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Cranbury

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the argument to  
memo re: preserving historic  
towns in NJ

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March 13, 1985

The Honorable Eugene Serpentelli  
Superior Court  
Court House CN-2191  
Toms River, New Jersey 08754

RE: Urban League of Greater New  
Brunswick v. Borough of  
Carteret, et al.  
Docket No. C-4122-73

Dear Judge Serpentelli:

On January 4, 1985 this court granted the Cranbury Historic and Preservation Society, Cranbury Landmarks Inc., Thomas Sadlowski and Richard Walling leave to appear as amici curiae in connection with the issue of historical preservation in Cranbury Township. The order gave amici the right to submit evidence, expert reports and briefs. On March 15, 1985, this court will hear oral argument concerning motions for builder's remedies. Amici is submitting this letter memorandum and the affidavit of Thomas Sadlowski in response to the motions.

Amici urge this court to postpone any decision upon developer's remedies until all parties and the court can review the master's report. The report of the master will be submitted to the court within two weeks. Sadlowski affidavit, paragraph 21. Thus, in view of the short delay, there could be no prejudice to any of the plaintiffs. On the other hand, any decision on developer's remedies will have momentous consequences to the historic preservation of Cranbury. The master has been briefed on the issues of historic preservation by amici and his report will in all likelihood discuss necessary historic preservation measures that should be taken. Under these circumstances, the court should delay its decision on developer's remedies until the master's report is received.

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Both the Federal Government and the State of New Jersey have recognized the importance of historic preservation. Congress has enacted the National Historic Preservation Act of 1966, 16 U.S.C.A. 470.\* The State of New Jersey has also acted on this subject, enacting N.J.S.A.13:1b-15.128 et. seq. "An act establishing the New Jersey Register of Historic Places." Additionally, the Municipal Land Use Law of 1975 explicitly recognized the importance of historic preservation by requiring inclusion of historic preservation sites in the Master Plan. See N.J.S.A.40:55D-28(b)(6). Commenting on this provision, Michael Pane in "Municipal Ordinances for Historic Preservation" a report prepared for the County and Municipal Government Study Commission (1981) stated:

"Thus, historic sites are officially given recognition as a major community resource and, by inclusion in the master plan, status as an element of the community which should be preserved and enhanced through the Land Use decision - making process."

Recently, the New Jersey Legislature even more directly recognized the link between zoning and historic preservation. Last week the Legislature passed and sent to the Governor the Fair Housing Act, the Senate Committee Substitute for S-2046. If signed into law by the Governor, that bill will establish a Council on Affordable Housing. One of the tasks of the Council

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\* In its preamble, Congress found:

- A. That the spirit and direction of the nation are founded upon and reflected in its historic past;
- B. That the historical and cultural foundations of the nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- C. That in the face of ever increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and non-governmental historic preservation programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our nation.

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according to the Senate Committee Substitute will be to adopt criteria and guidelines for "municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or historic preservation factors". Section 7(emphasis added.)

In Southern Burlington County N.A.A.C.P. vs. Mount Laurel Township II 92 N.J. 158 (1983) this court stressed the importance of the builder's remedy. Nevertheless, the court stressed that a builder's remedy should not be granted if it is established that because of environmental or other substantial planning concerns, the plaintiff's proposed project is clearly contrary to sound land use planning. Mount Laurel II supra at 280. (emphasis added) In view of the state and federal legislation on the subject of historic preservation discussed above, there is no doubt that historic preservation is a substantial planning concern which must be considered in determining whether a proposed developer's remedy is clearly contrary to sound land use planning.

In amici's affidavit, Sadlowski traces the historical development of Cranbury (paragraphs 3 to 8), states why Cranbury has unique historic significance (paragraphs 9 to 14) and discusses the threat which development that is not carefully located and controlled poses to Cranbury's Historic District (paragraphs 15 to 19). Sadlowski concludes as follows:

In the light of the unique historic significance of Cranbury's Historic District, it would be contrary to the goal of historic preservation to grant a developer's remedy on land located west of Route 130. I recognize that sound comprehensive planning involves a look at many factors in addition to historic preservation. Nevertheless, unless it can be determined that there are no appropriate sites for high-density development within Cranbury east of Route 130 which can be built consistent with sound planning principles, a developer's remedy on land west of Route 130 would be clearly contrary to sound land use planning. (paragraph 21)

Higher density uses east of Route 130 may be feasible without jeopardizing historical preservation goals. Nevertheless, in a community with the unique historical significance that Cranbury has, it would be clearly contrary to sound land use planning and the goals of historical preservation to award a developer's remedy for property east of Route 130 without receiving and reviewing the master's report on traffic, design,

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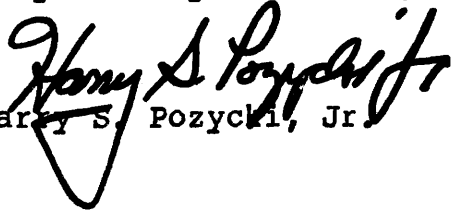
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density, phasing, and other planning standards that should be a condition of a developer's remedy so as to avoid negative impact upon the Historic District. (paragraph 22)

In accordance with the Sadlowski affidavit, amici urges this court to consider historic preservation issues when determining whether an application for a developer's remedy is "clearly contrary to sound land use planning." Mount Laurel II supra at 280. Furthermore, in view of the importance of historic preservation in Cranbury this court should delay any decision upon developer's remedies until this court has received the master's report. This report is due within two weeks and will give the master's recommendations upon how low and moderate income housing can be provided in Cranbury without jeopardizing historic preservation goals.

Amici will not appear at oral argument on March 15, 1985, but request that this letter memorandum and affidavit be considered in the court's decision.

Respectfully submitted,

  
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HSP/baf

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