

CA - Cranbury

4/3/85

Supplemental affidavit of Michael  
J. Herbert, attorney for T. Zirinsky

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~~Attorneys for Plaintiff Respondent, Lawrence Zirinsky~~

SUPREME COURT OF NEW JERSEY

DOCKET NO. 23830

TOWNSHIP OF CRANBURY, )

Petitioner, )

v. )

URBAN LEAGUE OF GREATER )

NEW BRUNSWICK and )

GARFIELD AND COMPANY; )

CRANBURY LAND COMPANY; )

LAWRENCE ZIRINSKY; )

TOLL BROTHERS, INC., )

Respondents. )

civil Action

SUPPLEMENTAL AFFIDAVIT OF

MICHAEL J. HERBERT

MICHAEL J. HERBERT, of full age, being duly sworn according to law upon his oath, deposes and says:

1. I am an attorney-at-law of the State of New Jersey and a partner with the firm of Sterns, Herbert & Weinroth, attorneys for the plaintiff, Lawrence Zirinsky, in on-going litigation under Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel, 92 N.J. 158 (1983)(Mt. Laurel II).

2. On December 20, 1983, I filed a complaint with the

Superior Court, Law Division (Docket No. L-079309-83P.W.) and thereafter personally handled all matters relating to that litigation, including a number of pre-trial and trial motions and trial proceedings which consumed the equivalent of approximately three weeks, during the Spring of 1984.

3. During the first phase of the trial before the Honorable Eugene D. Serpentelli, the defendant, Township of Cranbury, presented numerous documents and witnesses to support its contention that the July, 1980 State Development Guide Plan (SDGP) had been somehow modified in 1981 based upon recommendations made by the State Department of Community Affairs. During that phase of the trial, Richard Ginman, the former Director of the State Division of Planning, and the principal author of the SDGP testified at length about this document. In addition, Cranbury presented John Sully, a planner with the Middlesex County Planning Department.

4. On July 27, 1984, Judge Serpentelli issued an opinion determining that the fair share of low and moderate income housing for Cranbury Township by the year 1990 was 816 units. In that order Judge Serpentelli squarely dealt with the contention that the 1981 recommendations concerning the SDGP were, in fact, predominant over the July, 1980 SDGP. The Trial Judge also appointed : Carla Lerman and Philip Caton as Masters to assist Cranbury in , developing a complying ordinance and to review the site suitability of the four plaintiff-developers. (See Exhibit A attached) \

5. On September 11, 1984, all of the plaintiffs were advised by the court-appointed Master who was to deal with site suitability, Philip Caton, that they should be prepared to present their plans for the development of their sites at a joint meeting of the Cranbury Township Committee and Planning Board on September

25, 1984.

6. In response to this directive by the Master, our clients retained the planning and architectural firm of the Hillier Group to design a specific "concept plan" for a 144-acre tract, which was part of approximately 1,771 acres optioned by my client for possible purchase in Cranbury Township. That planning firm cooperatively designed a concept plan with the planning firm of Queale and Lynch and on September 18, 1984, a detailed proposal addressing a number of issues of concern to the Master, was sent to Mr. Caton, in preparation for the September 25th meeting (Exhibit B).

7. On September 25, 1984, I appeared before the joint Committee in Cranbury and presented the detailed concept plan, along with Mr. E. Wilson of the Hillier Group. (A copy of the Minutes prepared by the defendant Cranbury Planning Board detailing that presentation is attached as Exhibit C). It should be noted that the large concept plans could not be reproduced within the time allotted to respond to the instant petition. However, the narrative contents of the plan are set forth in the September 18th submission to the Master. That proposal specified that there would be the construction of 1,152 units on a 144-acre site with a proposed gross density of eight units per acre.

8. On October 25, 1984, or two days prior to the deadline set by the court to submit a complying ordinance, Cranbury requested a postponement for an additional 45 days. In response to that request I wrote to Judge Serpentelli on October 29th protesting that no such delay should take place. (See Exhibit D)

9. Despite my objections and those of other plaintiffs' counsel, a delay was granted to Cranbury.


10. In mid-December, 1984, or even beyond the extended deadline granted by Judge Serpentelli, Cranbury issued its "compliance plan". Although voluminous, that plan did not even address the detailed concept plans presented by any of the plaintiffs on September 25th, including our client.

11. On March 15, 1985, I appeared with other counsel to seek a builder's remedy, pointing out the extensive delay in this litigation, which dated back to July, 1974. At that time, William Warren and Carl Bisgaier, counsel for co-plaintiffs, Garfield and Company and Cranbury Land Company, urged that a builder's remedy be granted because of the pendency of certain legislation in the New Jersey Legislature. Judge Serpentelli noted that he could not grant a remedy based upon the pendency of such legislative action and Cranbury's counsel, William Moran, did not comment on this issue at all. It now appears that while that motion was being argued, the very materials that are now before the Court, including petitions and affidavits of Mr. Moran and his clients were in the process of preparation.

  
Michael J. Herbert

Sworn and Subscribed to Before Me

This 15 day of April, 1985.

  
An Attorney-At-Law of the State  
of New Jersey

STERNS, HERBERT  
a WEINROTH

A PROFESSIONAL CORPORATION  
COUNSELLOR AT LAW