CA - Cranbury 12/3/85

Letter-brief for Zirinsky, Ti - land owner seeking right to construct low + moderate income housing on his property

p 4

MLCC0469B

STERNS, HERBERT a WEINROTH
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
186 WEST STATE STREET
P.O. BOX 1298
TRENTON, NEW JERSEY 08607

(60S) 392-2IOO

JOEL H. STERNS
RICHARD K. WEINROTH
MICHAEL J. HERBERT
FRANK J. PETRINO
WILLIAM J. BIGHAM
W.S.GERALD SKEY
JOHN H. DUMONT
MARK D. SCHORR
MICHAEL M. MATEJEK
PHILIP J. HEYMAN
SIMON KIMMELMAN
VINCENT J. PALUZZI
RICHARD M. HLUCHAN
PETER A.BUCHSBAUM
DAVID M. ROSKOS
LORAINE SCHEWIOR
LAWRENCE F. GILMAN
LINDA K. STERN
PAUL M.O'GARA
THOMAS A.WALDMAN
MELINDA R. MARTINSON
KATHLEEN K. WESTON

IO NASSAU STREET
P. O. BOX 1348
PRINCETON, N. J. O8S42
(6O9) 924-2108

SUITE SOO
IISO SEVENTEENTH STREET, N.W.
WASHINGTON, O. C. 2OO3S
(2O2I293-3432

OF COUNSEL
RICHARD J. HUGHES

December 3, 1985

New Jersey Supreme Court
c/o Stephen W. Townsend, Clerk
Richard J. Hughes Justice Complex
CN 970
Trenton, New Jersey 08625

Re: Urban League of Greater New Brunswick, et al. v. Borough of Carteret, et al. (Cranbury Township)
Supreme Court Docket No. A-124 (24782)

Dear Honorable Justices of the Supreme Court:

We represent Lawrence Zirinsky, plaintiff-land owner who responded to the Mount Laurel II decision by seeking the right to construct low and moderate income housing on his property in Cranbury.

Plaintiff Zirinsky, who has thus done exactly what the Court encouraged in Mount Laurel II, strenuously opposes Cranbury's Motion for Transfer to the Affordable Housing Council. This Motion, set in an eleven year old case, is patently unfair. Cranbury now seeks an additional two or more year delay, based on a statute of uncertain constitutionality, just at the time when the trial court is finally about to require Cranbury to accept its fair share of low and moderate income housing for its region.

Obviously, plaintiff Zirinsky, who has spent an enormous amount of time and money, and part of whose property has been recommended for rezoning by the Planning Master appointed by Judge Serpentelli, could write volumes in support of the need for continued jurisdiction by Judge Serpentelli to complete

this protracted lawsuit. However, since this Court in its November 15, 1985 transmittal to counsel requested joint submissions, and also requested copies of briefs prepared for Judge Serpentelli below on the transfer issue, plaintiff Zirinsky will, at this time, rely on the submission to be presented to the Court on behalf of the Urban League which extensively sets forth procedural history in this matter, and the factual background and deep constitutional defects in the statute. We also rely on, and enclose herewith,copies of our September 23, 1985 letter to Judge Serpentelli in opposition to transfer, the Affidavit we submitted in opposition to another Cranbury delay tactic, that is. its petition for invocation of this Court's original jurisdiction to this Court and our November 24, 1985 letter concerning Cranbury's latest s^tay motion. Out of respect for this Courts direction, therefore, we would limit ourselves to a few additional brief comments concerning this case as it affects plaintiff Zirinsky.

Judge Serpentelli had established December 2, 1985 as the first date of a long-delayed compliance hearing in this matter. Cranbury had done everything in its power to resist even the holding of this hearing even though the invalidity of its ordinance under Mount Laurel I was established in 1976 by Judge Furman and the invalidity of its ordinance under Mount Laurel II was established by Judge Serpentelli in July, 1984. Cranbury did not even submit a compliance plan until December 28, 1984, six months after Judge Serpentelli's fair share decision and after all time periods for compliance with the trial court's order for rezoning had expired. See Herbert Affidavit, April 3, 1985, Paragraph 10. Yet this delayed plan did not address the detailed concept proposals presented by any of the plaintiffs including Zirinsky at the specific request of the Court appointed master. Id. Thus, the plan was essentially a continuation of a decade of resistance.

Recognizing its failures, Cranbury has twisted in every which way to avoid the compliance hearing mandated by Mount Laurel II. One salvo was the illfated Motion for assumption of direct jurisdiction. This having failed, and the Court having set a date for trial, Cranbury has now sought transfer. Whatever superficial gloss Cranbury may seek to put on this Motion, the fact remains that it is just an additional instance of resistance to the mandate of this Court in Mount Laurel II.

Further, this Motion puts plaintiff Zirinsky at a serious disadvantage. As noted, plaintiff Zirinsky specifically relied on Mount Laurel II in filing this Complaint. Now, having responded in good faith to the mandate of this Court inviting builder's remedy lawsuits, he would be victimized by Cranbury's Motion. The litigation time and effort we have expended heretofore in doing no more than what this Supreme Court explicitly invited our client to do would be rendered fruitless.

Further, plaintiff Zirinsky responded far more promptly than did the Legislature. At the time we filed suit, in December, 1983, there was not even the slightest hint of a legislative response to Mount Laurel II. Thus, it can not even be said that our Complaint, and the expenditures we have incurred as a result of that Complaint, were motivated by knowledge of legislative action or an attempt to beat the Legislature to the court house door. Rather, we have proceeded in sole reliance on the decision of this Court.

In addition, this Court can disregard voluntary compliance if transfer is granted in this case — although voluntary compliance with Mount Laurel was a prime, if not the prime goal of Mount Laurel II, see 92 N.J. at 214. The clear law which this Court hoped to establish would be gone if a case as old as Cranbury is allowed to be transferred to another body of uncertain constitutionality.

Moreover, the spill-over effects would be immediate and disastrous. Just the realization that a two year delay is there only for the asking would remove any need for immediate settlements and compliance. Indeed, the transfer would rob well-intentioned municipal officials of any political justification for compliance. Well-motivated officials thus would be undercut in their ability to take on the politically difficult task of compliance, if, by filing a Motion, even in the oldest of cases, they could postpone a day of reckoning for two years or more. And how could the citizenry be induced to accept settlement or voluntary compliance, if it became clear that the courts would be willing to cede their control of Mount Laurel II litigation to an agency that is as yet practically in utero.

Thus, transfer of this case would be a travesty of justice. It would deny relief to a builder such as Zirinsky who has spent an enormous amount of time and effort based on the Supreme Court's written promise to favor builder's remedy lawsuits. It would undermine the legal clarity which is urgently needed to produce voluntary compliance, the Court's primary goal in Mount Laurel II.

Worst of all, transfer in this case would have a devastating impact on the very class of people that Mount Laurel II was designed to help — low and moderate income persons. There should be no doubt, in this Court's mind, that grant of transfer here would seriously delay the provision of low and moderate income housing as desperately sought by the Urban League plaintiffs who have miraculously managed, although a non-profit group, to sustain this litigation for eleven long years. In place of a plaintiff such as Lawrence Zirinsky, who is ready, willing and able to try a compliance hearing tomorrow and build the day after, these low and moderate income plaintiffs and the persons they represent would again be forced to wait indefinitely before this Court's bright promise of equal opportunity, first extended in 1975, can be achieved. Their reward would be more paper, more process — exactly what Mount Laurel II derided in its very first paragraph, 92 N.J. at 198. It is urgently necessary for this Court to sustain their faith and that of the builder plaintiffs who have acted on their behalf by allowing this eleven year old lawsuit to proceed to final judgment without last minute interference. Cranbury's Motion must be denied.

Finally, we note that we hereby request oral argument in this matter.

Respectfully submitted,
STERNS, HERBERT & WEINROTH, P.A.
Attorneys for Plaintiff,
Lawrence Zirinsky

By: /s/ Michael J. Herbert

MJH/car
Enclosure

cc: All Counsel on Cranbury Service List