

● - Letter Brief submitted to Judge re UL opposition  
to motion to intervene filed by Realty Transfer Co,  
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April 17, 1986

Via Express Mail

The Honorable Eugene D. Serpentelli  
Assignment Judge, Superior Court  
Ocean County Court House  
CN 2191  
Toms River, NJ 08754

Re: Urban League, et al. vs. Carteret, et al. (Monroe)

Dear Judge Serpentelli:

This letter brief is respectfully submitted on behalf of the Urban League in opposition to the motion to intervene filed by Realty Transfer Company and Caleb Development Corp. (hereinafter referred to jointly as "Realty Transfer" or "movants") on the very eve of transfer. Movants' application should be denied because movants lack the "interest relating to the property or transaction which is the subject of the action" required by R. 4:33-1. Nor should movants be granted permissive intervention pursuant to R. 4:33-2 because such intervention would greatly prejudice parties which have been litigating this matter for years, and indefinitely delay the otherwise imminent resolution of the pending motions.

Movants have no real interest in these motions. While they own property in Monroe, they have not obtained, nor even sought, site development plan approval in connection with same. Movants demand to be heard merely on the basis that they "plan in the near future" to apply for such approval. This speculative statement of intent, it should be noted, does not appear in a sworn affidavit of either prospective party but is baldly set forth in the letter-memorandum of counsel. It is respectfully submitted that the possibility that movants may seek at some unspecified point "in the near future" to obtain the requisite interest, cannot support intervention as of right, especially where such possibility is unsubstantiated by a sworn statement as required by R. 1:6-6.

While movants may be able to satisfy the less rigorous standard of "question of law or fact in common" required for permissive intervention, such intervention should not be permitted because of the prejudice and delay which would result. Movants contend that their intervention will not "prejudice the adjudication of the rights of the original parties" because "... Monroe Township has no interest in proposing Mount Laurel housing on movants' land." As set forth in the Certifications of Alan Mallach and Eric Neisser, Esq., it is precisely because of Monroe Township's amply demonstrated lack of interest in proposing Mount Laurel housing anywhere that the Urban League seeks imposition of the conditions set forth in its motion papers. If anyone owning land in Monroe is permitted to intervene and to prevent the imposition of conditions by merely showing that the Township "has no interest in proposing Mount Laurel housing on [their] land," there will be no conditions imposed, and, it is respectfully submitted that by the time the Council is operative, there will be no "realistic opportunity" for Mount Laurel housing.

Movants distort the Urban League's position by attempting to isolate each of the factors set forth in plaintiff's brief and analyzing each in a vacuum. The determination of scarce resources mandated by the Hills decision requires a careful assessment of complex and interrelated factors. Considered in the context of the limited remaining land in the designated growth area, as it must be, burgeoning local development and the resulting likelihood of market saturation strongly indicate a need for the the imposition of conditions. When the "prior acts of the municipality" are taken into account, in accordance with the Hills decision, there can be no question of the necessity for the imposition of these conditions.

Movants concede that, "The other plaintiff-builders obviously have no interest in allowing competing housing projects to be approved by Monroe Township while they proceed before the Council on Affordable Housing." Indeed, why should other developers proceed with Mount Laurel if movants are permitted the unrestrained development they demand? Even if such developers were to eventually obtain approval for their Mount Laurel housing, as a practical matter, saturation of the market by developers such as movants would effectively preclude its realization.

Although movants have failed to annex answering papers setting forth their objection to plaintiff's motion, in their letter brief they object to an "across the board" moratorium on development. Movants misstate the relief sought. Plaintiff only seeks preservation of large development sites which the Council may well find suitable for Mount Laurel housing. Nor does the Urban League seek to limit developments incorporating appropriate Mount Laurel set-asides. As set forth in their brief, movants here previously offered their site for a lower income set-aside project.

The imposition of conditions sought may well induce the Township to accept such an offer, in the absence of competing market unit projects of similar scale.

Furthermore, even if the relief sought could be construed as a "moratorium," it is respectfully submitted that the prohibition against moratoria adopted by municipalities should not apply to conditions imposed pursuant to the explicit directive of the New Jersey Supreme Court, especially in the context of Mount Laurel litigation. There can be no question of a contrary legislative intent, since the cited statute precedes the Hills decision by more than a year.

Finally, there is no basis for movants' assertion that permitting intervention will not cause delay here. Since movants failed to submit a proposed form of Order, contrary to R. 1:6-2, it is impossible to ascertain whether they seek "intervention by movants and allowing movants to be heard on plaintiff Urban League's motion for imposition of conditions on transfer," as set forth in their Notice of Motion, or whether "movants therefore seek to intervene and be heard only on the question of whether the Monroe Township Planning Board may grant approvals to projects exceeding 50 units in size pending the grant of substantive certification by the Council", as set forth in their letter brief.

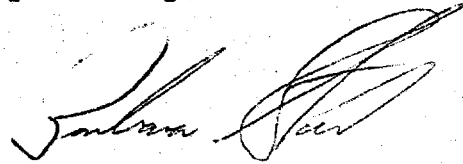
If the Notice of Motion accurately reflects the relief sought, movants may seek discovery and full participation in this matter. Of course, their discovery needs and interests can be expected to change to reflect changes in the status of their site plan development applications, which have not even been filed yet.

Even if movants do not wish to be heard with regard to any issue but the restraint sought on developments exceeding 50 units, and further agree to be bound with respect to any additional restraints which the Court may find necessary to preserve scarce resources, their intervention would still delay this matter. Movants have yet to file responsive papers, which should have been attached to their moving papers in accordance with R. 4:33-3, and the other parties are certainly entitled to respond. In short, granting movants' application would at the very least delay resolution of this matter by several weeks, if not months.

Since movants lack the requisite interest in this matter entitling them to intervention as of right and a grant of permissive

intervention would prejudice the other parties and delay resolution of this matter, it is respectfully submitted that movants' demand for intervention should be denied.

Respectfully,

A handwritten signature in cursive script, appearing to read "Julian J. [unclear]".

cc/Monroe Service List

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