

CA - Cranbury

4/9/84

letter memorandum opposing motion for  
recess by Twp

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RECEIVED

APR 1 1984

NOTE TO MEMBERS

April 9, 1984

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

Re: Browning Ferris Industries of South Jersey et al  
vs. Cranbury Township Planning Board and the Township  
Committee of the Township of Cranbury

Dear Judge Sperentelli:

On Friday, April 7, 1984, I received the Township of Cranbury's Motion to Recuse the Trial Judge. Please accept this letter memorandum in opposition thereto.

During the entire pretrial proceedings in this matter, neither the Township of Cranbury nor any other party ever placed any objections on the record with respect to the Court's procedure with respect to region, fair share and allocation. Mr. Moran's memorandum is entirely devoid of any reference to any objection being placed on the record to this procedure. Further, Mr. Moran's brief is not even in the form of affidavit. His brief amounts to an essay, and is devoid of any form of proof. Cranbury, as well as any other party defendant, could have objected to this procedure on the record, and if it felt constrained to do so.

The Township of Cranbury's moving papers make it appear that the Township Committee should pass a Resolution authorizing its attorney to take any step in the litigation, otherwise it intends not to be bound. The Township Committee members should be in the court room on a constant basis telling its counsel that they approve or disapprove of each step in the legal process. Clearly Cranbury was satisfied with the procedure utilized by the Court when the numbers were to its advantage.

It was content to sit back at that point and now when the process does not work to its satisfaction, it chooses to allege bias on the part of the Court.

With respect to the application to recuse, a Motion should be made to the New Jersey Supreme Court. In South Burlington County N.A.A.C.P. vs. Mt. Laurel Township 92 N.J. 158, 253, the Court indicated that the "Chief Justice, with approval of the Court will name three Judges that will thereafter handle all Mt. Laurel litigation. Each of these judges will be exclusively responsible for a particular area of the state;" clearly any modification of the order of the Supreme Court should be made by the Supreme Court, not the Trial Court. Clearly the Trial Court in this case has managed the case to this point in accordance with the Mt. Laurel mandate, See 92 N.J. at 292.

Nevertheless, if this Court should recuse itself, the recusal should be solely limited to the issues pointed out by Cranbury, i.e. region, fare share and allocation. The Court should retain jurisdiction with respect to compliance issues. Clearly nothing is alledged which pertains to the question of the Court's bias with respect to compliance. Therefore, the Court should retain jurisdiction with respect to compliance in any event.

I am also enclsioing a Notice of Motion returnable of April 11, 1984 to enforce the Settlement between Cranbury and Browning Ferris Industries, et al. The Township Committee has reneged twice; the Planning Board has taken no steps to honor its obligations purusant to the Order to which it has consented. The Court should enforce the settlement for the reasons set forth in the Affidavit submitted in support of the Motion.

Respectfully Submitted,



LAWRENCE B. LITWIN

LBL:sbr  
Enclosures  
cc: All counsel