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Morris v. Crantony Township 12-Feb-1985

~~Memorandum~~ Letter Memorandum in lieu
of a more formal brief in opposition
to plaintiff Garfield and Co.'s motion
for an order declaring it entitled
to a builder's remedy...

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February 12, 1985

Honorable Eugene D. Serpentelli
Court House
CN 2191
Toms River, NJ 08754

Re: Morris v. Cranbury Township
Docket No.: L-54117-83 P.W.

LETTER MEMORANDUM

Dear Judge Serpentelli:

Please accept this letter memorandum in lieu of a more formal brief in opposition to plaintiff Garfield and Company's motion for an order declaring it entitled to a builder's remedy in connection with the above referenced matter. We also oppose the similar motion of Cranbury Land Company and any other plaintiff.

Eventually Garfield may be able to establish that it is deserving of a builder's remedy. However, the issue is not one that should be determined in a summary judgment proceeding. As Your Honor is well aware, the standard for summary judgment is "the absence of any genuine issue of material fact challenged", as set forth in R. 4:46-2.

It is submitted that there are a myriad of facts to be sifted through in order to establish whether a builder's remedy is to be awarded to any of the plaintiffs in this case. The Court must consider factors such as the size of plaintiff's proposed project, the percentage to be devoted to lower income housing, the municipality's fair share allocation and the type of housing to be constructed in the rest of the project. The court must further consider environmental and other land use planning concerns. South Burlington City N.A.A.C.P. v. Mount Laurel Township, 92 N.J. 158, 279-280 (1983).

In this particular case, there are a considerable number of factors unique to Cranbury Township and unique to the individual sites of those parties seeking high density zoning in order to build lower income housing. A hearing on a summary judgment motion is not a forum sufficient to take testimony on all such factors. Furthermore, the report of the court appointed master has not yet been submitted for the parties to digest. This important document should be considered before any remedy is awarded.

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Although there is evidence that some parties representing the Township find Garfield's site desirable that does not constitute sufficient evidence that a builder's remedy is warranted. In Cranbury Land's case, plaintiff cannot even call on municipal testimony in favor of high density zoning to support its motion.

This is not to say that Garfield's exhibits are not relevant. The present zoning, the testimony of the Mayor, and the opinions of the Township's consultants have weight in determining who receives a builder's remedy. But others must be heard, and heard in full. The Township took 5 months to decide which landowners should receive high density zoning. The landowners and the municipality must now be heard in opposition to one another as to the decisions made by the Township before a builder's remedy is awarded.

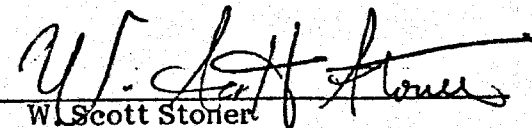
Considering the complexities of the proposed plans presented by the Township with such components as phasing, community supported housing, historic and environmental concerns, future sewer lines, water lines and roadways, it is imperative that no landowner receive a builder's remedy until all landowners and other interested parties are heard and the best overall plan for the development of the Township can be determined.

Given the careful and lengthy procedures that have been utilized in this case, it is neither wise nor just to grant Garfield and Co. or Cranbury Land a builder's remedy on summary judgment motion. We take the position that the issue of builder's remedies should be considered only after receipt of Mr. Caton's report, and then considered in the setting of a full and open hearing of the facts. In order to define the procedures under which to conduct such a hearing, we agree with the Urban League's position that a case management conference would be a useful first step.

It is therefore submitted that Garfield's and Cranbury Land's motions for summary judgment must be denied.

Respectfully submitted,

McCARTHY AND SCHATZMAN, P.A.

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