

ML - general

11/15/85

cover letter from NJ Supreme Ct to Counsel:

- ~~copy~~ sets forth a number of issues that the Court would like parties to address

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ML000495L

SUPREME COURT OF NEW JERSEY



STEPHEN W. TOWNSEND
CLERK

OFFICE OF THE CLERK
CN970
TRENTON, N.J. 08625

KEITH M. ENDO
DEPUTY CLERK

November 15, 1985

- Re: A-122 The Hills Development Co. v. Tp. of Bernards (#24,780)
 A-123 Helen Motzenbecker v, Bernardsville (#24,781)
 A-124 Urban League y. Carteret (Cranbury) (#24,782)
 A-125 Morris Co. Fair Housing Council v."Boonton (Denville)
 (#24,783)
 A-126 Real Estate Equities, Inc. v. Holmdel (#24,784)
 A-127 Urban League of New Brunswick v. Carteret (Monroe)
 (#24,785)
 A-128 Morris Co. Fair Housing Council v. Boonton (Randolph)
 (#24,786)
 A-129 Urban League of New Brunswick v. Carteret (So. Plainfield)
 (#24,788)
 A-130 AMG Realty Co. v. Facey v. Warren Tp. (#24,789)
 A-131 Urban League v. Carteret (Piscataway) (#24,787)
 A-132 Rivell v. Tewksbury (#24,790)
 A-133 J. W. Field Company, Inc. v. Tp. of Franklin (#24,799)

Dear Counsel*:

I enclose a copy of the Supreme Court's order directly certifying the above matters and granting leave to appeal. The Court has accelerated the time for preparation of these matters. The parties in each case are to exchange briefs simultaneously on or before December 2, 1985. Responses to those filings are to be served and filed on or before December 11, 1985. It is suggested that messenger or overnight delivery services be used to avoid delay.

The Court has a number of issues that it would like the parties to address. The briefs you are to file pursuant to the above schedule, however, do not have to be limited to those issues, a list of which are attached.

The Court will be hearing argument on a date to be scheduled after the submission of initial briefs. In all likelihood, counsel in the matters selected for argument will be directed to choose several attorneys from among their number to present joint arguments.

•see attached lists

The Hills Development Co. v. Tp. of Bernards
(and other related cases)

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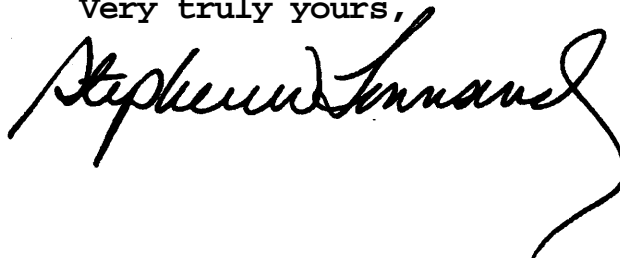
In order to minimize the duplication of effort in the preparation of briefs, the Court urges counsel to prepare and file joint submissions particularly in matters that have multiple parties such as the Cranbury and Denville cases.

For those attorneys who are participating in more than one case, you need file only a single brief. The brief's caption should identify each case that is being addressed in the body of the brief.

You are to submit nine copies of all briefs to this office, including copies of the briefs filed with the trial court on the motion to transfer. Copies must, of course, be served on the adversaries within your particular appeal. In addition, copies of all briefs must be served upon the Attorney General, the Public Advocate, and any amici curiae that the Court might allow to participate. In turn, the briefs of those parties will be served on counsel in all cases.

The Court has requested that the Attorney General prepare a complete legislative history of the Fair Housing Act. Copies will be served on all counsel. You may submit comments and suggested additions or deletions as a part of your initial brief.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen J. Linnard". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

SWT/tsg

attachments

ISSUES TO BE ADDRESSED

1. All parties in the initial exchange of briefs should address:

a. the meaning of "manifest injustice" including what factors should be considered in determining what is manifest injustice. If delay in the implementation of the Act (i.e., in the construction of housing) or any similar factor is listed, counsel should present, in support of the position taken, an analysis of the time it would take to afford relief pursuant to the Act.

i) Assuming that a balancing test is advocated, what relative weight should be given to each factor?

ii) What is proper scope of review by an appellate court of the trial court's determination of the manifest injustice issue?

b. Does the builders¹ remedy moratorium apply to a municipality if a motion to transfer to the Housing Council is denied and either all appeals have been exhausted or no appeals have been taken?

c. The Act provides for different treatment of transfer applications depending upon whether the party making application commenced suit 60 days or more before the adoption of the Act. How should applications be treated in an action when made by more than one party, one of whom filed a complaint 60 days or more before the effective date of the Act and one of whom did not?

2. Any builder or any other party who intends to argue that the Act is invalid in whole or part shall notify adversaries in the case immediately by phone that such position will be taken in the brief. In case of such notice, the parties on both sides in that case shall brief the invalidity issues on the initial exchange of briefs, including any claims of:

a) facial invalidity of the entire statute; *abuse of B/R*

b) invalidity of any part of the Act, considering it both on its face and as it might be applied, including the following parts:

^ 1) moratorium on builders¹ remedies;

- 2) alleged conflict between mandatory consideration by the Council on Affordable Housing and the constitutional power of courts to dispense with exhaustion requirements in matters in lieu of prerogative writs;
 - 3) definition of region;
 - „ 4) credits against fair share;
 - 5) alleged delay in enforcement of constitutional obligation;
 - 6) requirement, in determining prospective need, that consideration be given to approvals of development applications, real property transfers, and economic projections prepared by State Planning Commission; and
 - * 7) effect of settlement set forth in §22 of the Act; and
- ✓ c) severability.

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A-123 Helen Motzenbecker v. Bernardsville (#24,781)

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A-124 Urban League v. Carteret (Cranbury)
(#24,782)

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A-126 Real Estate Equities, Inc. v. Holmdel (#24,784)

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A-128 Morris Co. Fair Housing Council v. Boonton (Randolph) (#24,786)

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(#24,788)

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