Ct. - Zirinsky v. Cranbury Sept. 23, 1985

Letter brief in response to Cranbury's Motion to transfer to COAH against the transfer.

Pg. 3

CH000042B

CH000042B

STERNS, HERBERT & WEINROTH
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
186 WEST STATE STREET
P. O. BOX 1298
TRENTON, NEW JERSEY 08607

(609) 392-2100

10 NASSAU STREET
P.O. BOX 1248
PRINCETON, N.J. 08542
(609) 924-2108

SUITE 600
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 296-3432

OF COUNSEL
RICHARD J. HUGHES

JOEL H. STERNS
RICHARD K. WEINROTH
MICHAEL J. HERBERT
FRANK J. PETRINO
WILLIAM J. BIGHAM
W. S. GERALD SKEY
JOHN H. DUMONT
MARK D. SCHORR
MICHAEL M. MATEJEK
PHILIP J. HEYMAN
SIMON KIMMELMAN
VINCENT J. PALUZZI
RICHARD M. HLUCHAN
PETER A. BUCHSBAUM
DAVID M. ROSKOS
LORAINE SCHEWIOR
LAWRENCE F. GILMAN
LINDA K. STERN
PAUL M. O'GARA
THOMAS A. WALDMAN
MELINDA R. MARTINSON
KATHLEEN K. WESTON

September 23, 1985

Honorable Eugene D. Serpentelli, J.S.C.
Court House
Ocean County
CN-2191
Toms River, New Jersey 08754

Re: Lawrence Zirinsky, et al. v. Cranbury Township, Motion to Transfer

Dear Judge Serpentelli:

Please accept this letter brief in lieu of a more formal response to the motion by Cranbury Township to have the exclusionary zoning litigation against it transferred to the new Council on Affordable Housing established by the Fair Housing Act.

This Court has already received closely reasoned submissions from a number of the other parties involved in this case. These papers amply demonstrate that transfer of this case is totally inappropriate under the statute. In addition, such transfer runs completely counter to our State Constitution as interpreted in Mount Laurel II to require speedy disposition of exclusionary zoning litigation. These arguments need not be repeated. It suffices to say that plaintiff Zirinsky finds Cranbury's transfer motion to be an astonishing attempt to avoid a final decision in an eleven year old case.

Worse still, this motion seeks, in effect, to thwart judicial action in the enormous number of pending Mount Laurel II cases, many of which were filed in good faith years ago pursuant either to Mount Laurel I or Mount Laurel II. This baleful effect will occur because if a transfer can be granted in this eleven year old case then it can in any case presently

pending before the Courts, and filed in reliance on the Supreme Court's specific encouragement to builders lawsuits.

Such a ceding of judicial control over Mount Laurel II litigation would destroy the primary goal of the unanimous decision. That goal is the establishment of clear law and clear penalties for violating that law inorder to induce voluntary compliance by municipalities. See 92 N.J. at 214. Notwithstanding this primary goal, there will be no voluntary compliance if Cranbury's motion is granted. A spill-over effect or other cases will be immediate and disasterous. Why should any set of municipal officials take on the politically difficult task of compliance if, by filing a motion, even in the oldest of cases, they can postpone the day of reckoning for two years or more. Why settle or comply, if it is obvious as a result of grant of transfer here, that the Courts are willing to cede their control of Mount Laurel II litigation to an as yet non-functioning administrative agency.

This spill-over will probably cause existing settlement discussions to break down. It will intensify the political pressures against low income housing and in favor of delay on even municipal officials and attorneys who are presently inclined to seek an accommodation with the Courts and with the plaintiffs and to get on with the business of implementing the goals of Mount Laurel II. Such willingness to accommodate will disappear if Cranbury's delay effort is approved by this Court.

In sum, a decision by this Court granting transfer has a clear potential for devastating voluntary compliance and stiffening resistence to Mount Laurel II by signalling all communities, no matter what the status of their present litigation, that a two or more year delay is available to them merely for the asking. Such a result is not only contrary to the purposes of the legislation, which explicitly assert, in sections two and three, the State's desire to implement Mount Laurel II. It is also totally contrary to the Constitution of our State which was found by the Mount Laurel II Court to mandate prompt action to achieve the elimination of exclusionary zoning in accordance with the decade old

pronunciation by Justice Hall in the Mount Laurel I decision. Since, therefore, Cranbury's motion would imperil adherence to Mount Laurel II statewide, it should be denied.

Very truly yours,

Michael J. Herbert

MJH/car
cc: All Counsel of Record in the Cranbury, Monroe and Piscataway Cases

BRIEF 9-24-85