CA

Cranbury 7-26-84

Cranbury Land Co. v.
Cranbury Twp.

Letter re: opposition to 7-5-84 letter
(by Bisgaier)

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July 26, 1984

HONORABLE EUGENE D. SERPENTELLI, J.S.C.
Ocean County Court House
118 Washington Street
Toms River, New Jersey 08753

Re: Cranbury Land Company v. Cranbury Tp.
Docket No. L-070841-83PW
Prioritization of Builder's Remedy

Dear Judge Serpentelli:

I am in receipt of Mr. Warren's letter to your Honor of July 24, 1984, regarding the above. While his letter appears to adopt the approach taken by me in my letter of July 5, 1984, it also appears to reiterate a five point approach previously taken.

I am very much opposed to utilization of all but the last of the five points mentioned; that is, "the date on which each plaintiff commenced its litigation" (with the modification suggested in my prior letter). The other points should be rejected.

1. Whether the land is in a growth area. This court, in Orgo Farms has already ruled that the location of land in a non-growth area does not prima facie constrain a finding of "entitlement" to a builder's remedy. In fact, the court ruled that it does not go to entitlement at all but only to the issues of sound planning and environmental factors. These factors are considered by the master upon review of the site after entitlement is established. I see no reason why this should affect the issue of prioritization. If a developer is first in, prevails on entitlement and has a site in a non-growth area which the master and court deem appropriate for development under the standards set forth in Orgo Farms, the remedy should be granted regardless of the presence of other "entitled" developers with land in growth areas.

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2. The preference of the municipality. Mt. Laurel II must contain half a dozen specific disclaimers as to the relevancy of this factor to the award of a builder's remedy. My prior letter discussed this. A recalcitrant municipality which has steadfastly refused to abide by the law hardly should be given any say on an issue such as prioritization. Developers should not be encouraged to both litigate against and curry favor with the township.

3. The density to which the land was entitled pursuant to the challenged zoning ordinance. I am at a loss to understand this factor at all; particularly as to its relevance to prioritization. The Supreme Court did not wish to encourage those with lands of higher residential densities to sue more than others. Nothing, per se, can be gleaned from the relative densities other than "municipal preference". This has already been addressed.

4. Whether the plaintiff is a long-time landowner or speculator. This is totally irrelevant. While the word "speculator" is somewhat loaded, its use in contradistinction to the phrase "long time landowner" is unfair. Development of conventional housing in this state has been a function of the actions of landowners, contract purchasers, joint venturers, speculators, investors of all types of backgrounds as well as governmental entities. There is nothing in Mt. Laurel II to favor one over the other. Quite to the contrary, it is the explicit intent of the Court to encourage all, equally, whether private or public, landowner, contract purchaser, joint venturer, speculator or investor. The goals of Mt. Laurel II are not diminished by their being pursued by a speculator as long as there is adherence to the standards set forth in the opinion. Furthermore, it is unclear why a long-time landowner, who may have undertaken no positive action regarding lower income housing over the many years of ownership, should be seen favorably. A "speculator" who has invested money with a commitment to provide affordable housing may be acting more in the spirit of Mt. Laurel II than the landowner who never acted until the township chose to rezone its land from industrial to residential uses. In any event, I believe that the nature of the legal interest in the land is irrelevant to the question of prioritization.

I agree that an "objective" test is essential on the issue of prioritization for the very reasons expressed by Mr. Warren. I strongly urge the adoption of the "first in" approach suggested in my prior letter.

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If that approach is taken, the master will review each site in order of priority set by the court. A concept plan (as opposed to full site-plan approval) would be reviewed and approved for a given number of units for the first site. If additional units remain for the fair share, the next site would be similarly evaluated and so on.

I believe this approach is consistent with, if not mandated by, Mt. Laurel II, cost effective and time efficient. It will not constrain those who might otherwise be encouraged to litigate and clarify for all, at the earliest stage possible, the relative prioritization for site specific relief. It is fundamentally fair and the easiest of all proposed methodologies to apply.

Respectfully submitted,

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CSB:emm
cc: all counsel of record