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Cranbury

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Planner's report on  
compliance program

Cranbury Twp.  
on behalf of  $\Pi$ , Lawrence  
Zirinsky

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**PLANNER'S REPORT ON COMPLIANCE PROGRAM**

**CRANBURY TOWNSHIP, MIDDLESEX COUNTY**

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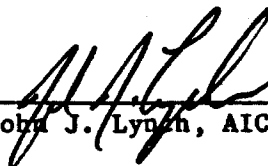
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JUDGE SERPENIELLO'S CHAMBERS

**Prepared on Behalf of Plaintiff, Lawrence Zirinsky**

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**The original of this report was signed and sealed  
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the Professional Planners Licensing Law**

**TABLE OF CONTENTS**

<b>Introduction</b> .....	<b>1</b>
<b>Site Suitability</b> .....	<b>1</b>
<b>Historic Preservation</b> .....	<b>4</b>
<b>Agricultural Preservation</b> .....	<b>5</b>
<b>Traffic</b> .....	<b>6</b>
<b>Fair Share and Phasing</b> .....	<b>7</b>
<b>Compliance Program</b> .....	<b>9</b>

## PLANNER'S REPORT ON COMPLIANCE PROGRAM

### CRANBURY TOWNSHIP, MIDDLESEX COUNTY

#### INTRODUCTION

This report is written on behalf of Plaintiff Lawrence Zirinsky. It involves a review and comment on the proposed compliance program of Cranbury Township in response to its Mount Laurel II obligations. It specifically discusses the site controlled by Mr. Zirinsky, referred to in the compliance program as Site 6.

In addition to the compliance program prepared for the township, the reports prepared by Philip B. Caton, AICP, PP, the Master appointed by the Court to assist in this case, and Alan Mallach, the expert retained by the Civic League of Greater New Brunswick, were reviewed as part of the preparation for writing this report.

Included in this report are comments on the suitability of Site 6; related issues raised by the township and commented upon in the Caton and Mallach report concerning historic preservation, agricultural preservation, and traffic; issues related to the appropriate fair share number to be addressed by the township by the year 1990, including a discussion on the staging concept; and the compliance program.

#### SITE SUITABILITY

The compliance program developed by the township suggests that this site is inappropriate for a Builder's Remedy. The Master's report suggests that the site is appropriate for a Builder's Remedy, but only on a portion of the site. Mallach appears to agree with the Master, but qualified his position by indicating that he had not had an opportunity to review the position of the Plaintiff on this matter.

In short, the township feels development on the Zirinsky tract would not only have a harmful effect on the historic character of the Village, but it would

intrude on the agricultural preservation area west of the Village. Both the Master and Mallach feel as though a partial development of the tract is appropriate, citing 300 units as a reasonable number, limiting its development to an area bounded by an interior collector street connecting Plainsboro Road and North Main Street.

The following comments are offered on the suitability of the site, with additional commentary in the sections of this report on Historic Preservation and Agricultural Preservation:

1. The proposed site consists of 144 acres and has frontage on both North Main Street and Plainsboro-Cranbury Road. It is only about 600 yards from an intersection with Route 130, and it abuts existing development in the northerly part of the Village.
2. With access points to two local roads, the site is able to be served from the north and west without passing through the Village. According to a study prepared by Henry Ney, a traffic engineer retained by Mr. Zirinsky, most of the traffic will be oriented to the north or west because of employment opportunities.
3. The site's proximity to sources of public and private goods and services is ideal. It adjoins the Village, which is the center of community activity in Cranbury, and it would become an integral part of community life. This is the only site in the list of potential Builder's Remedy sites which has a pedestrian relationship with the Village.
4. The Master Plan of Cranbury indicates the soils show few environmental limitations for community development in this location. The only portion of the site which has any serious environmental limitations is the flood plain associated with Cedar Brook, and this is located on the northerly portion of the site in a narrow band along the brook.

5. While the soils on the site are suitable for agricultural production, removal of these lands from the supply of farmland should not be of major concern. The use of large-scale agricultural equipment is limited in the site's present condition because of the proximity of homes on the south and east sides of the tract. While the development of this site would place some new housing in an area which adjoins agricultural land, the amount of contact between agricultural land and residential development would be reduced from about 3,500 feet in its present condition to 2,300 feet after full development of the site.
6. The prospective development would assist in carrying out local policies to encourage development in the Route 130 corridor. Protection could be given to the historic character of the Village through sensitive design. Agricultural preservation efforts would not be materially affected since the site is located next to existing development. The objectives of the County to encourage development north of the Village, among other places, is consistent with development in this location. The State Development Guide Plan shows the site to be entirely within the Growth Area.
7. Allowing development of this site for higher density uses is a continuation of the village concept, which served as the basis for development of the existing Village. The mutually supportive aspects of growth around an established center allow for the more efficient use of community services, and provide a setting which is important to the effective integration of this new housing with the existing fiber of the Village.

Subsequent sections of this report address not only the issues of historic preservation, agricultural preservation, and traffic circulation, but in the section on fair share, the issue of phasing is addressed. The concept of limiting development on Site 6 to only 300 units is covered in the section on the compliance program.

## HISTORIC PRESERVATION

The importance of preserving the historic character of the Village is cited frequently throughout the compliance program and the reports of the experts involved in various aspects of this case. It is undoubtedly a significant concern not only because of its National Register status, but because of the general appearance and scale of development in this developed portion of the township.

I share the opinion of most planners that historic preservation is an important planning goal, particularly in an area which has received National Register recognition. However, it should be placed in its proper perspective. The ambience of the Village is felt most effectively either at a pedestrian scale or by automobile traveling through the center of the Village. The flavor of an earlier time is most evident at this level of observation, and the area lying south of Plainsboro Road along Main Street has the greatest concentration of historic structures. The area to the north of Plainsboro Road is included in the historic district, but it appears as though no more than four of the 65 designated historic buildings in the district are located in the area lying on the west side of North Main Street abutting the Zirinsky tract.

The Zirinsky tract cannot be seen from the heart of the Village. It becomes visible between the houses which line North Main Street and Plainsboro Road, but it would be clearly viewed as a separate and distinct area, with the possible exception of that portion of the site which adjoins North Main Street and lies in the Historic District. Development in that section of the tract could be considered as part of the "gateway" to the Village historic district, so even though there are few historic structure in this area, new development along North Main Street should be sensitive to this gateway effect. However, this only concerns the frontage, and not the balance of the tract extending to the rear.

Relating the 300 housing unit development concept set forth in the Master's report to Historic Preservation, it is clear that the development of the balance of the tract would not be apparent from the Village because all the development

proposed by the Master is in the area adjoining the Village. Once the presence of that development is observable from the predominantly non-historic North Main Street area, additional development to the rear would be blocked from view.

Concern about the scale and quantity of development is largely a matter of the adequate provision of support services. While some services exist in the Village, additional development could occur along Route 130 in the commercial areas to serve the population as it grows. This would allow for an evolution of support services because the site is so close to established development.

#### AGRICULTURAL PRESERVATION

The pragmatic aspects of farmland preservation relate to the economics of farming itself and the likelihood that, in the long run, an effective support system will exist for the purchase and maintenance of farm equipment; purchase of fertilizer, seed and other products related to crop production; and the marketing of farm produce. While these concerns relate only to agricultural cropland and not other types of agricultural activity, it is apparent that the concerns of the township relate primarily to preservation of cropland.

The soils in Cranbury Township are suitable for agriculture, including the Zirinsky tract, according to the Soil Conservation Service. However, there are significant pressures in the region on agricultural lands which are reducing the prospects for long-term vitality. Active developments are underway in nearby parts of East Windsor and Plainsboro. Monroe Township is separated from Cranbury, to a large extent, by the New Jersey Turnpike. South Brunswick has large lot zoning along much of the Cranbury border, but it is primarily related to poor ground conditions rather than a form of agricultural preservation. This effectively leaves Cranbury and a portion of Plainsboro as the only contiguous agricultural lands in a relatively large area. The long-term prospects for an area of this limited size are not bright.

In spite of concerns about farmland preservation, the loss of farmland related to the Zirinsky tract should not be viewed as critical. Along two sides of this relatively square tract, the land is adjoined by single family dwellings



stripped along North Main Street and Plainsboro Road. Development on the site would be an extension of existing development, which is consistent not only with the State Development Guide Plan, but the plan of the Middlesex County Planning Board as well.

Relating the Master's proposal for a 300 unit development to the issue of agricultural preservation, it was concluded in the Master's report that the collector road from Plainsboro Road to North Main Street could serve as a clear limit of the Village, and the start of agricultural activity. There are several problems with this concept as it relates to agricultural preservation. First, the developer is asked to construct a road which would offer no opportunities for access along the entire length of one side of the road, that which would front on the agricultural preserve. Second, the remaining agricultural land on the Zirinsky tract does not adjoin agricultural land to the north. Instead, it runs into a flood plain along Cedar Brook. The only farmland with which it is contiguous lies to the west, and the long and relatively narrow configuration of the remaining lands on the Zirinsky tract may not lend themselves to profitable farming. There would continue to be a great deal of exposure between residences and active farming, as there is at present. This would seem to restrict the opportunities to use helicopters and heavy land machinery because of the possible adverse noise and comfort problems of the residents in the development. As pointed out earlier in this report, if the entire tract is allowed to develop, the actual line of exposure between agricultural land and residential development would be reduced considerably from the existing situation.

#### TRAFFIC

The compliance program cites a concern about traffic impact on the Village if the Zirinsky tract is developed. The Master's report does not reach the same conclusion. A traffic expert retained by Mr. Zirinsky, Henry Ney of Abington Ney Associates, concludes in a report prepared as a part of this proceeding that the traffic splits from the Zirinsky tract are primarily oriented to the north and west, minimizing impact on the Village. It also concludes that as the only Builder's Remedy site with a pedestrian relationship with the Village, it could have less impact on the Village than the development of a similar number of

units on another tract in the township, in which case the residents would have to drive into the Village in order to visit the establishments located there.

The thrust of the conclusion on traffic is that the bulk of new job opportunities are found in the Route 1 corridor, which requires a westerly movement from the site. Other significant numbers of job opportunities are found to the north in South Brunswick, and in points further north which are accessible from either Route 130 or Exit 8A of the New Jersey Turnpike in South Brunswick. The anticipated flows to the south and east, which may impact the Village, are predicted to be light.

While the above comments relate to the impact of the development on the Village based on site-generated traffic, the details of which are set forth in the Ney report, there is a proposal contained in the schematic plans for the Zirinsky tract which may alleviate some congestion now experienced at the intersection of Plainsboro Road and North Main Street. With the connector through the tract, traffic desiring to travel north on Route 130 or Cranbury-South River Road, to the Turnpike or other points north, would be able to enter Route 130 at North Main Street and avoid the congestion at the Plainsboro Road intersection.

#### FAIR SHARE AND PHASING

One of the key aspects of the compliance program is the aspect of phasing development. It was determined early in the proceedings on this case that the Township has a 1990 fair share number of 816 units. This consists of an indigenous need of 21 units, a present need of 95 units, and a prospective need of 700 units.

The township feels strongly, as set forth in the compliance program, that unless phasing is permitted, there will be a radical transformation of the character of the township, and particularly the Village. The Master seems to concur since he has suggested a phasing program of his own, and Mr. Mallach representing the Civic League supports this concept as well, but with a somewhat different phasing twist.

There are several points which should be considered on the issue of phasing:

1. The fair share number is a 1990 number and should be achievable by 1990 unless circumstances dictate that there would be a significant detriment to the community inherent in the development of the units needed to satisfy the obligation.
2. Several points are made that relate to being too close to 1990 to satisfy a 10 year obligation in roughly a five year period. The township suggested phasing in over an 18 or 24 year period. The Master came closer to a two phase staging period, which with modification was supported by Mr. Mallach.
3. Consideration should be given by the Court to one of the reasons why there may be an argument advanced for a radical transformation in Cranbury. Through a zoning policy which has allowed for an average annual increase of 77 jobs from 1972 to 1982, and an increase of only 45 housing units in the entire township from 1970 to 1980, there has been a systematic exclusion of residential development opportunities over a long period of time. It would appear to be inappropriate to reward exclusionary zoning with a drawn-out staging program.
4. The Master notes in his report that the fair share number under the consensus formula compresses a 10 year need into a 6 year compliance period, and suggests that the period of compliance be lengthened or the fair share reduced. It seems as though both have occurred, there is both a lengthening of the compliance period and a reduction in the fair share number. If all municipalities involved in compliance programs take this same approach, which is apparently unrelated to specific issues in the Cranbury case, then there will be insufficient zoning capacity to create the theoretical supply of low and moderate income housing units by 1990. Admittedly, there may be other forces, such as the demand for market rate units, which will reduce the likelihood of achieving the actual construction of the target number of lower income units, but this should not serve as a basis for avoiding zoning.

5. For purposes of illustration, rather than support of the phasing concept, if phasing were to occur beyond 1990, there would have to be an understanding of the actual fair share obligation which would fall on the municipality. It does not appear to be reasonable to assume that one could simply stretch out the 1990 number to some point several years later. Inherent in the consensus formula is the concept that the indigenous need should be met by 1990. In Cranbury, that accounts for 21 units. The present need is to be met in three successive six year periods. In Cranbury's case, the first phase to be met by 1990 is 95 units. From 1990 to 1996, another 95 units would be added to the fair share. On prospective need, if it is assumed that only 6/10 of the obligation is to be met by 1990, then that portion of the fair share would be 420 units. On this theory, the 1990 fair share number for compliance purposes would be 536 units as compared to a finding of 816 units. If this approach is used, there is an unmet 1980 to 1990 prospective need of 280 units. Where phasing would be permitted, it would appear that this unmet 1980 to 1990 need should be carried into the next compliance phase. If that is done, the 1990 to 1996 phase could be calculated as follows:

a. Unmet 1980 to 1990 Need	280 units
b. Second Phase of Present Need	95 "
c. 1990-96 Prospective Need	420* "
d. 1985-1990 Total Need	536
 Total Need, 1985-1996	 1,331 units

\*Assumes the same rate of regional growth which served as the basis for the 1980 to 1990 projection. The 420 units is based on 60% of 700 units, the 1980 to 1990 prospective need for Cranbury. Obviously, this number would have to be recalculated based on factors which exist at that time.

#### COMPLIANCE PROGRAM

The township, the Master and Mr. Mallach all agree with a phased compliance

program. Comments are offered herein on the plan set forth in the reports of the Master and Mr. Mallach.

In the Master's report, the extent of compliance in the township by 1990 would not be the reduced obligation under the fair share formula modification of 536 units, but would be only 275 units. This includes an assumption that Cranbury Housing Associates will be successful in securing funding for a 100 unit senior citizen housing project, presumably under the Section 202 program. It should be pointed out that over the last several years, HUD has had sufficient funding for only 3 such projects statewide each year, and there is intense competition for the funds. While it could be argued that there should be some time granted to secure such funding, this should not represent such a high percentage (36.3%) of the compliance program. The Master suggests limiting the time within which they could secure funding, but it is not clear what the zoning recourse would be in the event funding is not secured. To leave the township with the option of simply deferring that unmet obligation until 1990 does not appear to be reasonable, and to allow diverting the satisfaction of this obligation away from a legitimate Builder's Remedy site appears to contradict one of the reasons for having the Builder's Remedy in the first place, which is to penalize those municipalities which are recalcitrant in providing zoning opportunities for lower income households.

Removing the 202 project and the 21 rehabilitation units from the first phase leaves only 154 units to be satisfied on the Builder's Remedy sites. It is noted that there are phasing schedules implied on the two sites recommended in the Master's report. On the Zirinsky tract, it is suggested that not only should the site be limited to 300 units, as opposed to the 1,160 units proposed by the Plaintiff, but that it should be phased through 1990 at the rate of 60 units per year. A similar phasing scenario was imposed on the Garfield tract. This would appear to be a needless intrusion on construction and marketing activities and should not be permitted assuming any form of phasing schedule is accepted by the Court.

Before addressing a major concern over the concept of allowing only 300 units on the Zirinsky tract, there is a related issue to the compliance program which

deserves comment. The notion that Cranbury Housing Associates can gain credit for a second 100 unit project as part of the 566 unit compliance program set forth in the Master's report through 1994 is a particularly troublesome concept. Under current regulations, funding can only go to those community's which are underfunded. Presumably, Cranbury would be considered an underfunded community because it has no subsidized senior citizen housing projects in the Township. However, once a project is approved, Cranbury will no longer be underfunded, and it will be placed in a lower category of processing, effectively eliminating the possibility of securing funding. This is all based, of course, on current funding programs. It is highly speculative to assume for purposes of a compliance program that 200 out of 566 units in the program will be able to be funded out of public programs. This would leave only 366 units to be built on a setaside basis in conventional developments by 1994, which is a far cry from the 816 units indicated as the Township's fair share by 1990.

In the Master's report, a suggestion is made that the Zirinsky tract can be developed with only 300 units and still provide a 20 percent setaside of low and moderate income housing. This conclusion is reached on the basis of preserving the historic character of the Village and in trying to establish a clear line between the Village and the agricultural preservation area. The historic and agricultural issues are addressed elsewhere in this report. It is particularly difficult to understand the basis for the conclusion that this 300 unit development can effectively produce lower income housing. It is not the intent of this report to present financial analyses to illustrate the point, but rather some issues of more fundamental importance to the concept of developing a program which is reasonably achievable.

In securing control over the site, which is 144 acres in size, Mr. Zirinsky signed an option which runs for a period of years. The agreement sets forth a purchase price, but does not permit applying that price to a portion of the site. That would require a renegotiation. The practical aspects of this situation are that Mr. Zirinsky is being asked to develop a site at a gross density of two units per acre, as opposed to the 8 units per acre requested in the Builder's Remedy relief. If he does not build at that density, he has to rene-

gotiate his purchase option to apply to the 60 or 70 acres which the Master feels are suitable for development. This places him in the position of negotiating with a property owner to acquire the land on which development is to occur, leaving him with the remainder which is unavailable for development. At the same time, the development density on the 60 or 70 acres would be less than that which served as the basis for the original option agreement. There is a serious question which can be raised about the achievability of sufficient density at 4 or 5 units per acre for an entire site in order to be able to have an internal setback of 20 percent for lower income housing. With an effective gross density of only 2 units per acre, it would appear that the development of lower income housing would not be reasonably achievable.

If the Zirinsky tract is zoned for development at 8 units per acre, and 1,160 units are able to be developed on the site, a total of 232 low and moderate income units would be able to be built. This is only about one-fourth of the fair share number for the entire Township, and would provide an increase in the compliance program of 172 units since the compliance program assumes 60 lower income units for this tract. This is a much needed improvement in the overall program. The site is very suitable for development, it would be effectively integrated into the community, the traffic flows would be favorable, and it would not adversely affect the Township's goal of agricultural preservation, although that goal may not be a practical one. The site development density of 8 units per acre is sufficiently high to be cost effective, and it concentrates development sufficiently so extensive land area does not have to be devoted to satisfying fair share requirements.

It does not appear as though phasing beyond 1990 is appropriate. Even if the full fair share is provided for through zoning as a part of the compliance ordinance, other problems could have the effect of slowing down development and stretching it beyond 1990, such as the availability of sewer and water. These services may be able to be made available more quickly if the zoning is in place and there are active developments under consideration, than if there is some future phasing schedule requiring action by developers, planning boards and governing bodies after 1990.

In conclusion, every effort should be made to maximize development opportunities on the Zirinsky tract. The compliance program falls far short of the 1990 fair share number, and the Builder's Remedy sites should be the locations where the benefits fall. To allow the Township to defer its obligations over an extended period of time, and to treat a legitimate Builder's Remedy site as one which it does not want to see developed, results in allowing the Township to ignore the reason for creating the Builder's Remedy concept in the first place, which is to provide an incentive for voluntary compliance. If the result of a builder's action against a municipality is to simply initiate a response to Mount Laurel II without concern over allowing development on the site controlled by the builder, then the entire concept of the Builder's Remedy is lost, and municipalities can comfortably return to reactive zoning.

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