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Cranbury Twp's response (partial) to comments on its ML2 compliance program

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Cranbury Township's Response (Partial) to Comments on its Mount Laurel II Compliance Program submitted by:

Garfield & Company
Lawrence Zirinski
Cranbury Land Company

Prepared for:
Cranbury Township, New Jersey

July 18, 1985

by
George M. Raymond, AICP, AIA, P.P.
Chairman
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July 18, 1985

William C. Moran, Jr., Esq.
Cranbury-South River Road
Cranbury, New Jersey 08512

Re: Urban League vs. Cranbury Township

Dear Mr. Moran:

Attached hereto is my evaluation of the comments submitted by Garfield & Co., Lawrence Zirinski, and Cranbury Land Company regarding the Township's Compliance Package.

With warmest regards, I am

Sincerely yours,

George M. Raymond, AICP, AIA, P.P.
Chairman

GMR:kfv

Enc.

Response re: Garfield & Company

The plaintiff's contention that the subject site is suitable for residential development at a density of 9.2 units per acre is not contested in principle. The site consists of prime, well drained agricultural lands which, by definition, are eminently suitable for development. The site could be developed at any reasonable density, with the appropriate number of units per acre being a function of building types (e.g. increasing with the height in stories of the buildings used).

With a predominance of two-story town-house types of units, the proposed 9.2 units per acre density is excessive. A predominance of three-story buildings, including those that contain market rate units, only, would tend to change the character of the future neighborhood from suburban to urban. In the judgement of the Township, a density of 7 dwellings per acre will achieve a balance among building types and between the built-up and natural environment appropriate to Cranbury. Alan Mallach[1] concurred with the density proposed by the Township:

> "The appropriate density of a site...made up of nearly flat farmlands...is, in the final analysis, a matter of judgement, and a matter of balancing factors...[T]here are certain planning reasons to support reducing density on this site, including its proximity to the New Jersey Turnpike and

[1] Expert Report on Cranbury Township Mount Laurel II Compliance Program, May 1985, pp 2-3.

the need for extensive buffering and the need to set aside land for open space..."

In its compliance package, the Township submitted proof of the economic feasibility of a 20% setaside project at a density of 7 units per acre.[2] The probable feasibility of a development with 7 units per acre is also confirmed by the Master and Alan Mallach.

In his report on behalf of the plaintiff, Richard Reading asserts (Memorandum dated June 21, 1958 at pp. 3-6) an inability to analyze the Township's submission because it fails to break down the cost of producing and selling housing into its 90 components. In that submission the Township used a format that has been used in a number of cases before the Court.

Mr. Reading errs by assuming that the entire 816 Mount Laurel units will have to be produced by 1990. This is important because he ascribes the need for low pricing of the market rate product to the need to achieve the absorption of 544 market units per year (Memorandum dated September 3, 1984 at p. 3). The Township's proposed phasing eliminates this problem.

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[2] See Appendix A, Basis for Determining the Density Required to Permit the Provision of a 20% Mount Laurel Set-Aside.

Mr. Reading's analysis of the reasonableness of the Township's conclusion relies on the market price of housing being produced in Plainsboro, East Windsor, Hamilton and South Brunswick, only (Memorandum dated June 21, 1985, at pp. 2-3). This leads him to the conclusion that the sales prices required to produce the subsidies to support the Mount Laurel setaside units in a 7 unit per acre development in Cranbury would be uncompetitively high.

In its immediate housing market region, Cranbury is one of few communities outside of the Princetons which has established or has the potential of establishing a character conducive to the marketing of a higher quality housing product. In the Princetons, market rate housing sells for $100-110 per square foot. The prices required to cover the Mount Laurel deficit ($71.29/square foot, as shown in the Township's exhibit) approximate only a level equal to that currently changed in the municipalities studied by Mr. Reading.

Mr. Reading did not produce any detailed proof that, using his own technique and assumptions, the market rate unit sales prices required at 9.2 units per acre would be competitive.

Mr. Reading is correct in pointing out that the Township's assumption that the land cost will be $20,000 per acre is below the $6-7,000 per unit valuation by the Township's expert, Ronald Curini. It should be noted, however, that Mr. Curini's valuation

is based on the availability of both sewer and water at the site. It is assumed that the difference of $2,429 between the $3,571 per unit used in the Township's analysis and $6,000 is not an excessive allocation to the cost of providing these utilities to the site.

The figure used by the Township ($20,000 per acre) reflected the widely known price at which large tracts of land were being optioned at the time of production of the report.

The Court-appointed master concurs (at 30) with the appropriateness of the density proposed by the Township in his analysis of the imbalance that would result if the higher density requested by the plaintiff were to be granted. Even at the lower density proposed by the Township the development would contain, on 219 acres, twice as many units as the total number that currently exists in the entire municipality.

The master's suggestion that Cranbury bolster its argument by developing a hypothetical site plan could not be expected to produce conclusive evidence of the appropriate density for the site of 7 vs. 9.2 units per acre on the site. A plan showing 7 units per acre could be countered by a "counter-plan" showing that 9.2 units could be accommodated by use of a larger proportion of 3-story buildings. The Township assumes that the 307-unit lower income portion of the development will consist of

3-story buildings for reasons of economy. The Township's contention is that the 7 unit per acre gross density will remove the incentive for excessive use of urban building types for the market rate units as well and will place a premium on the production of a predominance of two-story townhouses. At the proposed density of 7 units per acre, the probability is that the developer's interest will coincide with that of the Township in the production of a development that would be well-balanced not only as to housing types but as to the amount and distribution of open space as well.

Response re: Lawrence Zirinski

There is no disagreement with the fact that the Zirinski site is intrinsically suitable for development. The main issues raised by its possible development, as proposed, are

(1) The impact of the mere presence, immediately adjacent to the Village, of 1,152 households arranged in a dense development pattern (at 8 units per acre vs. 3 units per acre in the Village) on the possibility of preserving the historic character of the community;

(2) The effect of the additional impact on the Village of the rush-hour traffic generated by the development; and

(3) The impact on farmland preservation of the withdrawal of 144 acres of such land from farming.

Both the master and Alan Mallach, the expert for the Urban League of Greater New Brunswick, agree that a partial development of the site--with 300 units--is all that should be permitted. Mr. Mallach would favor "a modest increase" in that number, but only upon decisive proof that a 300-unit development would be economically infeasible (at p. 4).

The preservation of the Village's historic character cannot be accomplished if the Village Center will be called upon to satisfy the commercial and service needs of a population much greater than that which it serves at present. Through traffic from the Zirinski development would not be the only kind of traffic that would use the Village streets. Households occupying market-rate units can be expected to have two cars, each. Since there would be no commercial development on or connected with the Zirinski tract, in contrast with the Garfield development, many of the residents would of necessity shop in the Village and thus increase the demand for parking spaces during the day. On weekends, this type of "shopping" traffic would totally overtax existing facilities. As a result, it is reasonable to expect that the pressure for the conversion of existing structures to more intensive uses and the creation of off-street parking lots at the expense of existing development would become irresistible.

The planner's report by John Lynch discusses the development's effect on the historic Village almost exclusively from the point of view of aesthetic impact. If the development cannot be seen from the Village, its argument runs, it will have no impact. This view is manifestly inadequate.

The through traffic analysis prepared by Henry Ney purports to prove that some two-thirds of those living in the Zirinski development will be employed along Route 1 and 25% more in South

Brunswick and points north along Route 130. In fact, however, as development in the Route 130-New Jersey Turnpike corridor intensifies, it is reasonable to assume that the lands in Cranbury which are zoned for office and industrial uses will eventually accommodate major centers of employment. The first instance of such change is the 150-acre, $125 million, 500-employee development proposed by the Sudler Development Co. on the tract directly to the north of the Garfield tract.[1] Future traffic patterns will therefore not be as neatly classifiable as proposed by the plaintiff's traffic expert. The main issue is that the preservation of the Village's historic district should not be jeopardized on the strength of traffic pattern projections based on fallible traffic assignments which are, in turn, based on current conditions and which will be modified of necessity as the region's development continues to evolve.

The planner's report misrepresents the master's position by suggesting that he does not concur with the Township's concern as to the effect of the traffic to be generated by the development on the Village. At p. 11, the master's report states as follows:

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[1]The Cranbury Press, July 17, 1985.

"Nonetheless the scale of development (1,152 units) proposed for Site 6 carries serious implications as to traffic even with the advantages[2] which have been recognized."

Agricultural preservation in the area between Routes 1 and 130 is under pressure (see Response re: Cranbury Land Company). The arguments used by Zirinski in favor of expanding his development are equally applicable to the Cranbury Land Company and possibly to other Zirinski-optioned lands along the Plainsboro boundary, as well. One issue raised by the prospect of rezoning the full 144 acre Zirinski property from agricultural to intensive residential use is the effect this would have in terms of a major further diminution of an already critically small enclave of agricultural lands and farming activities. A second issue is the land value dynamics that would be set in motion by the intimation of possible further changes along the fringes of the agricultural zone that would be provided by an infringement of that zone at this time.

John Lynch argues on Zirinski's behalf that the juxtaposition of the proposed development and agricultural activities will create a compatible land use pattern. In fact, he argues that the interface of residential and agricultural activities would be

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[2]The site's being within walking distance of the Village.

shorter than at present as a result of the development's shorter westerly perimeter than that of the existing residential uses. If continued, this line of argument would lead to the conclusion that agricultural preservation would be helped by the reduction of the perimeter of the agricultural zone which would result from the conversion to residential use of lands around its entire periphery.

In that regard, it should be noted that the master's suggested new western road boundary for a development of only 300 units would reduce the direct contact between residential and agricultural uses to zero. It should also be noted that the Zirinski planner's report makes no distinction between the existing single-family back yards that now adjoin the agricultural zone and the 8 unit per acre development that would adjoin it if the Zirinski plan were to be realized.

The Township believes that the Zirinski planner's attitude to the issue of phasing is contrary to the spirit of Mount Laurel II. That decision intends that a builder's remedy be granted as a reward for the builder's efforts to force municipal compliance with the constitutional mandate. Nowhere does the decision speak of the builder's remedy as a device intended "to penalize those municipalities which are recalcitrant in providing zoning opportunities for lower income households" (at p. 10).

The Supreme Court's intent in its grant of discretion to trial judges to moderate the impact of a large obligation so that no municipality will be "radically transformed" is discussed at length in the Response re: Garfield. Suffice it to say here that the municipality now consists of only some 750 dwelling units; that it has accepted the necessity of rezoning a sufficient amount of land to satisfy its full obligation; and that a rate of growth exceeding that proposed by the master would "radically transform" the municipality. It would also radically impact its fiscal capabilities, which is one of the municipality's concerns that was completely ignored in the planner's report.

In stretching out its compliance program Cranbury is prepared to accept any additional obligations that may be lawfully imposed upon it in the future provided that their satisfaction will not destroy the historic village; will not undermine the municipality's ability to continue its farmland preservation program to the maximum extent feasible given the circumstances at that time; and will not obliterate sensitive environmental features.

Cranbury is also prepared to offer alternative means of satisfying that portion of its obligation which it now proposes to satisfy via subsidized senior citizen housing should such a program prove to be infeasible. It should be noted, however,

that both federal and state policies and programs can experience radical changes in the span of time which the proposed phasing would allow Cranbury for the production of that type of housing, and that, therefore, it cannot now be assumed that in the 1990s Cranbury will be unable to cause the construction of a second 100-unit senior citizen project.

Response re: Cranbury Land Company

The intrinsic suitability of much of the CLC property for residential development is not in dispute. The Township's decision to omit this site from its compliance package is based almost entirely on policy considerations predominantly in the area of agricultural and historic preservation. Answers to most of the arguments marshalled by the CLC in support of its builder's remedy request were anticipated in the Township's Compliance Program which was submitted to the Court as well as in the master's April 11, 1985 review thereof and recommendations. Set forth herein are supplementary answers which may further clarify the issues and the Township position.

(1) Agricultural preservation in Cranbury is not a viable planning option.

Supported by a 26-page report prepared by John M. Hunter, Professor Emeritus in Agricultural Policy, Rutgers University, dated June, 1985, CLC asserts that due to (1) development pressures and (2) the relatively small expanse of the remaining agricultural lands in the area between Routes 1 and 130--which include Cranbury's agricultural zone--agricultural activities in the area are doomed to extinction; and that, consequently, the Township's efforts to preserve farmlands are an exercise in futility.

The Township's Compliance Program, L.K. Bentz Associates' report being submitted herewith, and the master's report offer in detail the arguments in favor of continued preservation of agricultural lands and farming activities in Cranbury and adjacent municipalities.

The presence of intense development pressures in the Route 1 and Route 130-New Jersey Turnpike corridors is indisputable. These two corridors have been designated as Growth Areas in the SDGP on either side of the Limited Growth Area that includes the lands in question.

The proof offered by CLC (with the help of Professor John Hunter) of the resulting threat to agricultural preservation confirms the Township's own concerns. The greatest threat stems from the fact that the total contiguous area under cultivation or potentially available for agricultural activities in the region may be allowed to decline to less than the "critical" mass "required to support all the services needed by individual farmers. The only rational response to that threat is to resist <u>any</u> further diminution of the agricultural zone. This is particularly important in a situation where the justification offered in support of a change from an agricultural to some other designation is not a pressing public need but is of a type that would be routinely equally applicable elsewhere along the perimeter

of the agricultural zone. In the instant case, for instance the justification offered by plaintiff Zirinsky is similar to that offered by CLC, which leads to the conclusion that a departure from the Township's farmland preservation policy in one instance, may undermine it in the other. Eventually, such a course of action would inevitably lead to the gradual erosion and eventual total demise of farmland preservation in Cranbury and adjacent areas.

The second major threat is inherent in the fact that a very substantial proportion of the land in the agricultural zone is currently owned by non-farmers. For the time being, under the pressure generated by the need to produce an acceptable Mount Laurel II compliance package, the Township has temporarily set aside its effort to compensate such owners for the development rights which would be denied them in the interest of agricultural preservation by permitting their transfer into the Growth Area. An effort to find some equally effective solution will resume following disposition of this case. But even if the Township's efforts in that direction should prove unsuccessful, the pressure for change in the agricultural zone will be much less if it remains zoned for 6-acre minimum development lots than if it were rezoned for dense residential or non-residential developments. Pursuit of its present policy will preserve for the Township important policy options which would be

precluded instantly were it to abandon its agricultural preservation policy before conclusive proof of the probability of its failure. Chief among these is to encourage low density residential development west of the Village in the interest of preserving its historic center.

CLC's position is predicated on the assumption that market forces must be accommodated or alternatively, that they cannot be resisted. The fact is that development pressures can be, and have been successfully deflected by public policies and regulations designed to direct them into acceptable channels. All over the country there are plentiful instances of suburban lands located between intensive growth corridors that have been devoted to much less intensive uses, including residences on large lots--despite the obviously higher land prices that could have been achieved if these lands had been permitted to develop for intensive residential on non-residential uses.

Land owners actively contribute to the pressures for higher densities only so long as they feel a reasonable expectation of being able to secure changes in regulations that would enable them to sell their land for higher prices. Frequently the pressure which they exert is directly proportional with their perception of the probability of achieving the desired zone change. Nothing can heighten

this perception more than the success of a neighboring owner, whose land is similarly situated, in obtaining a zoning change of that type. The pressure for development of such lands, by owners and developers alike, tends to largely evaporate once everyone becomes convinced that there is no chance of achieving a change in zoning.

CLC[1] itself cites the presence of the Shadow Oaks development, which is located partly on the north side of Old Trenton Road, as partial justification for its request for the rezoning of its own parcel. The rezoning of the CLC parcel would undoubtedly lead to its being cited in support of similar requests along the boundary between Cranbury and Plainsboro.

It is the Township's contention that ample land is being made available in the region to accommodate the foreseeable

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[1] CLC misrepresents (at pp. 61-63) the circumstances which justified the designation of Shadow Oaks as residential in the 1982 Land Use Plan. As the Existing Land Use Map in that document clearly shows, the area north of Old Trenton Road had already been developed at the time (September 9, 1982) of adoption of the Land Use Plan. While the text does propose an agricultural designation "north of Old Trenton Road," it does so in a general way (similar to the languge used to recommend an agricultural designation "west of the Village"). The map is the controlling device inasmuch as it identifies specifically which properties should be included and excluded from the agricultural zone.

The extension of the preliminary subdivision approval which was granted subsequent to the adoption of the Land Use Plan effectively affected only that portion of the Shadow Oaks development that is located <u>south</u> of Old Trenton Road.because it was then the only area that had not yet been developed.

demand for non-residential and residential uses, alike, and that therefore the SDGP's policy objective of deflecting development pressures from lands in the interstitial area between growth corridors is valid. The fact that this policy may also enable the preservation of significant agricultural lands strongly reinforces its appropriateness.

(2) Since Cranbury's agricultural area would have been permeated with intensive developments but for its exclusionary zoning, the objective of agricultural preservation is contrary to Mount Laurel II (at p.10).

Mount Laurel II (at 211) expressly conditions builders' remedies upon their not negating "the clear obligation to preserve open space and prime agricultural land." The Supreme Court (at 223-24) rejected the "six criteria of a developing municipality" set forth in Pascack (74 N.J. 494) on the ground, among others, that areas "that fit the 'developing' description...should not yield to 'inevitable future residential commercial and industrial demand and growth' because they may contain prime agricultural land..." The Court (at 219) also "reassure[d] all concerned that Mount Laurel is not designed to sweep away all land use restrictions or leave our open spaces and natural resources prey to speculators. Municipalities consisting largely of

conservation, agricultural or environmentally sensitive areas will not be required to grow..."

Cranbury Township's planning policies have consistently pursued agricultural preservation west of the Village. For many years, its one-acre zoning accomplished the desired ends. The advent of the Shadow Oaks development on one acre lots in 1978 caused the Township to seek other, more direct, means of achieving this objective. The adoption in 1982 of an agricultural zone in combination with a system enabling the transfer of development credits from agricultural into growth areas constitutes evidence of its continued interest in pursuing that objective. As the Township's proposed Compliance Program demonstrates, agricultural preservation need not be sacrificed in order to permit the municipality to meet even as sizeable a housing obligation as that which it must now satisfy.

CLC cites with approval the land use policies of certain adjoining municipalities which achieved rapid growth (240%, 79% and 74% in ten years in Plainsboro, East Windsor and Monroe Townships, respectively) as contrasting with those of Cranbury. While it is true that these municipalities have permitted a great many housing units to be built and eliminated vast expanses of farmland, this housing did not serve the needs of lower income households, as a result of

which all of them were ordered to revise their land development ordinances which were found to be no less exclusionary than that of Cranbury.

(3) The SDGP Limited Growth designation in the interstitial area between the Route 1 and Route 130-NJ Turnpike corridors has been invalidated by recent intensive developments within the affected area.

CLC asserts that the SDGP group erred in designating a Limited Growth Area between the two corridors. It also asserts that development which has occurred since 1980 has invalidated it in any event. CLC admits that none of the developments which have been permitted to occur in the SDGP Limited Growth Area--which covers portions of several municipalities--are located in Cranbury. It ascribes this to Cranbury's "exclusionary zoning." By doing so, it attempts to invest Cranbury's conformance with state development guidelines with an overtone of unconstitutionality.

Attacks of the nature of that mounted by the CLC on the validity of the SDGP designations was anticipated by the Supreme Court in Mount Laurel II (at 246-47):

"By virtue of our opinion today, the State Development Guide Plan's delineation of growth areas will in most cases conclusively determine the existence and location for the imposition of the Mount Laurel obligation (emphasis supplied)."

Furthermore, the presence of scattered developments, most of which abut the edges of the large Limited Growth Area on the SDGP, and which, in the aggregate, cover a relatively small proportion thereof, is insufficient to support a request that the Court set aside the SDGP designation for the entire area. A review of the entire SDGP Limited Growth Area requires a detailed planning study which CLC has not performed. On a municipality by municipality basis, however, it is of course possible that the Court might find problems with the existing SDGP boundaries, as the Supreme Court indicated might be the case due to local land use policies that are inconsistent therewith. It is important to note, however, that CLC does not even attempt to invalidate the Limited Growth Area boundaries in Cranbury proper since that Township's policy has successfully prevented any encroachments.

(4) Cranbury is not really committed to historic preservation because it has failed to enact appropriate local legislation (at 88).

The Township's capability to develop and enact legislation during the pendency of its Mount Laurel compliance program is limited. In its compliance package (at p. 17) it has indicated its intention to adopt "appropriate architectural guidelines and/or ordinances to protect the integrity of the historic district" following acceptance by the Court of its program. This would have occurred earlier, in response to the 1982 Master Plan recommendation to that effect, had it not been necessary to focus the Township's energy and resources almost exclusively on the resolution of its Mount Laurel problem.

(5) Development of the CLC site would have less impact on the historic district than that of the sites chosen by the Township (east of Route 130) or Site 6 - Zirinski recommended by the master (at 89).

This point is not disputed.

(6) The granting of a builder's remedy on the CLC site will not interfere with the state's decision-making process regarding S-92 or increase land costs to the state if an alignment through the site is ultimately chosen.

It is correct to assume that the NJDOT would not be deterred from exercising its right of eminent domain to acquire land for the preferred route for S-92 so long as actual development of the site is not undertaken. However, it would be irresponsible for Cranbury to further any change in the status of any portion of the potential S-92 right of way until its location becomes known. In any event, the formulation of a final site plan by the developer and its approval by the municipality would have to be delayed until after the final determination of the boundaries of any state taking.

It is not correct to assume that the price of land in condemnation would be the same if zoned for agriculture or for the number of units per net acre which could be placed on the area to be purchased by the state following a rezoning to permit the CLC development to proceed. Court approval of the Township's agricultural zoning would establish a low probability of rezoning of the site for more intensive uses, and would thus increase the likelihood of a land valuation based on agriculture as being "the highest

and best use." A rezoning as requested by CLC would automatically invest the land with townhouse development value.

1) The CLC development would not be incompatible with the adjacent Shadow Oaks development.

The Township agrees with the master's view to the effect that the CLC development

> "...would not be compatible with the abutting single family home subdivision, notwithstanding the efforts to mitigate the conflict of densities which are reflected in the plaintiff's conceptual site plan."

The Cranbury Land Company proposes to develop housing at five units per gross acre adjacent to and directly across from Shadow Oaks (see Cranbury Fields Vicinity map). The Shadow Oaks development contains large lot single family luxury homes. Directly opposite Shadow Oaks along Old Trenton Road the Cranbury Land Company has proposed Cranbury Field II, Cranbury Field III, and a one acre convenience commercial center. Cranbury Field II would be comprised of 358 conventional townhouses selling for $70,000 to $85,000 at 8.5 dwelling units per acre and Cranbury Field III would be comprised of 136 low and moderate income apartments at 17 dwelling units per acre. This type of intense residential development is not compatible with Shadow Oaks.

(8) Cranbury's reliance upon the "radical transformation" defense in seeking an extended phasing of its obligation is invalid since the municipality's small size is the result of prior exclusionary policies. (at p. 19)

The Supreme Court (at 256) clearly warned that it will not accept any fair share allocation formula that would "have the effect of unreasonably diminishing the share because of a municipality's successful exclusion of lower income housing in the past...." Cranbury's fair share was derived by means of a formula (AMG v. Warren) which clearly meets the Mount Laurel II mandate.

Nowhere in its discussion of the discretion granted to trial courts to moderate the impact of compliance so as to prevent the radical transformation of the municipality does the Supreme Court imply that what it has in mind is something other than the municipality as it exists when a given implementation program is imposed upon it. The decision (at 220) goes to great lengths to reassure communities "that any changes brought about by this opinion need not be drastic or destructive." This reassurance is directed at all municipalities, regardless of the factors which resulted in their present level or character of development.

CLC's attempt to measure the impact of immediate compliance with the Mount Laurel II mandate against a hypothetical level of development that Cranbury might have reached if its zoning policies had been different over the years is therefore totally invalid.

The above discussion should not be deemed to constitute an admission that Cranbury's policies were in any way more "exclusionary" than those of its neighbors and of almost all other New Jersey municipalities whose ordinances were found to be equally violative of the Mount Laurel II mandate.