

CH - UL v. Carteret  
Cranbury

4-Dec-85

Plaintiff - respondent Garfield joining brief of UL in  
support of not transferring the litigation to Court

pg. 14

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December 4, 1985

The Honorable Justices of the New Jersey Supreme Court  
c/o Stephen W. Townsend, Clerk  
Richard J. Hughes Justice Complex  
CN-970  
Trenton, New Jersey 08625

Re: Urban League of Greater New  
Brunswick, et al. v. Borough  
of Carteret (Cranbury)  
Supreme Court Docket No.: A-124  
(#24,782)

Dear Honorable Justices of the Supreme Court:

This firm represents plaintiff-respondent Garfield & Company in an action commenced by that Company against the Township of Cranbury alleging that the Township has violated the constitutional mandate of this Court by refusing to provide through its land use ordinances a realistic opportunity for the construction of low and moderate income housing. That action, docketed below as L-055956-83 P.W., has been consolidated with an earlier case commenced by the Urban League of Greater New Brunswick and certain subsequent cases commenced by other plaintiffs. Garfield & Company, the owner of approximately 220 acres of land in Cranbury, seeks, inter alia, the builder's remedy to which the principles set out by this Court in South Burlington N.A.A.C.P. v. Mt. Laurel Township, 92 N.J. 158 (1983), entitle it.

Pursuant to the suggestion of this Court, Garfield & Company joins in the brief submitted on behalf of the Urban League of Greater New Brunswick and adopts those further legal and factual arguments submitted to this Court by other plaintiff-respondents which support Garfield & Company's position that (1) the court below was correct in refusing to transfer the litigation commenced by Garfield & Company to the Affordable Housing Council, (2) the Fair Housing Act, Ch. 222, P.L. 1985, is unconstitutional on its face, (3) the moratorium on builders' remedies found in the Fair Housing Act is unconstitutional and may not therefore be given effect and (4) the moratorium on builders' remedies is not applicable to Garfield & Company because the litigation commenced by that

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Company has been consolidated with the Urban League litigation which was commenced prior to January 20, 1983. These issues were briefed by the Company below. DCra 241-58. However, because of one or two factual issues unique to Cranbury and Garfield & Company's land in Cranbury, this letter brief is submitted pursuant to Rule 2:6-4(b) to supplement the more extensive briefs which have been filed by other plaintiff-respondents.

No one has questioned the statutory analysis presented to the trial court by plaintiff-respondents showing that were this matter transferred to the Affordable Housing Council no decision could be had for at least twenty-two (22) months, while a final order from the trial court could be had within three months. At least in connection with low and moderate income development in Cranbury, this delay has very considerable consequences. Cranbury has become one of the most desirable locations in the State for the construction of office, research and warehouse facilities. The development pressure moving down from exit 8A of the Turnpike is enormous. Moreover, Cranbury has very limited utilities. The Compliance Program submitted by Cranbury to the trial court estimates that only 620 new dwelling units could be absorbed by Cranbury within current water diversion rights authorized to the Township by the Department of Environmental Protection and only 1,250 dwelling units could be serviced without major modification to the existing sewer system. A copy of sections J and K of Cranbury's Compliance Program as submitted to the trial court is annexed to this letter brief as PGaal-11. This development pressure combined with the Township's limited utilities means that any significant delay in resolving this litigation will result in (1) the loss of land which would otherwise be dedicated to low and moderate income residential development to office/research development and (2) the loss to proposed low and moderate income developers like Garfield & Company of the existing inexpensive water and sewage infrastructure. Commercial developers will reap the benefits of this inexpensive infrastructure, while developers of low and moderate income housing will have to pay large sums of money to create new infrastructure for the Township. Such extraordinary expenses threaten the viability of subsidized residential development.

Obviously, the number of dwelling units which can be built given Cranbury's present infrastructure are fewer than the number of units which must be built to reach the fair share assigned to Cranbury by the trial court. As pointed out above, delay in resolving this litigation will place a disproportionate burden with respect to the funding of new infrastructure on the developers of subsidized residential units. In addition, delay in resolving this litigation will cost Garfield & Company as much as five million dollars in excess infrastructure costs which it would not otherwise have to spend.

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As set out in the Affidavit of Donald E. Fetzer, which was never challenged or controverted, after existing infrastructure resources are exhausted the most economical method of sewerage the Garfield site would involve pumping waste to Monroe Township's treatment facility. DCra 259-61. At the present time the Monroe Utilities Authority is planning to convert the 1.5 million gallon per day Forsgate Treatment plant to a 5.5 to 6.0 million gallon per day pumping facility. Mr. Fetzer pointed out that if this conversion project is made final without participation by Garfield & Company, the cost of sewerage that Company's land will increase by as much as five million dollars.

The executive director of the Monroe Utilities Authority has emphasized that any developer who does not agree to participate in this project in the near future will not be allowed to participate at all. If Garfield & Company has to wait two years to learn whether it will be permitted to develop its land for high density residential housing, it will have lost its opportunity to participate in the most economical method of sewerage its land. It will then have to bear not only the costs of subsidizing low and moderate income housing but also the very considerable costs of having to create infrastructure by means far less economic than are available at the present time.

For all of the reasons set out above as well as the reasons found in the briefs filed on behalf of the Urban League and other plaintiff-respondents, it would be manifestly unjust to transfer the litigation commenced by Garfield & Company to the Affordable Housing Council.

Respectfully submitted,



William L. Warren

WLW/sd

cc: All Counsel On Annexed Listing

Use Plan stated that environmental constraints on similar sites made other than low density residential development "very undesirable and imprudent." The extent, if any, of those portions of the site that can support higher density housing will have to be determined. 10

Site 5 is located in the Medium Density Planned Development District between Main Street and Route 130 directly south of Cranbury Village. This site is basically consistent with the Land Use Plan because of its relationship to nearby industrial and commercial land use patterns and accessibility to regional roadway patterns. However, it was designated for medium density development at 3 units per acre because of potential adverse impacts on the national historic district. Sites 6-9 are totally inconsistent with the Township Land Use Plan because of their "Agricultural" designation. They are also inconsistent with the Township Land Use Plan because of their potential adverse impacts on the national historic district. 20 30

## J. PUBLIC SEWER

### 1. Criteria Description

Development areas should be located in close proximity to the existing local public sewer system, minimizing pumping requirements, length of force mains, likelihood of costly interceptor extensions, and environmental impacts associated with construction activity. Municipal interconnection is a high priority. If public sewer is unavailable, package systems could be permitted provided that they are consistent with the adopted municipal utilities master plan and are designed to eventually interconnect with logical/timely extension of the existing public system. 40

Currently Cranbury Township is sewered only in the Village Area. The gravity collection system collects the sewage at a pumping station located on Cranbury Brook west of Main Street, which pumps the waste to South Brunswick Township, which in turn, transfers the waste combined with South Brunswick Township waste through North Brunswick Township and the City of New Brunswick to the Middlesex County Utilities Authority trunk sewer near the Raritan River and thence through the Middlesex County Utilities Authority system to Sayreville for treatment. The treatment plant at Sayreville has a design capacity of 120 million gallons a day. In 1983 the average daily flows at the plant were only 95 million gallons a day. 50 60

The Cranbury Township pumping station now serves approximately 450 residential and non-residential users. The station is equipped with 2 pumps, each driven by a 40 H.P. motor rated at 580 g.p.m. Current flow is 90,000 g.p.d. average, and peak flow at 110,000 g.p.d. The South Brunswick agreement limits the flow to 250,000 g.p.d., which is roughly 2½ times the current use. This equates to 675 residential units or equivalent flow from new non-residential users. 10

The existing collector sewer network in Cranbury Township was primarily designed to collect effluent from the Village. According to the Master Sewerage Plan, the existing sewerage system for the Cranbury Brook basin would be expanded along the northern edge of Brainerd Lake and Cranbury Brook to a point just east of the Turnpike. The proposed main trunk line would range from 24 to 15 inches. At present, an existing 24-inch line along Scott Avenue dead ends at Maplewood Avenue. 20

## 2. Site Analysis

The current station design of 580 g.p.m. (peak flow) should be rated at 1/2 peak for an average flow of 290 g.p.m. This results in a maximum service of 420,000 gallons per day (290 g.p.m. x 60 min. x 24 hrs. = 420,000 g.p.d.). The limit for the current station should be set at 75% of the maximum, or 315,000 g.p.d. to allow for service time and infiltration peaks. This would provide capacity of 225,000 g.p.d. for increased service. At 200 g.p.d. per residential unit, approximately 1,125 dwelling units could be served by the existing system. A practical limit of 900 units would be more realistic, so that 45,000 g.p.d. for non-residential growth could be anticipated concurrently with residential building, without a major change in the pumping station. The agreement with South Brunswick Township would need re-negotiation at around 675 dwelling units or equal flow before the pumping station reaches the limit of its present capacity. 40

The existing station could be rebuilt with 2 - 60 H.P. motors with a total head of 200 feet and 750 g.p.m. (peak flow) using the same 8" force main and emergency generator to pump the waste to South Brunswick 50

\* Sewage Master Plan, Report No. 1551-1, Kupper Associates, Inc., July 1969.

Township. The average flow would again be estimated at 1/2 peak or 375 g.p.m. or 540,000 g.p.d. maximum. 10  
Using 75% for a practical design-and-build limit to permit service, storm impacts and allow for wear on the pumps, result in a practical limit of 405,000 g.p.d. This rebuilding could provide 90,000 g.p.d. expansion to the estimated limit of the pumping station and force main. The 90,000 g.p.d. suggests 450 additional residential units which in turn should be limited to 350 units in order to leave 20,000 g.p.d. service for non-residential growth for the community. The buildout then approaches 1,250 dwelling units to be served and 20 65,000 g.p.d. for non-residential growth.

When the Cranbury system reaches 405,000 g.p.d. or earlier, inclusive of waste and infiltration, the pumping station and force main will need a secondary system, or an on-site treatment facility. Based upon the previous discussion it can be concluded that the existing Cranbury sewerage system can initially serve 675 new residential dwelling units within the present South Brunswick Township agreement and that up to 1,250 30 new dwellings could be tied in if the present pump station were rebuilt or upgraded. Residential development beyond 675 units can only realistically be achieved with public sewerage if an interconnection is made with another utilities authority or increased capacity is obtained through South Brunswick.

In 1978, the Upper Millstone 201 facilities study\* proposed a regional wastewater management plan for those portions of Hightstown Borough and Cranbury, East Windsor, Millstone, and Monroe Townships which lie 40 within the Millstone River basin. The goal of the study was to provide guidelines for the systematic development of a sewer system that would realistically meet the region's growth expectations while protecting the natural environment. After the completion of the study, all of the municipalities involved decided to solve their problems by themselves rather than within the 201 concept. Hightstown continues to operate its own sewerage treatment plant rather than sending flows to East Windsor. Cranbury is serviced through South 50 Brunswick, and Monroe is presently in the process of converting a sewerage treatment plant to a pump station to send flows out of the community for treatment.

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\* 201 Facilities Plan, Upper Millstone River Basin, Upper Millstone Water Management Study Group, December 1978.

East Windsor continues to operate an existing sewerage treatment plant with current daily average flows of 1.9 million gallons with a design capacity of 2.2 million gallons per day. The East Windsor Utilities Authority is currently working with the New Jersey Department of Environmental Protection to upgrade the plant and increase capacity to 2.96 m.g.d. Even if plant capacity is increased over the next 2-3 years, development pressures in the Township will probably require that a new 4.5 m.g.d. plant be built or development will take place in other communities where sewerage capacity is more readily available. The Mercer County Planning Board might in fact view a new plant sized beyond 2.96 m.g.d. to be contrary to current county land use thinking which seeks to divert new development into areas that already have infrastructure with underutilized sewerage capacity. The present sewer "treatment capacities are stretched to their ultimate limits" in East Windsor Township according to the East Windsor Municipal Utilities Authority, and current plans for expansion could not accomodate projected residential sewerage flows from Cranbury Township. Even if the 201 study were revived, the EWMUA states that it might be well into the 21st century before actual service could be implemented.

The Monroe Township Municipal Utilities Authority is currently in the process of converting their treatment plant into a 3 million gallon per day pump station that would send flows in a northerly direction to the existing Outcalt pump station that can reach a peak pumping capacity of 6.0 m.g.d. if new force mains are added and the station is upgraded at the estimated cost of 6 million dollars. The 3 million gallon per day design capacity at the new pump station has taken into account present flows and a projected zoning saturation within its service area, but has not accounted for the proposed Caleb planned development of 3,900 residential dwelling units or the proposed Ballentrea retirement community of 2,510 residential dwelling units. Sewerage service from Monroe to Cranbury Township seems unrealistic given the apparent inability of the present and proposed Monroe System to even adequately service their own planned developments. Sewerage service from Plainsboro Township is also improbable because their present system is owned and operated by the Linpro Development Company which is now and will ultimately have to service over 1.0 million square feet of commercial, office and light manufacturing space, and 6,300 dwelling units. The Linpro plant is now sized for 1.5 million gallons per day. Linpro has reserved 1.2 m.g.d. for their use while Plainsboro Township can



use the remaining 300,000 g.p.d. In the near future, the plant will probably become a public utility regulated by the State Public Utilities Commission. The plant has the capability of being expanded to 2 million gallons per day to service remaining growth areas in Plainsboro Township. 10

It is necessary to establish the capacity limit which South Brunswick Township can accept in the system which serves Cranbury, including the gravity mains, 5 downstream pumping stations and force mains. Long term sewerage service from South Brunswick Township into Cranbury appears to be the logical and most feasible at the present time, because homes within the Village are presently hooked into their system, the plant in Sayreville has capacity, and South Brunswick has expressed the desire and has the capability to service new residential growth in Cranbury Township. The Township of South Brunswick is willing to renegotiate the existing contract with Cranbury to include a review of fee rates, capital cost contributions, and upgrading of existing facilities. At present, they feel that existing gravity lines have the capacity to service new residential growth in Cranbury. The existing Lawrence Brook pump station in South Brunswick would have to be upgraded and a new force main would probably have to be installed. Based upon an evaluation of each site in relationship to the present municipal system and expanded South Brunswick system, it appears that Site 8 would best meet the criteria because it would be totally serviced by gravity sewer lines and be in close proximity to the existing pump station. Most of Sites 1 and 2, and all of Site 3 can be serviced by gravity lines crossing under Route 130 while the majority of Sites 5 - 7 involve pumping and force main construction. Providing public sewer to Sites 1-3 will also make it available to commercial and industrially zoned lands which in turn increases the ratables which support the necessary expansion of municipal services and facilities. Site 4 is more remote than Site 5 from the present system, and would require pumping at least once into the existing municipal system, or pumping past Sites 1, 2 and 3 along Route 130 directly into South Brunswick. Site 9 is the most isolated from the existing municipal system. It would either require a package plant, pumping into the municipal system for "approximately 1.5 miles" according to the plaintiff, or interconnecting with a new East Windsor Township sewerage treatment plant. 20 40 50



Floodway  
Ridge Lines

Existing Sewer Mains

Existing Pump Station

Flood Plains

CRANBURY TOWNSHIP

Figure 8  
SEWER SERVICE



**PUBLIC WATER****1. Criteria Description**

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Development areas should be located in close proximity to the existing local public system and provide for general upgrading to include new sources, storage, and municipal interconnections while minimizing environmental impacts and costs associated with construction activity.

The existing water system is comprised of three wells approximately 250 to 325 feet deep with a total capacity of 1.1 million gallons per day, a 100,000 gallon aerial storage tank (1940), and nine miles of distribution mains from 2" through 12" diameter, consisting of 7.7 miles of 6" and smaller mains. The Cranbury Water Department notes that 525 homes in the village area are served by the existing system.

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The diversion rights authorized to Cranbury Township in 1973 are for 12 million gallons per month. State Department of Environmental Protection records indicate that water use during the peak month in Cranbury reached 7.6 million gallons per month while township records indicate 200,000 to 245,000 gallons per day pumping for the maximum month in years 1971, 1972, 1977, 1980 and 1983.

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The three township wells are rated at 100, 200 and 400 gallons per minute. Records indicate, however, that none reach that yield due to pump inefficiencies and other factors, which reduce the yields to about 75%. There is no indication of combined flows of No. 1 and No. 3, the two normal production wells, but the fact that both draw water from the same strata and are located in close proximity to one another, no more than 500 gallons per minute can be expected. The shallow No. 2 well is not used regularly in the system due to poorer water quality and limited capacity. This well can deliver up to 100 gallons per minute at best.

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With an assumed maximum rate of supply of 500 gallons per minute, fire flow demand of 1,500 gallons per minute, combined with domestic use estimated at 250 gallons per minute, the system shows a short fall of over 1,200 gallons per minute under a fire situation. To compensate for the short fall, Brainerd Lake storage is recognized as a supplemental supply for the high risk Village Center.

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To date, water mains have not been extended to the 119 unit Shadow Oaks development on Old Trenton Road due to the lack of supply and storage. The tract is improved with dry water mains and individual wells for the current water supply.

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## 2. Site Analysis

At 200 gallons per day per residential unit, approximately 620 new dwelling units could be absorbed within current diversion rights authorized to Cranbury Township. This would also provide 31,000 gallons per day for non-residential land uses. Any single development of even 25 residential units intending to use the Cranbury water system will require additional supply.

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Depending on magnitude of development, the supply could be a new well, purchase of an existing acceptable farm well, or cross connection with an adjacent water system capable of supplying the required flows.

The development of as few as 100 units of housing or equivalent would require a standpipe of substantially larger capacity to provide an adequate storage for fire protection. This phase may be eliminated if an adjacent water system were to be interconnected, which had sufficient supply and pressure to compensate for the lack of an additional storage tank.

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If an independent water system were selected with additional wells and storage, it would have to include an emergency interconnection with one of several adjacent systems. The State Department of Environmental Protection is promoting interconnections in several directions, and it is the strongest of the priorities for the existing and considered expansion of the Cranbury water system.

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The State Department of Environmental Protection has stated that "the Raritan Aquifer is definitely over drafted, and we (they) are doing everything possible to avoid granting additional allocations." They would prefer that towns like Cranbury utilize alternate surface water sources. In fact, the DEP has stated in general terms that not only will they not approve additional "allocations from overstressed aquifers where there is an alternate source" but in the case of Cranbury Township might even decrease the 1973 diversion rights authorization because of its current unused balance of 4.4 million gallons per month.

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The possibility of interconnection to water systems near Cranbury Township has been explored in an effort to provide adequate and reliable service to meet new residential demands. The East Windsor Utilities Authority (EWMUA) presently has diversion rights of 110,000,000 million gallons per month. In July, 1983, the EWMUA pumped 102 million gallons which was only 8 million short of their allocated capacity. This year they seem to average between 75-80 million gallons per month which also takes into consideration a local water conservation program. East Windsor's projected level of development activity over the next 5-10 years will require use of their total diversion rights allocation and probably result in a request for more water from the DEP or alternative surface water sources.

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The Monroe Township Municipal Utilities Authority recently had their diversion rights reduced from 222 million gallons per month to 139 million yet they project that development activity within the township in the next 5 years will require over 150 million gallons per month.

South Brunswick Township recently received DEP approval for 25 million gallons per month of temporary diversion rights over the next 3 years because development demands had resulted in their exceeding their official allocation of 90 million gallons per month to 115 million gallons during recent summer months. In order to keep up with development pressures, the town had negotiated a contract with Elizabethtown Water Company to provide 90,000,000 more gallons per month so that total water levels could reach 180 million gallons per month if the temporary diversion rights were withdrawn in three years.

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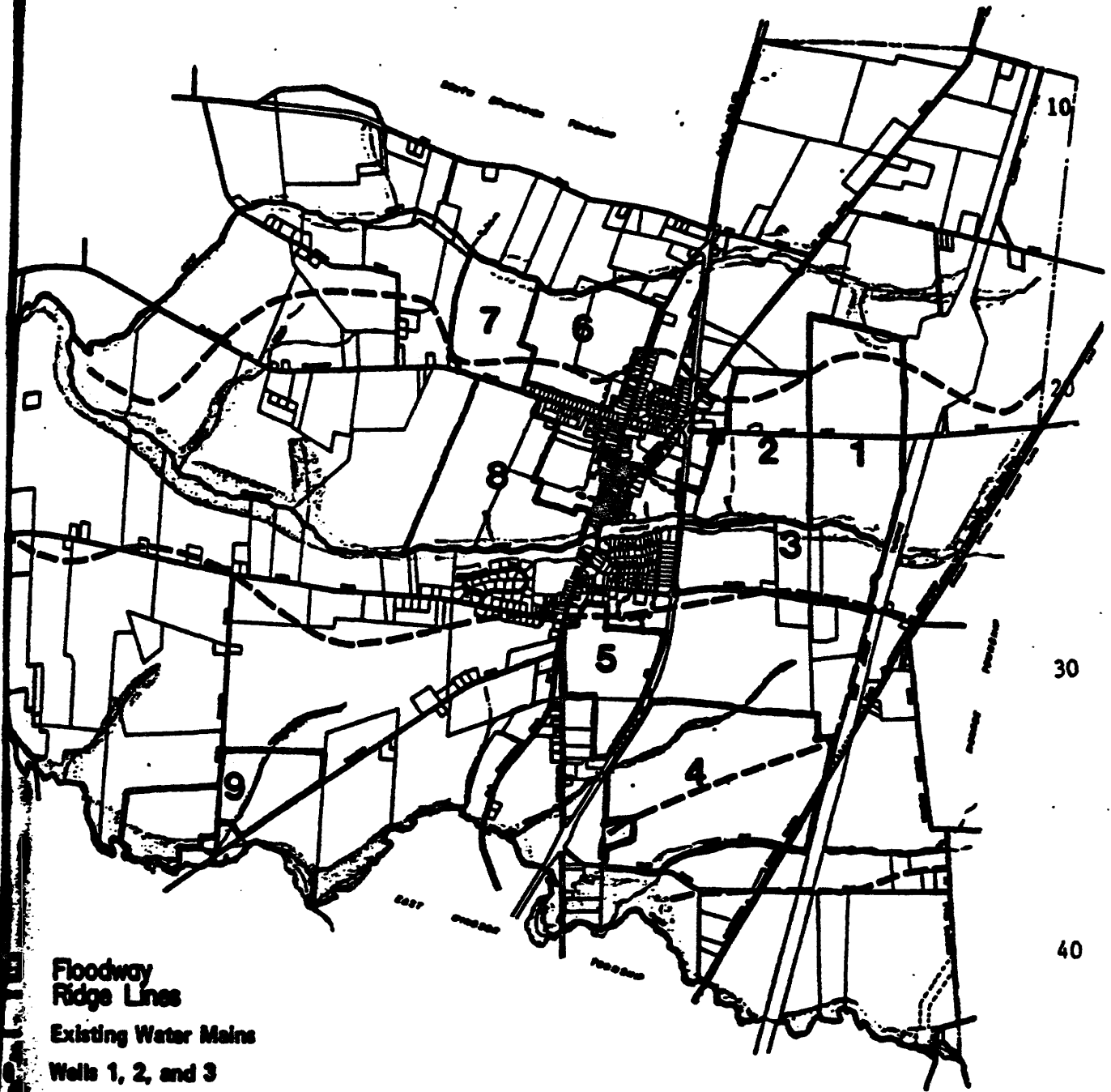
Municipal service interconnections with either the East Windsor, Monroe or South Brunswick water systems seem unrealistic at the present time or within the foreseeable future because development pressures in these municipalities will require use of their present diversion rights and even more water from additional diversion rights or alternate surface water sources.

The Elizabethtown Water Company appears to be the logical and most feasible service interconnection with Cranbury Township at the present time because it has expressed a desire, capability and willingness to service new residential, commercial and industrial growth in Cranbury Township. The Elizabethtown Water Company has 105 million gallons a month of surface water from the D & R Canal and Spruce Run and Round

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Valley Reservoirs in addition to 46 million gallons per month from 140 wells within their present system. They have indicated that 130 million additional gallons per month of surface water might be available to their system which is now either being held in reserve at the reservoirs or can become available by expanding reservoir capacity. Elizabethtown indicated that they have a 16" water main which terminates at the Plainsboro/Cranbury border and could physically be extended easterly into Cranbury either along Plainsboro Road or Dey Road at the expense of the developer. They expressed an interest in sizing new water mains to accommodate future growth beyond any immediate development demands and would consider limited franchise areas and operating and maintaining the existing water system in Cranbury Village.

For purpose of this evaluation it was assumed that water service to the first 620 residential units could possibly come from unused diversion rights within Cranbury Township if the DEP did not reduce the present level of 12 million gallons per month. Therefore, even in the short term, a new well and storage plus an expanded township water system would have to be in place to service an incremental level of growth. Since the DEP might not increase Cranbury's diversion rights, it seems plausible to assume that residential development beyond the initial 620 units will be serviced from the Elizabethtown Water Company. Service cannot realistically be expected from other neighboring municipal water systems. Based upon an evaluation of each site in relationship to the present municipal water system and Elizabethtown, it appears that Sites 6, 7, and 8 would best meet the criteria, followed by Site 5. Sites 1, 2 and 3 are within the same drainage basin as Site 8 but are further removed from the existing municipal system and the Elizabethtown Water Company lines in Plainsboro Township. Providing public water to Sites 1-3 will also make it available to commercial and industrially zoned lands which in turn increases ratables which support the necessary expansion of municipal services and facilities. Site 4 is located just across Route 130 from Site 5 but would probably require construction of longer water mains because of its distance from the municipal system and Elizabethtown Water Company. Site 9 is the most isolated from either the municipal system or interconnection with Elizabethtown. It would probably require the construction of a new satellite well and holding tank.



**Floodway  
Ridge Lines**  
**Existing Water Mains**  
**Wells 1, 2, and 3**

# Flood Plains

**RANBURY TOWNSHIP**  
**MIDDLESEX COUNTY, NEW JERSEY**

Figure 9  
**WATER SERVICE**

