

Holmdel

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Letter to Judge in lieu of formal brief in opposition to
defendant's motion to reconsider the appointment

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REPLY TO:

Engelhard Building

Honorable Eugene D. Serpentelli, J.S.C.
Court House
Toms River, N.J. 08754

Re: Brunswick - Hampton Associates v. Holmdel Township
Docket No. L-15209-84 PW

Dear Judge Serpentelli:

Please accept this letter in lieu of a formal brief in opposition to defendant's motion to reconsider the appointment of a master. The municipality has at pretrial conceded the invalidity of its ordinance. The Court, therefore, has the unquestioned right of discretion to Appoint a master (Mount Laurell II at 281). In fact, Mount Laurell II encourages the trial courts to freely utilize masters (Mount Laurell II at 282-83).

The master in this case will not duplicate the efforts of existing planners as defendant contends. Rather, the master, responsible only to the Court, will conduct his independent study and permit the Court the opportunity to examine the four existing advocate proposed viewpoints in light of the master's unbiased analysis.

Defendant's suggestion that the master will prematurely establish plaintiffs' right to a builder's remedy is erroneous. The master will perform his site specific evaluations of plaintiffs' parcels, and his analysis will provide the Court with information concerning the suitability of the subject parcels for the type of development being proposed. Consideration of suitability of the subject parcels is the required next step following resolution of the issues of fair share and compliance; the former having been tried and the latter having been conceded by the municipality at

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pretrial. Clearly, the master's report establishes no rights in any party whatsoever. Contrary to the defendant's assertion, the appointment of a master to provide the Court with an independent opinion regarding suitability of the sites is a far cry from a decision recognizing plaintiff's rights to a builder's remedy. Such a decision is solely within the province of the Court, and appointment of a master to aid the court in reaching its determination regarding fair share and site suitability is an undertaking sanctioned and encouraged by the Supreme Court's decision in Mount Laurel II (Mount Laurel II at 282-83). Defendant's attempt to characterize utilization of a master as a usurpation of the Court's role cannot be seriously considered. Indeed, the Court's discretion in reaching a decision regarding the appropriate remedy, a stage of the proceeding not yet reached in this matter, is totally unfettered and, in fact, the Court remains free to disregard the advice of the master regardless of whose position might be furthered as a result of that advice.

Having determined not to present the August, 1984 ordinance during the compliance stage, defendant's contention that appointment of a master prior to consideration of the applicability of "the time of decision" rule is untenable. The information to be provided to the Court by the master is, if anything, a natural prerequisite to the Court's determination concerning the issue raised by defendant. However, given the current posture of the instant suit, the question as to whether "the time of decision" rule applies is totally irrelevant and surely does not require reconsideration of the Order which is both appropriate and reasonable and serves the best interests of all parties.

For all of the foregoing reasons, the defendant's motion should be denied.

Respectfully submitted,


Meryl A.G. Gonchar

MAGG:SC
cc: Ronald L. Reisner, Esq. (hand delivered)
Carl Bisgaier, Esq.
J. Peter Sokol, Esq.