Monroe 1986

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No P.I.

— Cover letter, + Objections Monroe's plan

ML000205W

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Campus at Newark

School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

March 2, 1987

Mr. C. Roy Epps, President
Civic League of Greater New Brunswick
47-49 Throop Avenue
New Brunswick, NJ 08901

Dear Roy:

Enclosed please find Objections to Monroe's plan filed on behalf of Monroe Development Associates.

Sincerely,

Barbara

encls

cc/Mallach, Payne, Neisser (w/encls)

ML000205W

GROSS & NOVAK, P.A.
ATTORNEYS AT LAW

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August 14, 1986

Honorable Judges of the Appellate Division
Hughes Justice Complex
CN-006
Trenton, New Jersey 08625

RE: Urban League of Greater New Brunswick, et als.
Vs. Monroe Township, et als.
Docket No. A-4020-85-T7

Dear Honorable Judges:

Please accept this letter brief in lieu of a more formal brief pursuant to R. 2:6-2(b) and R. 2:6-5. This letter brief is submitted on behalf of Carl E. Hintz in reply to the brief of the Appellant, Township of Monroe, which was submitted on August 4, 1986, under the erroneous Docket No. A-5394-94-T1.

PROCEDURAL HISTORY

The Urban League of Greater New Brunswick and others are parties in a suit against the Township of Monroe and other municipalities, which resulted in the directives of the New Jersey Supreme Court as set forth in the decision commonly referred to as "Mt. Laurel II"*. On remand from the Supreme Court, the Honorable Eugene D. Serpentelli, Judge of the Superior

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* Southern Burlington County NAACP, et al. v. Township of Mt. Laurel, et als., 92 N.J. 158 (1983). One of the consolidated appeals in that decision was Urban League of Greater New Brunswick, et als. v. Borough of Carteret, et als. No. A-4; See: 92 N.J. at 339-350.

Court, entered an Order and Judgment as to Monroe Township on August 13, 1984 (Da. 6 to Da. 14), pursuant to findings that the land use regulations of Monroe Township were invalid under the guidelines set forth by the Supreme Court in Mt. Laurel II. This Order and Judgment are not appealed from here.

On January 28, 1985, the Council of the Township of Monroe met in a special meeting for purposes of discussing the services of a professional planner to prepare a compliance plan in accordance with that Order and Judgment. On March 29, 1985, the Township Council submitted such a plan, with the assistance of a professional planner, Hintz, Nelessen Associates, P.C. That plan was reviewed by Ms. Carla Lerman, the court appointed master, in her report, dated July 1, 1985. Mr. Carl Hintz, the respondent herein, is a principal of Hintz, Nelessen Associates, P.C., and he and his firm were retained by the Council of the Township of Monroe on January 28, 1985 to provide professional planning services (Da. 22-20 to Da. 23-30.) During the period from December 26, 1984, when he was first contacted by the then-township attorney, through March 29, 1985, Mr. Hintz and his firm provided a total of 166.75 hours of professional services on behalf of the Township of Monroe, and expended $842.17 in out-of-pocket disbursements on behalf of the Township of Monroe, all in connection with the preparation of a compliance plan in accordance with the Court's Order and Judgment of August 13, 1984. A bill for these services was submitted to the Monroe Township Council, through its attorney, Thomas R. Farino, Jr., Esq., on March 29, 1985 (Ha. 5 to Ha. 7).

Thereafter, by Notice of Motion dated April 4, 1985, (Da. 26 to Da. 32) Mr. Farino moved the Court for an order to pay certain professionals for their services rendered in connection with the preparation of the compliance plan. A copy of these motion

papers was mailed to the Clerk of the Township of Monroe on April 10, 1985 (See: Certification of Alice Heil (Ha. 4)). On May 13, 1985, Judge Serpentelli entered an Order and Judgment compelling the Township of Monroe to make payment to Thomas R. Farino, Jr., Esq., Carl E. Hintz, and Carla Lerman. (Da. 51 to 55). That is the order which is here appealed from.*

On July 29, 1985, the Township of Monroe filed a Notice of Appeal (Da. 62 to Da. 64). The Township filed an amended notice on August 7, 1985 (Da. 65 to Da. 69). By Notice of Motion dated September 26, 1985, (Da. 76 to Da. 77) the undersigned attorneys for Carl E. Hintz moved this court to dismiss that appeal as out of time, with prejudice. A separate Motion to Dismiss was filed by Eric Neisser, Esq. and John M. Payne, Esq. on behalf of the ACLU of New Jersey on October 21, 1985 (Da. 92; Ha. 14 to Ha. 20). By Order of December 13, 1985, the Appellate Division granted those motions (Da. 93; Da. 95), and denied the Appellant's cross motion (Da. 94).

On April 7, 1986, the Township of Monroe again filed a Notice of Appeal (Da. 102 to Da. 106) of the same Order and Judgment of May 13, 1985, apparently now contending that the decision of the Supreme Court of New Jersey issued on February 20, 1986 in Hills Development Company v. Township of Bernards, _____ N.J._____ (Docket No. A-122) brought finality to the instant proceedings. A preargument conference was conducted with the Honorable Mark A. Sullivan, Justice, on June 23, 1986. Despite Justice Sullivan's efforts, little was accomplished at

* It should be noted for the record that Respondent, Carl E. Hintz and his firm Hintz, Nelesson Associates, P.C., stipulate that payment under this Order and Judgment would satisfy the Township's obligations to both Mr. Hintz and the firm.

that conference, other than the establishment of a briefing schedule.

STATEMENT OF FACTS

Carl E. Hintz, and his firm, Hintz, Nelessen Associates, P.C. were retained by the Township of Monroe by resolution of January 28, 1985, to provide professional planning services in accordance with an Order and Judgment of the Superior Court dated August 13, 1984 (Da. 6 to Da. 14; Da. 22 to 20 to Da. 23 - 30). Mr. Hintz's firm provided a total of 166.75 hours of professional services, and expended $842.17 in out-of-pocket disbursements on behalf of the Township of Monroe, and billed the Township for a total of $10,248.42 on March 29 1985. (Ha. 5 - Ha. 7). On March 29, 1985, the Township Council submitted a compliance plan which had been prepared by the respondent. It was necessary to engage the Respondent, because the Mayor had directed the Township Engineer and Planner to refrain from assisting the Council in its compliance attempts (Da. 30 - 30 et seq.). The Mayor further refused to authorize payments for professional services connected with Mt. Laurel compliance (Da. 31 - 50 et seq.) including payments to Respondent. By Order and Judgment of May 13, 1985, the Superior Court ordered that Mr. Hintz's bill, as well as those of other professionals, be paid, and entered an judgment to that effect. The payment has not been forthcoming. A previous appeal of that Order and Judgment was made, but a Motion to Dismiss that appeal with prejudice was granted on December 13, 1985.

Respondent respectfully submits that these are the only facts properly at issue here. The statement of facts included in the Appellant's brief at Db. 4 through Db. 5 goes far beyond merely stating the facts, and sets forth argument on several points. To the extent that it does so, Respondent respectfully requests the Court to disregard same.

LEGAL ARGUMENT

I.

Appellant Should Be Estopped From Asserting That The Order of May 13, 1985 Was Interlocutory And May Now Be Appealed Again.

Appellant has again attempted to argue the procedural issues that were before this court in an earlier appeal (Docket No. A-5394-84-T1). This Respondent does not dispute that the Order and Judgment of May 13, 1985 may have been considered an interlocutory order pursuant to Adams v. Adams, 53 N.J. Super. 424, 429, cert. den. 30, N.J. 151 (1959). In fact, this Respondent advanced that argument in its letter brief of September 26, 1985 (Da. 79 to Da. 82). Appellant should be estopped from availing itself of that argument, however, since Appellant vigorously argued to the contrary in its letter brief of October 16, 1985 (Ha. 8 - Ha. 13). Appellant was delinquent in filing its first appeal out of time, and now attempts to get a "second bite of the apple" by contending, in direct contravention to its own earlier arguments, that the order appealed from was an interlocutory one, which has now been "finalized" by the Supreme Court's decision in an unrelated case. Such an attempt should not be condoned by this Court. cf. Raritan Engine Co. v. Edison Township, 184 N.J. Super. 159 (App. Div. 1982) and Victor Talking Machine Co. v. George, 69 F.2d 871 (3rd Cir. 1934).

II.

The Court Below Had Full Authority For Its Order Of May 13, 1985.

Notwithstanding the foregoing, should the Court determine that this matter should be decided on the merits, the merits support affirmance of Judge Serpentelli's order.

Appellant seems to base its position on the Local Budget Law, N.J.S.A. 40A:4-1 et seq. Appellant selectively chooses N.J.S.A. 40A:4-57 and N.J.S.A. 40A:4-46 to support its position that no payment can be made for the professional planning services rendered by Carl E. Hintz. Appellant totally disregards, however, N.J.S.A. 40A:4-53, which states, in pertinent part:

> A local unit may adopt an ordinance authorizing special emergency appropriations for the carrying out of any of the following purposes:
>
> * * *
>
> d. engagement of special consultants for the preparation, and the preparation of a master plan or plans, when required to conform to the planning laws of the state.

The Township admits that it submitted a compliance plan which has been prepared with the aid of Mr. Hintz's firm (Db. 1-22; Db. 4-10). There can be no question that Mr. Hintz and his firm were just the sort of "special consultants" contemplated by N.J.S.A. 40A:4-53(d).

On January 28, 1985, the Township Council adopted a resolution authorizing the appointment of Mr. Hintz and his firm at a specified hourly rate (Da. 22-20 to Da. 23-30). This resolution provides sufficient authority for the order entered by the court below.

Certainly, under normal circumstances, a trial court should not ignore the legislatively declared public policy that an appropriation by a municipal governing body precede any actual disbursement of municipal funds. See: Essex County Board of Taxation v. City of Newark, 139 N.J. Super. 264 (App. Div., 1976) (modified 73 N.J. 69 (1977)). The factual circumstances faced by the court in that case are surprisingly similar to those of the

instant case. Judge Serpentelli's order reflects a sensitivity to the concerns expressed by the Appellate Division in 139 N.J. Super. 264, as well as the practical effectiveness of the Supreme Court's remedy in 73 N.J. 69.

The trial court in the Essex County case ordered seizure of municipal funds in order to pay for a revaluation and tax map program, which a recalcitrant city council would not adopt. To comply with previous orders, the county board had entered into contracts for the revaluation and tax map program on the City's behalf. The Appellate Division disallowed the seizure, but the Supreme Court ordered that the funds be used to pay for such services, effectively reversing the Appellate Division.*

In the instant case, it is not the Township Council, but the Mayor and administration which appear to be recalcitrant. The Monroe Township Council engaged Mr. Hintz's services to comply with prior court orders, just as the county board entered in the contracts to comply with court orders in the Essex case. The Mayor of Monroe "reaffirmed his intentions to authorize no payments for professional services in connection with Mt. Laurel litigation." (Da. 31-50 et seq.). Accordingly, the Township Council, like the county board in Essex, sought the court's assistance with this dilemma. In Essex, the Appellate Division stated:

* Technically, 73 N.J. 69 was not a direct reversal of 139 N.J. Super. 264, since the county never sought Supreme Court review of that decision. Rather, the county board went back to the trial court for a contempt order, which was granted and appealed. The Supreme Court certified that appeal, and remanded to the trial court for re-entry of its original order.

> The trial court has full power . . . to compel the required appropriation to be made. Essex, 139 N.J. Super. at 275.

Judge Serpentelli in the instant case followed the dictates of Essex. He did not order the seizure of municipal funds, but rather ordered the Township to make payment; whatever procedural steps were necessary to comply with this order were thereafter to be carried out, either by the Township administration, or, in the event of the administration's refusal, by the Council.

The Council had committed itself, upon the Court's order, to make the necessary "special emergency appropriation" pursuant to N.J.S.A. 40A:4-53(d) prior to actual disbursement. (Da. 32 - 10 et seq.). The Council considered a resolution providing for such an appropriation at its July 1, 1985 meeting (Da. 60 to Da. 61). That resolution was tabled for consideration at the next subsequent meeting, but apparently was stayed by the filing of the first appeal of Judge Serpentelli's order in this matter.

Nevertheless, contrary to the Appellant's position, nothing in the Local Budget Act (N.J.S.A. 40A:4-1 et seq.) prohibits the court from ordering payments, or the Council from incurring an obligation prior to adopting a "special emergency appropriation." See: Essex, supra. The cases cited by the Appellant, principally Mt. Laurel Township v. Local Finance Board, 166 N.J. Super. 254 (App. Div., 1978), aff'd 79 N.J. 397 (1979) are inapposite for several reasons.

First, Mr. Hintz's services in the instant case fall into a specific exemption in the Local Budgets Act (N.J.S.A. 40A:4-53(d)), as set forth above. This same section was specifically recognized by the Supreme Court in Essex, 73 N.J. at 75, but was not applicable in Mt. Laurel Township, supra.

Second, the Mount Laurel Township case did not deal with a court ordered payment, as did Essex and as does the instant case. Third, and perhaps most importantly, the court in Mt. Laurel Township focused on that township's timing of the emergency appropriation and failure to foresee the expenses. The court stated that:

> Even if the trial expenses were not anticipated when the budget was adopted [and in a footnote states that it is arguable that some increased expenses attributable to the intervention could have been anticipated in the budget itself] the necessary funds could have been appropriated by the emergency appropriation technique before the point at which the additional expenses were incurred and before outside counsel and additional experts were retained.

The factual situation in the instant case is quite different. The Monroe Township Council engaged Mr. Hintz's services for 1985 well within the 1985 budget approval period. Curiously, neither in the previous appeal nor in this appeal has the Appellant indicated what amount was appropriated for expenses related to the Mt. Laurel litigation in 1985. The Appellant makes much of the fact that the 1984 budget was exhausted by May of that year (Db. 12-8 et seq.; Db. 5-3 et seq.) but this Respondent fails to see how the 1984 budget is relevant to these services, which were provided in 1985.

It is apparent from the certification of the Council President (Da. 31-51 et seq.) that the Council was frustrated in its attempts to appropriate any money in the 1985 budget to pay for Mt. Laurel-related expenses. Under these circumstances, the Council had no alternative but to seek the court order which is here appealed from, and did not shirk or disregard its budgetary responsibilities as may be said of the Mt. Laurel Township council, based upon the facts as presented in that case. It is

absurd to imply, as Appellant does, that the Council should have made a special emergency appropriation in January before engaging the services of Mr. Hintz rather than attempting to include those expenses in the regular municipal budget process. As is apparent from Mr. Tipper's certification, the special emergency appropriation was only necessary after the mayor failed to include such amounts in the 1985 budget. Since the budget need not be adopted until March 20th (N.J.S.A. 40A:4-10), it can hardly be said that the Council failed to act promptly in seeking Court authorization for the payments in question by Notice of Motion dated April 4, 1985.

In short, Appellant's argument that payment of these expenses pursuant to court order is in violation of the Local Budget Law is a red herring introduced to divert the court's attention from the real issues of this case, namely that, despite the Township Council's efforts to comply with the Court's earlier order of August 13, 1984, the Mayor's steadfast refusal to permit the Township to comply in any way with its obligations under Mt. Laurel II has placed the Council in the unenviable position of having to obtain court orders in order to make any progress in this regard. To assert, as Appellant does, that the court had no authority to enter an order compelling the Township to pay for services engaged in good faith is an absurdity. To rely upon the Local Budget Law in an attempt to circumvent the Township's obligations under the Supreme Court's decision in Mt. Laurel II is both abusive and irresponsible. If the mayor, knowing that expenses must be incurred to comply with a court order, does not approve inclusion of those expenses in the annual budget, the Council has no choice but to seek a court order.

Finally, the Appellant seeks to hide behind a state grand jury presentment and recommendations, which specifically

authorized the voting of emergency appropriations (Da. 43-20 et seq.) and which concluded that there was no evidence of criminal conduct in a much more egregious situation than the instant case. The presentment which is relied upon by the Appellant, to the extent that it is relevant at all, supports the actions taken by the Monroe Township Council in the instant case. Certainly Appellant could not be suggesting that there is potential criminal liability to the Township of Monroe if it complies with Judge Serpentelli's order. Nothing in that presentment has anything to do with the court's authority to order payment for services, whether or not monies have been appropriated in the budget.

Judge Serpentelli's order did not ignore the Local Budget Law, but merely compelled the Township to act responsibly in accordance with it. See also: Salaries of Probation Officers, 58 N.J. 422 (1971).

III.

The Township Had Ample Notice
of Its Obligation To Hintz

It is patently erroneous to state, as Appellant has, that the Township was unaware of the proceedings below. As evidenced by the certification of Alice Heil (Ha. 4) the Township Clerk was served with notice of the proceedings by mail on April 10, 1985. Zoning Board of Adjustment v. Service Electric Cable T.V., 198 N.J. Super. 370 (App. Div. 1985) is accordingly distinguishable, since the court in that case found that no proof of service appeared in the record. The Township of Monroe has apparently taken advantage of these proceedings and this court to advance an internecine quarrel between the administration and the Township Council. Such abuses should not be condoned by this Court.

Appellant correctly states that R. 1:5-1 requires service on all attorneys of record. Despite Appellant's self-serving statement that, as of April 1, 1985, Thomas R. Farino, Jr., Esq. was no longer "township attorney," there is no indication that he was removed as attorney of record in this case, or that a substitution of attorney was filed, or even that Mr. Farino was instructed to withdraw as counsel of record in this suit prior to April 4, 1985, the date of the notice of motion in question. (Da. 29-21). That notice lists Mr. Farino as the attorney for the Township of Monroe and is directed to the Mayor and Council of Monroe. It is accompanied by a certification signed by the President of the Township Council, William R. Tipper. It was served on the Township Clerk. At the very least, therefore, Mr. Tipper, as Council President, and the Township Clerk were both aware of the motion. The motion in question was brought by the attorney of record for the Township, on behalf of the Township Council, with notice to the Township Clerk. For the Township now to argue that it was unaware of the motion is totally specious. Furthermore, Carl Hintz, a non-party to the instant litigation, had a right to rely on the fact that Mr. Farino had complied with all his obligations under R. 1:5-1 and R. 1:6-2.

IV.

Appellant's Attempt to "Supplement the Record" Should Be Disallowed

In a paragraph at the end of Point III of its brief, the Appellant indicates that it has attached to its letter brief numerous exhibits which it claims to be relevant in this matter. The Appellant suggests that these documents would have been presented to the trial court if the Township had had knowledge of the motion in question.

These "exhibits" consist of council minutes dating back to 1976, a variety of letters, an Affidavit of Joseph R. Scranton, Administrator, and the State Grand Jury Presentment referenced above, none of which were of record below, and several of which, particularly Mayor Garibaldi's letters of July 1, 1985 and Mr. Scranton's affidavit, postdate the order here appealed from. They should not be considered by this Court. cf. Naftal v. Township of Easthampton, 123 N.J. Super. 450 (App. Div. 1973). However, Appellant has omitted certain very relevant parts of the record, which are attached hereto as Ha 1 to Ha. 20, and have been referred to herein. Respondent has no objection to the inclusion of Pages 20 through 23; 26 through 32; 50 through 55; 60 through 82; 92 through 95; and 102 through 106 of Appellant's Appendix. Respondent strongly objects to the inclusion of all other items in Appellant's Appendix, on the grounds that they are irrelevant to this appeal, could not have appropriately been made part of the record below, and only tend to obfuscate the very clear issue which is before this Court.

V.

Conclusion

As was stated by the Supreme Court in Essex County Board of Taxation v. City of Newark, 73 N.J. at 74 (1977):

> This is not a case of a municipality undertaking an expenditure not ungirded by appropriation but rather a municipality refusing to make an expenditure which the law renders mandatory. Moreover, our judicial review of this matter, resulting in the steps we now take to compel compliance with a legislative mandate, affords at least that amount of protection customarily supplied by adherence to the appropriation procedures.

Likewise, the situation in the instant case is not one of a township council undertaking to expend funds which are not

appropriated, but rather one of a municipal administration which has frustrated the Council's attempts and flouted the Court's orders by refusing to approve an appropriation and make an expenditure which the law (in this case the Supreme Court, rather than the legislature) renders mandatory. There is no question that the Essex County case involved peculiar circumstances where a county board had to step in because a municipal council would not undertake to act in accordance with court orders. The situation in the instant case is quite similar, only exacerbated by the fact that the municipal council has expressed a willingness to act in accordance with court orders, but has been prevented from doing so by the recalcitrance and intransigence of its mayor. Not only has the Council reviewed the expenses in question, but the trial court has done likewise. It is entirely frivolous for the Township now to argue that the appropriation process has been circumvented.

In light of the approach taken by the Supreme Court in Essex supra, it is frivolous for the Township to argue that the trial court does not have the authority to order the payments in question. The Supreme Court was satisfied that the remedy invoked by Judge Margolis in Essex was legally correct and capable of achieving the desired objective (non-discriminatory taxation). There can be no question that the similar order of Judge Serpentelli in the instant case is legally correct and capable of achieving the desired objective (non-discriminatory housing). Furthermore, the factual record simply does not support the Township's contention that it had no notice of the motion which led to the Order and Judgment here appealed from. It may be that the Township administration, in its reluctance to have anything to do with compliance with the Township's Mt. Laurel obligation, chose to ignore or disregard that motion.

Such irresponsible behavior certainly cannot be grounds for appeal to this court.

In light of all the foregoing, the order of Judge Serpentelli should be affirmed, and attorney's fees and costs awarded to the Respondents. RR. 2:11-4; 2:11-5.

Respectfully submitted,

GROSS & NOVAK, P.A.
Attorneys for the Respondent,
CARL E. HINTZ

William P. Isele

WPI/sn
cc: As per attached Mailing List

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APPENDIX

THOMAS R. FARINO, JR.
Cor. Applegarth & Prospect Plains Road
Cranbury, New Jersey 08512
(609) 655-2700
Attorney for Township of Monroe

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al, Plaintiffs vs. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MIDDLESEX/OCEAN COUNTIES DOCKET NO: C-4122-73
JOSEPH MORRIS and ROBERT MORRIS, Plaintiffs vs. TOWNSHIP OF CRANBURY IN THE COUNTY OF MIDDLESEX, a Municipal Corporation of the State of New Jersey, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX/OCEAN COUNTIES DOCKET NO. L-054117-83
GARFIELD & COMPANY, Plaintiff, vs. MAYOR AND THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY, A Municipal Corporation and the Members thereof; PLANNING BOARD OF THE TOWNSHIP OF CRANBURY, and the members thereof, Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX/OCEAN COUNTIES. DOCKET NO. L-055956-83 P.W.
BROWNING-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 vs. Plaintiff, CRANBURY TOWNSHIP PLANNING BOARD and THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISON MIDDLESEX/OCEAN COUNTIES DOCKET NO: L-058046-83 P.W.

CRANBURY DEVELOPMENT CORPORATION, A Corporation of the State of New Jersey,
Plaintiff,
vs.
CRANBURY TOWNSHIP PLANNING BOARD and the TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO: L-59643-83

CRANBURY LAND COMPANY, A New Jersey Limited Partnership,
Plaintiff,
vs.
CRANBURY TOWNSHIP, a Municipal Corporation of the State of New Jersey located in Middlesex County, New Jersey,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISON
MIDDLESEX/OCEAN COUNTIES
DOCKET NO: L-070841-83

MONROE DEVELOPMENT ASSOCIATES,
Plaintiff,
vs.
MONROE TOWNSHIP,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L-076030-83 PW

LAWRENCE ZIRINSKY,
Plaintiff,
vs.
THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY, a Municipal Corporation, and THE PLANNING BOARD OF THE TOWNSHIP OF CRANBURY,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO: L-079309-83 P.W.

TOLL BROTHERS, INC., a Pennsylvania Corporation,
Plaintiff,
vs.
THE TOWNSHIP OF CRANBURY IN THE COUNTY OF MIDDLESEX, A Municipal Corporation of the State of New Jersey, THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY AND THE PLANNING BOARD OF THE TOWNSHIP OF CRANBURY,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L-005652-84

LORI ASSOCIATES, A New Jersey Partnership; and HABD ASSOCIATES, a New Jersey Partnership,
Plaintiffs,
vs.
MONROE TOWNSHIP, A municipal corporation of the State of New Jersey, located in Middlesex County, New Jersey,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L-28288-84

GREAT MEADOWS COMPANY, a New Jersey partnership; MONROE GREENS ASSOCIATES, as tenants in common; and GUARANTEED REALTY ASSOCIATES, INC., a New Jersey corporation,
Plaintiffs,
vs.
MONROE TOWNSHIP, a municipal corporation of the State of New Jersey, located in the State of New Jersey, located in Middlesex County, New Jersey,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/OCEAN COUNTIES
DOCKET NO. L-32638-84 P.W.

A copy of the within Notice of Motion, Certification and Order has been filed with the Clerk of the County of Middlesex at Court House, P. O. Box 1110, New Brunswick, New Jersey.

THOMAS R. FARINO, JR.
Attorney for Township of Monroe

The original of the within Notice of Motion, Certification and Order has been filed with the Clerk of the Superior Court in Trenton, New Jersey.

THOMAS R. FARINO, JR.
Attorney for Township of Monroe

PROOF OF MAILING

On April 10, 1985, I, the undersigned, mailed to the Clerk of the Township of Monroe, by regular mail, the following:

Notice of Motion, Certification and Order

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Alice Heil

Alice Heil

DATED: April 10, 1985

12 North Main Street, Pennington, New Jersey 08534
Carl E. Hintz P.P., A.I.C.P., A.S.L.A. 609 737-1930
Anton C. Nelessen M. Arch. U.D., P.P. 201 873-3084

March 27, 1984

Monroe Township Council
c/o Thomas R. Farino, Jr., Esq.
Corner of Applegarth &
Prospect Plains Road
Cranbury, N.J. 08512

For professional planning and design services in connection with Monroe Township's Mt. Laurel Compliance Program.

Services of C. E. Hintz

12/26	Meeting with Farino	1.5
1/7	Review of minutes of meetings and other background material	1.5
1/22	Meeting with Farino and Mrs. Carroll, Clerk	1.0
1/25	Work on review of developer sites	1.5
1/28	Review of sites and evaluation	3.0
1/28	Meeting with Council	5.5
1/29	Review of scoring, analysis	1.0
1/30	Work on criteria	.5
2/3	Preparation of report	1.0
2/6	Review of Cranbury, South Brunswick, East Windsor zoning - research on compliance	1.5
2/13	Visited sites	2.5
2/15	Monroe Compliance Report	4.0
2/16	Preparation and attendance at Council meeting	5.5
2/18	Work on compliance report - review of developer proposals	1.5
2/19	Work on compliance - review of maps by developers, reports to photocopy, delivery to clerk	3.0
2/20	Call to Hutt	.25
	Work on mapping	.5
2/21	Call to Lerman	.5
2/22	" " "	.5
2/22	" " " , work on report	1.0
2/22	Calls with Mytelka, Frizell and Hutt	1.5
2/25	Review and report preparation	3.0
2/26	Meeting with Rogers, Farino, Levinson; visit to sites; work on report	5.5
2/27	Mt. Laurel Compliance Report	2.5
2/28	Work on " "	5.0
3/1	Monroe report	3.0
	Meeting with Farino	2.0
3/2	Finalized report	3.0
3/3	Finalizing report	8.0
3/4	Call on maps, map making	.5
	Work on report, ordinance	3.5

3/6	Work on report, telephone calls	1.0
3/7	Calls with Lerman, Halpern	1.0
3/7	Calls to Lerman, Farino; report revisions	1.5
3/8	Production of report	1.0
3/9	Monroe Council Meeting; picked up report	3.0
3/13	Call with Farino - revisions to report	.5
3/16	Work on report, revisions	1.5
3/18	Calls to Farino, Lerman; report text changes	.5
3/19	Call with Lerman, report changes	1.0
3/21	Report production	2.0
3/22	Picked up reports, delivery to Farino, mailing to Lerman	2.0
3/26	Calls with Farino, Tolischus	.5
3/27	Calls to Tolischus, Nelessen regarding map, site review and graphic coordination	.25 3.0
3/29	Hearing and meeting with Farino	3.0
		99.25

99.25 hours @ $75/hour = $7,443.75

Services of C. M. Rodrigues, Associates Planner

1/25	Research and Planning	4.0
1/27	" " "	10.0
1/28	" " "	7.0
2/13	" " "	4.0
2/15	" " "	5.0
		30.0

30.0 hours @ $40/hour = $1,200.00

Services of F. Nelessen, Draftsperson

2/4	Drafting	1.0

1.0 hour @ $25/hour = $ 25.00

Services of J. Constantine, Draftsperson

2/28	Drafting	4.0
3/4	Trips to Brunswick Blueprint and Dross Assoc.	1.5
3/7	Check of sites for acreage and location	2.5
3/8	Trips to Dross and reproduction	2.5
3/14	Trip to Triangle Repro, graphic coordination	4.0
3/19	Graphic coordination	2.5
3/20	Trips to Triangle and graphic coordination	2.0

19.0 hours @ $25/hour = $ 475.00

Services of P. A. Timperman, Secretary

2/7	Copy various pages from compliance report for Monroe litigation	.25
2/26	Type proposals to meet Mt. Laurel compliance - exhibits and report	2.5
3/1	Type Monroe Twp. Compliance Report	1.0
3/4	" " " " "	6.0
3/5	" " " " "	2.5
3/9	" " " " "	4.5
3/10	Monroe Twp. Compliance Report revisions	.75
		17.5

17.5 hours @ $15/hour = $ 262.50

Reproduction, Blueprinting, Printing (at cost)

Triangle ArtCenter	= $	662.21
Yes Messenger Service	= $	85.00
Tax Map/So. Brunswick for Monroe	= $	2.00
SDGP Maps	= $	15.00
Photocopying	= $	1.40
	$	765.61
+ 10% Handling	= $	76.56
	$	842.17

Summary

Carl E. Hintz	= $	7443.75
C. M. Rodrigues	= $	1200.00
F. Nelessen	= $	25.00
J. Constantine	= $	475.00
P. A. Timperman	= $	262.50
Miscellaneous	= $	842.17
	$10,248.42	TOTAL (Final Bill)

Township of Monroe
County of Middlesex
PETER P. GARIBALDI
Mayor
MARIO APUZZO
Director of Law
DEPARTMENT OF LAW: Municipal Complex
Perrineville Road
Jamesburg, N.J. 08831
(201) 521-4400

October 16, 1985

The Honorable Judges
of the Appellate Division
Hughes Justice Complex
CN-006
Trenton, NJ 08625

RE: Urban League of Greater New Brunswick, et als. v. Monroe Township et als.
Docket No. A-5394-84T1

Dear Honorable Judges:

Please accept this Answering Letter Brief in lieu of a more formal Brief pursuant to R. 2:6-2(b) and R. 2:6-5. This Answering Letter Brief is submitted in support of the Appellant, Monroe Township.

STATEMENT OF FACTS

As a result of the on-going litigation in Urban League of Greater New Brunswick, et al v. Borough of Carteret, et al in which the Township of Monroe is one of many defendants, the Township was found to be in violation of Mt. Laurel II and was ordered on July 27, 1984 to submit a compliance package to the Court. Ms. Carla Lerman was appointed by the Court as Master to assist the Township. On March 29, 1985, the Township Council submitted a compliance plan which had been prepared with the aid of Hintz-Nelessen Associates, P.C., planners.

LEGAL ARGUMENT

I

THIS APPEAL SHOULD NOT BE CONSIDERED AN INTERLOCUTORY APPEAL UNDER R. 2:2-4.

The Township of Monroe and its elected officials could be severly prejudiced if this Appeal were not decided. N.J.S.A. 40A:4-57 provides that:

> No officer, board, body or commission shall, during any fiscal year, expend any money (except to pay notes, bonds or interest thereon), incur any liability, or enter into any contract which by its terms involves the expenditure of money for any purpose for which no appropriation is provided, or, in excess of the amount appropriated for such purpose. Any contract made in violation hereof shall be null and void, and no monies shall be paid thereon. . . .

Appropriations can be made not only in the annual budget itself but pursuant to the emergency appropriation authority of N.J.S.A. 40A;4-46, which provides that:

> A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal year . . . .

Mount Laurel Twp. v. Local Finance Bd. (N.J. 1979) 79 NJ 397 (1979), aff'd. 166 N.J. Super. 254 (A.D. 1978), citing Home Owners Construction Co. v. Glen Rock 34 N.J. 305 (1961) [1]

[1] In Home Owners Construction Co., the Supreme Court stated that a contract or expenditure by a municipality may be made prior to an appropriation therefor if the municipality is experiencing a bona fide emergency or the expenditure will only be for an incidental alteration during public works and the expenditure is reasonable and in the public interest.

The 1984 Local Municipal Budget of the Township of Monroe provided for $34,700.00 in the category classified as Office of the Township Attorney, Urban League Suit. Vouchers were submitted by Thomas R. Farino,Jr. totaling $34,625.50 for the period between January 1, 1984 and May, 1984 for legal services relating to the Urban League litigation. Mr. Farino was advised that the remaining available balance from which to pay for his legal services was $74.50 as of May, 1984 (Da 4)

As the Master, Ms. Lerman was court-appointed, no allowance was ever made in the Municipal Budget for payment for her services. No Purchase Orders, required by established procedures, were ever created to encumber funds for payment of Ms. Lerman. (Da 5, 6) Further, no Purchase Orders exist for the services of the Planner, Mr. Carl E. Hintz, and the Township Business Administrator was never informed that Mr. Hintz had been employed by the Township Council. (Da 5, 6) No provisions were ever made in the 1984 Monroe Township Municipal Budget to pay for any of these professional services. (Da 5, 6) In his Order of May 13, 1985, the Honorable Eugene D. Serpentelli, A.J.S.C. ordered Monroe Township to pay $23,893.00 to Thomas R. Farino, Esq., $10,248.42 to Carl E. Hintz; and $6,839.55 to Carla Lerman. (Da 11)

As of April 1, 1985, Thomas R. Farino, Esq., was no longer attorney for the Township of Monroe. The Department of Law of the Township of Monroe assumed responsibility for representation of theTownship in Urban League, as well as other matters,

and Essex County Bd. of Taxation v. Newark, 73 N.J. 69 (1977).[2] Only under limited circumstances, not here applicable, may a municipal expenditure be made prior to an appropriation. The purpose of the Local Budget Law (N.J.S.A. 40A:4-1 to 87) is to achieve fiscal control and prevent irresponsible, ill-considered or undisclosed public expenditures, and deficit financing. Mt. Laurel Twp. v. Local Finance Bd., 166 N.J. Super. 254 (App. Div. 1978), at 257; N.J.S.A. 40A:4-57.

It would be contrary to N.J.S.A. 40A:4-57 for the Township to now expend monies to comply with the Court Order because there were no funds appropriated in the budget prior to incurring the expense for services performed by Thomas R. Farino, Carla Lerman, and Carl E. Hintz. The 1984 Local Municipal Budget of the Township made provision for $34,700.00 for legal services in the Urban League suit (Da 4). The Township was aware that it was about to exceed the legal expense line item and that no funds were appropriated for services by a professional planner or master (Da 5, 6). Mr. Farino was advised that his vouchers for withdrawals from the Urban League account for 1984 had reached a total of $34,625.50 as of May, 1984 and that the remaining balance was $74.50 (Da 4). Such a violation of the Local Budget Law would be a serious infraction by the elected officials of the Township of Monroe, especially given the Presentment of the New Jersey State Grand Jury dated April 26, 1985,

[2] In Essex County Board of Taxation, the Supreme Court stated that a municipality can contract or expend funds prior to an appropriation therefor if there is a legislative mandate requiring an expenditure and there are available funds for

State Grand Jury No. 139-85-6 entitled In the Matter of State Grand Jury Investigation Concerning Township of North Bergen Municipal Budget Overexpenditures (a copy of this Presentment is attached in the Appendix (12a)). Nor will this Appeal delay the Court's actions to effectuate the constitutional mandate of Mt. Laurel II. * The Court can continue with its work despite this Appeal having been filed and having to be decided.

LEGAL ARGUMENT II

THIS APPEAL SHOULD NOT BE CONSIDERED TO HAVE BEEN FILED OUT OF TIME AND CONTRARY TO R. 2:4-1(a) and R. 2:4-4.

For support of this argument, the Defendant is relying on the Affidavit of Mario Apuzzo which is attached in the Appendix as Da 27a). We also submit that the Plaintiff has not been prejudiced from the time lapse involved. Finally, the Local Budget Law questions involved are substantial and meritorious , and the Court should take that into consideration also in deciding the issue of timeliness of filing this Appeal.

* Southern Burlington County N.A.A.C.P., et al v. Township of Mt. Laurel, et als., 92 N.J. 158 (1983).

CONCLUSION

For the foregoing reasons, we respectfully request of your Honorable Judges that the Plaintiff's Motion be dismissed.

Respectfully submitted,

Mario Apuzzo ap

MARIO APUZZO
Director of Law

MA:ap

cc:

ERIC NEISSER, ESQ.
JOHN M. PAYNE, ESQ.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102
201-648-5687
ATTORNEYS FOR PLAINTIFFS-RESPONDENTS
On Behalf of ACLU of NJ

SUPERIOR COURT OF NEW JERSEY
Appellate Division

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al., Plaintiffs-Respondents	Docket No. A-5394-84T1 (Monroe Township)
vs.	
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants-Appellants	AFFIDAVIT OF ERIC NEISSER, ESQ.

STATE OF NEW JERSEY)
: ss.
COUNTY OF ESSEX)

ERIC NEISSER, being duly sworn, deposes and says;

1. I am co-counsel for the Urban League of Greater New Brunswick, plaintiffs below and respondents before this court.
2. The order appealed from was entered in the Superior Court on May 13, 1985.
3. The Notice of Appeal was served on August 7, 1985.
4. No motion to extend the time to file a notice of appeal was filed.
5. No motion for leave to appeal has been filed.
6. No motion for stay of the Order has been filed.

Eric Neisser
ERIC NEISSER

Sworn to before me this
22 day of October 1985.

Jonathan M Hyman
Attorney at Law
of New Jersey

ERIC NEISSER, ESQ.
JOHN M. PAYNE, ESQ.
Constitutional Litigation Clinic
Rutgers Law School
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ATTORNEYS FOR PLAINTIFFS-RESPONDENTS
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SUPERIOR COURT OF NEW JERSEY
Appellate Division

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al., Plaintiffs-Respondents	Docket No. A-5394-84T1 (Monroe Township)
v.	
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants-Appellants	MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

It is well settled that a final judgment, to be appealable as of right, must be final as to all issues and all parties. As the court pointed out in Frantzen v. Howard, 132 N.J. Super. 226, 227-28 (App. Div. 1975), "piecemeal reviews, ordinarily are anathema to our practice, as expressed in the rules which require the final disposition of all issues at one hearing on the trial level followed by orderly appellate review. The interruption of the litigation at the trial level, by the taking, as here, of an unsanctioned appeal' disrupts the entire process and is wasteful of judicial resources."

The Order of the Court under appeal simply directs payment by Monroe Township of fees owed to the Court-appointed Master and the Township attorney and planning consultant. It is clearly not

a final judgment as to all issues relating to Monroe, not mention as to all parties.

Even if the order were somehow appealable as of right, the appeal must be dismissed for lack of jurisdiction because appellants failed to comply with R. 2:4-1 of the Rules Governing Appellate Practice, which provides in pertinent part:

> (a) Appeals from final judgments of courts ... shall be taken within 45 days of their entry.

Here, notice of appeal was filed 77 days from the entry of the Order. Thus, notice of appeal was filed beyond the time limit required for appeals from final judgments. No motion for extension of time to appeal under R. 2:4-4 was ever filed. Thus, the appeal must be dismissed for lack of timeliness.

The appeal fares no better under respondents' view that the Order is interlocutory. As such, it is barred for failure to comply with R. 2:5-6 of the Rules Governing Appellate Procedure. It is further barred by the express terms of the Supreme Court's decision in So. Burlington Cty. NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983).

R. 2:5-6 holds that application for leave to appeal from interlocutory orders shall be made by serving and filing with the court a notice of motion for leave to appeal within 15 days of the entry of such order. Appellant did not file such a motion. Rather, defendant filed a notice of appeal beyond all applicable time limits. Thus, the Court should dismiss the appeal, even if viewed as interlocutory, for failure to comply with the Rules.

Finally, this appeal is barred by the express holding of the Supreme Court in Mount Laurel II, in which the Court stated:

> [t]he municipality may elect to revise its land use regulations and implement affirmative remedies under protest.' If so, it may file an appeal when the trial court enters final judgment of compliance. Until that time there shall be no right of appeal ... Proceedings as ordered herein (including the obligation of the municipality to revise its zoning ordinance with the assistance of the special master) will continue despite the pendency of any attempted interlocutory appeals by the municipality.

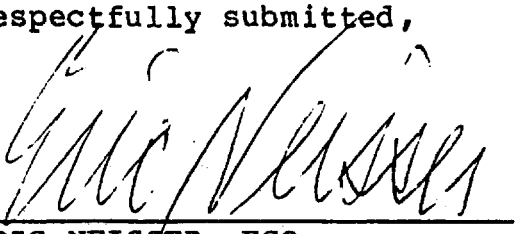
92 N.J. at 285 (emphasis added).

Monroe Township seeks to impede compliance with the dictates of Mount Laurel II by refusing to comply with the lawful orders of the court and by raising untimely and improper appeals. As the Court pointed out in Mount Laurel II, "confusion, expense and delay have been the primary enemies of constitutional compliance in this area. This problem needs the strong hand of the judge at trial as much as the clear word of the opinion on appeal." Id. at 292.

Plaintiff respectfully requests that this Court provide that clear word by dismissing this appeal.

Dated: October 21, 1985

Respectfully submitted,



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ATTORNEYS FOR
PLAINTIFFS-RESPONDENTS

AFFIDAVIT OF SERVICE

State of New Jersey)
: ss.:
County of Essex)

KATHY HECHT , of full age, being duly sworn according to law, on oath, deposes and says:

1. I am a student at the Constitutional Litigation Clinic, Rutgers Law School, Newark.

2. On Tuesday, October 22, 1985, I deposited in the U.S. Mail Depository, Washington Street, Newark, two (2) copies of the within Motion to Dismiss, Affidavit of Eric Neisser, Esq., Memorandum of Law in Support of Motion and Brief of Respondent regarding the matter of Urban League of Greater New Brunswick, et al. vs. Carteret, No. A 5394-84T1, with sufficient postage affixed, addressed as follows:

Mario Apuzzo, Esq.
Municipal Complex, Perrineville Rd., Jamesburg, NJ 08331

Arnold Mytelka, Esq.
Clapp &Eisenberg, 80 Park Plaza, Newark, NJ 07102

Stewart M. Hutt, Esq.
459 Amboy Avenue, Woodbridge, NJ 07095

Carl S. Bisgaier, Esq.
510 Park Boulevard, Cherry Hill, NJ 08034

Douglas K. Wolfson, Esq.
PO Box 5600, Woodbridge, NJ 07095

Carl D. Silverman, Esq.
1640 Vauxhall Road, Union, NJ 07083

William P. Isele, Esq.
Gross & Novak, Brier Hill Ct., Bldg. C, PO Box 188,
East Brunswick, NJ 08816

Thomas R. Farino, Jr., Esq.
Cor. Applegarth & Half Acre Roads, Cranbury, NJ 08540

Ms. Carla Lerman, 413 West Englewood Avenue, Teaneck, NJ 07666

The Hon. Eugene D. Serpentelli, Assgnmt Judge, Superior Court,
Ocean County Court House, CN 2191, Toms River, NJ 08754

SWORN TO AND SUBSCRIBED
before me this 22nd day
of October, 1985.

Attorney at Law of the State of New Jersey

Kathy Hecht
KATHY HECHT

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SUPERIOR COURT OF NEW JERSEY
Appellate Division

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al., Plaintiffs-Respondents	Docket No. A-5394-84T1 (Monroe Township)
v.	
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants-Appellants	MOTION TO DISMISS

Based on the annexed affidavit of Eric Neisser, Esq. and the Memorandum in Support submitted herewith, the respondent Urban League of Greater New Brunswick moves this Honorable Court to dismiss the above-captioned appeal for lack of jurisdiction.

Dated: October 21, 1985

Respectfully submitted,

Eric Neisser

ERIC NEISSER, ESQ.