Old Bridge 1984

- Memorandum re: proposal for settlement
  Attch: Cover letter

Pgs. 29

p.i. 3126

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MEMORANDUM

To

The Municipality of the Township of Old Bridge

From

O & Y Old Bridge Development Corp.

Regarding

PROPOSAL FOR SETTLEMENT

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August 15, 1984

FILE NO.

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HAND DELIVER

Re: Olympia and York/Old Bridge Development Corp. v. Township of Old Bridge; Urban League v. Carteret,et al.

Gentlemen:

On Wednesday, August 8, 1984, representatives of the Township of Old Bridge, The Urban League, Olympia & York and Woodhaven Village met to discuss the possibilities of achieving agreement on revisions to the Old Bridge Township Land Development Ordinance prior to the August 27, 1984 deadline imposed by Judge Serpentelli's Order.

At that meeting, Olympia and York agreed that it would provide Old Bridge Township with an outline of those principles under which, in its opinion, the case could be settled without further litigation. Olympia indicated that if the Township and the Urban League were to accept these major principles, and provided that subsequent negotations over details were conducted in the same spirit of cooperation, then a mutually acceptable settlement could be achieved.

In the attached memorandum, we set forth what we belive to be the essential minimum elements of a settlement of this case insofar as Olympia and York, the Township of Old Bridge and the Planning Board of the Township of Old

Bridge are concered. We have not addressed, here, our concerns which affect the Municipal Utilites Authority of the Township of Old Bridge.

The memorandum conveys not only the basic issues affecting these parties, but also provides rationale for the proposals. I will not attempt to summarize that memorandum, which was the product of intensive efforts on the part of Olympia and York and its consultant team, except to highlight the following essential elements:

1. Olympia and York must receive concept plan approval, either from the Township or as part of a Court Order, of its entire proposed development. The dimensions of that Concept Plan are set forth in the enclosed memorandum.

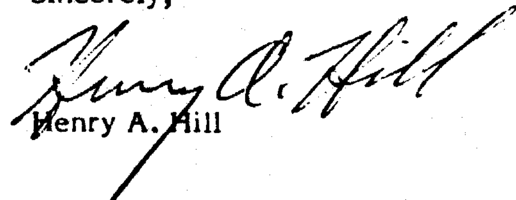
2. As part of the overall process of development, Olympia and York must be assured of streamlined, flexible land development approval processes.

3. Old Bridge Township must join with Olympia and York in making essential infrastructure investments to service lower income housing.

4. Old Bridge Township must join with Olympia and York in an effort to reduce the costs of homeownership through a search for any available state and federal subsidies, and by reducing the impact of the property tax on lower income units.

Olympia and York believes that the attached memorandum sets forth the basis for moving forward with the settlement of this case. In accordance with the terms of reference established at the August 8th meeting, if agreement can be achieved on these basic principles, then discussion of the details of these principles and negotiations on other issues can proceed forthwith. If, on the other hand, the Township cannot agree to the basic principles, then further expenditure of time and other resources in a negotiation process would be fruitless, and this case should be moved for trial. It is our firm desire to work with the Township in the most cooperative manner possible, and we trust that the Township will accept the principles laid out in the attached memorandum in this same spirit.

Sincerely,



Henry A. Hill

Enclosures

cc: Barbara Williams, Esq.
John Payne, Esq.
Bruce Gelber, Esq.
Stuart Hutt, Esq.
Joel Schwartz, Esq.
Alan Mallach
Lloyd Brown

MEMORANDUM

To

The Municipality of the Township of Old Bridge

From

O & Y Old Bridge Development Corp.

Regarding

PROPOSAL FOR SETTLEMENT

In our view, the first step toward reaching a settlement of the Mount Laurel II litigation between the Township of Old Bridge and O & Y Old Bridge Development Corp. would be the approval by the Township of a Concept Development Plan which would be a settlement plan agreed upon between the parties for submission to the Court as part of the stipulation of settlement.

1. CONCEPT DEVELOPMENT PLAN

1.1 The Concept Development Plan Would:

a) Show all the lands owned by O & Y Old Bridge Development Corp.

b) Show the approximate alignment of the major road system of the development as necessary for internal traffic circulation.

c) Show the approximate size and location of land Uses as follows:

   (i) Residential areas with average densities

   (ii) Commercial lands

   (iii) Office/Industrial lands

   (iv) Open Space

d) Establish a total permitted number of residential units.

e) Establish a total permitted number of square feet applicable to each of the commercial, office and/or industrial lands.

f) Vest all the foregoing for a period of twenty (20) years.

1.2 Conditions We Would Agree To:

With regard to the submission of the Concept Development Plan, we would be prepared to:

a) Provide a statement by a soils engineer that the areas designated on the Plan are suitable for construction of the types of buildings indicated by the land Uses.

b) Provide a report by a traffic engineer providing an internal traffic analysis showing that the internal road network is adequate to serve the internal traffic volumes.

c) Agree to a commitment that Preliminary Major Subdivision Approval will not be applied for with regard to any of the lands subject of the Concept Plan unless and until provision has been made that would assure the lands subject of that subdivision application with sanitary sewers.

d) Agree to a commitment that Preliminary Major Subdivision Approval will not be applied for with regard to any of the lands subject of the Concept Plan unless and until provision has been made that would assure the lands subject of that subdivision application with a public potable water supply.

e) Agree to a commitment that all lands encompassed by the Concept Plan shall meet the requirement for surface drainage that post-development run-off shall not exceed pre-development run-off based on the run-off induced by storms of one hundred (100) year frequency and computed by the Rational Method.

f) Agree to reserve sites that, in total, are equal to one (1) percent of the area of the residential lands, which sites would be reserved for future public facilities such as a fire station, a police station, a first aid station, a library and similiar Uses. These sites would, subsequently, be transferred to the Township upon a Building Permit being applied for and would be deed restricted to prevent sale of the property prior to the site serving its intended Use.

1.3 Conditions We Would Not Agree To:

With regard to the Concept Plan, we would not be prepared to:

a) provide engineering designs to substantiate the availability of a public sewerage system;

b) provide engineering designs to substantiate the availability of a public water supply;

c) provide engineering designs to substantiate surface drainage systems other than to indicate the approximate size and location of retention/detention facilities;

d) provide a Traffic Impact Statement;

e) provide any form of Fiscal Impact Statement or condition the progress of the development upon the subsequent submissions of Fiscal Impact Statements;

f) agree to relate or index the progress of the residential development to the progress of non-residential development;

g) provide for Groundwater Recharge;

h) agree to build or contribute to the cost of constructing any public facility such as schools, fire stations, police stations, first aid stations, libraries or similiar facilities.

1.3-1 Reasons For Not Agreeing to Certain Conditions:

With respect to the matters we are not prepared to submit, it is our opinion that (a) these matters will subsequently be provided in the normal course Major Subdivision Approval and are premature at the Concept Plan Stage or (b) are matters outside the jurisdiction of the Township or (c) are matters constituting improper or illegal extractions, as follows:

a) Under terms of an Agreement between the Old Bridge Township Sewerage Authority, Woodhaven Village, Inc. and O & Y Old Bridge Development Corp., a major sewer system has been provided for this entire southwest quadrant of the Township. This should satisfy that sewers can be made available to the development or, in the alternative, our willingness to condition our subdivision applications upon sewers being available should satisfy any concern in this regard. In any event, the matter of sewerage system design is a responsibility of the Old Bridge Township Sewerage Authority which runs with the obligation to serve its franchise area and, as such, except for assurance that sewers will be available prior to the approval of subdivisions, the design of such systems is not a matter within the purview of the Planning Board.

b) Middlesex Water Company is prepared to provide our development with a potable water supply. The Old Bridge Municipal Utilities Authority is also discussing the purchase of bulk water from the Middlesex Water Company. Regardless of the outcome, a potable water supply will be available to our development. In the alternative, our willingness to condition our subdivision applications upon the availability of a public water supply should satisfy any concern in this regard. In any event, the matter of design of potable water systems is the responsibility of the Old Bridge Municipal Utilities Authority that runs with its obligation to serve its franchise area and, as such, except for assurance that potable water will be available prior to approval of subdivisions, the design of such systems is not a matter within the purview of the Planning Board.

c) Surface drainage systems require a level of design that is premature at Concept Plan Stage. Our willingness to commit that post-development run-off shall not exceed pre-development run-off should constitute adequate provision for storm water drainage at the Concept Plan Stage.

d) Since our traffic will not impact upon Township roads, it is our opinion that a Traffic Impact Statement relates to matters outside the jurisdictional purview of the Township.

e) The Land Development Ordinance requirement that developments be conditioned upon a positive Fiscal Impact Statement and thereafter the progress of the residential component of that development be dependent upon subsequent positive Fiscal Impact Statements is, in our opinion, a grossly illegal practice.

f) The Ordinance requirement that the progress of the residential portion of a development be dependent upon the progress of non-residential development, is in our opinion, simply a disguised positive Fiscal Impact. Beneath lies the same grossly illegal Fiscal Impact requirement.

g) With regard to the Land Development Ordinance requirement that groundwater recharge be provided, the purpose of groundwater recharge is to replenish water taken from underground aquifers to offset the water withdrawn to provide a potable water supply for development. The artificial replenishment of aquifers is intended to deter any further intrusion of salt water into the aquifers which would contaminate existing and future potable water supplies. It is now determined that the potable water supply for this development will be provided by overland supply and will not come from groundwater sources. This development will not obtain any water from aquifers; consequently, the entire issue of groundwater recharge is totally irrelevant to this development.

h) With regard to our refusal to construct or contribute to the cost of constructing public facilities, this is so clearly not a responsibility of the developer that it requires no comment.

1.4 Other Matters to be Encompassed by the Concept Development Plan:

1.4-1 Reduction of Open Space:

The Ordinance presently requires that Open Space be provided equal to twenty three (23) percent of the Gross Project Area. The Gross Project area encompasses all lands of the development; accordingly, it includes the commercial and the office/industrial lands. Normally, Open Space is required to be provided only in relationship to the amount of residential development. It is not normal planning practice to provide Open Space for non-residential land Uses.

In addition, to provide Open Space on the basis required by the Ordinance means that Open Space must be provided for lands that are designated Open Space, having the effect of "a tax on a tax".

The Concept Plan that we would propose for settlement contains:

Commercial, Industrial/Office lands	398 acres
Major Roads/Rights-of-Way	136 acres
Open Space lands	342 acres
Residential lands	1,742 acres
Total	2,618 acres

It can be seen from the foregoing that the Open Space we propose to provide is equal to 19.6% of the residential lands. This, however, actually represents a reduction of approximately 200 acres as compared to the 23% of Gross Project Area as required by the Ordinance. It is our position that these lands should more appropriately be used for residential development.

1.4-2 Additional Residential Units:

By Council Resolution, dated May 3, 1982, our development was assigned 10,260 residential dwelling units. Under the General Development Plan submitted, these 10,260 dwelling units were relegated to 1,540 acres of land. This produces an average residential density of 6.67 units per acre. It is our position that the density of 6.67 units per acre was the natural end result of following the Ordinance. Consequently, as an average density, this density is acceptable to the Municipality. Applying this density to those lands we have designated as residential on our proposed settlement plan produces:

1,742 acres @6.67 u.p.a.=11,619 dwelling units.

It is our position that, as part of the settlement we obtain 11,619 residential dwelling units assigned to and vested with the Concept Plan.

1.4-3 Midrise Apartments:

As part of the settlement, we would require that apartment buildings be permitted within our development. In this regard, we would be prepared to accept the following restrictions:

1) Maximum Number: Not to exceed ten (10) percent of the total number of residential units.

2) Maximum Height: Eight (8) stories plus mechanical and/or elevator penthouse.

3) Restricted Areas: The construction of apartments would be restricted to areas designated on the Concept Plan.

1.4-4 Office Buildings:

The Ordinance presently provides for a maximum height of sixty-five (65) feet on P.D./S.D.5 lands. Allowing twelve (12) feet floor to floor height means that office buildings are presently restricted to approximately five (5) stories in building height. It is hard to perceive any seriously adverse effect that would result from permitting ten (10) story office buildings on our site at the juncture of Highways 9 and 18. We would require that office buildings be permitted on this site up to a maximum building height of one hundred twenty (120) feet plus an elevator and/or mechanical penthouse.

We would also expect that our P.D./S.D. lands at Highways 9 and 18 be allotted a specific number of square feet of floor area for development which should be up to five million (5,000,000) square feet.

2. MOUNT LAUREL MUNICIPAL CONTRIBUTION

2.1 Preface:

It is our position that the low and moderate income units to be built within our development should not generate costs which will have to be offset by increasing the selling price of the housing which is not Mount Laurel mandated. Our market consists of middle income families and to meet that market our product must be affordable to purchasers with income ranges only slightly above that of the upper-end of the Mount Laurel moderate income scale. If shortfalls in costs from the Mount Laurel housing are transferred to the balance of the project, our development will not be affordable to our market and not only will we have a financially unfeasible development, but the actual vehicle necessary to provide the Mount Laurel housing will have been destroyed.

A common solution to this problem is to simply increase the number of residential units under the theory that the increased value of the development attributable to the increased number of units will more than offset the additional cost of including the Mount Laurel II units. While this solution undoubtedly works in many cases, it does not work when applied to our development. We have studied this matter at great length and find that beyond a certain point, the addition of units has a negative effect on the value of the project. The rationale and computations that support this conclusion are too extensive to present in the context of this letter but some of the more direct issues are:

a) Increasing the number of units past a certain point relegates the entire development to a higher density development, destroys any potential for a "mixed" development and, thereby, obviates any possibility of having a development which can respond to the entire spectrum of the market.

b) To meet the annual sales volume that will be necessary to support the carrying costs of a development of this size, it is essential that the development be able to capture the widest possible spectrum of the potential market.

c) In our case, the benefit of additional units would be some fifteen or twenty years into the future. This future benefit must be offset by the costs associated with providing the low and moderate income units as the development progresses. Since the benefit of additional units is so far in the future, the additional costs of the Mount Laurel units would simply be diverted to the remainder of the development and, as previously explained, in our particular case this would place our product beyond the reach of the greater percentage of our market.

Because the obligations of Mount Laurel are the direct responsibility of the Municipality and not the developer and because the addition of units will not equate to the costs of providing the low and moderate income units within the development, we are looking to the Township to provide assistance in making the low and moderate income units financially feasible. In this regard, we suggest that consideration be given to the following proposals:

2.2 Permit Fees:

As a contribution to the cost of providing the low and moderate income housing under Mount Laurel II, the Township waive all Building Permit fees, Inspection fees and similar fees associated with all low and moderate income housing mandated under Mount Laurel II.

2.3 Tax Abatement:

We are of the opinion that the taxation of lower income housing is not consonant with the objectives of Mount Laurel II.

While it may be premature for Olympia & York to suggest the particular mechanism whereby tax abatement is achieved, as the following paragraphs show, the imposition of conventional taxes on lower income housing has a dramatic impact on affordability.

We are of the opinion that creative efforts, which may involve creation of a housing authority within the Township of Old Bridge or an entity such as an improvement authority or a housing authority, or creation of a qualified non-profit corporation which could provide tax-exempt housing within the context of the current state legislation, must be explored.

Our reason for suggesting this is, in calculating what constitutes affordable housing to a Mount Laurel low and moderate income purchaser, principal, interest and taxes must not exceed twenty eight (28) percent of income. If the taxes were abated, this amount could make a significant difference in the price range of units deemed affordable to those low and moderate income purchasers. For example, assuming the Mount Laurel units will range in selling price from approximately $20,000 per unit for a one-bedroom low income unit to $45,000 for a three-bedroom moderate income unit, using the current tax rate of $3.01 per $100 of value, taxes on the units would range from $602 to $1,355 per annum. At an eleven (11) percent mortgage rate amortized over thirty (30) years, $602 per annum will add $5,268 to the funds available for constructing a unit, while $1,355 on the same basis will add $11,857.

Such a proposal has obvious long-term advantages to the Municipality. Firstly, the quality of the low and moderate income housing would be increased substantially. Secondly, in the future, when the full realty

tax would apply, the Muncipality would be applying its tax rate to a unit of higher value and, thereby, eventually recoup the tax abatement originally given.

2.4 Infrastructure Costs:

It is our position that, since twenty (20) percent of the residential portion of the development will be devoted to Mount Laurel housing, approximately twenty (20) percent of the infrastructure required to serve the residential component of our development will, in fact, be infrastructure necessitated by Mount Laurel mandated housing. We are asking that the Township support its Mount Laurel obligations by reimbursing twenty (20) percent of the cost of all infrastructure installed in the residential component of our development. Specifically, these would be costs related to the construction of:

Roads, curbs and sidewalks
Sewer system
Water system
Storm drainage
Off-site improvements.

Again, we do not see this as unduly burdensome to the Township. The Fiscal Impact Statements that were previously required to be submitted with our General Development Plan Application show that, even if the non-residential development is excluded, the residential portion of our development alone will produce a significant surplus to the Township. While we were never provided with copies of the reports, from comments made, it would appear this was confirmed by the financial consultant engaged by the Township. This surplus from tax revenues should substantially, if not entirely, offset the cost of reimbursing twenty (20) percent of the infrastructure costs.

2.5 Major Roads:

Some of the road systems within the development are intended to carry external traffic through the development. A prime example of this is the Trans-Old Bridge Collector which is really a Township freeway that goes through our development. Quite independent of Mount Laurel, we are legally entitled to reimbursement from the Township for the cost of constructing such roads proportionate to the external traffic carried as a ratio of the internal traffic. We would expect to be proportionately reimbursed for roads that fall within this category and would anticipate that these funds would come from the Township's general revenues or from the Township's ability to fund through its unused bonding capacity.

2.6 Financial Offsets:

In addition to the offsetting revenues mentioned in the foregoing proposals, the Township might also consider the following:

2.6-1 <u>Block Grants:</u>

The Township currently receives approximately $450,000 per annum in Block Grants that could, quite appropriately, be applied to its share of the costs relative to the infrastructure for the Mount Laurel housing.

2.6-2 <u>Undeveloped Lands:</u>

We are currently paying in excess of $500,000 per annum realty taxes. This amount is being paid relative to raw land that represents virtually no expense whatsoever to the Municipality. It is, in effect, a windfall revenue to the Township. Once the lands are approved for development, the taxes on these vacant lands will increase and this increase will also be occasioned without incurring any expense to the Township. In evaluating the cost of meeting its Mount Laurel obligations within the Olympia development, it should not be inappropriate for the Township to take into account the very substantial windfall revenues that will continue to be generated for many years by the vacant undeveloped lands of this same development.

SECTION 3 SIMPLIFIED APPROVAL PROCESS AND ORDINANCE PROVISIONS

At the meeting held at the offices of Brener, Wallack & Hill on August 8, 1984, we stated that it was essential that a simplified approval process be put in place, so that Olympia and York, or any developer seeking to provide lower income housing, could move a development forward without undue delay or excessive submission requirements. This was discussed at length in a conceptual context. Near the termination of the meeting, we were asked if we would be willing to point out specific areas of the Ordinance that are not consistent with an expedited process and, concurrently, to identify provisions of the Ordinance that are at issue.

With regard to an expedited process, it is not sufficient to merely identify areas of delay or excessive submission requirements. Such a critique is most useful if it is placed in the context of certain conceptual objectives, without which it could be construed as a systematic criticism of the Ordinance which could be offensive and counterproductive.

In the context of an expedited process, there are a few concepts that, we believe, are fundamental to the objective:

1) Conceptually, it must be recognized that matters dealing with land must be separated from matters dealing with buildings. The entire process of subdivision approval must be devoid of requiring any material that relates to buildings that may subsequently be constructed on the lands and devoid of requirements for information that would, normally, be provided on a plot plan for that building. The matter of setbacks, yard grading, landscaping and similar matters are, more appropriately, the subject of a plot plan relative to a Building Permit. To require what amounts to a plot plan for each building to be built in a subdivision, along with architectural plans for those buildings in the processing of a subdivision approval only delays the process, generates burdensome detail and focuses attention away from the road layout and similar matters which should be the issues of Preliminary Subdivision Review.

2) The present process does not provide for a true Preliminary Subdivision Approval process. If an expedited process is to be put in place, the initiative must focus on an improved system consistent with Mount Laurel II objectives, rather than defend the multiplicity of reasons supporting an obviously cumbersome tradition. Much of the problem stems from the three-year life of the Preliminary Approval which obviously generates greater concern than would an approval given for a much shorter period. We would suggest that the Preliminary Approval be for one hundred and ninety days and be stripped of all extraneous requirements that would be subsequently satisfied in the process of Final Subdivision Approval. Basically, we propose that a submission for Preliminary Subdivision Review would constitute not much more than a preliminary sketch plan prepared by a competent professional and show:

(a) Approximate road alignments and road rights-of-ways with approximate gradients in conformity with Ordinance requirements.

(b) Approximate lot lines and approximate lot sizes all in conformity with Ordinance requirements.

(c) Existing contour lines.

(d) Approximate finish levels of subdivision rough grading.

(e) Basic drainage systems.

(f) Approximate size and location of retention/detention facilities.

(g) Indicate buffer areas, where required by provisions of the Ordinance.

(h) Indicate the approximate size and location of open space which is part of the plan or required by Ordinance as a component of the subdivision.

(i) An outbound survey prepared by a land surveyor licensed to practice in New Jersey.

Such a submission would be examined by the staff planner and, if appropriate, by the staff engineer. A public hearing would be held at the earliest possible date and the application would be approved or rejected. If the application was approved, it would be approved conditioned upon the application for Final Subdivision Approval being submitted within one hundred and ninety days and meeting all Township standards with respect to:

Road design
Street lighting
Sidewalks
Curbs
Drainage
Erosion protection
Sewerage systems
Water systems
Fire hydrants
Street signage
Electrical distribution
Telephone,

and other similar requirements all to be set forth in engineered construction drawings with the surveyor's final plat of subdivision and in conformity with the layout of the Preliminary Plan as previously approved.

Basically, this process has been a standardized procedure for many years in numerous Municipalities. Wherever it is employed, the process is extremely fast. Both the staff and the Approving Boards are relieved of such a cumbersome burden of repetitious, unnecessary submission material that they can competently respond to a greater volume of subdivision applications with significantly less effort.

In reviewing the following comments pertaining to the Ordinance, the foregoing objectives should be kept in mind which are in direct response to your request for more specific guidance with respect to, firstly, those matters that are at issue and, secondly, those specific provisions that inhibit an expedited approval process.

ORDINANCE PROVISIONS

We are under the impression that P.D. zoned lands essentially are regulated by Sections 7 through 18 of the Ordinance. Accordingly, we have not reveiwed nor commented upon Sections 1 through 6.

SECTION 7 APPLICATION PROCEDURES

7-1 Conditional Uses

7-1:1 Submission Procedures

7-1:2 Contents of Plan

7-2 Variances

7-2:1 Submission Procedures

7-2:2 Contents of Plan

7-3 Environmental Impact Reports

7-3:1 Scope

We object most strenously to this subsection which presumes that every site is environmentally sensitive. It is our position that the Township should be aware, within the context of its Master Plan, what areas of the Township are environmentally sensitive and only those areas specifically designated as environmentally sensitive should be subject of an Environmental Impact Report. More specifically, we do not consider any part of our land holdings to be environmentally sensitive; accordingly, our entire development should be exempt from this provision or, in the alternative, deemed to comply with the provisions of this subsection.

7-3:2 Review of Environmental Impact Assessment

Since this subsection is merely an extension and dependent upon subsection 7-3:1, it is our position that we should be exempt or, in the alternative, deemed to comply with the provisions of this subsection.

7-3:3 Waiver

This subsection might be applied against subsections 7-3:1 and 7-3:2, providing a waiver for the entire development on the basis that the proposed development will have negligible or no environmental impact.

7-3:4 Public Project

7-3:5 Project Description

For the reasons stated relative to 7-3:1, it is our position that we should be exempt from this subsection or, in the alternative, deemed to comply.

7-3:6 Investigation & Identification of Environmental Impacts

For the reasons stated relative to 7-3:1, it is our position that we should be exempt from the provisions of this subsection or, in the alternative, deemed to comply.

7-3:7 Mitigating Measures

For the reasons stated relative to subsection 7-3:1, it is our position that we should be exempt from the provisions of this subsection or, in the alternative, deemed to comply.

7-3:8 Project Alternatives

For the reasons stated relative to 7-3:1, it is our position that we should be exempt from the provisions of this subsection or, in the alternative, deemed to comply.

7-3:9 Irreversible and Irretrievable Commitment of Resources

For the reasons stated relative to 7-3:1, it is our position that we should be exempt from the provisions of this subsection or, in the alternative, deemed to comply.

7-3:10 Relationship Between Short-Term and Long-Term Uses of the Environment

For the reasons stated relative to 7-3:1, it is our position that we should be exempt from the provisions of this subsection or, in the alternative, deemed to comply.

7-4 Minor Subdivision Approval

7-4:1 Submission Procedures

7-4:1.1

7-4:1.2

7-4:1.3

7-4:1.4 We would make note of this subsection for later reference as to how the provisions of this subsection could be used to expedite the Subdivision Approval process.

7-4:2 Contents of Minor Subdivision Plan

7-4:2.1 General Legend

7-4:2.2 Title Block

7-4:2.3 Surrounding Area

7-4:2.4 Site Characteristics

7-4:2.5 Certifications and Endorsements

7-4:2.5.1

7-4:2.5.2

7-5 Major Subdivision Approval

7-5:1 Major Subdivision, Preliminary Approval

7-5:1.1 Submission Procedures

7-5:1.1.1

1) The time limits are taken from the New Jersey Municipal Land Use Law which specifies maximum time periods. In the interest of expediting the process, we believe that the minimum time necessary for public notice or approximately ten days, rather than thirty days, should be adequate time to file prior to the meeting of the Approving Board.

2) Again, we are dealing with legal maximums. If the application is found incomplete, the applicant should be notified within five days, not forty-five days as provided in this subsection, thereby, allowing the applicant to remedy the deficiency and proceed.

7-5:1.1.2

7-5:1.1.3 Again, the time limits set forth are the maximum time limits permitted under the New Jersey Municipal Land Use Law. We believe that the forty-five day approval period is excessive and unduly delays the approval process. We believe the application should be made ten days prior to a regular meeting of Planning Board and at that meeting, the Planning Board should either approve, approve with conditions or refuse the application. We see no reason why ninety-five days should be applied to an application of more than ten lots. It is our opinion that, regardless of the number of lots, the time-frame suggested should be adequate for Preliminary Subdivision Review.

7-5:1.1.4

7-5:1.2 Contents of Preliminary Plan

7-5:1.2.1 General Legend

We object to subparagragh (g) on the basis that it suggests a level of detail that is premature at the Preliminary Subdivision Review stage. We object to subparagraph (h) on the basis that it suggests a level of detail that is premature at the Preliminary Subdivision Review stage.

7-5:1.2.2 Title Block

7-5:1.2.3 Surrounding Area

7-5:1.2.4 Site Characteristics

7-5:1.2.5 Plan Details

(a) Lots and Buildings

(1) For Preliminary Subdivision Review, it should be sufficient to show the approximate dimensions of the lots and the approximate areas of the lots. It should not, at this stage, be necessary to work to the level of accuracy of tenths of a foot and determine all areas to the nearest square foot. The matter of setback lines is a requirement controlled by the provisions of the Ordinance and these regulations should be relied upon in this regard at the time a Building Permit is issued and not required to be shown on a Preliminary Plan.

(4) We object most strenuously to the provision of architectural drawings of any kind relative to either Preliminary or Final Subdivision Application. It is our position, that the subdivision should be handled as an entity unto itself. Any buildings to be built on the lots created by the subdivision is a matter completely apart from the subdivision of land and their construction is adequately controlled by Ordinance provisions with regard to setback, height and various other constraints. Buildings that will be built upon these lots must comply with these Ordinance provisions and the determination of compliance relative to setbacks should be made concurrent with the issuance of the Building Permit for the particular structure to be built on any given lot.

(5) We have no objection to this provision provided it is interpreted as applying to the general rough-grading of the subdivision and not interpreted as applying to the fine finish grading relative to construction on a given lot within the subdivision which is normally shown on the building plot plan and is a matter to be dealt with concurrent with the issuance of Building Permits.

(b) Utilities

(1) It is our position that the layout of sewers, water, gas and electric represent a level of detail that is premature at the Preliminary Subdivision Review and is an unnecessary duplication of Final Approval requirements (see subsection 7-5:2.4.2).

(3) We have no particular objection to providing evidence from the Old Bridge Township Utilities Authority and the Sewerage Authority that capacity is or will be

available to the subdivision but we do believe that this evidence should be more appropriately provided at the time of Final Approval and thus avoid delays in obtaining documentation relative to a matter that would be a condition of Preliminary Subdivision Approval and, in any event, unnecessarily duplicates Final Approval requirements (see subsection 7-5:2.4.2).

(c) Storm Drainage

This subsection refers to Section 15 which, in turn, stipulates under subsection 15-1:1 that the engineering calculations relative to drainage shall be submitted prior to Final Approval of any subdivision and we do not take issue with this requirement. However, the requirement as stated under this subsection, "Storm Drainage", relates to Preliminary Major Subdivision Application and requires a level of detail and engineering that is premature at the Preliminary Subdivision Review stage and is an unnecessary duplication of Final Approval requirements.

(d) Vehicular & Pedestrian Facilities

(1) We have no objection to this requirement provided that it is interpreted to mean approximate changes in the grade and approximate high points.

(2) We have no objection to this requirement providing the preliminary profiles are interpreted to mean approximate preliminary low and high points of preliminary grades.

(3) Location, type and size of curbs and sidewalks is an inappropriate level of detail. Such items should be schematically indicated in their approximate location for Preliminary Review.

(4) Requirements pertaining to parking, loading and unloading with dimensions, traffic patterns, curb radii, etc., are more appropriate to Site Development Plan Approval and represent a level of detail totally inappropriate at the Preliminary Review stage of a Major Subdivision.

(e) Landscaping

(2) Details of landscaping are more appropriately the subject of Site Development Plan Approval and are not requirements relevant to Preliminary Major Subdivision Review.

(f) Miscellaneous Details

(1) Street lighting is specified by standard Township criteria. The details of these facilities are not relevant at Preliminary Major Subdivision Review stage and are an unnecessary duplication of Final Approval requirements (see extensive provisions of Section 17).

(2) Detailing the method of refuse disposal or storage and the locating of such a facility is, more appropriately, a matter subject of Site Development Plan Approval and not a matter that should be considered relative to Preliminary Subdivision Review.

(3) It is appropriate to indicate on plans for Preliminary Major Subdivision Review areas set aside for recreation areas, but the requirement to provide plans of clubhouses, mailboxes and street furniture is a level of detail that is totally inappropriate for Preliminary Major Subdivision Review and are, more appropriately, matters subject of a Site Development Plan Approval.

(4) The Township has standard criteria laid down relative to provisions to be employed to prevent erosion and silting. It should not be necessary to provide this level of detail at the Preliminary Major Subdivision Review stage since the application of the standard criteria can be made a condition of approval that is required to be submitted with the application for Final Subdivision Approval.

(h) Environmental Impact Assessment

For the reasons stated in 7-3:1, it is our position that we should be exempt from the requirements of this subsection or, in the alternative, deemed to comply.

7-5:1.3 Effect of Preliminary Approval

The implications of the provisions of this subsection are probably the major source of all the time consuming delays and level of detail inherent in the Preliminary Subdivision Application process that completely obviates any possibility of an expedited Preliminary Subdivision Review. The Preliminary Approval grants certain substantial rights that extend for a three year period. The conferring of rights for such an extended period imposes upon the Approving Body and the process itself an undue burden to consider almost every eventuality with the result that the "Preliminary" application process, in essence, becomes a "Final" application process. We would suggest that the Preliminary Approval of a Major Subdivision be more in context with the wording of subsection 7-4:1.4. The Preliminary Approval could then be stripped to bare essentials necessary for speedy and responsible consideration. The subsequent submission of the Final Subdivision Plan within the 190 day period would have to meet all engineering standards of the Township as a condition of the Preliminary Approval. The present process does not really provide for the submission of Preliminary and Final plans of subdivision. By any reasonable standard, the present process requires the submission of TWO FINAL Subdivision Plans and the resultant duplication and inordinate processing times are extremely cost generative. Instead of a system to expedite development, the Ordinance mandates a process that quite effectively deters major development.

7-5:1.3.1 The provisions of this subsection somewhat substantiate the comments made relative to subsection 7-5:1.3 because the Preliminary Approval applies to such specific details as Design Standards for streets, curbs, sidewalks, lot size, yard dimensions, off-tract improvements and so forth. This level of detail is not appropriate for Preliminary consideration and the introduction of such detail completely frustrates an expedited process.

7-5:1.3.2

7-5:1.3.3

7-5:1.3.4

7-5:2 Major Subdivision, Final Approval

7-5:2.1 Submission Procedures

7-5:2.1.1 This subsection, taken in context with subsection 7-5:2.1.2 that follows, allows the Township a total of seventy-five days to grant Final Approval, which is excessive and totally out of context with an expedited process.

7-5:2.1.2

7-5:2.1.3

7-5:2.2 Contents of Final Plan

7-5:2.3 Proposed Final Plan for Filing

7-5:2.3.1 General Notes

7-5:2.3.2 Map Details

7-5:2.3.3 Certifications and Endorsements

7-5:2.3.4 Proof of Payment of Taxes

7-5:2.3.5 Tax Map Reference

7-5:2.4 Construction Drawing Details

7-5:2.4.1 General Notes

(c) It is our position that the buildings to be built upon a given lot are not relevant to any level of subdivision approval and should more appropriately be the subject of the issuance of Building Permit.

(g) It is our position that the architectural drawings of buildings have no relationship to the approval of a plan of subdivision. The provision of architectural drawings should, more appropriately, be related to the issuance of Building Permits.

7-5:2.4.2 Utilities

It is quite apparent in reviewing subparagraphs (a) to (f), inclusive of this subsection, that all requirements relative to various utilities are adequately provided for within the structure of the Final Approval process and, as previously mentioned, it should not be necessary to provide this level of detail in the Preliminary Subdivision Review process.

7-5:2.4.3 Storm Drainage

The provisions of subparagraphs (a) to (h), inclusive of this subsection, adequately deal with the requirements for storm drainage for Final Subdivision Approval. Consequently, the provisions of this subsection support our previous comment that this level of detail at the Preliminary Subdivision Review stage is unnecessary because it duplicates Final Approval requirements.

7-5:2.4.4 Vehicular and Pedestrian Facilities

7-5:2.4.5 Landscaping

(b) We have no objections to providing Landscaping Plans relative to Final Subdivision Approval provided they show such landscaping as shall be provided within street rights-of-ways and boulevards but to require landscaping details for off-street trees, open space, building foundations, parking lots is inappropriate to a plan of subdivision and is more appropriately relative to Site Development Plan Approval.

7-5:2.4.6 Miscellaneous Details

Construction details of recreational facilities, swimming pools, tennis courts, clubhouses, etc., is not relevant to a subdivision approval but, more appropriately, relates to Site Development Plan Approval of a particular property where these improvements are proposed.

7-7 **Planned Development**

It is our position that the Concept Plan proposed for settlement will supersede in their entirety all subsections from 7-7:1, "Planned Development, General Development Plan Approval", to subsections 7-7:3.8, "Effect of Final Approval", 7-7:3.8.1, 7-7:3.8.2, inclusive. And with respect to these subsections, we are either exempt or, in the alternative, deemed to comply by virtue of the Concept Development Plan.

SECTION 8 PERFORMANCE GUARANTEES

8-1 On-tract Improvements

8-1:1 Streets

8-1:2 Curbs, Sidewalks, Bikeways, Open Space, Pathways

8-1:3 Street signs and Other Signs and Pavement Markings

8-1:4 Landscaping

8-1:5 Shade Trees

8-1:6 Street Lighting

8-1:7 Survey Monuments

8-1:8 Utilities

8-1:9 Storm Sewers, Culverts, Channels, Detention/Retention Ponds and Other Storm Drainage Facilities

8-1:10 Water Supply Lines and Fire Hydrants

8-1:11 Sanitary Sewers

8-2 Off-tract Improvements

Our position is that the Methodology for Off-Tract Pro Rata Analysis for the Township of Old Bridge, by Louis Berger Associates, August 1980, has no legal foundation and, in any event, would be pre-empted by a Settlement Plan. Consequently, the provisions of subsections 8-2, 8-2:1, "Determination of the Drainage Pro Rata Share", and 8-2:2, "Determination of the Transportation Pro Rata Share", would not apply to our development.

8-3 Performance Guarantee

8-3:1 General Requirements

8-3:2 Determination of Guarantee

8-3:2.1

8-3:2.2

8-3:2.3

8-3:2.4

8-3:3 Conditions for Building Permits and Certificates of Use and Occupancy

8-3:3.1	Site Development Plans - Non-residential
8-3:3.1.1	
8-3:3.1.2	
8-3:3.1.3	
8-3:3.1.4	
8-3:3.1.5	
8-3:3.2	Site Development Plans - Residential
8-3:3.3	Minor and Major Subdivisions and Planned Developments
8-3:3.3.1	
8-3:3.3.2	
8-3:3.3.3	
8-3:3.3.4	
8-3:3.3.5	
8-3:3.3.6	
8-3:3.3.7	
8-4	**Maintenance Guarantee**
8-5	**Duplication**
8-6	**Release**
8-7	**Inspection**

SECTION 9 PLANNED DEVELOPMENTS

So much of this Section contains provisions that are either out of context with the criteria of the Concept Development Plan proposed for Court approved settlement or contains regulations founded on principles at issue, such as the Groundwater Recharge provisions, that it is more direct to simply take exception to the entire Section. There are, however, many regulatory provisions contained in this Section, that are acceptable in principle and subject to detailed review, could be considered reasonable regulatory standards.

This Section also contains a substantive issue that has not been addressed. We object to subsection 9-7:9, "Aesthetic Considerations", on the grounds that it provides for a completely arbitrary approval process based on individual personal preference.

The following excerpt from this subsection, 9-7:9, exemplifies the type of subjective standard that we find objectionable:

> "Architectural design and building construction shall be consistent, complementary and harmonious. Approval of designs and exterior changes and additions may be recommended by an Architectural Review Committee to the Approving Board. A P.D. shall have the option of establishing its own Architectural Review Committee and appropriate standards prior to submission of Preliminary or Final Plans, or being included under provisions for a township-wide Advisory Committee. Architectural Review Committees shall pay particular attention to facade treatments, materials, color scheme, neighborhood or "village" character, fencing and landscaping, accessory structures, signage and street furnishings."

These subjective Design Standards are interspersed throughout the Ordinance and without belaboring their detailed occurrence, we take exception to all of them.

SECTION 4 OTHER ISSUES

4.1 Agency

Old Bridge Township has certain statutory authority vested in it. Other agencies, such as the Middlesex County Planning Board and the State of New Jersey's Department of Transportation or Department of Environmental Protection have their own statutory and regulatory frameworks. Due to the size and nature of the Olympia and York development, we would prefer to conduct negotiations on our own behalf before these other agencies, and do not wish to have Old Bridge Township act as the agent of the County or the State in any way. Thus, for example, issues relating to traffic improvements on Route 18 or Englishtown Road would be properly addressed in direct negotiations between Olympia and York and the State or the County and not handled as "conditions of approval" by the Planning Board.

4.2 Technical Ordinance Issues

In this memorandum, Olympia and York has addressed the matters of central concern to itself, and presumably, to other developers seeking to provide housing under Mount Laurel II. There are other issues, such as Engineering Standards, road widths, and similar issues of a technical nature which are more appropriately addressed once the Township and Olympia have achieved agreement on the central issues and in accordance with the direction given at the meeting, we have refrained from commenting on these matters at this time. By providing the specifics concerning the approval processes (above), Olympia is not indicating that it has, therefore, waived its right to comment on the remainder of the developmental process in Old Bridge, and it reserves the right to address the remaining issues at a later date.

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FILE NO.

August 16, 1984

All parties in the Urban Legaue v. Carteret/Olympia & York v. Old Bridge Litigation

Enclosed as promised is a copy of the material which was prepared on behalf of Olympia & York and delivered to representatives of the Township of Old Bridge.

I would remind all parties that we will meet in the office of Brener, Wallack and Hill on Monday, August 20, at 1 p.m. in order to discuss the status of the case and the probability of achieving any acceptable settlement prior to the August 27 deadline.

Sincerely,

Thomas J. Hall

TJH:te
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