

- - Plaintiff's acknowledgment of Old Bridge Twp ordinance revisions
↳ and critique

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September 24, 1984

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JUDGE SERPENTELLI'S CHAMBERS

Jerome J. Convery, Esq.
Township of Old Bridge
One Old Bridge Plaza
Old Bridge, New Jersey 08857

Re: Urban League v. Carteret, No. C 4122-73

Dear Mr. Convery:

We are in receipt of the proposal of the Township of Old Bridge dated September 4, 1984 regarding ordinance revisions. The position of the Urban League with respect to the specific items set forth in the proposal is as follows:

1) We are in agreement with the 20% set aside for the PD II zone alone assuming that the report of Mr. Carl Hintz analyzing the vacant developable land in the PD II zone reflects to our satisfaction that the PD II zone contains adequate developable acreage to be subject to the 20% set aside and that a sufficient number of the proposed projects for development are within the PD II zone. In addition, we will require, as we have in all other settlements, that the ordinance provide that no other zones (including the PD class I zone) allow residential development at comparable or higher densities to that allowed in the PD II zone without also requiring a mandatory 20% set aside. It is important to ensure that any non-Mt. Laurel developers do not have a competitive advantage over any Mt. Laurel developers which would undermine the "realistic opportunity" to build Mt. Laurel housing.

Moreover, certain cost generating factors are associated with the PD II zone, including, but not limited to, the requirement that 10% of any development be commercial (O.B. Ord. 9:4-2.1) and the requirement of specific densities within the PD II zone (O.B. Ord. 9-6.1). It is expected that such items will be addressed by the Township of Old Bridge in the process of its review of the ordinances in accord with ¶ 12 of the proposal. Any final agreement on ordinance revision is contingent on satisfactory agreement concerning the removal of all unnecessary cost generating features and the adoption of a special streamlined and "fast-track" approval procedure applicable to Mt. Laurel developments.

We are also in agreement as to the 50/50 split between low and moderate income units. However, we remain willing to consider proposals by any developer which would alter this ratio if a significant amount of housing slightly above the moderate income range would result. In our view, such housing would satisfy an important existing need consistent with Mt. Laurel II.

Finally, the ordinance should contain a provision requiring that the low and moderate income units be sufficiently integrated into the developments to assure against undue concentration or "ghettoization" of those units and assure that they have adequate access to available services and facilities. See Southern Burlington County NAACP v. Twp. of Mt. Laurel (Mt. Laurel II), 92 N.J. 158, 268 fn.32 (1983).

2) The goal of the Urban League is to ensure that revisions to the ordinances provide a realistic opportunity for the development of low and moderate income housing. To that end, it is most important that the maximum gross project density be sufficient to enable the builders to profitably construct the low and moderate income units. By a copy of this letter, I am requesting that O&Y and Woodhaven respond to you directly with their positions as to this matter. The Urban League wishes to reserve judgment until we review their submissions.

3) Pursuant to our telephone conversation, it is our understanding that this provision is meant to apply where an owner of a parcel greater than 300 acres decides to develop a portion of the parcel less than 300 acres. In such a situation, the mandatory set aside would still apply. We are in agreement with Item #3 based upon that understanding.

4) Item #4 is acceptable to the Urban League in all respects excepting the limitations on restrictions on resale to 25 years from the date of initial sale. It is our position, and has been in all prior settlements, that the restriction should be for 30 years. This period of time coincides with the length of time of the average mortgage; has been accepted as an appropriate restriction period by the secondary mortgage market; (see FMNA Announcement 83-01 dated January 7, 1983); and is contemplated by the Supreme Court's concern that set aside units continue to be available to lower income people over a sufficient period of time. It is also suggested that for ease of calculation, the median regional income be reflected as 94% of the PMSA (Primary Metropolitan Statistical Area) in which Old Bridge is located, which approximates the median income of the 11 county region set forth in your proposal. This simplified approach has been adopted in a number of municipalities.

5) The Urban League is in agreement as to the matters set forth in ¶ 5, except that we suggest specifically adding the Civic League of Greater New Brunswick and the Housing Coalition of Middlesex County to the last sentence of ¶ 5. We further suggest that the Municipal Agency or non-profit organization referred to in ¶ 4 above be given the responsibility for reviewing and approving the affirmative marketing plans of developers.

6) The Urban League has no objection to Item #6.

7) In our view, height requirements should be considered in the context of the analysis of the cost generating features of the ordinances of Old Bridge now being conducted by the planning consultant retained by Old Bridge. However, it is to be noted that in the Mahwah case Judge Smith invalidated a proposed building height of 35' as too restrictive. (Slip Op., p. 48).

8) While the phasing requirement set forth in ¶ 8 approximates the phasing requirement upheld in Mahwah, excepting the omission of 75 + 1 market units with a 75% set aside and the addition of 85% market units and with an 85% set aside, (Slip Op., p. 43), in our view this phasing requirement cannot be directly applied to Old Bridge. The situation in Old Bridge is unique due to the size of the tracts potentially developable by O&Y and Woodhaven. Application of the proposed phasing requirement to O&Y and Woodhaven based on a conservative estimate of a proposed development of 10,000 units would result in construction of 2500 units without even one unit of low and moderate income housing being built. It is suggested that Old Bridge request Mr. Hintz to develop alternatives to phasing based on percentages such as phasing based on the number of market units constructed. Mr. Mallach remains available to work with Mr. Hintz in reaching a concept of phasing more appropriately tailored to Old Bridge.

9) The Urban League has no objection to Item #9 in principle. However, we suggest that Old Bridge set forth a workable standard for bedroom mix in its ordinance. The housing needs in the region indicate that no more than 50% of the units should be 1 bedroom or efficiencies and 20% of the units should be 3 bedrooms or larger. Draft ordinances in other municipalities specifically reflect these percentages.

10) Item #10 relates to a matter which has particular applicability to the proposed developers and the question of whether a realistic opportunity of development of Mt. Laurel II housing is presented. Accordingly, it is our position that the developers should respond to this item directly, and that the issues should be considered as part of the cost generating factors being analyzed by the planners retained by Old Bridge.

11) It is difficult to react to Item #11 without specificity as to exactly how the procedures regarding the Environmental Impact Report and/or Environmental Impact Statement would be "streamlined consistent with the requirements of Mt. Laurel II." However, it is to be noted that in Mahwah Judge Smith specifically indicated the burden was on the municipality to specify whether the proposed development was in an environmentally sensitive area before reports would be required. (Slip Op., p. 65). See also Mt. Laurel II, 92 N.J. at 304 n.54. The Old Bridge Ordinance makes no distinction as to whether the parcel is or is not in an environmentally sensitive area and requires the developer to submit initial reports regardless of how the land is categorized. We believe the burden to make the initial determination of environmental sensitivity should be placed upon the municipality consistent with the Mt. Laurel II and Mahwah opinions.

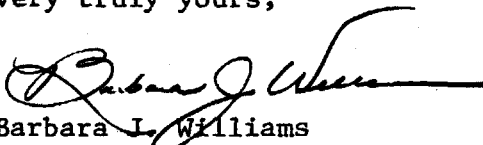
12) We are in agreement with #12 "in concept," with specific agreement being dependent upon our concurrence with the precise streamlining requirements delineated by the Township of Old Bridge. It is our understanding based upon our telephone conversations that such streamlining will not be limited solely to "engineering requirements" since the ordinances may include (and in all probability do include) cost generating provisions which do not specifically fall within the category of engineering requirements which may have to be "streamlined." Moreover, we believe the Township should consider waiver of

fees and appropriate municipal contributions to ensure the feasibility of low and moderate housing development. We await the Township experts' report on these matters.

13) The Old Bridge Zoning Ordinance should be amended to include mobile homes. However, clarification is necessary as to specifically which zones mobile homes would be permitted and what standards would apply to development.

It is hoped that the foregoing will provide the Township of Old Bridge with a basic framework of the position of Urban League with respect to Items #1 through #13. We remain willing to discuss these items with you further at any time.

Very truly yours,



Barbara L. Williams

cc/The Hon. E. D. Serpentelli
Messrs. Norman, Hutt, Hill