

MM

~~C~~ Cranbury

1983

BFI v. Cranbury

Brief in Opposition to Motion for
Partial Summary Judgment ~~#~~
submitted by Defendant Cranbury.

pgs = 13

~~ML000607B~~

ML000607B

BROWNING - FERRIS INDUSTRIES OF
SOUTH JERSEY, INC., A Corporation
of the State of New Jersey,
RICHCRETE CONCRETE CO., A
Corporation of the State of New
Jersey and MID-STATE FILIGREE
SYSTEMS, INC., A Corporation of
the State of New Jersey,

Plaintiffs,

v.

CRANBURY TOWNSHIP PLANNING BOARD
and THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY,

Defendants.

SUPERIOR COURT OF NEW
JERSEY
LAW DIVISION: MIDDLESEX
COUNTY

Docket No. L 058046-83

URBAN LEAGUE OF GREATER NEW BRUNSWICK
Plaintiff,

v.

CARTERET, etc. et al.

Defendants.

SUPERIOR COURT OF NEW
JERSEY
CHANCERY DIVISION:
MIDDLESEX COUNTY

Docket No. C 4122-73

BRIEF IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT

WILLIAM C. MORAN, JR., ESQ.,
Attorney for Defendant,
Township of Cranbury
HUFF, MORAN & BALINT
Cranbury-South River Road
Cranbury, New Jersey 08512

MICHAEL P. BALINT, ESQ.
On the Brief

JOSEPH MORRIS and ROBERT MORRIS

Plaintiffs,

v.

TOWNSHIP OF CRANBURY IN THE
COUNTY OF MIDDLESEX, a municipal
corporation of the State of New
Jersey,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

Docket No. L 054117-83

GARFIELD & COMPANY, a New Jersey
Partnership,

Plaintiff,

v.

MAYOR AND THE TOWNSHIP COMMITTEE
OF THE TOWNSHIP OF CRANBURY,
a municipal corporation, and the
members thereof; PLANNING BOARD
OF THE TOWNSHIP OF CRANBURY, and
the members thereof*

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

Docket No. L 055956-83

CRANBURY DEVELOPMENT CORP.,

Plaintiff,

v.

CRANBURY TOWNSHIP PLANNING BOARD
and TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

Docket No. L 59643-83

CRANBURY LAND COMPANY, a New
Jersey Limited Partnership,

Plaintiff,

v.

CRANBURY TOWNSHIP, a Municipal
corporation of the State of New
Jersey, located in Middlesex
County, New Jersey

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY/
OCEAN COUNTY
Docket No. L 070841-83 P.W.

LAWRENCE ZIRINSKY,

Plaintiff,

v.

THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANBURY, a Municipal
Corporation, and THE PLANNING
BOARD OF THE TOWNSHIP OF CRANBURY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
Docket No. L 079309-83 P.W.

PROCEDURAL HISTORY

The defendant, Township of Cranbury, joins in the Procedural History as set forth in Plaintiff's brief.

STATEMENT OF FACTS

Commencing in or about 1981, the Township of Cranbury instituted a program as required by Statute to review the Township Master Plan and Zoning Ordinance. The initial technical data was assembled by Raymond, Parish, Pine & Weiner, Inc., P.C. and presented to the Township Planning Board through a series of workshop sessions which were held in late 1981 and early 1982 and which were open to the public. Findings of completed phases of the study were discussed and analyzed at these sessions with a view towards formulating policy which would be incorporated in the Master Plan itself.

The workshop sessions culminated in May, 1982 with the preparation of a draft working document known as the "Draft Cranbury Township Land Use Plan and Agricultural Conservation Element". Following the completion and circulation of the draft document, the Planning Board published notices on June 25, 1982 in the Cranbury Press and on June 28, 1982 in The Home News concerning a public hearing to be held on July 8, 1982; on July 16, 1982 in the Cranbury Press and The Home News concerning a public hearing to be held on July 29, 1982; and on July 23, 1982 in the Cranbury Press and The Home News concerning a public hearing to be held on August 3, 1982. Each of the notices clearly stated that the

purpose of the hearings was to consider "revisions of the Master Plan". (See, Plaintiffs¹ Exhibit D). The public hearings were all held on the advertised dates.

Following these workshop meetings and public hearings, the Planning Board adopted a Cranbury Township Land Use Plan on September 5, 1982. Subsequent thereto, as required by N.J.S.A. 40:55D-62, the Planning Board commenced the preparation of a zoning ordinance which would reflect the changes as contemplated in the land use element of the Master Plan. On May 5, 1983 the Ordinance was recommended to the Township Committee for adoption. It was introduced on first reading by the Township Committee on May 23, 1982 and adopted on July 25, 1983 on second reading and after a public hearing at which time Plaintiffs¹ counsel was heard.

THE MASTER PLAN AS ADOPTED BY THE CRANBURY TOWNSHIP PLANNING BOARD IS PROCEDURALLY VALID AS NOTICES OF HEARINGS CONDUCTED PRIOR TO THE ADOPTION OF SAID PLAN WERE PUBLISHED AS REQUIRED BY STATUTE AND PLAINTIFFS WERE THUS NOT DENIED THEIR DUE PROCESS RIGHTS TO NOTICE OF THE PROPOSED REVISION OF THE MASTER PLAN.

The Planning Board, in addition to conducting workshop sessions open to the public, conducted three public hearings prior to the adoption of the land use element of the Township Master Plan. Said hearings were advertised to the public by publication in two newspapers with general circulation in the Township, to wit; The Cranbury Press and The Home News. The notices, as appended to Plaintiffs¹ brief as "Exhibit D" are alleged to be statutorily defective and violative of Plaintiffs¹ Due Process rights as guaranteed by the Fourteenth Amendment to the United States Constitution. As a result of these alleged defects, Plaintiffs contend the Master Plan and thus the Zoning Ordinance itself, were not adopted pursuant to law.

N.J.S.A. 40:55D-13 provides in pertinent part:

"The planning board shall give:

(1) Public notice of a hearing on adoption, revision or amendment of the master plan; such notice shall be given by publication in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality at least 10 days prior to the date of the hearing."

Plaintiffs further rely on N.J.S.A. 40:55D-11, which provides that in regard to notices concerning development or adoption of a Master Plan:

"...shall state the date, time and place of the hearing, the nature of the matters to be considered and in the case of notices pursuant to subsection N.J.S.A. 40:55D-12 of this act, an identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office, and the location and times at which any maps and documents for which approval is sought are available pursuant to subsection N.J.S.A. 40:55D-10.

The thrust of Plaintiffs¹ argument is that the notice published by the Planning Board failed to set forth the role which the Master Plan plays in connection with the implementation of zoning ordinances pursuant to the procedural requirements of the "Municipal Land Use Law", N.J.S.A. 40:55D-1 et seq. Although Plaintiffs argue that the notices "did not adequately specify the nature of the hearings" (Plaintiff's Brief, Page 11), the impact of their argument is that the notices failed to state the expanded and more important role of the Master Plan in municipal government law as a result of the adoption of the "Municipal Land Use Law" in 1976. The Statute does not require that.

N.J.S.A. 40:55D-11 does require that such notices state the date, time and place of the hearing and

the "nature of the matters to be considered". The notices specifically enumerated that the purpose of the hearings was to consider revisions to the Master Plan.

The first two notices published by the Planning Board were identical with the exception of the dates upon which the hearings were to be held. The third notice, which was published after the completion of the first two hearings in which certain issues were more clearly defined, was even more specific. It provided:

"Please take notice that the continuation of the public hearing to consider an amended element of the Land Use Plan of the Township of Cranbury and, specifically, a Farmland Preservation Plan has been rescheduled to August 3, 1982, at the Cranbury Elementary School at 8:00 P.M. At that time the Planning Board will also consider possible revisions to the plan specifically in the high density planned development, middle density village, industrial districts and for properties on Dey Road, south of Station Road and north of the proposed Old Trenton Road Master Planned road in the agricultural district. The Board will consider any written material provided it is submitted before the public hearing. Maps and reports are available for review at the Cranbury Township Office between the hours of 9-12 A.M. and 1-4 P.M. Copies of reports may be purchased at the Cranbury Township Office for a fee of \$10.00.

Georgea von Lutcken
Board Secretary

The July 23, 1983 notice specifically indicated one of the zones which was being considered for revision was the industrial zone. As stated in Plaintiffs¹ statement of

facts prior to the Master Plan and Zoning Ordinance revisions each of the subject properties were located in the industrial zone. The notice further advised that written material provided before the public hearing would be considered.

There is no question that the "Municipal Land Use Law" expanded the role of the Master Plan in land use law. There is no case law which interprets the sections of the law which set forth the requirements of publication of notice of Master Plan hearings. N.J.S.A., 40:55D-11 and N.J.S.A. 40:55D-13. The statutes which provided the source for these new sections dealt principally with notice requirements for development applications since prior to 1976 Municipalities were not required to have Master Plans.

Source law R.S. 40:55-1.36, however, provided for publication of notices relating to adoption or amendment of the official map:

"Upon receipt of the recommendation of the planning board or after forty-five days without such recommendation, the governing body shall hold a public hearing on the proposed adoption of the official map or amendment thereto and shall cause notice of the hearing to be published in the official newspaper of the municipality or in a newspaper of general circulation in the municipality, at least ten days prior to the hearing. A map showing the proposal shall be made available for public inspection in the office of the municipal clerk during such period and the notice shall so state. At the public hearing all interested parties shall be afforded

an opportunity to be heard, prior to the final vote upon the ordinance."

The cited source only required publication of notice of the hearing; and as in N.J.S.A. 50:55D-10(b), that "any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least 10 days before the date of the hearing during normal business hours in the office of the administrative officer." The contested notices so provided; in fact making such maps and documents additionally available in the Township's public library.

Plaintiffs further assert that the Due Process clause of the United States Constitution compelled the Township Planning Board to go beyond providing that notice which is specifically required by Statute. There is an allegation that the amended zoning ordinance is confiscatory in nature when applied to the Plaintiffs¹ properties. This is clearly a factual question as there is no evidence before the Court at this time to support the same. Plaintiffs have even stated that personal service may have been required although the cited statutes do not even mention the same.

The cited Statutes are clear and unambiguous on their faces. N.J.S.A. 40:55D-11 in particular requires that the notices stated the "nature of the matters to be considered". The matter was the revision of the Master

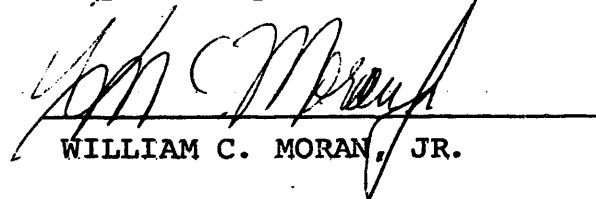
Plan. The third notice went so far as to indicate specific zones which likely would be affected by the contemplated changes. Plaintiffs¹ property was located in one of those zones. Each Plaintiff clearly had the opportunity to review the maps and documents which were on file. Whether any did in fact examine the exhibits is unknown by the Township.

One of the basic rules of statutory construction is that unambiguous language is presumed to express the legislative purpose. In re Information Resources, Corp., 126 N.J. Super 42, 50 (App. Div. 1973). Plaintiffs would have the Court interpret the notice requirements of N.J.S.A. 40:55D-11 to provide for a far greater notice than simply "the nature of the matters to be considered." The nature of the matter before the Planning Board was the revision of the Mas'ter Plan and it was so stated in the notices.

Since proper notice of the Master Plan hearings was given, the subsequent adoption of the plan and implementation of the Zoning Ordinance was procedurally appropriate.

It is respectfully requested that the Motion for Partial Summary Judgment as to Count IV of Plaintiffs' Complaint be denied for the reasons stated.

Respectfully submitted,



WILLIAM C. MORAN, JR.