

UL v. Carteret, Old Bridge 1984

- Transcript of proceedings
- Cover letter to clerk

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ARTHUR SUTTON, CSR
SUPERVISOR
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DATE August 8, 1984

JUDGE SERPENTELLI'S CHAMBERS

NAME OF CASE URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al,
vs.

BOROUGH OF CARTERET, et al,

DOCKET NUMBER C-4122-73

DATE OF TRANSCRIPT 7/2/84

*File
u/r - Carteret*

Clerk of Superior Court
Ocean County Courthouse
Toms River, N. J. 08753

Dear Sir:

*Case may please file into
this - I believe this is yours -
not Wiley - Inc*

Enclosed you will find carbon copy of transcript of proceedings -
taken in the above entitled cause on the date set forth above.
The original of this transcript has been forwarded to the person
who ordered same. This transcript is not for purposes of appeal.
Please file in accordance with the appropriate Rule.

A copy of this letter is going forward to the parties listed
below to constitute the notice of the filing.

Very truly yours,

Caroline Wolgast

Caroline Wolgast, CSR

cc Supervisor of Court Reporters
Henry A. Hill, Esq.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: OCEAN COUNTY
DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al,

Plaintiffs,

vs.

BOROUGH OF CARTERET, et al,

Defendants.

Civil Action

TRANSCRIPT OF
PROCEEDINGS

Toms River, New Jersey

July 2, 1984

B E F O R E:

HONORABLE EUGENE D. SERPENTELLI, J.S.C.

A P P E A R A N C E S:

BRUCE GELBER, ESQ.
Attorney for Urban League

THOMAS NORMAN, ESQ.
Attorney for Old Bridge Township Planning Board

JEROME J. CONVERY, ESQ.
Attorney for Old Bridge Township

HENRY A. HILL, ESQ.
Attorney for Olympia 2 York

STEWART M. HUTT, ESQ.
Attorney for Woodhaven Village and
Brunswick Manor Assoc.

CAROLINE WOLGAST, CSR
Official Court Reporter

point of clarification.

Its fair share is set at twenty-four fourteen and paragraph three speaks to some credits. Does that reduce the twenty-four fourteen?

MR. GELBER: That's correct, Your Honor.

THE COURT: Okay.

And the twenty-four fourteen is arrived at through the straight application of the so-called Lerman Report of April 2, '84?

MR. GELBER: Not exactly, Your Honor.

The twenty-four fourteen was a figure agreed upon by settlement, by compromise. It is derived largely from the consensus report prepared by Ms. Lerman with certain minor modification by Carl Hintz.

THE COURT: All right.

MR. GELBER: I believe, Your Honor --

THE COURT: Is that clear from paragraph two? It appears as though, from paragraph one, that you have followed the -- for regional purposes, you followed the report, but paragraph two, then you have not exactly followed the original need or fair share allocation. You have done something --

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1 MR. GELBER: That is correct.

2 THE COURT: -- that one might gain the
3 impression that the report generates that number,
4 and that's not necessarily vital, but I think
5 it should be clear that it doesn't.

6 MR. CONVERY: May it please the Court,
7 I have no objection to the stipulation in the
8 judgment indicating in paragraph two that the
9 number is twenty-four fourteen housing units
10 as per report of Carl Hintz, which is in fact
11 the exact number that he had reached based upon
12 his calculations.

13 THE COURT: All right.

14 I think it might be useful also to
15 indicate that the plaintiffs' expert, Miss Lerman,
16 filed a report finding that the fair share
17 number was whatever it is and that the Urban
18 League methodology, if applied in its totality,
19 would have created a fair share number of
20 whatever that was.

21 Now, these were given to me over the
22 phone and they were close at some point in time,
23 but I think it might just be useful for the
24 purposes of setting forth the stipulation.

25 MR. HUTT: Don't you think you ought to

1 say Mrs. Lerman's number, too?

2 THE COURT: That's what I said, the
3 Urban League methodology, which I meant the
4 Lerman number.

5 MR. HUTT: Oh, I thought you meant Mallach.

6 THE COURT: I did, Mallach, too.

7 In other words, I want --

8 MR. HUTT: Three numbers?

9 THE COURT: Right. As I understand, the
10 Lerman number was somewhere around twenty-seven
11 hundred.

12 MR. GELBER: That's correct, Your Honor.

13 The number, as indicated by Miss Lerman, was
14 twenty-seven eighty-two.

15 MR. HUTT: Twenty-seven eighty-two?

16 MR. GELBER: That's correct.

17 THE COURT: And Mallach was --

18 MR. GELBER: Without financial need,

19 Mallach's number was twenty-six forty-five.

20 With the financial need factor, it was thirty-five
21 thirty-eight.

22 THE COURT: What's Old Bridge median
23 income?

24 MR. CONVERY: It's less.

25 THE COURT: Then something is wrong. If

1 it's less than the median, that number should go
2 down.

3 MR. GELBER: From Mr. Mallach's number?

4 THE COURT: You're saying with the median,
5 the number went up?

6 MR. GELBER: No, Your Honor, with the
7 inclusion in overall present need and a factor
8 for financial need.

9 THE COURT: Oh, financial need?

10 MR. GELBER: That's correct.

11 THE COURT: Oh, I'm sorry. Both of his
12 numbers include a factor for --

13 MR. GELBER: That is correct. He has
14 modified his approach to include that factor.

15 THE COURT: Okay.

16 MR. GELBER: Your Honor, it is my
17 understanding that the builders have some
18 concern about the procedure that's laid out in
19 the agreement and, just for the record, I want
20 to explain that the stipulation was entered into
21 only between the Urban League and the township
22 and it is based on that stipulation that we
23 ask the order to be entered. It is my understanding
24 that the township fully intends to involve both
25 developers in the revision process. In fact, it

1 would be my position that it would be quite silly
2 not to involve them during the initial forty-five-
3 day period.

4 It is also my understanding that nothing
5 in this agreement precludes that involvement
6 and, based on that, we have essentially allowed,
7 through the agreement, the township to try to
8 reach an agreement during the initial forty-five-
9 day period without participation of the master.
10 If that is unsatisfactory, then I fully expect
11 the master will be appointed and the proposed
12 revisions will be submitted to the Court within
13 the ninety-day period.

14 THE COURT: I don't see this to be any
15 different than if the Court were to find the
16 ordinance noncompliant and order ordinance
17 revision. Obviously, any plaintiff would have
18 full input into the revision process, so I
19 don't see any problem with that.

20 MR. GELBER: Judge, the other side of the
21 coin, of course, is that at any time the township
22 can reach a settlement with any one of the
23 parties, nothing in this agreement precludes that
24 or requires it. I think it would be in the
25 township's interest to try to satisfy all the

parties. I don't believe we could in any way prevent the township from reaching settlement with one or another of the parties.

So again I don't believe this order interferes with the normal course of events.

MR. CONVERY: May it please the Court, Your Honor, I'd like to amplify that.

First of all, as you know, it was set down for trial today on the heart of this order, and certainly we were only dealing with the Urban League when we were negotiating fair share number and when we were discussing the question of whether or not there was compliance. So I think Old Bridge has proceeded in good faith with the Urban League who was going to be the adversary today at trial. It is not the intention of the Township of Old Bridge to preclude discussions with the builders who have filed lawsuits. In fact, I agree that it would make no sense not to discuss ordinance revisions with those builders, but I also believe that, as Your Honor has said, if there had been a finding of noncompliance, certainly I would hope that Your Honor would have given Old Bridge an opportunity to revise its ordinance. I think

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1 forty-five days is reasonable. I think that if
2 no agreement can be reached within forty-five
3 days, that at that point the Urban League -- it
4 says right in the order, in the stipulation and
5 the judgment -- shall ask that the master be
6 appointed. I think this is perfectly reasonable.
7 It provides a ninety-day period of time and I'm
8 representing to the Court, although I don't
9 believe the builders at this point are a party
10 to the order and the judgment that is being
11 entered, I'm representing that certainly Old
12 Bridge would be foolish not to discuss ordinance
13 revisions with those builders where there is,
14 in fact, litigation pending.

15 THE COURT: Certainly Old Bridge wants to
16 avoid further litigation and will proceed in
17 good faith knowing that at some later time, if
18 these ordinance revisions are unsatisfactory,
19 certainly the builders are going to come forward
20 and ask for relief.

21 MR. HILL: Your Honor, I'd like -- there
22 has been a basic error creeping into this record
23 from the beginning. Olympia & York filed their
24 suit on February 14, 1984, the second lawsuit
25 they filed. Urban League never got Old Bridge

1 remanded and it wasn't until they got permission
2 from this Court to add Old Bridge in April of
3 1984, that Old Bridge became a party to the
4 Urban League case. If anyone is a tag-along
5 plaintiff in this suit, it's Urban League and
6 not O&Y Old Bridge.

7 So either because of a misconception as
8 to the dates by this Court or a sense of urgency,
9 we got into the position where we weren't
10 participating in fair share. I think that was
11 error. It crept in before we objected to it.
12 That was Your Honor's ruling.

13 However, we see this process going on and
14 on and on. Counsel has been very conscious of
15 what the error has been. We made a point of
16 filing this suit. When we filed this suit,
17 nobody else was suing Old Bridge and nobody had
18 the right to sue Old Bridge under the Mount
19 Laurel count, but because they had a prior case
20 and because they wanted to join it with the
21 prior case, somehow we got froze out of the
22 process and I think that was incorrect law and
23 there was no reason for that, but that was Your
24 Honor's will and we didn't care that much about
25 fair share and region because that's not where this

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case is at. However --

THE COURT: So what's the point?

MR. HILL: The point is that paragraph five of the Court's order is entirely unacceptable to -- of the proposed order is entirely unacceptable to Olympia & York. The point is that paragraph five advocates a procedure between Urban League and Old Bridge under which they're going to revise Old Bridge Township's ordinances.

Now, my client has spent about half a million dollars reviewing the old ordinance. We have spent hundreds of thousands of dollars understanding the water system, the sewer system.

THE COURT: We are still not getting the point. This Court is going to be occupied in a few minutes.

MR. HILL: The point, Your honor --

THE COURT: What's your problem?

MR. HILL: The point, Your Honor, is that we don't think that anyone out there is competent to handle the ordinance provision review process with Old Bridge. We watched other settlements of Urban League where there have not been builder-plaintiffs and we don't believe that their counsel and their experts truly understand the

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1 building process to have allowed the kinds of
2 settlements that they have proposed to this
3 Court in other cases in the Urban League case.
4 We don't intend for that to happen to Old Bridge
5 where my client, for one, owns twenty-five
6 percent of vacant developable land. I mean, this
7 is not learning time for them. This is the
8 way my client makes its living and we intend,
9 we desire, to participate fully in the ordinance
10 review process.

11 Your Honor has an order in front of you -
12 resulting from the prior motions of which Your
13 Honor said that we were fully entitled to
14 participate in the compliance section. Paragraph
15 five of this order is an undisguised attempt
16 between two parties -- and if there is a tag-
17 along plaintiff in this suit, it's not Olympia &
18 York -- under which two parties are trying to
19 shut Olympia & York out of the ordinance
20 development process, the ordinance review process.
21 We'd like to participate. We understand that
22 ordinance better. We participated in writing
23 parts of it or reviewing parts of it. Old Bridge
24 has hundreds of pages of --

25 THE COURT: In the interest of time, what

1 do you call --

2 MR. HILL: We object to paragraph five.

3 THE COURT: I got that --

4 MR. HILL: We think it's an attempt to
5 usurp our right in the case.

6 THE COURT: I got that impression. What
7 do you call participation? You know, I don't
8 perceive that any plaintiff, regardless of
9 whether they were first, last or in the middle,
10 under Mount Laurel has the right to dictate the
11 ordinance revision process and it certainly is
12 not going to be permitted in this court --

13 MR. HILL: But why --

14 THE COURT: Let me finish -- and I don't
15 believe that kind of aggressiveness is either
16 in the interest of the orderly revision process
17 or in the interest of your client.

18 However, you can approach it as you see
19 fit. As I read Mount Laurel, this municipality
20 is given basically two options: One is to be
21 given the right to revise within the ninety-day
22 period without a master. If the Court sees fit,
23 that a master be appointed and assist in the
24 revision process and in that setting seek the
25 input of all those who might be in a position to

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contribute to the fair share which would obviously include Olympia & York and obviously include Mr. Hutt's client. But the decision as to how this ordinance is going to be amended, at least at this stage, is not plaintiff's, it's going to be Old Bridge. They're going to have to pay the fiddler if they're not right and Mount Laurel doesn't go nearly as far as you are suggesting. Plaintiff has no right to rewrite this ordinance for Old Bridge, Old Bridge has that right. If they do it wrong, then somebody is going to do it for them and that's what's hanging over their head.

So I see no leverage as of the type that you are indicating at this posture.

Now, having said that, I repeat that I would expect that proposed revisions would be submitted to you. I would expect that you would have the right to submit to the Township of Old Bridge any revisions that you would propose, any suggestions with respect to amendment of ordinance which would remove cost-generating features and, if necessary, create affirmative devices. But I think we have got to keep in perspective where the revision process lies.

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1 Mr. Hutt.

2 MR. HUTT: Your Honor, I think it is more
3 a matter of semantics than anybody's overreaching.
4 What they have said and what you said does not
5 exactly comport to what paragraph five does say.
6 I think it is probably more inadvertence on
7 their part.

8 As I read paragraph two, it reads the
9 same way you did. To tell you the truth, I
10 thought the twenty-four fourteen was Mrs. Lerman's
11 number. I'm glad we straightened that out.
12 I think, by the same token, paragraph five has
13 to be straightened out.

14 Paragraph five really is not part of this
15 order and motion either in the stipulation or
16 in the order because the only thing they're
17 entitled to settle without the participation
18 of Mr. Hill's client and my client is the fair
19 share number and lack of compliance. Paragraph
20 five goes past that. Paragraph five now comes
21 up with they're now saying to the Court this is
22 the fair share number and we don't comply.

23 Now, we start getting into the second
24 stage proceeding and in the last proceeding that
25 we had in this matter, you had ruled that Olympia &

1 York and Woodhaven Village had the right to
2 participate and be part of the ordinance revision
3 process. The problem with the way paragraph five
4 is, number one, it doesn't mention that. I
5 mean, it's nice, all these oral representations
6 and everything else, which I appreciate, but we
7 have to act a little bit more lawyerlike and
8 get the representations in writing. That's
9 number one.

10 Number two is the way it's written, it
11 says those two parties can agree. Now, the way
12 they explain oh, yes, we can mention it, we can
13 buzz in their ear, we discuss with them, but
14 it doesn't make us an equal party. Now, for
15 argument sake let's say that the Urban League
16 and the town agree to what the ordinance should
17 be and let's assume we don't agree. The way
18 this paragraph five is written, that's what it's
19 going to be. I don't think that's the intent.
20 The way the law is, Your Honor, it is submitted
21 to you for final approval. That is always there,
22 but the point is it's one thing to get a draft
23 of a paper that's submitted back and forth and
24 it's another thing to be an equal partner in a
25 room. Frankly, I think in the scope of this, I

1 will agree with Mr. Hill on one thing, that this
2 is not a new situation as you have in most of
3 your Mount Laurel cases. This application of
4 both my clients has been very extensive,
5 extremely extensive. There's a lot of background.
6 You are talking about a lot of land. You're
7 never going to get anything done in forty-five
8 days, that's for sure, not that we wouldn't want
9 it done tomorrow or yesterday, but being
10 realistic, it's not going to happen in forty-five
11 days.

12 The second problem is this: The only way
13 it's really going to happen is we're all equal
14 partners sitting in a room to try to hammer this
15 out to either submit it to the Court for its
16 approval without a master or to submit it to a
17 master at that point in time for his or her
18 consideration for your recommendation.

19 THE COURT: That's not the way it's going
20 to be and that's not the way it's going to be
21 in any case, as far as I'm concerned. I don't
22 see that the Urban League has a veto power over
23 what Old Bridge is going to do either and to the
24 extent that this provision might imply that,
25 that is equally inaccurate. It is true that they

1 are going to try to agree between them and, if
2 not, they are given the power to request a master.
3 That's what is going to trigger the master and
4 I think that's the reason why the paragraph is
5 in as it is, but no plaintiff in an Urban League
6 case has a veto power over the revision process
7 and no plaintiff can say that the revision will
8 not be enacted unless I agree. That's what you
9 are implying and that's what Mr. Hill is implying
10 and that's not the law of the case.

11 MR. HUTT: I am not implying that, Your
12 Honor. What I am trying to say is that we be
13 equal partners. The language talks about the
14 two of them agree. It doesn't talk about
15 anybody else agreeing than the two of them agree.
16 It is only subject to our review and I submit
17 that we all have to agree to submit something
18 to you, not just the two of them.

19 THE COURT: No. I think more appropriately
20 if the two of them reach an agreement, then
21 there not be a request for a master. That's
22 what that paragraph is really aiming at. If they
23 agree, then there will be submission and you are
24 open to be heard and if you are knocked down
25 by their agreement, I think it would be appropriate

1 to amend that paragraph to indicate that any
2 agreement reached between the Urban League and
3 Old Bridge is not only not binding on the Court,
4 but is not binding on the parties. It is clearly
5 not binding on the Court, but also indicate
6 that regardless of the agreement, even if all
7 of the plaintiffs should agree, that Carla
8 Lerman is still going to be appointed to review
9 it, review the revision, notwithstanding the
10 agreement of all the plaintiffs. That has been
11 my procedure in every one of the Urban League
12 cases.

13 Now, her function in that regard is not
14 going to be the same as a master. It will
15 merely be an expert reporting her review of the
16 ordinance.

17 The comment was made that the Urban League
18 has settled some cases with revisions that
19 perhaps builders would not have agreed to and
20 I understand that their orientation may cause
21 them to feel in their judgment that something is
22 appropriate that other builders may not and
23 that's specifically why Mrs. Lerman has been
24 appointed in every case that's been settled, so
25 that they will look at the ordinance from the

1 standpoint of its realities in producing Mount
2 Laurel housing and that's what she is in the
3 process of doing in the four or five other
4 municipalities.

5 Does that resolve the problem?

6 MR. HILL: Yes, Your Honor, but there is
7 an issue of law which I don't understand. Your
8 Honor has stated that there is a motion for
9 summary judgment pending which would be heard
10 on the sixth and assuming that this settlement
11 wasn't taking place and assuming that that
12 ordinance were invalidated at that time because
13 those affidavits have not been opposed, would
14 the result be any different from what we are
15 discussing here?

16 In other words, how many times does a
17 plaintiff have to be overruled as a matter of
18 law, have ordinances declared not in compliance
19 before they're entitled to a master and the
20 process, their remedial process outlined in
21 Mount Laurel II? What I don't understand is
22 Your Honor seems to have created a second and
23 maybe a third chance before the Mount Laurel II
24 remedial process begins to take hold and I
25 don't understand the law that authorizes that.

1 THE COURT: You mean because Old Bridge
2 was involved in the original case and their
3 ordinance was found noncompliant? Is that what
4 you're saying?

5 MR. HILL: Yes, or even if this were the
6 first case and instead of this stipulation,
7 unless the stipulation of noncompliance buys
8 them something that they wouldn't have, if Your
9 Honor declared contested this Friday that their
10 ordinances were not compliant, based on the
11 motion for summary judgment, would they be in
12 a different position as a matter of law? That's
13 what I don't understand.

14 It is my understanding, reading the
15 case, that once ordinances are declared
16 noncompliant, the whole remedial process takes
17 place. The master comes in and the town no
18 longer has the leeway that is enjoyed before.

19 THE COURT: So what's your question?

20 MR. HILL: My question is how come Old
21 Bridge is getting that leeway after they're
22 agreeing that their ordinance is noncompliant?

23 THE COURT: What leeway?

24 MR. HILL: Why isn't a master being
25 appointed today?

1 THE COURT: Because the opinion gives me
2 the authority not to appoint a master expressly,
3 that I exercise that judgment. It's that simple.

4 MR. HILL: All right.

5 THE COURT: I thought maybe I didn't
6 understand your question.

7 All right, anything else?

8 MR. NORMAN: Your Honor, on the motion
9 for summary judgment scheduled for Friday, I
10 assume now it's mooted out?

11 THE COURT: It's moot.

12 All right, let us amend the stipulation
13 then to make it clear that what the Lerman
14 number is, the Mallach number is and the Hintz
15 number and that the credits are against the
16 2,414 fair share as agreed to by the parties.

17 MR. HILL: Your Honor, one question on
18 the credits. It is my understanding that under
19 the fair share methodology, the period of time
20 is -- there is this language that the following
21 units builder rehabilitated since 1980, we
22 understand that the period of time begins in
23 1982 when people can have credit for units; that
24 units already occupied are not eligible as a
25 credit against indigenous or prospective need if

1 they were occupied after 1982. Why are we in
2 this case going back to 1980? What number is
3 Old Bridge being allowed by way of additional
4 credits for units built and occupied between
5 1980 and 1982 and what is the Urban League's
6 justification for departure from the methodology
7 on giving additional credits to Old Bridge as
8 a result -- by using the 1983 instead of 1982
9 number?

10 THE COURT: Why do you say it's 1982?

11 MR. HILL: That is my understanding of
12 the credit period of time.

13 THE COURT: Why? Who's ever ruled on
14 that or who's even said it?

15 MR. HILL: Well, my understanding was
16 they used the numbers, the employment growth
17 between 1972 and 1982 and that the period under
18 consideration was always 1972 to 1982. I have
19 seen Mr. Mallach explain to Princeton at a
20 public meeting, for instance, the things that
21 they did and that's why I draw the analogy and
22 he was speaking for the Court. He understands,
23 I assume, the process better than me. He was
24 talking about housing in the '70s and they said
25 do we get credit for that, will Judge Serpentelli

1 give us credit for that. He would say I don't
2 think so, I think so, and he'd explain the
3 way the methodology worked.

4 THE COURT: Did you say -- I think you
5 said he was speaking for the Court?

6 MR. HILL: He was being asked in the
7 township meeting whether -- he was being asked
8 by the town whether he thought you, Your Honor,
9 would give them credit for certain units that
10 were constructed during a certain period of time
11 and he, based on many hours meeting with you,
12 gave his opinion. He was not speaking for the
13 Court. He gave his opinion on how the methodology
14 would have treated that and it was my understanding
15 that that methodology would not have gone back
16 to units that were built and occupied in 1980,
17 for instance.

18 THE COURT: Well, first of all, you said
19 so many things, I don't know what to answer, but,
20 first of all, Mr. Mallach and I have never
21 spent many hours together; secondly, obviously
22 he doesn't speak for the Court; thirdly, I don't
23 know where he gets his ideas with respect to
24 credits; fourthly, the so-called Lerman Report
25 contains no language with respect to credits;

1 fifthly, I have never ruled on the issue of
2 credits; sixthly, if there is such a word, '72
3 to '82 is totally irrelevant. The '72 to '82
4 decade that you are referring to deals with sole
5 job projections and that decade is now outdated
6 because the '83 figures are now in and the '82
7 figures were chosen because in 1972 the manner
8 in which jobs were counted was changed so that
9 they couldn't go back before '72 in order to get
10 an accurate count and so they used the most --
11 or they used the figures available from '72 on
12 and it so happened that '82 was the last published
13 figures when the Urban League started to prepare
14 the report. Now the '83 figures are available
15 and I don't know whether the experts are going
16 to use eleven years, whether they're going to
17 use an updated decade or whatever they're going
18 to use.

19 With regard to the issue of credits
20 specifically, I have never ruled on the question
21 and I don't intend to rule on it in this case.
22 I will say that I perceive of the present need
23 as existing prior to 1982 and prospective need
24 starting in 1980 and going to 1990 for the
25 purposes of calculating that need.

1 Now, that doesn't make any difference
2 as to where the credits are applied. The fair
3 share is still there and the important element,
4 as I see it, at least with respect to what is
5 involved in this case, is that these units are
6 price-controlled units to the extent that they
7 will remain Mount Laurel units and one could
8 perhaps make an argument that you could go back
9 as far as Mount Laurel I for credits.

10 On the other hand, there is an argument
11 to be made that you should at least start in
12 1980. I have never heard anybody say '82, so
13 I think the credits are entirely appropriate.

14 MR. HILL: I don't understand what
15 public policy -- and I don't know if I have a
16 right to ask this, but I don't understand what
17 public policy interest is served by giving
18 credits for units that are today occupied, have
19 been occupied since 1980, are not available
20 for indigenous need, for prospective need.

21 What we are talking about are the people
22 who are unsheltered. Why give credit for units
23 that are occupied?

24 THE COURT: In about two weeks you'll
25 read the reason. I expressly addressed that in my

1 opinion which is about to be filed and there is
2 a strong public policy to reward those
3 communities which have at least made some effort
4 at Mount Laurel compliance and that's precisely
5 the reason for giving credit in the opinion
6 itself.

7 MR. HILL: I'm sorry, Your Honor, I have
8 not read it.

9 THE COURT: Mount Laurel II expresses
10 that viewpoint.

11 MR. GELBER: Judge, if I may, just to
12 clarify the record.

13 THE COURT: Yes.

14 MR. GELBER: For the purposes of
15 settlement, the Urban League and Old Bridge
16 applied the criteria with respect to credits
17 that are set forth in Mr. Mallach's report of
18 November 1983 that is submitted into evidence
19 in the original Urban League case. To answer
20 Mr. Hill's question, the justification for
21 allowing the credit for units that come into
22 occupancy after 1980 is based on the fact that
23 present need is drawn -- figures for present
24 need are drawn from the 1980 census. So,
25 therefore, it is warranted to provide a credit for

1 units that come on board since 1980 that meet
2 other criteria that are set forth in the report
3 because these units can be seen as a direct
4 reduction of units that show up in the 1980
5 census as present need. I believe the 1972
6 to 1982 figures that you were referring to,
7 Judge, just indicated -- relate to one of the
8 factors in the formula, not to the determination
9 of need or credit. Full discussion of that
10 is set forth in Mr. Mallach's report.

11 If I may also just state, for the
12 purposes of settlement, the criteria applied to
13 Mr. Mallach's report were applied in this case
14 fairly strictly so that the township, during
15 the course of settlement discussions, sought
16 credit for a substantial number of additional
17 units and the agreement was reached that they
18 would waive their right to seek credit for those
19 additional units in return for a settlement
20 as to the overall fair share number.

21 MR. CONVERY: Your Honor, may I respond?

22 THE COURT: Yes, just a minute.

23 MR. CONVERY: On behalf of Old Bridge,
24 I'd just very briefly like to say that, first
25 of all, I don't think Mr. Hill is a party to this

1 part of the case. There is no consolidated
2 order regarding O&Y regarding this issue of
3 credits. I'd just like to take that position on
4 behalf of Old Bridge.

5 Secondly, I would like to concur in what's
6 been said on behalf of the Urban League, that
7 Old Bridge sought a hundred fifteen credits
8 regarding Community Block Grant development and
9 a certain criteria was presented by the Urban
10 League which was accepted by Old Bridge which
11 led to seventy-five credits. So we gave up
12 a substantial amount of credits which we believe
13 we were entitled to based upon the criteria
14 that was indicated.

15 Furthermore, we sought ninety-nine credits
16 regarding Section 8 rental assistance and based
17 upon the criteria presented by the Urban League
18 and through settlement and negotiation, the
19 township withdrew its request for credit regarding
20 that. I think it is important to point that out
21 so that no one can draw any kind of inference
22 that these credits are not deserved by Old Bridge
23 and that the settlement was not reasonable in
24 regard to the credits. Thank you.

25 THE COURT: Mr. Hill.

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MR. HILL: Your Honor, I'm satisfied on that. I just wanted to understand the rationale and I do better now, Your Honor.

THE COURT: You see, I think one could argue here, if you want, about three hundred units one way or the other, but this isn't the best example how Mount Laurel II is working as the Court had hoped for it to work and is working to produce actual housing. I don't know what it is. I mean, Olympia & York is a good example. It's been litigating all these years and has been batting zero up to now and now, within a process of a very short period of time since Mount Laurel II, we are at least in the stage where in ninety days we will know whether the Olympia & York and Woodhaven matters are resolved or, if not, we are going to have a very abbreviated trial on the issues of Builder's Remedies.

So, it seems to me this settlement is clearly in the interest of the plaintiffs in this case and represents the kind of expedited resolution of Mount Laurel issues that the Court was aiming at.

The differential in credits or the

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1 differential in the fair share number existing
2 between Hintz, Mallach and Lerman without the
3 financial need is inconsequential and is something
4 that we could argue about from here to doomsday
5 in terms of reasonableness and I think that I
6 have no difficulty at all with regard to that
7 number.

8 I was in the process of indicating the
9 revision which should be made to paragraph two
10 and then three as well, indicating that those
11 credits are a credit against the twenty-four
12 fourteen, and then to paragraph five indicating
13 that any agreement as to the ordinance revision
14 will not be binding upon the other plaintiffs in
15 this case; that a full hearing will be held with
16 respect to the ordinance revision and you may
17 as well, while you are at it, include that in the
18 event a revision is found acceptable to all of
19 the plaintiffs, that notwithstanding that fact,
20 Carla Lerman will be asked to review the revision
21 as an expert witness only for the purposes of
22 providing the Court with a report that, in her
23 judgment, the ordinance does meet the mandates of
24 Mount Laurel II.

25 MR. HILL: Your Honor, as we compile data

1 and comments on the ordinance, if we choose to
2 do that, can we communicate those to Carla Lerman?
3 Do we have permission to at least give her reports
4 that may or may not assist her?

5 THE COURT: She will not be in it at all,
6 at least for forty-five days. It seems to me
7 that the first thing you want to do is submit
8 to the township and to the Urban League any
9 proposals you have for revision and specific
10 proposals with respect to Builder's Remedy. I
11 mean, this is the opportunity to resolve your
12 case in full.

13 Now, maybe the township is going to say
14 well, you know, we don't take your proposal.
15 Then we will get to it later on, but the first
16 step I would suggest would be to submit to the
17 town your position as to revisions of ordinance
18 and your Builder's Remedy. At the end of forty-
19 five days we will know where the town and Urban
20 League stand with regard to the revision and
21 we will know whether Miss Lerman comes in at
22 that point, and if she does, then you start
23 submitting to her as well.

24 MR. HILL: How, mechanically -- I ask not
25 just for this case, but other cases -- I have

1 wondered, when you are in litigation, is it
2 proper to submit suggestions to the other side?
3 You know, how, mechanically, would we do this?
4 Send it to Mr. Convery or send it to the township
5 committee, or what are the --

6 THE COURT: You are dealing with counsel
7 and I say there is a completely open and free
8 exchange. You have the right to give them as
9 much information as you feel you want to and
10 they have the obligation to give you any proposed
11 revisions of the ordinance as well.

12 MR. HILL: When we deal with counsel, does
13 counsel have an obligation to share what we
14 send them to the township committee or the
15 planning board?

16 THE COURT: I think, if nothing else, they
17 have the professional and ethical obligation.
18 That goes unsaid.

19 MR. HILL: All right. Thank you, Your
20 Honor.

21 MR. HUTT: I agree with you, Your Honor.
22 The one thing I want to make clear, and I have
23 had this problem before -- it doesn't even have
24 to be in the order -- my understanding is that
25 all four parties, whatever they submit, one will

1 submit to the other so we will have a complete
2 interchange and not having to say how come he
3 got a copy. I think clearly all four of us are
4 entitled to whatever document crosses anybody
5 else's desk.

6 THE COURT: Yes.

7 MR. HUTT: Thank you.

8 MR. CONVERY: I just wanted to indicate
9 that if the developers wish to submit proposals,
10 I would simply ask that they send a copy to both
11 me and Mr. Norman because I just think that it's
12 in their best interest and the town's best
13 interest. Mr. Norman represents the planning
14 board. I represent the township. Obviously,
15 we are going to be working together, but we are
16 so far apart, as far as offices are concerned,
17 by distance, as a practical matter --

18 MR. HUTT: There's no problem.

19 THE COURT: Absolutely. I indicated it
20 should go to counsel, all counsel, and that's
21 entirely appropriate and it may be that the
22 township would perform one function and the
23 planning board another. I don't know how you
24 want to handle it. That's entirely up to you.

25 Okay, Mr. Gelber, you will submit a revised

1 stipulation and order.

2 MR. GELBER: Yes, Your Honor.

3 THE COURT: Thank you.

4 * * * *

11 C E R T I F I C A T E

13 I, CAROLINE WOLGAST, a Certified Shorthand
14 Reporter of the State of New Jersey, do certify that
15 the foregoing is a true and accurate transcript of my
16 stenographic notes.

17 *Caroline Wolgast*
18 CAROLINE WOLGAST, CSR
19 License No. XI00316

20 DATED: Aug 8, 1984
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