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8-Nov-85

- Motion for stay of Trial Court Proceedings and for expedited Appeal
- Affidavit in support of motion for stay
- Letter Brief
- Order
- Cover letter forwarding docs to clerk

pg. 15

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HUFF, MORAN & BALINT

COUNSELLORS AT LAW

CRANBURY-SOUTH RIVER ROAD

CRANBURY, NEW JERSEY 08512

J. SCHUYLER HUFF
WILLIAM C. MORAN, JR.
MICHAEL P. BALINT
DAVID E. ORRON

TELEPHONE
(609) 655-3600

November 8, 1985

Ms. Elizabeth McLaughlin, Clerk
Superior Court-Appellate Division
CN 006
Trenton, New Jersey 08625

Re: Urban League of Greater New Brunswick, et al.,
Plaintiff-Appellant -v- The Mayor and Council
of The Borough of Carteret, et al., and other
Consolidated Cases

Dear Ms. McLaughlin:

I am enclosing herewith original and 4 copies of the following documents:

- 1) Motion for Stay of Trial Court Proceedings and For Expedited Appeal;
- 2) Affidavit in Support of Motion for Stay;
- 3) Letter Brief; and
- 4) Order.

This will also confirm that this matter will be heard before the Honorable Virginia Long on Tuesday, November 12, 1985 at 10:30 a.m.

Very truly yours,


WILLIAM C. MORAN, JR.

WCM:gs
Enclosures
cc: All counsel involved.

HUFF, MORAN & BALINT

COUNSELLORS AT LAW
CRANBURY - SOUTH RIVER ROAD
CRANBURY, N. J. 08512
(609) 655-3600

ATTORNEYS FOR Defendant, Township of Cranbury

Plaintiff CONSOLIDATED
URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

vs.

Defendant

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al.

and other Consolidated Cases.

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION

Docket No. AM

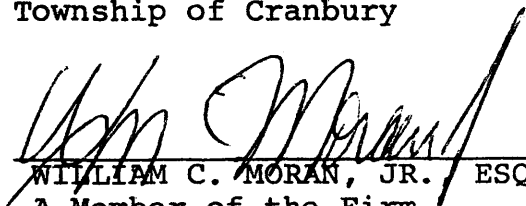
CIVIL ACTION
MOTION FOR STAY OF TRIAL
COURT PROCEEDINGS AND
FOR EXPEDITED APPEAL

Defendant, Township of Cranbury, moves the Court for an Order Staying Any Further Proceedings in the Trial Court which is the New Jersey Superior Court, Law/Chancery Division pending the disposition of a Motion for Leave to File an Interlocutory Appeal filed by the Township of Cranbury with the Superior Court, Appellate Division on October 26, 1985; and

Further moves for expedited treatment of said Motion
and for the hearing on the Appeal if said Motion is granted.

HUFF, MORAN & BALINT
Attorneys for Defendant,
Township of Cranbury

BY:



WILLIAM C. MORAN, JR. ESQUIRE
A Member of the Firm

Dated: November 7, 1985

HUFF, MORAN & BALINT

COUNSELLORS AT LAW
CRANBURY - SOUTH RIVER ROAD
CRANBURY, N. J. 08512
(609) 655-3600

ATTORNEYS FOR Defendant, Township of Cranbury

Plaintiff CONSOLIDATED
URBAN LEAGUE OF GREATER
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vs.

Defendant

THE MAYOR AND COUNCIL OF THE
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SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION

Docket No. AM

CIVIL ACTION
AFFIDAVIT IN SUPPORT OF
MOTION FOR STAY

STATE OF NEW JERSEY)

SS:

COUNTY OF MIDDLESEX)

William C. Moran, Jr. being duly sworn according to law,
upon his oath, deposes and says:

1. I am an Attorney at Law of the State of New Jersey,
and the Township Attorney for the Township of Cranbury, the
Defendant in the above captioned matter, and the Attorney
charged with the representation of the Township in this matter.

2. This action is an action pursuant to Southern
Burlington County N.A.A.C.P. vs. Township of Mt. Laurel, et al.

92 N.J. 158 (1983), hereinafter referred to as Mt. Laurel II.

At the present time there is one public interest plaintiff prosecuting the action and three plaintiffs seeking builder's remedy. A fourth plaintiff, Toll Brothers Inc. is in the process of circulating a Stipulation of Dismissal as to their complaint.

3. On October 2, 1985 the Honorable Eugene D. Serpentelli heard oral argument on a Motion made by the Township of Cranbury to transfer these pending matters to the Council on Affordable Housing, pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

4. Judge Serpentelli denied Cranbury's Motion together with the Motions of Piscataway Township, South Plainfield Borough, Monroe Township and Warren Township, all of which were heard simultaneously.

5. Thereafter, Cranbury Township and several other municipalities, who were similarly treated, filed Notice of Motions for Leave to Take an Interlocutory Appeal in Superior Court, Appellate Division.

6. Judge Serpentelli, in his Order denying the transfer, also denied any stays of his Order of Denial.

7. Thereafter, Judge Serpentelli, scheduled a hearing on Cranbury Township's Compliance Package which had been submitted to the Court in December of 1984. Said hearing is now scheduled to commence on December 2, 1985.

8. At said hearing, a minimum of 8 expert witnesses, including the Court appointed Master, 2 Agricultural Experts, 2 Planners, a Housing Expert, an Historic Preservationist and a Professional Engineer will be called as witnesses. In

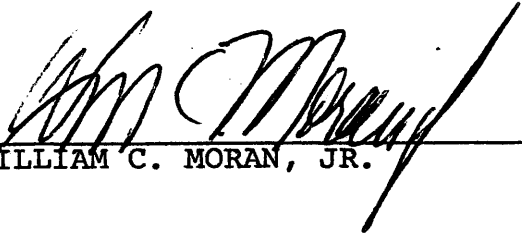
addition, several fact witnesses will be called. The trial will be attended by a minimum of 5 attorneys representing the various parties, and it is estimated that the trial of the matter will take a minimum of 2 to 3 weeks, at a cost to the various participants in the probable neighborhood of \$100,000.00. In addition to the trial time involved, each of the parties will have to do substantial amounts of preparation for trial.

9. In the event the Appellate Division determines to grant the Motion for an Interlocutory Appeal and subsequently determines that the trial court erred in not transferring these matters to the Council on Affordable Housing, all of this time, effort and money will have been wasted.

10. Counsel is aware of the fact that the Courts, on numerous occasions, have indicated that delay is something to be specifically avoided in Mt. Laurel litigation. That is the reason that this Motion is also for expedited treatment on the Appeal. If the stay is granted, and Cranbury is unsuccessful on its Interlocutory Appeal, at most, the Compliance Hearing will be delayed for a matter of several weeks. The Compliance Package has already been before the trial court for almost one (1) year.

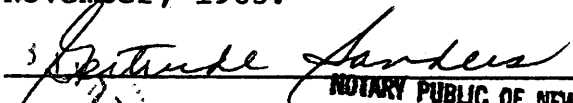
11. The unnecessary expense attended, upon proceeding with the trial at this stage in the proceedings, would constitute immediate and irreparable harm to the Township and, it is submitted, also to the plaintiffs. It is for this

reason that it is urged that the stay, pending the decision on the Motion for Interlocutory Appeal, should be granted.

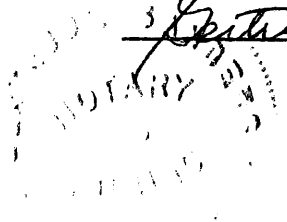


WILLIAM C. MORAN, JR.

Sworn to and subscribed
before me this 7th day of
November, 1985.



NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 3, 1989



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CRANBURY-SOUTH RIVER ROAD

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DAVID E. ORRON

November 8, 1985

Ms. Elizabeth McLaughlin, Clerk
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CN 006
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Re: URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,
Plaintiff-Appellant - v- THE MAYOR AND COUNCIL
OF THE BOROUGH OF CARTERET, et al., and other
Consolidated Cases

Superior Court of New Jersey, Appellate Division,
Docket No. AM

On Motion For Leave to File an Interlocutory Appeal

Sat Below: Eugene D. Serpentelli, A.J.S.C.

Dear Ms. McLaughlin:

I am filing this Letter Brief as the Brief of the Defendant-Appellant, Township of Cranbury, in the above captioned matter.

PROCEDURAL HISTORY¹

The procedural history in this litigation goes originally back to 1974. However, for all relevant purposes here, the history starts with an entry of an Order by the Honorable Eugene D. Serpentelli on July 27, 1984 which fixed Cranbury Township's fair share obligation under So. Burlington Cty. N.A.A.C.P. vs. Mt. Laurel Tp., 92 N.J. 158, 456 A. 2d 390 (1983) as 816 units of low and moderate income housing and directing

Cranbury Township to rezone to accommodate that housing (Pa 1a). Cranbury Township filed its proposed package to accommodate that number of units in December of 1985. No hearing was held on the acceptability of the Compliance Package and on August 21, 1985, Cranbury moved to transfer the pending litigation to the Council on Affordable Housing pursuant to the Fair Housing Act which had been passed on July 2, 1985 (Pa 6a). The Motion was argued on October 2, 1985 and consolidated for purposes of argument with other similar Motions filed by Warren Township, Piscataway Township, Monroe Township and South Plainfield Borough. Judge Serpentelli denied all Motions (Pa 268a). Thereafter, Cranbury Township filed a Motion for Leave to File an Interlocutory Appeal from that Order with the Superior Court, Appellate Division. Shortly after filing the Notice of Motion, Cranbury Township received a notice from the Trial Court scheduling a hearing on its Compliance Package for December 2, 1985.

STATEMENT OF FACTS

Cranbury Township is a rural, primarily agricultural community in southern Middlesex County. Plaintiff, Urban League (now Civic League) is a public interest group claiming to represent persons of low and moderate income housing, seeking housing opportunities in Cranbury Township. Plaintiffs,

¹All Appendix references are to the Appendix in Support of Motion For Leave To Take An Interlocutory Appeal for Defendant-Appellant, Township of Cranbury, already filed in this matter.

Garfield & Co., Cranbury Land Co. and Zirinsky are builders seeking Builder's Remedies in Cranbury Township. The essential facts of the main case are set forth in the statement of facts in Defendant-Appellant, Cranbury Township's Brief in Support of its Motion For Leave to File an Interlocutory Appeal.

Cranbury Township and all the parties to this case are now faced with the prospect of a lengthy and complex trial on the acceptability of a document entitled "Mt. Laurel II Compliance Program for Cranbury Township, New Jersey" which was submitted to the Trial Court in December of 1984. That document, itself, is 136 pages long followed by several appendices which are of equal length. It is estimated by all concerned that the trial of that issue will last a minimum of 2 weeks. From the expert reports already filed, it appears that Philip Caton, the Court appointed Master, George Raymond, the Township Planning Consultant, Linda Bentz, a Planner and Agricultural Expert, Dr. John Hunter, an Agricultural Expert, Peter Abeles, a Planner, Alan Mallack, a Housing Expert, Donald Fetzner, a Professional Engineer and an Historic Preservationist will all be called upon to testify at the time of trial. In addition, numerous fact witnesses will be called upon to testify. On the issues involved, including the viability of agricultural preservation in Cranbury Township, the effect of development on historic preservation in Cranbury Township, the adequacy of the infrastructure in Cranbury Township, the economic viability of development at various densities, basic entitlement to a

Builder's remedies and numerous subissues. It is clear that the trial of the case will cost tens of thousands of dollars with additional thousands of dollars being spent in preparation for the case.

ARGUMENT

COMMON SENSE DICTATES THAT A STAY FOR A
SHORT PERIOD OF TIME SHOULD BE GRANTED
IN ORDER TO PERMIT THE DECISION ON A
QUESTION OF STATEWIDE IMPORTANCE SUCH
AS THE TRANSFER OF PENDING LITIGATION
IN ACCORDANCE WITH STATUTORY INTENT.

A reading of the commentary in cases concerning R. 2:9-5, the rule which permits stays of matters pending appeal, makes clear that the decision whether or not to grant such a stay rests in the sound discretion of the Court. Del Deo, 1A New Jersey Practice which says, "Fundamentally, the granting or denying of a stay is discretionary with the Court". Of similar intent is the case Grober vs. Kahn, 88 N.J. Super. 343, 212 A 2d 384 (App. Div. 1965). The case of Zaleski vs. Local 401 of United Elec. Radio and Mach. Workers of America, 6 N.J. 109 77 A 2d 798 (1951) also makes it clear that stays can be granted where applications for Interlocutory Relief are pending.

In the instant case, defendant is well aware as anyone of the fact that delay is something to be avoided. On the other hand, a review of the briefs already submitted on the Motion For Leave to File an Interlocutory Appeal, indicates that Judge Serpentelli has denied a Motion for Transfer in the face of a stated legislative intent to encourage

conclusion of these matters through the administrative process, rather than through litigation, See N.J.S.A. 52:27D-303.

Cranbury Township has requested, therefore, expedited treatment of its Motion and, if the Motion is successful, of the hearing on the Interlocutory Appeal itself.

A few scenarios present themselves as follows:

- (a) If the Motion for Leave to File An Interlocutory Appeal is denied after this stay has been granted, at most the trial of the matter before Judge Serpentelli will have been delayed a few weeks.
- (b) If the Motion for Leave to File An Interlocutory Appeal is granted, but the Appeal is subsequently dismissed after being heard on an expedited basis, the trial would at most be delayed a few months.
- (c) If the stay is denied, and it is ultimately determined that the Motion for Transfer should have been granted, after the Compliance Hearing has gone ahead, literally tens of thousands of dollars of the money of the various parties to the case, and hundreds of man hours will have been wasted.

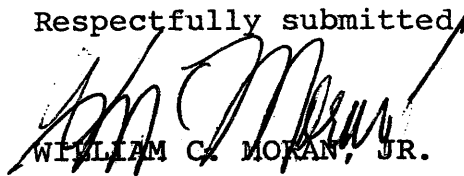
Balancing on the one hand, the need to pursue the remainder of this matter with all reasonable dispatch against the unnecessary costs which would be incurred, if the Transfer Motion is ultimately granted. It becomes clear that the reasonable exercise of discretion would justify a short delay in the proceedings below, in order to ascertain that a wasteful process is not permitted to occur. For these reasons it is respectfully submitted that there is a clear and imminent danger

of irreparable harm, not only to the defendant, but also to the plaintiffs in this matter. The harm, of course, being the necessity of proceeding what could ultimately turn out to be the useless exercise.

CONCLUSION

For all of these reasons, it is respectfully submitted that a stay of the Trial Court proceedings pending the outcome of Defendant-Appellant's Motion for Leave to File an Interlocutory Appeal and the subsequent hearing on that Appeal, if the Motion is granted, should be issued.

Respectfully submitted,


WILLIAM C. MORAN, JR.

WCM:gs

cc: All counsel involved.

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SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION

*Docket No.*AM

CIVIL ACTION
ORDER

This matter having been heard by the Court, upon the application of the Defendant, Township of Cranbury, for a stay of the Trial Court proceedings pending the determination of its Motion For Leave To File An Interlocutory Appeal to the Appellate Division of Superior Court; and it appearing to the Court that such a stay is justified,

IT IS ON THIS ____ DAY OF NOVEMBER, 1985,

ORDERED that any further proceedings on these consolidated matters in the Superior Court, Chancery Division or Law Division be stayed, pending a determination and disposition of defendant's

Motion For Leave to File an Interlocutory Appeal, and if such Motion is granted until the disposition of the Appeal before the Appellate Division of Superior Court.

IT IS FURTHER ORDERED that the operation and effect of this Order will remain in effect only until such time as the Motion for Stay can be considered by a full panel of the Superior Court, Appellate Division.

J.A.D.