

CA - Cranbury

3/4/85

Letter memorandum in lieu of a formal brief
on behalf of Garfield + Co. in opposition to
application of Joseph + Robert Morris
for permission to be considered for the
award of a builder's remedy

⊕ exhibits A and B (letter and leave to
apply for builder's remedy)

p 12

CA002607D

WARREN, GOLDBERG, BERMAN & LUBITZ

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW112 NASSAU STREET
P. O. BOX 645
PRINCETON, NEW JERSEY 08542
(609) 924-8900219 EAST HANOVER STREET
TRENTON, NEW JERSEY 08608
(609) 394-7141

PLEASE REPLY TO: PRINCETON

March 4, 1985

The Honorable Eugene D. Serpentelli, A.J.S.C.
Ocean County Superior Court
Ocean County Courthouse
Washington Street - Courtroom 1
CN 2191
Toms River, New Jersey 08754Re: Morris v. Township of Cranbury
Docket No. L L-054117-83 P.W.

Dear Judge Serpentelli:

Please accept this letter memorandum in lieu of a formal brief on behalf of Garfield & Company in opposition to the application of Joseph and Robert Morris for permission to be considered for the award of a builder's remedy in the above captioned litigation.

This application by Joseph and Robert Morris is essentially identical to the motion made by them almost a year ago to amend their Complaint to include a request for a builder's remedy and to be considered for such a remedy. A copy of the letter memorandum submitted by Garfield & Company in opposition to that motion is enclosed under cover of this letter memorandum as Exhibit A. The arguments set out in Garfield & Company's June 5, 1984 letter to this Court are as applicable today as they were when made, some nine months ago.

Having reviewed the various memoranda submitted in opposition to the Morris Brothers' May, 1984 application to be considered for a builder's remedy and having heard oral argument on that application, this Court denied the Morris Brothers' motion. A copy of that Order is annexed as Exhibit B. It denied Robert and Joseph Morris's application to amend their Complaint and to participate in the builder's remedy stage of this litigation. It provided that all plaintiffs qualifying for a builder's remedy would have preference with respect to Mt. Laurel construction over the Morris Brothers, and it provided that the Morris Brothers should be entitled to participate in all compliance hearings held by the Township of Cranbury and to submit any proposals that they might have to the Township and/or the Master. Having considered the Morris Brothers' application for a builder's remedy in detail more than nine months ago and having ruled on that application, no reason exists to consider such an

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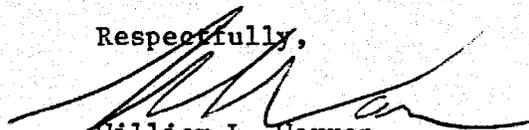
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application again at this time. Certainly nothing in the Morris Brothers' papers suggests any reason for reconsidering their application.

The Morris Brothers adopt the arguments made by Toll Brothers. However, the Morris Brothers are in a very different position than Toll Brothers. Not until May of last year, weeks after the fair share and compliance trial had ended, did the Morris Brothers express any interest in seeking a builder's remedy. As pointed out in Garfield & Company's June 5, 1984 letter memorandum, the Morris Brothers were well aware of the course and status of the consolidated action. Nevertheless, they failed to apply for a builder's remedy. They failed to participate in any discovery relating to fair share and compliance. They failed to present an expert report with respect to fair share and compliance. They failed to participate in that portion of the trial at which builder's remedy issues were addressed. They failed even to apply for a builder's remedy until the first stage of the trial had been completed. And, finally, their application has already been considered and denied.

The Morris Brothers have not made any showing that equity or justice requires either participation as a builder's remedy plaintiff at this late date or reconsideration of this Court's decision of August 3, 1984 denying their application to apply for a builder's remedy. Their application should therefore be denied.

Respectfully,



William L. Warren

WLW/st

WARREN, GOLDBERG, BERMAN & LUBITZ

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

112 NASSAU STREET
P. O. BOX 645
PRINCETON, NEW JERSEY 08542
(609) 924-8900

219 EAST HANOVER STREET
TRENTON, NEW JERSEY 08608
(609) 394-7141

PLEASE REPLY TO: PRINCETON

June 5, 1984

The Honorable Eugene D. Serpentelli, J.S.C.
Superior Court of New Jersey
CN 2191
Toms River, New Jersey 08754

Re: Morris v. Township of Cranbury
Docket No.: L-54117-83 P.W.

Dear Judge Serpentelli:

Please accept this letter in lieu of a formal brief on behalf of Garfield & Company and in opposition to the application of Joseph and Robert Morris for permission to seek a builder's remedy against Cranbury Township or to amend their Complaint to include a request for relief in the form of a builder's remedy.

Having commenced an action which explicitly failed to allege that Cranbury's zoning ordinance did not provide for its fair share of low and moderate income housing; having commenced an action which explicitly failed to seek a builder's remedy; having failed to retain experts and to present expert reports on the issues of compliance and fair share; having failed to participate in the trial of these issues; and, finally, having subscribed to a pre-trial order dated March 16, 1984 characterizing its suit as a prerogative writ action seeking to invalidate Cranbury's zoning ordinance on non-Mount Laurel grounds, Messrs. Morris now seek permission to apply for a builder's remedy. Such permission should not be granted for three reasons:

1. Joseph and Robert Morris cannot be said to have prevailed on the issue of compliance.
2. Cranbury has not been given an opportunity to challenge Joseph and Robert Morris' right to a builder's remedy or the grounds of exhaustion of remedies, standing or on the grounds of environmental and planning considerations.

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3. . Joseph and Robert Morris have presented no reason that equity or justice would require granting them permission to amend their Complaint, thereby restructuring this case, after trial on the issues of fair share and compliance has been completed.

1. FAILURE TO PREVAIL ON THE ISSUE OF COMPLIANCE:

A builder's remedy is to be granted only where the plaintiff developer "vindicates the constitutional obligation [to provide to low and moderate income housing] in Mount Laurel - type litigation." South Burlington County N.A.A.C.P. v. Mount Laurel Township, 92 N.J. 158, 218 (1983). See id. at 270. However, Joseph and Robert Morris did not retain experts on this constitutional issue. They did not submit expert reports. They did not attend any depositions or make experts retained by them available for deposition; and, finally, they did not participate in the trial of the issues of fair share and compliance. Under these circumstances, it can hardly be claimed that they have vindicated "the constitutional obligation in Mount Laurel - type litigation." Id. at 218. They are, therefore, not entitled to a builder's remedy and are certainly not entitled to claim their right to such a remedy more than a week after the completion of the constitutional phase of the trial in this consolidated action.

2. FAILURE TO PARTICIPATE IN THE BUILDER'S REMEDY PORTION OF THE TRIAL:

The trial of this consolidated action not only included presentations on the issues of fair share and compliance but also presentations on the right to a builder's remedy. The Township of Cranbury specifically challenged, through testimony and legal argument, the right of Zirinsky, Cranbury Land Company and Toll Brothers to a builder's remedy. Grounds urged by Cranbury included, inter alia, standing, exhaustion of remedies and land which was inadequate for planning or environmental reasons. Having chosen not to participate in this or any other stage of the trial, Messrs. Morris should not now be permitted to restructure their Complaint and this case, requiring a reopening of the trial in this consolidated action on the builder's remedy issues.

3. FAILURE TO SHOW THAT EQUITY OR JUSTICE REQUIRES THE RELIEF SOUGHT:

This is not a situation in which the movant can argue that he was legitimately unaware of the existence of the consolidated action and should therefore be permitted to participate in the action as a builder's remedy plaintiff, even though the constitutional issues have already been tried. Messrs. Morris were plaintiffs in this consolidated proceeding from the very beginning. They made the affirmative choice not to allege a violation by Cranbury of the Mount Laurel constitutional mandate. At no time prior to or even during the trial of this action did they seek to amend their Complaint to add Mount Laurel claims. Indeed, the Pre-trial Order in this case, signed by

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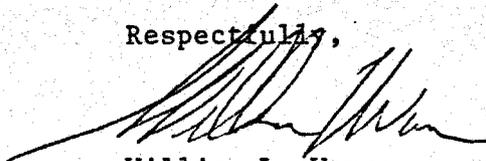
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counsel for Messrs. Morris on March 16, 1984 specifically recites that the Morris Complaint is a prerogative writ action "seeking to invalidate the zoning ordinance on non-Mount Laurel grounds. [1C]. Under these circumstances and given the fact that the trial of this case on the issues of fair share, compliance and entitlement to a builder's remedy has already been completed, Messrs. Morris should not now be permitted - without any justification whatsoever - to restructure this case to make themselves Mount Laurel plaintiffs.

I am sending a copy of this letter memorandum to all counsel on the annexed service listing.

Respectfully,

A handwritten signature in dark ink, appearing to read "William L. Warren", written in a cursive style.

William L. Warren

SERVICE LISTING - GARFIELD & COMPANY

Michael J. Herbert, Esquire
STERNS, HERBERT AND WEINROTH, P.A.
186 West State Street
P.O. Box 1298
Trenton, New Jersey 08607
Attorneys for Plaintiff, Lawrence Zirinsky

William C. Moran, Esquire
HUFF, MORAN AND BALINT
Cranbury-South River Road
Cranbury, New Jersey 08512
Attorneys for Defendant, Mayor and The Township Committee of the
Township of Cranbury, a municipal corporation, and the members thereof

Joseph L. Stonaker, Esquire
STONAKER AND STONAKER, ESQUIRES
41 Leigh Avenue
P.O. Box 570
Princeton, New Jersey 08540
Attorneys for defendant, The Planning Board of the Township of Cranbury,
and the members thereof

Richard Schatzman, Esquire
McCARTHY AND SCHATZMAN, P.A.
6 Charlton Street
P.O. Box 2329
Princeton, New Jersey 08540
Attorneys for Plaintiffs, Joseph Morris and Robert Morris

Thomas R. Farino, Jr., Esquire
Corner of Applegarth and Half Acre Roads
Cranbury, New Jersey 08512
Attorney for Plaintiff, Cranbury Development Corporation, a Corporation
of the State of New Jersey

Carl S. Bisgaier, Esquire
BISGAIER AND LOEFFLER
510 Park Boulevard
Cherry Hill, New Jersey 08034
Attorney for Plaintiff, Cranbury Land Company, a New Jersey Limited
Partnership

Bruce S. Gelber, Esquire
Janet LaBella, Esquire
National Committee Against Discrimination in Housing
1425 H. Street NW
Suite 410
Washington, D.C. 20005
Attorney for Plaintiff, Urban League of Greater New Brunswick

Bertram Busch, Esquire
BUSCH AND BUSCH, ESQUIRES
99 Bayard Street
P.O. Box 33
New Brunswick, New Jersey 08903
Attorney for Defendant, Borough of South Plainfield

Patrick J. Diegnan, Jr., Esquire
1308 Durham Avenue
South Plainfield, New Jersey 07080
Attorney for Defendant, Township of South Brunswick

Joseph Benedict, Esquire
247 Livingston Avenue
New Brunswick, New Jersey 08902
Attorney for Defendant, Township of South Brunswick

Phillip Paley, Esquire
17 Academy Street
Newark, New Jersey 07102
Attorneys for Defendant, Township of Piscataway

Lawrence B. Litwin, Esquire
SCERBO, KOBIN, LITWIN AND WOLFF, ESQUIRES
10 Park Place
Morristown, New Jersey 07960
Attorneys for Plaintiffs, Bronwing-Ferris Industries of South Jersey, Inc., a corporation of the State of New Jersey, Richcrete Concrete Company, a corporation of the State of New Jersey, and Mid-State Filigree Systems, Inc., a corporation of the State of New Jersey

Eric Neisser, Esquire
John Payne, Esquire
CONSTITUTIONAL LITIGATION CLINIC, Room 338
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102

Leslie Lefkowitz, Esquire
1500 Finnegans Lane, P.O. Box 3049
North Brunswick, New Jersey 08902
Attorney for Defendant, Township of North Brunswick

Guliet D. Hirsch, Esquire
BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540
Attorney for Toll Brothers, Inc.

Michael Noto, Esquire
151 Route 516
P.O. Box 607
Old Bridge, New Jersey 08857
Attorney for Township of Old Bridge

Arnold K. Mytelka
CLAPP & EISENBERG
80 Park Plaza
Newark, New Jersey 07102
Attorneys for Plaintiffs, Lori Associates & Hadb Associates

FILED AUG 3 1984

E. SERPENTELLI, J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO. L-54117-83 P.W.
CONSOLIDATED WITH:
C-4122-73
L-55956-83 P.W.
L-59643-83 P.W.
L-58046-83 P.W.
L-70841-83 P.W.
L-79309-83 P.W.
L-5652-83 P.W.

WARREN, GOLDBERG, BERMAN & LUBITZ

A PROFESSIONAL CORPORATION
112 NASSAU STREET
P. O. BOX 645
PRINCETON, NEW JERSEY 08542
(609) 924-8900

ATTORNEYS FOR Plaintiff, Garfield & Company

JOSEPH MORRIS and ROBERT MORRIS,

Plaintiffs,

vs.

TOWNSHIP OF CRANBURY IN THE
COUNTY OF MIDDLESEX, a
municipal corporation of the
State of New Jersey,

Defendant.

CIVIL ACTION

(Mount Laurel)
Assigned to the Honorable
Eugene D. Serpentelli, J.S.C.
by Order of the New Jersey
Supreme Court

ORDER DENYING LEAVE TO APPLY
FOR BUILDER'S REMEDY, ETC.

THIS MATTER having been opened by telephone conference to the Court by McCarthy and Schatzman, P.A., attorneys for plaintiffs, Joseph and Robert Morris, (Richard Schatzman, Esquire) on an application for an Order permitting amendment of the Complaint, or alternatively, participation in the builder's remedy portion of Urban League of Greater New Brunswick v. Carteret, et al. action (Docket No. C-4122-73) and other actions against Cranbury Township previously consolidated therewith, and with the participation of the following counsel: William C. Moran, Jr., Esquire of Huff, Moran & Balint, Esqs., attorneys for defendant Township of Cranbury; Joseph L. Stonaker, Esquire of Stonaker & Stonaker, Esqs. for defendant Township of Cranbury Planning Board;

William L. Warren, Esquire, of Warren, Goldberg, Berman & Lubitz, Esqs., attorneys for plaintiff, Garfield & Company; John N. Payne, Esquire for Eric Neisser, Esquire, attorneys for plaintiff Urban League; and Guliet F. Hirsch, Esquire of Brener, Wallack & Hill, Esqs. attorneys for plaintiff Toll Brothers; and the Court having considered both oral and written responses and argument of opposing counsel and having considered the moving and responding papers submitted on behalf of the parties, and good cause appearing for the entry of this Order;

IT IS on this 3 day of Aug, 1984, ORDERED that:

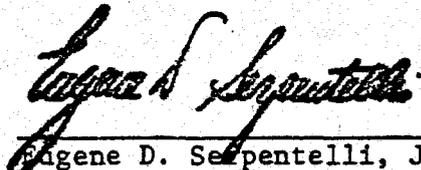
Plaintiffs Robert and Joseph Morris are denied amendment of the Complaint and participation in the builder's remedy portion of Urban League of Greater New Brunswick v. Carteret, et al. action (Docket No. C-4122-73) and other actions against Cranbury Township previously consolidated therewith.

IT IS FURTHER ORDERED that plaintiffs Joseph and Robert Morris are to be given full notice of any hearings to be held with respect to revising and amending defendant Cranbury Township's Land Use Ordinances and said plaintiffs will be given an opportunity to participate in any such hearings.

IT IS FURTHER ORDERED that all plaintiffs who have qualified for a Mount Laurel builder's remedy shall have preference with respect to Mount Laurel construction over Joseph and Robert Morris.

IT IS FURTHER ORDERED that plaintiffs Joseph and Robert Morris are permitted to submit to defendant Cranbury Township and/or the defendant Planning Board of Cranbury Township, and/or a master, if one is appointed by the Court, any proposal these plaintiffs have with respect to so-called Mount Laurel construction with respect to its parcel of land.

IT IS FURTHER ORDERED that any copies of any proposed land use ordinances revisions or amendments that result from the revision process shall be supplied to plaintiffs Joseph and Robert Morris.


Eugene D. Serpentelli, J.S.C.

SERVICE LISTING - GARFIELD & COMPANY

Michael J. Herbert, Esquire
STERNS, HERBERT AND WEINROTH, P.A.
186 West State Street
P.O. Box 1298
Trenton, New Jersey 08607
Attorneys for Plaintiff, Lawrence Zirinsky

William C. Moran, Esquire
HUFF, MORAN AND BALINT
Cranbury-South River Road
Cranbury, New Jersey 08512
Attorneys for Defendant, Mayor and The Township Committee of the
Township of Cranbury, a municipal corporation, and the members thereof

Joseph L. Stonaker, Esquire
STONAKER AND STONAKER, ESQUIRES
41 Leigh Avenue
P.O. Box 570
Princeton, New Jersey 08540
Attorneys for defendant, The Planning Board of the Township of Cranbury,
and the members thereof

Richard Schatzman, Esquire
McCARTHY AND SCHATZMAN, P.A.
6 Charlton Street
P.O. Box 2329
Princeton, New Jersey 08540
Attorneys for Plaintiffs, Joseph Morris and Robert Morris

Thomas R. Farino, Jr., Esquire
Corner of Applegarth and Half Acre Roads
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Carl S. Bisgaier, Esquire
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510 Park Boulevard
Cherry Hill, New Jersey 08034
Attorney for Plaintiff, Cranbury Land Company, a New Jersey Limited
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Bruce S. Gelber, Esquire
Janet LaBella, Esquire
National Committee Against Discrimination in Housing
1425 H. Street NW
Suite 410
Washington, D.C. 20005
Attorney for Plaintiff, Urban League of Greater New Brunswick

Bertram Busch, Esquire
BUSCH AND BUSCH, ESQUIRES
99 Bayard Street
P.O. Box 33
New Brunswick, New Jersey 08903
Attorney for Defendant, Borough of South Plainfield

Patrick J. Diegnan, Jr., Esquire
1308 Durham Avenue
South Plainfield, New Jersey 07080
Attorney for Defendant, Township of South Brunswick

Joseph Benedict, Esquire
247 Livingston Avenue
New Brunswick, New Jersey 08902
Attorney for Defendant, Township of South Brunswick

Phillip Paley, Esquire
BERNSTEIN, HOFFMAN AND CLARK, ESQUIRES
336 Park Avenue
Scotch Plains, New Jersey 07076
Attorneys for Defendant, Township of Piscataway

Lawrence B. Litwin, Esquire
SCERBO, KOBIN, LITWIN AND WOLFF, ESQUIRES
10 Park Place
Morristown, New Jersey 07960
Attorneys for Plaintiffs, Bronwing-Ferris Industries of South Jersey, Inc., a corporation of the State of New Jersey, Richcrete Concrete Company, a corporation of the State of New Jersey, and Mid-State Filigree Systems, Inc., a corporation of the State of New Jersey

Barbara J. Williams, Esquire
John Payne, Esquire
CONSTITUTIONAL LITIGATION CLINIC, Room 338
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102

Leslie Lefkowitz, Esquire
1500 Finnegans Lane, P.O. Box 3049
North Brunswick, New Jersey 08902
Attorney for Defendant, Township of North Brunswick

Guliet D. Hirsch, Esquire
BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540
Attorney for Toll Brothers, Inc.

Michael Noto, Esquire
151 Route 516
P.O. Box 607
Old Bridge, New Jersey 08857
Attorney for Township of Old Bridge

Arnold K. Mytelka
CLAPP & EISENBERG
80 Park Plaza
Newark, New Jersey 07102
Attorneys for Plaintiffs, Lori Associates & Hadb Associates

Stewart M. Hutt, Esquire
HUTT, BERKOW & JANKOWSKI
459 Amboy Avenue, P.O. Box 648
Woodbridge, New Jersey 07095
Attorneys for Plaintiff, Great Meadows