

ML - Cranbury

31-May-1984

(Morris v. Cranbury)

- Letter in lieu of a formal brief in support of Morris' request to seek a builder's remedy
- Notice of motion on short notice
- Amended complaint
- Proposed order granting leave to apply for Builder's Remedy

pgs. 14

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Please Reply
 To Princeton

May 31, 1984

The Hon. Eugene D. Serpentelli
 Judge, Superior Court of New Jersey
 Ocean County Court House
 CN 2191
 Toms River, NJ 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.

This motion is being brought on short notice to be heard at Your Honor's earliest possible convenience. It seeks an Order which:

- 1) Allows plaintiffs Joseph and Robert Morris to seek a builder's remedy against Cranbury Township pursuant to the understanding of the pretrial conferences, or
- 2) Gives plaintiffs leave to amend their Complaint to include a request for relief in the form of a builder's remedy.

Plaintiffs Joseph and Robert Morris are contract optionees of contiguous premises of 101 acres of land in Cranbury Township. The land is zoned for Planned Development-Medium Density in which multi-family dwellings are a "conditional use". The Cranbury Land Development Ordinance of July 25, 1983 permits one unit per every two acres in this zone. However, with the purchase of TDC's, a gross maximum density of three units per acre could be achieved.

Plaintiffs have gone to considerable expense to obtain studies of their land concerning its feasibility for development

The Hon. Eugene D. Serpentelli
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Page 2

as a site for multi-family units. Plaintiffs have made applications and sought approvals from defendant Cranbury Township for their project. They submitted drawings and site plans in conjunction with applications to the Township Board of Adjustment in the early winter months of 1982. Plans for the project began even prior to this date. The actions of defendant Township have thwarted plaintiffs' efforts to develop their land, however.

It is plaintiffs' intention to develop low cost and medium cost housing in Cranbury. Plaintiffs seek to develop their land in accordance with Mt. Laurel II standards. It was plaintiffs' belief that the understanding of the various pretrial conferences was that all consolidated plaintiffs would be eligible to participate in and apply for the relief to be afforded the consolidated plaintiffs in this action. Accordingly, plaintiffs request confirmation of this understanding in the form of an Order.

If this is not the case, then plaintiffs seek the court's permission to amend their Complaint to include relief in the form of a builder's remedy in order to apply for said remedy on the basis of their proposed development, their good faith, and their compliance with the planning concerns of Mt. Laurel II and Cranbury Township.

Counsel for plaintiffs requests that the Court set down this motion for hearing at the earliest possible date.

Respectfully submitted,

MCCARTHY AND SCHATZMAN, P.A.



By: W. Scott Stoner

WSS/lb

cc: All attorneys involved in case.

MCCARTHY AND SCHATZMAN, P.A.
6-8.Charlton Street
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Princeton, NO 08540
Attorneys for Plaintiffs,
Joseph and Robert Morris

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-5652-84 P.W.

JOSEPH MORRIS and)
ROBERT MORRIS,)
)
) Plaintiffs,)
)
vs.)
)
TOWNSHIP OF CRANBURY)
IN THE COUNTY OF MIDDLESEX,)
a municipal corporation of)
State of New Jersey)
)
Defendant.)

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

Civil Action

**NOTICE OF MOTION ON
SHORT NOTICE**

TO:

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SIRS:

PLEASE TAKE NOTICE that the undersigned, Attorneys for Plaintiffs, Joseph and Robert Morris, will apply to the Superior Court, Law Division, the Honorable Eugene D. Serpentelli at the Ocean County Court House in Toms River, New Jersey, on the earliest date as may be set by the Court for an Order permitting plaintiffs, Joseph and Robert Morris, to amend their Complaint in the consolidated case of Urban League of Greater New Brunswick v. Carteret, et al. action (Docket No. C-4122-73) and other actions against Cranbury Township consolidated therewith, or

alternatively, permitting plaintiffs to apply for a builder's remedy in this action pursuant to the understanding of the pretrial conferences.

MCCARTHY AND SCHATZMAN, P.A.

By:  _____

W. Scott Stoner

Attorneys for Plaintiffs,
Joseph and Robert Morris

Dated: May 31, 1984.

PROOF OF SERVICE

We hereby certify that copies of the within Notice of Motion on Short Notice, Letter Brief, two proposed forms of Orders and copy of Amended Complaint have been served upon all parties listed on the face of this Motion by mailing same by regular mail on May 31, 1984.

MCCARTHY AND SCHATZMAN, P.A.

By:  _____

W. Scott Stoner

Attorneys for Plaintiffs,
Robert and Joseph Morris

MCCARTHY AND SCHATZMAN, P.A.

6-8 Charlton Street
P.O. Box 2329
Princeton, NJ 08540
Attorneys for Plaintiffs,
Joseph and Robert Morris

SUPERIOR COURT OF NEW JERSEY
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 ROBERT MORRIS,)
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 Plaintiffs,)
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 vs.)
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 IN THE COUNTY OF MIDDLESEX,)
 a municipal corporation of)
 State of New Jersey)
)
 Defendant.)

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

Civil Action

AMENDED COMPLAINT
(In Lieu of
Prerogative Writs)

The plaintiffs, Joseph Morris and Robert Morris, c/o 535 Secaucus Road, in the Town of Secaucus, County of Hudson, and State of New Jersey, by way of complaint, say:

COUNTONE

1) The plaintiffs are the contract optionees of contiguous premises containing approximately 101 acres located in the Township of Cranbury, County of Middlesex, and State of New

Jersey, namely, Lots 36 and 23, Block 18, on the current Cranbury Township Tax and Assessment Map.

2) Defendant adopted a "Land Development Ordinance" purportedly under the "Municipal Land Use Law" of the State of New Jersey (N[^]J[^]S[^]A⁺ 40:55D-1 et seq.) by action of its Township Committee on July 25, 1983. The said Ordinance is hereinafter referred to as the "Ordinance".

3) By virtue of Article VIII of the Ordinance, plaintiffs' lands were zoned in the so-called "PD-MD, Planned Development - Medium Density Zone" of the Ordinance, which provides for (in Section 150-27 of same), multi-family dwellings as a conditional use but only after receiving certain "development credits" from the so-called "A-100 Agricultural Zone" in Article IV of the Ordinance.

4) Thus, the so-called "A-100 Agricultural Zone" is the "sending zone" for the "development rights" to plaintiffs' lands as "receiving zones" as well as to the "PD-HD Planned Development - High Density Zone" provided for in Article IX of the Ordinance.

5) The aforesaid "development rights" transfer scheme enacted in the Ordinance is H1t1[^] ^11[^] tne "Municipal Land Use Law" of New Jersey (N[^]J[^]S[^]/L 40:55D-1 et seq.), and specifically is not authorized by N[^]kj[^]/U 40:55D-62 and N[^]Ks[^]/L 40:55D-65.

WHEREFORE, plaintiffs demand judgment against the defendant:

A) Declaring the said "transfer of development rights scheme" of the Ordinance to be null, void and of no force and effect and severing said portion of the Ordinance from the "PD-MD Planned Development - Medium Density Zone" by virtue of the severance clause of the Ordinance enacted in Article XXI of same;

B) Declaring the said "PD-MD Planned Development - Medium Density Zone" valid without the necessity of obtaining such "development credits";

C) Appointing a Master to supervise the revision of the Land Development Ordinance of the Township of Cranbury so as to

assure that the new Ordinance conforms with the mandates of the Court in Mount Laurel I.»

D) Granting to the Plaintiffs a builder's remedy including all of the necessary local approvals, including, but not limited to, higher density development, site plan, subdivision and building permit approvals so as to construct the aforesaid development; and

E) Costs of this lawsuit.

COUNT TWO

1) Plaintiffs repeat the allegations of Count One as if set forth herein.

2) The Defendant Township is a municipal corporation located in Middlesex County, which is charged with the obligation of adopting a Land Use Ordinance governing inter alia the use of the land in the Township.

3) In 1976, the Superior Court, Chancery Division, invalidated the then zoning ordinance of Defendant Township of Cranbury, since that ordinance precluded Cranbury from assuming its fair share of low and moderate income housing within its housing region, Urban League of New Brunswick, et al. v. Mayor of Cranbury, et al., 142 N.J. Super 11 (Ch. Div. 1976).

4) On January 20, 1983, the New Jersey Supreme Court issued its decision in Southern Burlington County NAACP, et al. v. Mt. Laurel I, 92 N.J. 158 (1983) (hereinafter referred to as "Mount Laurel I") •

5) In Mount Laurel I, the Supreme Court explicitly affirmed the holding of the Chancery Division in Urban League of Greater New Brunswick, et al. v. Cranbury, et al., that Cranbury's Zoning Ordinance was exclusionary, in violation of New Jersey's Constitution.

6) In Mount Laurel, N.J., the Supreme Court also held that municipalities which were in a growth area as designated by the SDGP, had an affirmative obligation to provide for a realistic opportunity for low and moderate income housing within their housing region.

7) Despite the decision by the Supreme Court in Mount Laurel, N.J. Defendant did not modify the Land Use Plan so as to provide for a realistic opportunity for low and moderate income housing in either the growth or limited growth areas designated by the SDGP, or anywhere else in the Township.

8) Plaintiffs have sought approvals of their plans to develop the lands that they had acquired. Plaintiffs intend to gain approval of a development which would provide for a substantial amount of low and moderate income housing, consistent with the mandate of Mount Laurel, N.J. Plaintiffs have not received any approvals to date.

9) Defendant has stated that it would not be considering any changes in the recently adopted Land Use or Master Plan.

10) Despite the mandate of Chancery Division and the Supreme Court in Mount Laurel, N.J. v. Township of Mount Laurel, N.J. and Mount Laurel, N.J. v. Township of Mount Laurel, N.J. that the defendant eliminate exclusionary barriers in its land use plans and ordinances, it has, in fact, perpetuated and tightened such barriers.

11) Thus, the Land Use Plan and Ordinance fail to provide a realistic opportunity for construction of any low and moderate income housing in the Township, either to meet present or prospective regional needs or the Township's present local need for such housing, in contravention of the Constitution of the State of New Jersey.

WHEREFORE, the Plaintiff demands judgment as follows:

A) Declaring the Land Use Plan of the Township of Cranbury to be violative of the New Jersey Constitution;

B) Declaring the Land Development Ordinance of the Township of Cranbury to be unconstitutional as violating the mandate of MoHJ2i_kmifl_I;I to provide for a realistic opportunity for the construction of low and moderate income housing to meet both local and regional housing needs;

C) Enjoining the enforcement of the Land Development Ordinance by the Township;

D) Appointing a Master to supervise the revision of the Land Development Ordinance of the Township of Cranbury so as to assure that the new Ordinance conforms with the mandates of the Court in MoUft_Laujrel_ ^n •»

E) Granting to the plaintiff a builder's remedy, including all of the necessary local approvals, including, but not limited to, higher density development, site plan, subdivision and building permit approvals so as to construct the aforesaid development;

F) Granting to the Plaintiffs costs of suit and counsel fees; and

G) For such other relief as this Court deems fitting and proper.

MCCARTHY AND SCHATZMAN, P.A.

Attorneys for Plaintiffs

By: ml Scott Stoner
W. Scott Stoner

May 31, 1984

MCCARTHY AND SCHATZMAN, P.A.
6-8 .Charlton Street
P.O. Box 2329
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Attorneys for Plaintiffs,
Joseph and Robert Morris

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(Mount Laurel)
Assigned to the Honorable
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by Order of the New Jersey
Supreme Court

Civil Action

ORDER GRANTING LEAVE TO
APPLY FOR BUILDER'S REMEDY

THIS MATTER having been opened to the Court by McCarthy and Schatzman, P.A., attorneys for plaintiffs, Joseph and Robert Morris, 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 aK action (Docket No. C-4122-73) and other actions against

Cranbury Township previously consolidated therewith, and the Court having considered responses 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 _____ day of _____, 1984, ORDERED that:

Plaintiffs Robert and Joseph Morris are permitted to apply for a builder's remedy in this action pursuant to the understandings of the pretrial conferences,

This Order being conditioned upon plaintiffs being bound by the determination of region and fair share which results from the main segment of the trial in the Urban League case.

Eugene D. SerpenteTTT, J.S.C.

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P.O. Box 2329
Princeton, NO 08540
Attorneys for Plaintiffs,
Joseph and Robert Morris

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(Mount Laurel)
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Civil Action

ORDER GRANTING LEAVE
TO AMEND COMPLAINT

THIS MATTER having been opened to the Court by McCarthy and Schatzman, P.A., attorneys for plaintiffs, Joseph and Robert Morris, on an application for an Order permitting amendment of the Complaint, or alternatively, participation in the builder's remedy portion of ^lba]i_]eague_of_Grea^^ New Brunswick v. Carteret, et al^ action (Docket No. C-4122-73) and other actions against Cranbury Township previously consolidated therewith, and the Court

having considered responses 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 _____ day of _____, 1984, ORDERED that:

Plaintiffs Robert and Joseph Morris are permitted to file an Amended Complaint in the Urb^ri_Leagfe_of_Gre_ater_Ne_w ^IHHi^ifji_Xj._tlltflfti_ii_ilj. action (Docket C-4122-73) and the other actions consolidated therewith, for the purpose of allowing plaintiffs to participate in the builder's remedy segment of the law suit,

This Order being conditioned upon plaintiffs being bound by the determination of region and fair share which results from the main segment of the trial in the UrjDanJLejigije^ case.

Eugene D. Serpentetti, O.S.C.