

Monroe v. Monroe

Sep 18, 1984

Letter from Bisgamer to Judge re: reconsideration
of the issue of prioritization of builder's remedy,

Pgs 2

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File

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September 18, 1984

HONORABLE EUGENE D. SERPENTELLI, J.S.C.
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

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JUDGE SERPENTELLI'S CHAMBERS

Re: Monroe Development Associates
v. Monroe Tp.

Dear Judge Serpentelli:

I am in receipt of a copy of Stewart Hutt's letter of September 12, 1984, to your Honor seeking reconsideration of the issue of prioritization of builder's remedy.

Please consider these comments in your review of that request.

Monroe Development Associates is not taking a position at this time as to the entitlement of the other plaintiffs to the builder's remedy. It is the position of Monroe Development Associates that, regardless of the issue of entitlement, no other plaintiff-developer should be given prioritization over Monroe Development Associates for the builder's remedy. In this regard, I note that in discussions with the municipality over the past months, Monroe Development Associates has proposed a development of between 840 and 960 total units with a lower income component of between 168 and 192 units. This aspect of the development proposal did not meet with resistance from counsel for the defendant, and I expect that it should be acceptable from a planning and environmental standpoint to the court-appointed master.

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September 18, 1984

Re: Monroe Development Associates
v. Monroe Tp.

In the context of the Cranbury matter, I have set forth my views on the issue of prioritization of builder's remedy where the court finds that several plaintiff-developer litigants are otherwise entitled to that remedy. The court may recall that my view is that the only relevant standard for prioritization is the determination of prioritization based solely on the chronological order of filing of complaints against the municipality. However simplistic this standard may seem, I believe it is well reasoned and supported by the Mt. Laurel II decision. In that regard, I note that Monroe Development Associates was the first litigant in time in the Monroe Township litigation other than the Public Interest plaintiff. More importantly, it is my position that, regardless of the court's ultimate determination of "entitlement" as to the other plaintiffs, no finding of entitlement can create rights for them superior to that of Monroe Development Associates. As pointed out in Mr. Hutt's letter, Monroe Development Associates was the only developer-litigant who filed suit in a timely fashion to participate in the trial on fair share and compliance. Monroe Development Associates did participate in that trial until its conclusion and ultimate finding of a lack of compliance and fair share obligation. However long this remedial process takes and whatever the input of the other developer-litigants, so long as Monroe Development Associates fully participates, I believe it stands alone as to prioritization for full consideration of the builder's remedy.

In reading Mr. Hutt's correspondence, I am not certain as to whether he disagrees with any of the positions taken above. However, if he is seeking a reconsideration of the court's prior decision, which is in conflict with my position, I strongly object to that reconsideration.

Respectfully yours,



CARL S. BISGAIER

CSB:emm

cc: all counsel of record