

CA - Cranbury

8/22/84

letter-memorandum in response to  
motion of Stony Brook-Millstone Watershed  
Assoc. for leave to appear as amicus  
curiae

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August 22, 1984

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RICHARD J. HUGHES

Honorable Eugene D. Serpentelli, J.S.C.  
 Ocean County Court House  
 CN-2191  
 Toms River, New Jersey 08754

Re: Cranbury Land Company v. Cranbury Township  
 Docket No. L-070841-83P.W.

Dear Judge Serpentelli:

Please accept this letter-memorandum as a response to the motion of the Stony Brook-Millstone Watershed's Assoc., Inc. for leave to appear as amicus curiae in the above referenced matter.

It is apparent that the application is out of time. The Brief in support of the application indicates an intention to attempt to introduce environmental factors into the determination of Cranbury's fair share and in support of its Zoning Ordinance. However, the fair share determination has already been made in the Court's letter-opinion of July 27, 1984. Further, that same letter-opinion determines that the existing Cranbury ordinance is invalid. Accordingly, it is obvious that the fair share and validity issues which the proposed amicus wishes to address have already been decided. For that reason, the participation of the proposed amicus would not serve the Court or the interests of justice. Contrary to what is stated in paragraph 5 of amicus's Affidavit, it is clear that the Association's input will not assist the ultimate resolution of this matter.

In addition, amicus appears to have read, but not to have understood the Mount Laurel II opinion. The statement on page 6 of its Brief that "imposing lower numbers cannot disserve the public interest because the land will always be there, if

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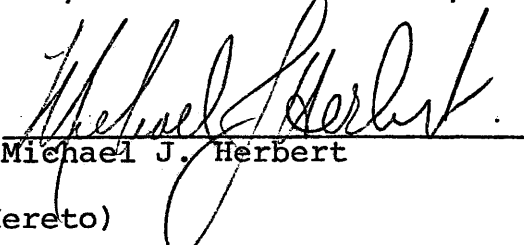
necessary, for the future housing" is unsupportable. It totally ignores the Supreme Court's emphasis on the timely achievement of each community's fair share of low and moderate income housing needs. This emphasis is so strongly stated throughout the opinion that citation is unnecessary. Therefore, the contention that achievement of fair share can always be postponed without affecting the public interest shows an entire lack of sensitivity to the public interest, indeed the constitutional public interest, as defined by the Supreme Court in Mount Laurel II. Such misinterpretation of the thrust of Mount Laurel II is further evidence that their proposed amicus will not make a meaningful contribution to this case. This fact, plus the untimeliness of the application, demonstrate that the already huge list of counsel involved in this case should not be burdened with an additional amicus whose contributions will be untimely procedurally and minimally substantively.

Finally, to the extent that amicus wishes to deal with the phasing in of a compliant ordinance revision--this is suggested but not definitively stated on page 5 of its Brief--there is little basis for an amicus presentation of the law since the issues concerning phasing are primarily factual. Thus, there would appear to be little scope for an amicus brief during a compliance trial devoted to an evaluation of the validity of a revised ordinance and the phasing provisions included in such ordinance. Even this interest of the amicus does not justify its admission into this proceeding.

For all of the above reasons, it is respectfully requested that the motion by the Stony Brook-Millstone Watershed's Assoc., Inc. for leave to participate in this case as amicus curiae be denied.

Respectfully submitted,  
STERNS, HERBERT & WEINROTH, P.A.

By

  
Michael J. Herbert

MJH:ks

cc: All Counsel of Record (Attached Hereto)

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