

- letter between Counsel re Old Bridge ordinance revisions for compliance
- Twp's Memorandum of Response

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BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET

PRINCETON, NEW JERSEY 08540

(609) 924-0808

CABLE "PRINLAW" PRINCETON
TELECOPIER: (609) 924-6239
TELEX: 837652HARRY BRENER
HENRY A. HILL
MICHAEL D. MASANOFF**
ALAN M. WALLACK*GULIET D. HIRSCH
GERARD H. HANSON
J. CHARLES SHEAK**
EDWARD D. PENN+
NATHAN M. EDELSTEIN+
THOMAS L. HOFSTETTER**
ROBERT W. BACSO, JR.+
EDWARD M. BERNSTEIN^
MARILYN S. SILVIA
THOMAS J. HALL
SUZANNE M. LAROBARDIER
ROCKY L. PETERSON
VICKI JAN ISLER
MICHAEL J. FEEHAN* MEMBER OF N.J. & D.C. BAR
** MEMBER OF N.J. & PA. BAR
+ MEMBER OF N.J. & N.Y. BAR
^ MEMBER OF N.J. & FLA. BAR

FILE NO. 2108-00-02

September 19, 1984

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JUDGE SERPENTELLI'S CHAMBERS

Jerome Convery, Esq.
Township of Old Bridge Attorney
151 Route #516
Old Bridge, NJ 08857RE: Urban League vs. Township of Old Bridge

Dear Mr. Convery:

Since the July 2, 1984 Court Hearing, in which the Township of Old Bridge indicated that it would revise its ordinances to comply with the requirements of Mount Laurel II, the following events have occurred:

1. The Township and the parties held a series of informal meetings to explore possibilities for settlement;
2. At the meeting between the parties on August 8, 1984 you requested that Olympia & York put forth in writing its concerns with respect to the Old Bridge Township Development Process;
3. In a good faith effort to respond, we provided you with a 28 page Memorandum on August 15, 1984, which set forth in some detail our concerns with respect to the Old Bridge Township Development Process and our recommendations for change;
4. On September 4, 1984, you responded with a settlement proposal, addressed to Urban League, which completely ignored the concerns expressed by Olympia & York; and
5. You informed us orally that the Township Council and the Planning Board have rejected our memorandum in its entirety.

We are deeply concerned that the path of negotiation which the Township has elected to take, which appears to be directed at meeting Urban League's traditional concerns without addressing the specific developmental problems confronting the Township of Old Bridge, is doomed to failure.

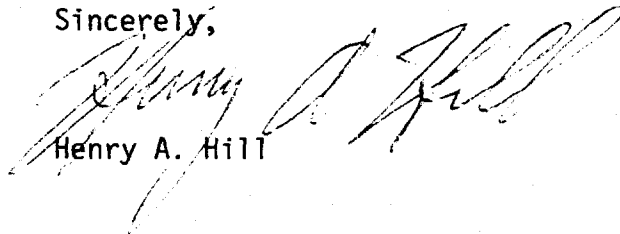
September 19, 1984

After a careful review of the proposal you put forth to the Urban League, it appears that the Township has offered what amounts to an illusory settlement. That is, by requiring larger land owners to build lower income housing, while exempting smaller land owners, the Township's proposal would make it economically impossible for any larger land development to take place while encouraging land development to take place on smaller parcels. Since the smaller land developers would have no inducement to build affordable housing, and since the large land owners would have the extra financial burden of providing such housing, no development whatsoever would take place on the larger parcels and no lower income housing would be built.

We are providing a detailed response to your proposal to Barbara Williams of September 4, 1984, but must inform you that the proposal as set forth in your letter and the process which appears to exclude Olympia & York from meaningful negotiations are both rejected.

We believe we have no alternative but to seek the Court's intervention and an immediate appointment of a Master to supervise the revision of the Old Bridge Township Land Development Ordinance. Along with a copy of this letter, we will be providing Judge Serpentelli with a copy of our August 15, 1984 memorandum.

Sincerely,



Henry A. Hill

HAH:klp

CC: The Honorable Eugene D. Serpentelli ✓
Barbara Williams
Dean Gaver
John Payne
Bruce Gelber
Stewart Hutt
Thomas Norman

MEMORANDUM OF RESPONSE

TO: Jerome J. Convery, Township Attorney
Township of Old Bridge, New Jersey

From: Brener, Wallach and Hill, Attorneys
for Olympia and York/Old Bridge Development Company

Re: Township's proposal of September 4, 1984

Date: September 19, 1984

Introduction:

The Township's September 4, 1984 proposal, addressed to Barbara Williams of the Urban League, failed to address the major concerns articulated by Olympia and York in a memorandum addressed to you and delivered August 15, 1984.

The first part of this memorandum addresses the major problem contained in your proposal, the impact of the proposal on the larger developers and its failure to produce lower income housing. The second part contains further specific comments on the remainder of the Township's proposal.

I. Old Bridge Township's proposal would not produce lower income housing, and would penalize larger developers.

The thrust of the Township's proposal would be to place the burden of producing lower income housing on the Class II Planned Developments, while exempting all other developers in the Township, including those developers who would proceed under Class I Planned Development status. In effect, this would restrict the Town's Mount Laurel obligation to those developers who own land in excess of 300 acres. As we see it, this proposal would actually ensure that no developer would construct lower income housing, since there would be no requirement for a Class I developer to include low income housing in his project, and a Class II developer would find it impossible to compete in such a market.

There are two practical realities which the larger developer would face:

first, the exempted developers could be quite sizable, since under your ordinance, a Class I P.D. could have as much as 299 acres, and could have in excess of 650 units without including a non-residential component. If it contained a non-residential component, such a Class I P.D. development could contain over 1000 units;

secondly, these "smaller developments" would be able to proceed with a tremendous competitive advantage over the larger developments. In a competitive market, well-organized, competent developers will be able to build and market units without having to pay the costs inherent in supplying lower income housing, and thereby significantly underprice their units as compared with units that could be offered by Olympia and York or any other "Class II" developer.

It would be economically impossible for Olympia or Woodhaven to proceed on this basis. Consequently, there would be no lower income housing. This aspect of your proposal makes the entire offer to "settle this case" illusory.

I also bring to your attention that under the provisions of the Land Development Ordinance the decision to proceed with a Class I or Class II Planned Development is, at least in part, a developer's decision, based on whether or not the developer chooses to proceed with certain options set forth in your ordinance under subsection 9-4:2.1. Your ordinance also imposes additional requirements on Class II P.D.'s, such as a fiscal impact report and a requirement that residential construction be staged and dependent upon the progress of non-residential development. As we read your proposal, this choice would be stripped from the developer; all landholdings of 300 acres or more would become "Class II" P.D.s with a Mount Laurel obligation.

II. Specific additional comments:

50/50 split: As we have indicated, it is our contention that flexibility in the mix of low-to-moderate income housing within the 20% set-aside will be required in order to provide a cost-effective response to market considerations extant in Old Bridge Township. We are working with the Urban League and with the Center for Urban Policy Studies at Rutgers to prepare a model demonstrating a mix of market, "least cost", and lower income units which is responsive to the underlying concern of Mount Laurel II. We will be prepared to testify on this in Court. Under these circumstances, it is inappropriate to require a mandatory 50-50 split between low and moderate income units.

Density bonus: The one substantive benefit you hold out to developers does not provide any realistic benefit to Olympia and York, as we have already told you. Your proposal is to provide a modest density increase to "PD IIs"--to go from what you regard as a 3.4 du/ac. floor to a 5.0 du/ac. floor in exchange for a 20% setaside. As we have previously already indicated to you, the actual net residential density granted to Olympia & York by resolution of the Township Council is approximately 6.6 dwelling units per acre on the residential portion of its development. From Olympia and York's perspective, this "bonus" is of no actual benefit, not only because we regard our current "floor" as 6.6 du/ac, but also because our analyses and our market studies show that a variety of non-density benefits will have to be granted by the Township in order to induce Olympia to help Old Bridge meet its obligation to provide lower income housing. As we have stressed, we regard procedural reform of the land development process as a paramount consideration. We are also seeking appropriate infrastructure contributions and a reallocation of the water franchise. Density additions will not help Olympia & York.

Height increases: We do not regard your proposal to amend your Land Development Ordinance allow for greater building height as in any way responsive to Olympia & York's request to build as much as 10% of its developments as mid-rise apartments. Mid-rise apartments would be eight story structures; your proposal is to permit a maximum of three stories (approximately of 35 feet) on 25% of a P.D. while keeping your current maximum building height of 30 feet for the remainder of the P.D.. This is not a concession of any real substance.

Bedroom mix requirements: We believe it is quite likely that bedroom mix requirement could impose significant costs which would affect the provision of lower income housing and we reserve the right to clarify this in further discussions with the Township and the Urban League, as we proceed with the refinement of our economic models.

Recharge: We object to your retention of the Aquifer Recharge requirements in the Ordinance, since, as we have pointed out, there are significant technical problems inherent in the Old Bridge Township ordinance requirements, as well as the probability that New Jersey Department of Environmental Protection regulations would pre-empt the local requirements. While Olympia and York would have no objection to the construction of appropriate ponds and water detention basins, the ordinance, as written, could require the construction of injection wells and other expensive recharge devices, since there is no convenient and cost-effective way to recharge the Old Bridge Sands from Olympia's property. Given the fact that Olympia & York no longer intends to rely on local ground water but instead seeks to use an overland water transmission line, with water coming from surface water supplies as suggested by the State of New Jersey's Department of Environmental Protection, we see no policy reason for retention of this costly, and probably environmentally ineffectual, requirement. We certainly feel it has no place in a settlement of a Mount Laurel II suit.

Environmental Impact: We similarly regard your requirement for an environmental impact report as wholly unnecessary and outside the bounds of any settlement of a Mount Laurel II suit.

Engineering Streamlining: We remain willing to participate in an overall engineering streamlining discussion, but only after we have reached agreement on the more fundamental issues as outlined in our memorandum to you of August 15th, since these kind of discussions are a "second level" of consideration, after agreement has been reached on fundamental issues.

We remind you that there are three necessary elements to any settlement proposal which would be acceptable to Olympia and York:

Real procedural reform, including reduced submission requirements and fast-tracking of developments which include lower income housing;

Infrastructure contributions for lower income housing; and

Awarding the franchise for the provision of water supply to Middlesex Water Company or the creation of a financial package which offered equivalent benefits to Olympia and York.

Without these elements, Olympia and York cannot participate in an overall settlement of Old Bridge Township's Mount Laurel II litigation.

We believe that our August 15th memorandum covered these issues in depth, and it would serve no useful purpose to reiterate them here. The Township's decision to respond only to Urban League and not to any of the elements set forth above indicates that the Township simply does not recognize the gravity of Olympia's concern on these issues.