

~~ML~~ ML Piscataway

20-June-84

Gerickert, et al v. Twp of Piscataway

Letter to judge re: belief that the
motion for summary judgment is premature.

pgs = 3

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CARL S. BISGAIER
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June 20, 1984

HONORABLE EUGENE D. SERPENTELLI, J.S.C.-
Ocean County Court House
118 Washington Street
Toms River, New Jersey 08753

Dear Judge Serpentelli:

Re: Gerickont, et al, v. Tp. of Piscataway
L-032501-84 PW

I am in receipt of the Motion for Summary Judgment filed on behalf of the Township of Piscataway in the above-referenced matter. I have the following comments.

First, it appears to me that the motion is premature. I do not believe the court can legally foreclose entitlement to a builder's remedy at this stage. There is, in fact, no certainty that this case will ultimately resolve the issues prevalent in a Mt. Laurel case. At such time as a final adjudication is made, the court could properly review the Piscataway motion. In fact, the resolution of the motion may be moot as a result of the actions of the Master and ultimate court decision.

Secondly, there is reference in Mr. Paley's papers to a developer being required to have a "project" prior to the grant of the builder's remedy. The requirement for a specific project design, at least a concept plan, is obviously necessary for the builder's remedy; that is, actual site relief, is granted. However, it is not necessary as a pre-condition to filing a law suit or as a pre-condition to the "award" of the right to a builder's remedy. As was evident in the Clinton case, the Supreme Court was willing to entertain the award of a builder's remedy on the Beaverbrook tract in a situation where the prevailing litigant had not even proposed lower income housing on that tract. The proper procedure under Mt. Laurel II would be for a prevailing developer-litigant to be given an opportunity to present its plans to the Master for

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Re; Gerickont, et al, v. Tp. of Piscataway

review subsequent to the "award" of the entitlement to a builder's remedy. Given the length of litigation, changing market factors, and a multitude of miscellaneous factors which impact on development, it would be an unnecessary and undesirable rule to require a developer to come forward with a specific development proposal (other than one in the most general terms) prior to the actual award of entitlement to the remedy.

Respectfully yours,

CARL S. BISGAIER

CSB:emm

cc: all counsel of record
on attached service list

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URBAN LEAGUE V. CARTERET

(And All Consolidated Cases)

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