

CA - Cranbury

8/6/84

Brief in support of notice of motion  
for leave to appear as amicus  
curiae

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CA 002244 B

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY  
DOCKET NO. C-4122-73

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URBAN LEAGUE OF GREATER :  
NEW BRUNSWICK, :  
 :  
Plaintiff, :  
 :  
v. :  
 :  
THE MAYOR AND COUNCIL OF :  
CARTERET, et al., :  
 :  
Defendants. :

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BRIEF IN SUPPORT OF NOTICE OF MOTION  
FOR LEAVE TO APPEAR AS AMICUS CURIAE

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On the Brief

## STATEMENT OF FACTS

The Stony Brook-Millstone Watersheds Association, Inc. is a non-profit corporation organized under the laws of the State of New Jersey for the purpose of preserving the environmental quality in the watershed area comprised of the Stony Brook and Millstone Rivers, which includes all or part of twenty-six (26) municipalities including Cranbury, in an area of two hundred fifty-six (256) square miles.<sup>1</sup> It provides technical expertise and reviews and analyzes a series of public policy issues and their impact on water quality and the environment.

The Association is familiar with the efforts by Cranbury Township to preserve its farmland and protect the national and state historic district in the central part of its village area. The Association attended many of the Planning Board's informal sessions which led to the adoption of the Master Plan, and testified at the public hearings held by the Planning Board and Township Committee to adopt Master Plan and zoning ordinances, respectively. In addition, the Association, through its representatives and members, has attended a series of meetings with regard to preserving farmland in the State of New Jersey. In fact, many of these meetings were held in Cranbury because of its tradition as a viable and productive agricultural

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<sup>1</sup>East Amwell, East Windsor, Franklin, Hightstown, Hillsborough, Hopewell Borough, Hopewell Township, Lawrence, Manalapan, Manville, Millstone Borough, Millstone Township, Monroe, Montgomery, North Brunswick, Pennington, Plainsboro, Princeton Borough, Princeton Township, Rocky Hill, Roosevelt, South Brunswick, Washington, West Amwell and West Windsor

agricultural community. The preservation of farmland has been recognized as a critical governmental objective.<sup>2</sup>

This motion and brief are submitted on behalf of the Stony Brook-Millstone Watersheds Association, Inc., in support of its application to file an amicus brief and encourage the Court to uphold the Township's zoning ordinances.<sup>3</sup>

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<sup>2</sup>The Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., has as its purposes the following: "...To provide adequate light, air and open space; ...To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; ...To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; ...To promote the conservation of open space and valuable natural resources and to prevent urban sprawl and degradation of the environment through improper use of land; ... and To promote the conservation of energy through the use of planning practices designed to reduce energy consumption and to provide for maximum utilization of renewable energy sources...."

<sup>3</sup>We believe that the basic thrust of the Township's Master Plan and zoning ordinances are in compliance with Mt. Laurel with respect to overall housing needs, farmland preservation and historic protection. There may be details of the Township zoning ordinances which could or should be modified to reduce cost generating features and we express no opinion with respect to those matters.

## ARGUMENT

THE COURT SHOULD NOT BLINDLY IMPOSE A SEVENFOLD INCREASE IN CRANBURY TOWNSHIP'S POPULATION OVER THE NEXT SIX YEARS WITHOUT CONSIDERING THE POTENTIALLY ADVERSE IMPACT SUCH INCREASE WOULD HAVE ON THE ENVIRONMENT.

In Southern Burlington County NAACP v. Mt. Laurel Twp., 92 N.J. 160 (1983) (hereinafter "Mr. Laurel"), the Supreme Court reemphasized and reiterated a municipality's obligation to provide a realistic opportunity for the construction of low and moderate income housing. The Association does not question that decision or the fact that Cranbury Township should provide a realistic opportunity for low and moderate income housing. However, in determining Cranbury's "fair share" and/or requiring Cranbury to adopt zoning ordinances implementing the fair share, the Court must be extremely sensitive not only to the Township's obligation to provide a realistic opportunity for low and moderate income housing, but also to insure that the Township will not be radically transformed overnight as a result of the Court's decision or to undermine or destroy the Township's salutary efforts to preserve its prime agricultural lands or protect its national historic district.

The Supreme Court held that "the remedial obligation of municipalities that consist of both "growth areas" and other areas may be reduced, based on many factors, as compared to a municipality completely within a "growth area." Id. at 215. (Emphasis added) The Court further provided that "the housing opportunity provided must, in fact, be the substantial equivalent of the fair share." (Id. at 216.) However, the Supreme Court explicitly acknowledged and emphasized that other important planning goals should not be sacrificed in providing Mt. Laurel housing. The Court held

that agricultural preservation should be encouraged and that a radical transformation of a municipality should not occur because of any Mt. Laurel suit.

We reassure all concerned that Mt. Laurel is not designed to sweep away all land use restrictions or leave our open spaces and natural resources prey to speculators. Municipalities consisting largely of conservation, agricultural, or environmentally sensitive areas will not be required to grow because of Mt. Laurel. No forests or small towns need be paved over and covered with high-rise apartments as a result of today's decision.

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No one community need be concerned that it will be radically transformed by a deluge of low and moderate income developments.

\* \* \*

Our scenic and rural areas will remain essentially scenic and rural, and our suburban communities will retain their basic suburban character. But there will be some change, as there must be if the constitutional rights of our lower income citizens are ever to be protected. That change will be much less painful for us than the status quo has been for them. Id. at 219-220.

The Association has read the report submitted by the Court-appointed expert which apparently sets a fair share number at approximately eight hundred (800). It is somewhat surprising that the words "environment," "environmental quality," "water quality," etc., do not appear anywhere in the report. Surely the dictates of Mt. Laurel cannot be met without taking such factors into consideration. This Court should not accept any "fair share" determination without input on these crucial factors. Simply stated, if people move in and the water supply is not adequate (either qualitatively or quantitatively), then the people will be forced to move elsewhere.

There can be no serious question as to the salutary benefits of farmland preservation. Both the Mt. Laurel decision itself and the Municipal Land Use Law,

N.J.S.A. 40:55D-2(g) and 28(a)(b)(2), specifically delineate the Court's and legislature's concern for agricultural preservation. A number of state and federal studies have consistently indicated the need to preserve the country's and region's prime agricultural lands. The salutary benefits of such preservation are obvious and include, but are not limited to, the facts that the agricultural industry is critical in reducing our country's balance of payments problem, supports the northeast region's agricultural production to keep prices lower in the northeast region and also alleviate potential problems from a cutoff of agricultural products from other areas of the country (such as the Medfly problem, transportation strikes, etc.) and provides a viable state agricultural industry to provide foodstuffs for New Jersey, New York and Pennsylvania citizens. A sevenfold increase in Cranbury's population over a six (6) year period not only is inconsistent with sound planning principles, but may or will undermine the Township's efforts at farmland preservation and historic protection.

One fact is certain. If the Court errs and imposes too great a burden on Cranbury with respect to population growth over the next six (6) years such that it destroys or undermines the Township's efforts to preserve farmland and protect its historic village, that error will be permanent. Once the farmland is developed there can be no return to farming on that land and may signal the death knoll for farming in central New Jersey. On the other hand, if the Court errs on the side of providing too few housing units, the land in Cranbury will still be available in 1990 or thereafter as the site for low and moderate income housing in the 1990s. Simply stated, the imposition of a radical transformation of Cranbury from a largely agricultural community to a highly developed one in six (6) years can permanently eliminate the agricultural community in Cranbury and seriously undermine its efforts at historic

protection. On the other hand, imposing lower numbers cannot disserve the public interest because the land will always be there, if necessary, for future housing. Accordingly, either in the calculation of the "fair share" for Cranbury or in the imposition of such fair share, the Court should not go beyond the numbers currently contemplated in the Township's Master Plan and implementing zoning ordinances.

Respectfully submitted,

STRAUSS, WILLS & O'NEILL

By   
Peter M. O'Neill

Dated: August 6, 1984.