

~~01/11/75~~ Cranbury
CA'

11/11/75

- Pretrial Memorandum of Cranbury
- Factual and legal Contentions
- Cover letter to Judge

Pg. 7

P.i. 2009

CA 001230D

RECEIVED

NOV 12 1975

HUFF AND MORAN
COUNSELLORS AT LAW
CRANBURY-SOUTH RIVER ROAD
CRANBURY, NEW JERSEY 08512

J. SCHUYLER HUFF
WILLIAM C. MORAN, JR.

TELEPHONE
(609) 655-3600

November 11, 1975

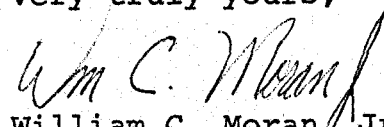
Hon. David D. Furman
Middlesex County Court House
New Brunswick, New Jersey 08903

Re: Urban League of Greater New Brunswick, et als
vs. Borough Council of Carteret, et als
Docket No.: C-4122-73

Dear Judge Furman:

Please find enclosed an original Pretrial Memorandum and an original plus two copies of Factual and Legal Contentions on behalf of the Township of Cranbury for the Pretrial Conference scheduled for November 17, 1975 at 1:30 p.m.

Very truly yours,


William C. Moran, Jr.

WCM/gml
cc: All Attorneys of Record

Attorney(s): HUFF AND MORAN
Office Address & Tel. No.: Cranbury-South River Rd., Cranbury, NJ (609) 655-3600
Attorney(s) for Defendant, Township Committee of the Township of Cranbury

URBAN LEAGUE OF GREATER NEW BRUNSWICK, a
non-profit corporation of the State of
New Jersey, et als

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION
MIDDLESEX COUNTY

Plaintiff(s)

vs.

THE MAYOR AND COUNCIL OF THE BOROUGH OF
CARTERET, et als

Defendant(s)

Docket No. C-4122-73

CIVIL ACTION

PRETRIAL MEMORANDUM OF

TOWNSHIP OF CRANBURY

1. **NATURE OF ACTION:** Class action suit challenging the Defendant municipalities' zoning ordinances and other land use policies and practices. The Plaintiffs' base their cause of action on N.J.S.A. 40:55-32, Article One, Paragraphs 1, 5, and 18 of the New Jersey Constitution; (SEE RIDER)

2. **ADMISSIONS AND STIPULATIONS:**
NONE.

RECEIVED

NOV 2 1975

3. **FACTUAL AND LEGAL CONTENTIONS:** (Annexed hereto).

4. **DAMAGE AND INJURY CLAIMS:**

5. **AMENDMENTS:** NONE.

6. **LEGAL ISSUES AND EVIDENCE PROBLEMS:** Standing to allege federal grounds for relief; existence of a proper class; standing of corporate plaintiff; joinder of indispensable parties; lack of jurisdiction for failure of justifiable issue; failure to state a claim upon which relief can be granted; absence of common law or fact for joinder of parties; applicability of term developing municipality to Cranbury Township; (SEE RIDER)

7. **LEGAL ISSUES ABANDONED:**
NONE.

RIDER TO PRETRIAL MEMORANDUM OF TOWNSHIP OF CRANBURY

1. 42 U.S.C. 1981, 1982 and 3601 et seq.; and on the Thirteenth and Fourteenth Amendments of the United States Consitution.

7. relationship of public facilities and services to the requirement of providing for Plaintiffs' needs; reasonableness of failure to adopt resolution of local approval; compliance with County master plan; relationship between fair share formula and actual construction; the assumption of natural growth as basis for relief and its incongruence with planning.

9. **EXHIBITS:**

10. **EXPERT WITNESSES:** Without limit.

11. **BRIEFS:** As Required by Court.

12. **ORDER OF OPENING AND CLOSING:** Usual.

13. **ANY OTHER MATTERS AGREED UPON:** NONE.

14. **TRIAL COUNSEL:** William C. Moran, Jr. for Cranbury Township.

15. **ESTIMATED LENGTH OF TRIAL:**

16. **WEEKLY CALL OR TRIAL DATE:** To be fixed.

17. **ATTORNEYS FOR PARTIES CONFERRED ON
MATTERS THEN AGREED UPON:**

19

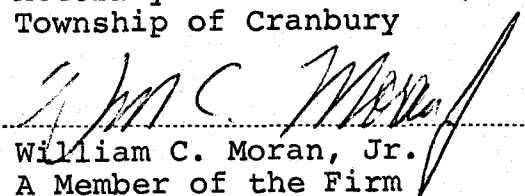
18. **IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED,**
except Plaintiffs' expert witnesses have not been identified nor have
they been deposed.

19. **PARTIES WHO HAVE NOT BEEN SERVED:** NONE.

PARTIES WHO HAVE DEFAULTED: NONE.

HUFF AND MORAN
Attorneys for Defendant,
Township of Cranbury

By


William C. Moran, Jr.
A Member of the Firm

Dated: November 10, 1975 .

FACTUAL AND LEGAL CONTENTIONS

Defendant questions whether the Plaintiffs constitute a proper class particularly because of the scope of its alleged membership. There is a serious question whether the interests of low income persons are the same as the interests of moderate income persons and furthermore whether the Plaintiff-representatives can represent both interests adequately.

Defendant contends that the corporate Plaintiff lacks standing under N.J.S.A. 40:55-47 because it fails to show any more than a theoretical interest in this case. The standing of organizations was not recognized even in the far reaching Mt. Laurel decision nor in the more liberal concurring opinion of Justice Pashman. Furthermore, Defendant maintains that all of the Plaintiffs lack standing on the federal issues. Robert Warth, et al vs. Ira Seldin, 43 U.S.L. Week 4906 (U.S. June 25, 1975). In addition the Leagues of Women Voters by their acknowledged lobbying attempts since 1971 to implement Plaintiffs' claims for relief through legislation are partisan and therefore their entrance as amicus curiae would be improper because their partisan position is inconsistent with the impartial role as advisor to the Court.

Defendant submits that Plaintiffs' action against the municipalities is in fact an action against a class, R.4:32-1, and that the class of Defendants named in the Complaint is improper because it fails to define the entire class which should include most municipalities in the counties of Bergen, Morris, Passaic and Somerset. Moreover, the only claims to common law or fact are those pertinent to the larger class noted above; failure to treat

Defendants as part of this larger class is to acknowledge that each Defendant's set of land use policies and practices is unique. Such an acknowledgment undermines the Plaintiffs' claim to meeting the requirement of commonality for permissive joinder thus justifying a severance for Cranbury Township. Even if Defendants are not treated as a class, the additional municipalities mentioned above are necessary parties since they have a very definite interest in the manner in which the needs of the Plaintiff class are determined. Their municipal land use policies and practices affect the named Defendants' policies and practices and vice versa. Finally, the State and County governments are necessary parties because any determination of a fair share formula would affect the State and County planning not only with respect to housing but the capital budget for other public works projects, environment and ecological concerns and agricultural plans.

Cranbury Township maintains the Court lacks jurisdiction. If all necessary parties are in fact joined the only ruling which the Court could issue would be an advisory opinion which is not within its power. New Jersey Turnpike Authority vs. Parsons 3 N.J. 235, 240, 69A.2d 875, 877 (1949). Even if the Court could render more than an advisory opinion it would still lack jurisdiction because the issue involved is a political question reserved for the legislature. Such discretionary directions as to how the state will accommodate its housing needs, the structure of local government and land use policy are all within the exclusive domain of the legislature. To require a new mechanism for planning by local governments based on regional approach would require an act of the legislature and is beyond the power of this Court.

Cranbury Township contends that its zoning ordinance and other land use policies and practices are a reasonable and valid exercise of the police power delegated to the municipality by the state legislature. Defendant further asserts it is not a developing municipality within the terms of Mt. Laurel; rather it is a historical, rural and agricultural community with serious environmental and ecological problems. This position is fortified by the state policy to preserve New Jersey's best agricultural land of which Cranbury is recognized to have an abundance. However, if Cranbury is found to be a developing community because of its location within a particular region the above stated facts present peculiar circumstances which meet the burden of proof required by the Mt. Laurel decision to allow an exception to the dictates of that case. Furthermore, if Cranbury Township is found to be a part of an expanding region as conceived of in Mt. Laurel, such region must be defined as all of Northeastern New Jersey.

The basis for the relief sought by Plaintiffs is founded upon an antiquated assumption that so called "natural forces" must be accommodated and fails to comprehend the need for adequate planning and the discretionary character involved in such an undertaking which is clearly outside the judicial arena.