

U.L. v. Carteret

10-14-1976

● Cranbury

Brief of  $\Delta$  Township of Cranbury in Support for  
Permanent Stay

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PI # 1116

● CA001247B

10/14/76

CA001247B

IN THE  
SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4685-75

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URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, ET AL.,  
Plaintiff - Respondent,

vs.

THE MAYOR AND COUNCIL  
OF THE BOROUGH OF  
CARTERET, ET AL.,  
Defendant - Appellant.

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BRIEF OF DEFENDANT - APPELLANT, TOWNSHIP OF CRANBURY  
IN SUPPORT OF MOTION FOR PERMANENT STAY

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## PROCEDURAL HISTORY

Plaintiffs, comprising an organization and certain individuals, individually and as representatives of a class similarly situated, sued twenty-three of the twenty-five municipalities of Middlesex County including Cranbury Township. The complaint alleged that the zoning ordinance of each municipality was unconstitutionally exclusinary and discriminatory. Plaintiffs sought as a remedy an allocation to each municipality of its fair share of low and moderate incoming housing to meet the county-wide need and that each municipality adopt a new zoning ordinance to accommodate its allocated share. The Cities of New Brunswick and Perth Amboy were joined as Third Party Defendants.

The Trial Court dismissed certain municipalities unconditionally and dismissed others based upon their acquiescence to changes in their zoning ordinances. The Trial Court concluded that the zoning ordinances of eleven municipalities were constitutionally invalid under the Mount Laurel decision. The judgment required each municipality to amend its zoning ordinance in such a manner that a specific number of low and moderate income housing units could be accommodated. Furthermore, the number of units to be accommodated included a number of units to meet future housing needs and was based on a formula which took the total number of units needed by 1985, as

determined by the Court, divided by the eleven municipalities. The judgment also provided that the municipalities should pursue and cooperate in available Federal and State subsidy programs for new housing and rehabilitation of substandard housing. Those municipalities whose zoning ordinances were declared invalid and required to comply with the affirmative relief ordered were: Cranbury, East Brunswick, Edison, Monroe, North Brunswick, Old Bridge, Piscataway, Plainsboro, Sayreville, South Brunswick and South Plainfield. The judgment having been entered on July 9, 1976, was to be effective and complied with 90 days after entry and jurisdiction retained pending submission of an amended zoning ordinance by each municipality to the Court.

After the date of the judgment, eight of the eleven municipalities against whom judgment was entered filed notices of appeal, the first having been filed on August 19, 1976. The appealing municipalities are: Cranbury, East Brunswick, Monroe, Piscataway, Plainsboro, Sayreville, South Brunswick and South Plainfield. Plaintiffs cross-appealed and also appealed as to 14 other towns. The eight appealing municipalities moved before the Trial Court for a stay of the effect of the Trial Court judgment pending the outcome of the appeal. On September 24, 1976, this matter was heard and the Motion was denied by the Trial Court.

After the date of this denial of a Stay, Defendant Cranbury Township moved before the Appellate Division on behalf of all

appealing municipalities for a Temporary Stay of the effect of the Judgment of the Trial Court until such time as the Motion for a Permanent Stay pending appeal could be considered by the full Appellate Division Part. At the same time, South Plainfield moved on behalf of all appealing municipalities for a Stay pending the appeal. On September 30, 1976, this matter was heard and the Motion for Temporary Stay was granted by Baruch S. Seidman, J.A.D.

ARGUMENT

POINT ONE

THE DENIAL OF THIS STAY WOULD FORCE ACTION ON THE PART OF CRANBURY TOWNSHIP TO ITS POSSIBLE IRREPARABLE DETRIMENT BEFORE A FINAL DETERMINATION OF THE ISSUES RAISED ON THIS APPEAL.

The Trial Court gave Cranbury Township 90 days within which to adopt a new zoning ordinance and to submit the same to the Court implicitly for the Court's approval. R.2:9-5 provides that an appeal does not automatically stay the proceedings in a civil action. However, because of the nature of the relief granted by the Trial Court in this matter, the stay is necessary in order to avoid the necessity of having to adopt a new ordinance prior to the complete utilization of the appellate process in a case which involves issues of first impression in this state of important public policy questions. In effect, the municipality would be required to amend its zoning ordinance prior to a final determination of whether said ordinance is, in fact, unconstitutional as determined by the Trial Court. The denial of this stay would also require the Planning Board of the municipality to consider applications for approval of large scale development contrary to the Master Plan to the great expense of the long-range overall development of the municipality. The denial of this stay would also require the municipality to expend large sums of money in formulating a new ordinance, which would require expert consultation and extensive research. All of these

expenses, difficulties and time requirements could be rendered useless and moot if the Defendant municipality is successful in this appeal. Moreover, if the municipality complies with the Trial Court judgment it will have to set up an ordinance to meet the particular housing allocation of the judgment and if the basic method of determining regional housing needs or the manner of allocating such need is incorrect as the appellant alleges the expenditure of time and money would have to be repeated.

There is no reason why the Township should be put to the expense of having to adopt the new ordinance and also subjected to the danger of operating under a judicially imposed new ordinance which may irreparably harm the existing comprehensive zoning scheme of the municipality. Until the issues raised on the appeal are disposed of, the status quo should be maintained. Briefly stated, the issues which the Township intends to raise on the appeal are as follows:

1. The Trial Court erred in accepting the archaic and arbitrary county boundaries in defining the term "region". The use of such boundaries creates a false planning foundation upon which to approach the complex problems of an urban society; the Supreme Court in Mount Laurel clearly stated that the county unit was unrealistic for purposes of defining a region,



67 N.J. 155, 189, 336 A. 2d 713, 733 (1975).

2. The Trial Court finding of low and moderate housing need was without foundation and its selection of a time period for determining future need was arbitrary.
3. The Trial Court lacked authority to order affirmative relief in the first instance. The Supreme Court in Mount Laurel expressly stated that it is the municipality's function and responsibility to decide at least initially on the manner and method of complying with the judgment.
4. The Trial Court's allocation formula for meeting the low and moderate housing need of the County is arbitrary and capricious. To simply take the total housing need, whatever it may be determined to be, and divide it by the eleven municipalities can only compound the pressing problems of urbanization and fails to provide an appropriate problem solving approach to the complexities of suburban sprawl.
5. The Trial Court erred in retaining jurisdiction after judgment for the purpose of

supervising compliance, a practice specifically prohibited by the Mount Laurel decision and by the Appellate Division in Cranbury Greens, Inc. vs. Township of Cranbury, Docket No. A3107-74.

6. The Trial Court erred in not certifying this as a class action and refusing to provide for notice to the class as required by The Court Rules.
7. Various other issues too numerous to set forth herein at length.

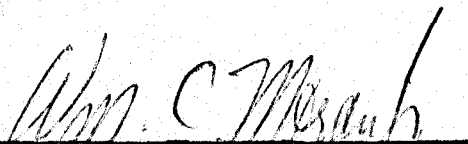
CONCLUSION

All of these arguments are presented in good faith and it is respectfully submitted that they constitute bona fide issues for Appellate review. It is submitted that these issues should be determined before the Township is required to adopt a new ordinance and that, therefore, the request for Stay should be granted.

Respectfully submitted,

HUFF AND MORAN, Attorneys  
for Defendant, Cranbury  
Township

By:

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