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Twp. Cranbury 3-Apr-1985

Notice of Motion for leave
to intervene or, in the
alternative, to appear as
amicus curiae

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ATTORNEYS FOR Applicant O & Y Old Bridge Development Corporation

SUPREME COURT OF NEW JERSEY
DOCKET NO. 23830

TOWNSHIP OF CRANBURY, :

Petitioner, :

Civil Action

URBAN LEAGUE OF GREATER :
NEW BRUNSWICK, GARFIELD & :
COMPANY, CRANBURY LAND :
COMPANY, LAWRENCE ZIRINSKY, :
and TOLL BROTHERS, INC., :

NOTICE OF MOTION FOR LEAVE
TO INTERVENE OR, IN THE
ALTERNATIVE, TO APPEAR AS
AMICUS CURIAE

Respondents. :

TO: IRWIN I. KIMMELMAN
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Attorneys for Petitioner

S I R S:

PLEASE TAKE NOTICE that the undersigned hereby moves before the New Jersey Supreme Court on behalf of O & Y Old Bridge Development Corporation to intervene in the above-captioned matter or, in the alternative, for leave to appear amicus curiae in connection with the same matter. In support of this application, we shall rely upon the attached affidavit of Dean A. Gaver, together with the enclosed letter memorandum.

HANNOCH, WEISMAN, STERN, BESSER,
BERKOWITZ & KINNEY, P.A.
Attorneys for Applicant O & Y
Old Bridge Development Corporation

By


Dean A. Gaver
A Member of the Firm

DATED: April 3, 1985

CERTIFICATE OF SERVICE

I hereby certify that two copies of the Motion For Leave to Intervene, Affidavit of Dean A. Gaver, and letter memorandum were served today upon all counsel of record by first class mail to the following addresses:

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A Member of the Firm

DATED: April 3, 1985

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New Jersey Supreme Court
c/o Stephen W. Townsend, Clerk
Hughes Justice Complex
CN-970
Trenton, New Jersey 08625

Re: Township of Cranbury v. Urban League
of Greater New Brunswick, et al.
Supreme Court Docket No. 23830

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

The within letter memorandum is being filed on behalf of O & Y Old Bridge Development Corp. ("O & Y"), a major residential land developer and a plaintiff in the Mount Laurel II action entitled "O & Y Old Bridge Development Corporation v. The Township of Old Bridge, et al.," (Docket No. L-009837-84), presently pending before the Honorable Eugene Serpentelli. Said action was filed on February 14, 1984, and is a successor action to an action entitled "O & Y Old Bridge Development Corp. v. The Township of Old Bridge, et al.," Law Division, Middlesex County (Docket No. L-32516-80), filed on February 18, 1981, stating claims under the governing exclusionary zoning law as articulated by this Court. The pending Mount Laurel II action is further consolidated with the action

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entitled "Urban League of Greater New Brunswick v. The Township of Carteret, et al.", (Docket No. C-4122-73), itself bottomed, in part, on a consent order with Old Bridge, entered in 1976.

While O & Y has not yet been formally joined in this action, we understand that amici curiae, consisting of 22 municipalities including the Township of Old Bridge, have applied to this Court for a stay of all pending litigation and, in the alternative, for a "reconsideration" of the fundamental aspects of the Mount Laurel II determination.

While the short time frame* does not permit the preparation of complete papers either for intervention or comprehensive response to the serious procedural and substantive issues raised by the recent Petition, we felt compelled, as a directly affected party-in-interest, to respond. Given our tentative status, we will only briefly touch upon the critical elements highlighting the manifest inappropriateness of the requested relief insofar as it

* As above, despite the fact that the relief requested by applicant for amicus curiae status, the Township of Old Bridge, would directly affect that municipality's pending litigation with O & Y, this party-plaintiff was neither purportedly joined nor served with any papers in connection with the matter pending before this Court. We have been advised, however, that this Court has directed all responsive papers to be filed by today. Discerning no other practicable way to defend our client's interest, under the very narrow time limits allowed, we are asking that this Court consider the within letter brief memorandum and, if there are to be further proceedings, to grant us leave to formally intervene. Admittedly, this procedure is irregular, but, then, so is this entire petition.

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affects the litigation pending as against the Township of Old Bridge.

Piggybacking upon the voluminous, though essentially ethereal allegations of the Petitioner*, the Township of Old Bridge seeks a stay of all proceedings or a reconsideration of the basic directives, laid down by this Court over two years ago, to compel practicable compliance with the original Mount Laurel (I) mandate issued almost a decade ago.

A STAY OR RECONSIDERATION IS NOT WARRANTED

Putting aside the procedural niceties of the amicus applicant's request for injunctive relief without the benefit of joining other parties to the litigations sought to be sidetracked, the thrust of the argument seems to be that: (1) legislation may be enacted; and (2) such legislation may affect pending litigations; and (3) the courts may thereafter permit retroactive interference with constitutionally founded litigative rights. On this basis, it is said, this Court should freeze all litigation, just when they are beginning to bear tangible fruits, and "see what happens."

* Including, for instance, such unparticularized and frankly silly assertions, as the presence of "chaos" in the courts. We believe that such scare-tactic overstatements are demonstrably disprovable, but further suggest that such a blunderbuss attack is patently inappropriate for the highest appellate court even to begin to entertain.

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Though recognizing, of course, that this Court has said that it would welcome effective legislative intervention in this difficult field, we urge that: (1) there is no way to know what, if any, legislation will finally be enacted; and (2) whether and how such legislation would purport to impact upon ongoing litigations; and (3) whether the courts would enforce certain aspects of proposed legislation -- such as building moratorium and phasing -- which could, practically speaking, defeat the possibility of viable housing projects which include Mount Laurel housing. In short, the factual background underlying the Petition is, at this point, wholly speculative. Further, the actual application of any statutory enactment to any particular case will only be known after case-by-case court review. There is no clear deus ex machina on the horizon!

A STAY OF RECONSIDERATION IS PECULIARLY
INAPPROPRIATE WITH RESPECT TO THE
TOWNSHIP OF OLD BRIDGE

The Township of Old Bridge (nee the Township of Madison) has had more than its "fair share" of exclusionary zoning litigation. See, for instance, Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481 (1977) and Urban League of Greater New Brunswick v. Mayor and Council of Carteret, et al., 142 N.J. Super. 11 (Ch. Div. 1971), dating back to 1970. Despite these seemingly inter-

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minable court combats, each leading to adverse judgments to the Township, no Mount Laurel housing has yet been built in that municipality as a result of the court actions. However, the tide seems to be turning, and yet, at the eleventh hour, the Township, through its amicus application, seeks to freeze everyone in their tracks and to debar any effective relief pending the outcome of the above-outlined hypothetical events.

In fact, the stay application is wholly at odds with the conduct of the municipality in the proceedings pending before the trial court and, indeed, it could be argued, is against the municipality's own best interests.* By early summer of 1984, the Township had settled on its fair share number, agreeing to a negotiated number that could well turn out to be significantly lower than that achieved by the literal application of the several court accepted fair share methodologies.

In any event, the Township entered into a formal, filed stipulation as to fair share, on June 27, 1985, and should not now be permitted to collaterally attack, in this curious procedural

* Given that counsel for the amici is different from the township attorney who has been representing the municipality in the pending proceedings, we can only conclude that counsel before this Court is uninformed and unaware of the status of the matter below.

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fashion, fair share determinations.*

Secondly, since mid-Fall of 1984, the Township has been engaged with the several plaintiffs in extensive settlement negotiations which could result in a mutually acceptable result. While it is certainly understandable that some Township officials might want the whole Mount Laurel matter simply to go away, this is plainly not going to happen under any conceivable scenario of events. To permit this Township, however, to be immunized from litigation, pending a series of wholly problematical events, would not just be inequitable to the litigants and to the intended beneficiaries of the Mount Laurel mandate, it would be unconscionable.

The Township of Old Bridge, though one of the original defendants in the odyssey of exclusionary zoning, has so far effectively avoided the constitutional prescriptions for some 15 years. For this Court to sanction this desperate application to sidestep definitive implementation of the constitutional demands of the Mount Laurel I decision, on the eve of the long-awaited day of

* Indeed, the entire procedural irregularity of this pending "action" is perplexing. According to newspaper reports, published for many months, the shotgun multi-town attack on Mount Laurel was to be filed in the federal courts. It was evident to many practitioners that the well established "doctrine of abstention" would be an insurmountable bar to such a federal proceeding. We can only speculate that this current application, if it were to be denied on the merits, is but the first step in an effort to skirt the limitations of federal court jurisdiction, permitting such municipal parties to argue, in any later federal action, that they had attempted to seek relief through the state court system.

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reckoning, would be a grievous blow to the purposes and principles repeatedly pronounced by this Court over the last ten years.

Let the Legislature and the Governor act, if they will. It will then be for the litigants and the courts to sort through the implications thereof. But, it is respectfully submitted, this Court should not countenance this municipality's efforts to continue to escape from the constitutional imperative.

We further respectfully request that Your Honors consider this brief submission in opposition to the amicus application of the Township of Old Bridge for the cited relief, as though we had had due opportunity for formal intervention, as amicus or otherwise. In the event that this matter proceeds further, we further ask leave to participate in order to give this Court a full factual record of the litigative situation as to the Township and in order to protect our litigation rights.

Respectfully submitted

HANNOCH, WEISMAN, STERN, BESSER,
BERKOWITZ & KINNEY, P.A.
Attorneys for O & Y Old Bridge
Development Court

By


DEAN A. GAVER

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DAG:da
cc: All counsel on attached service list

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Page 8

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