

8/10/84

Monroe 1984

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letter re: opposed to amendment
to order

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August 10, 1984

HONORABLE EUGENE D. SERPENTELLI, J.S.C.
Ocean County Court House
118 Washington Street
Toms River, New Jersey 08753

Re: Monroe Development Associates
v. Monroe Tp. (L-076030-83PW)

Dear Judge Serpentelli:

I am in receipt of Mr. Hutt's letter of August 7, 1984, regarding the builder's remedy in Monroe. I am opposed to his recommendation regarding amendment of the Order as to plaintiff-developers other than my client.

First, I believe there is a compelling argument regarding entitlement to a builder's remedy where litigation is commenced after the start of trial in another matter and where the party did not participate in the hearings on the issues of fair share and compliance. I assume that counsel for Monroe will address this point more broadly; however, I raise it only in so far as there may be any suggestion that Mr. Hutt's client stands on equal footing with mine.

Second, I cannot believe there is an issue as to prioritization among the various developers in this matter. I believe it is clear that Monroe Development Associates is entitled to the builder's remedy and must be given first priority in review by the master. The only issue on suitability is whether, under the generous standards set forth in Mt. Laurel II, the site can be developed within the parameters of sound land use planning and whether substantial environmental degradation will occur. Since I believe that even the defendant is willing to concede this site is suitable under those standards (it is now zoned for industrial use), I do not think suitability is an issue.

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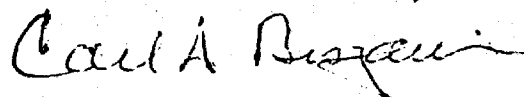
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Third, "relative suitability" among the sites is certainly not an issue. I read your opinion to indicate that the master's function was to evaluate each site relative to suitability standards in Mt. Laurel II and not to comparative suitability among all proposed sites. In any event, that would be particularly inappropriate in Monroe in light of the two previous points made as to entitlement and prioritization.

If consideration is being given to granting the other developers in Monroe any status which would interfere with or in any way jeopardize my client's right to a full builder's remedy, I am requesting briefing and oral argument. This is obviously of great concern to my client, a concern which was not anticipated when the complaint was filed.

Respectfully submitted,



CARL S. BISGAIER

CSB:emm

cc: all counsel of record