UL v. Certoet; ~~[illegible]~~ Old Bridge (1984)

Letters replying to the ~~[illegible]~~ settlement proposal, clarifications.

12 pgs

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November 28, 1984

Our File #

Barbara J. Williams, Esq.
Rutgers - The State University of New Jersey
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S.I. Newhouse Center for Law and Justice
15 Washington Street
Newark, New Jersey 07102-3192

Re: Urban League v. Carteret (C-4122-73)
Woodhaven Village v. Old Bridge (Consolidated Cases)

Dear Ms. Williams:

I am writing in reply to your letter, dated November 26, 1984 in which you address the Woodhaven proposal for settlement (Letter proposal, dated November 1, 1984)

Initially, I would like to clear up an ambiguity which apparently exists regarding the lands zoned PD. My understanding is that the ordinance provides for a PD zone and does not provide for PDI or PDII zones. The designation PDI and PDII are simply classifications of the type of development within the PD zone based upon specific criteria set forth in the ordinance (e.g., Class I PD requires a site greater than 25 acres and less than 300 acres; whereas, the Class II PD requires a site greater than 300 acres). To the best of my knowledge, the Township's intention is to rezone the entire PD zone (regardless of class I or II designations). According to Mr. Hintz's memorandum, dated August 17, 1984, there exist 6,317 acres in the PD zone.

Next, addressing the issue of mandatory set aside, we do not understand the Urban League disfavoring the proposed 12% set aside in favor of a 20% set aside. We believe, for the reasons set forth below, that a 12% set aside satisfies the concerns of the Urban League.

First, a 12% set aside in the PD zone (assuming a density of 5 u/a) will yield zoning for the Township's Fair Share, plus 70% overzoning.

Second, at a 12% set aside applied to the Woodhaven and O & Y sites alone, the Urban League is guaranteed that the Township's Fair Share will be met.

Third, if the Township's Fair Share increases, post-1990, Woodhaven has proposed to increase the mandatory set aside as set forth in the schedule contained on Page Three of the Letter Proposal, dated November 1, 1984.

Fourth, by rezoning a vast amount of land, as opposed to zoning a lesser amount of acreage (where a 20% set aside may be reasonable), the number of builders/developers/ landowners is increased. The numerous builders would clearly be more willing to develope at a 12% set aside rather than at a 20% set aside, thereby increasing the probability of constructing lower income units. Keep in mind, that there are developers other than Woodhaven and O & Y zoned PD, such as Brunneti and Kaplan.

The aforementioned reasons in support of a 12% set aside are persausive regardless of the particular hardships Woodhaven faces (see, page 3 of Letter Proposal dated November 1, 1984).

What is unique about the Old Bridge situation compared to other settlements to which the Urban League was a party, is that vast acreage is being re-zoned by the Township. The inverse relationship between acreage re-zoned and a reasonable set aside percentage is clear to Woodhaven. Where there is plenty of land rezoned, the set aside should be decreased. Where the land re-zoned is scarce, the 20% set aside is important to achieve compliance.

In light of the foregoing, Woodhaven Village urges the Urban League to reconsider its strict adherence to a 20% mandatory set aside.

Thanking you for your attention in this matter and looking forward to your response, I am,

Very truly yours,

STEWART M. HUTT
For the Firm

SMH:al

cc: Hon. E. D. Serpentelli
Jerome Convery, Esq.
Thomas Norman, Esq.
Henry Hill, Esq.
Bruce Gelber, Esq.
Mr. Joel Schwartz

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November 26, 1984

Stewart M. Hutt, Esq.
459 Amboy Avenue
Woodbridge, N.J. 07095

Re: Urban League v. Carteret, Civ C 4122-73

Dear Mr. Hutt:

I am in receipt of your proposal for settlement dated 11/1/84 with respect to various aspects of revision of the ordinances of the Township of Old Bridge.

On behalf of the Urban League, I am unable to concur with Woodhaven's proposal to deviate from the 20% set-aside agreed upon by the Urban League and the Township of Old Bridge. This proposal is premised on the basis that rezoning of the entire PDII zone would exceed the fair share number which is the subject of the existing Consent Order. We are also assuming that developments without a mandatory set-aside will not be awarded comparably high densities so as to place developers subject to the set-aside requirements at a competitive disadvantage. Mr. Hintz's report reflects gross acreage of "still vacant in the planned development zones." It is unclear whether this acreage figure also includes the PDI zone, which the Township has to date not agreed would be subject to the Mt. Laurel set-aside.

Regardless, reduction of the set aside from 20% to 12%, to produce the fair share number presupposes that both O&Y and Woodhaven will in fact have constructed 2205 units by 1990 so as to totally satisfy the fair share. To my knowledge, neither developer projects this as a potentiality and both perceive the actual absorption rates within the requisite six year period to fall far short of the fair share number. As a result, even at the agreed upon 20% set aside, a short-fall will exist in reaching the fair share which Old Bridge will have to meet by 1990.

As I indicated in my letter to Mr. Convery on September 24, 1984, we are in agreement with utilization of 20% set aside in the PDII zone alone based upon the assumption that the zone contains adequate acreage and that a sufficient number of the proposed projects for development are within the PDII zone. Sufficient acreage in and of itself does not insure a realistic potentiality of actual construction of the mandated housing units and cannot therefore serve as a basis, in our view, for concluding that the PDII zone is "overzoned" by three times the fair share number.

In all other settlements to which the Urban League has been a party in this litigation, a determination has first been made as to the location of the proposed projects which would realistically meet the fair share. Overzoning was thereafter utilized to provide a mechanism for other development should this potentiality not become a reality as to the sites anticipated to be developed. Consideration of overzoning in the abstract without regard to the potentiality of development does not comport with the goal of the Urban League to insure that actual building of Mt. Laurel units result.

Given the anticipated short fall in the fair share with respect to the actual proposed construction by O&Y and Woodhaven by 1990, we believe it highly inappropriate to decrease the fair share thereby only increasing the short-fall which Old Bridge would be required to meet.

While we remain receptive to innovative proposals which will be agreeable to all parties and applaud you for your efforts to seek such a solution, reducing the set-aside, in the absence of an absorption rate equal to the total 18,375 units by 1990, is unfortunately not the answer.

As to the other items set forth in your letter, we believe that all of the parties are very close to an agreement and that a meeting of all the parties may be productive to discuss those items.

We look forward to meeting with you in the near future.

Very truly yours,

Barbara J. Williams

cc/Messrs. Convery, Hill, Norman

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Our File # 4427

November 1, 1984

Jerome J. Convery, Esq.
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Township of Old Bridge
151 Route 516, P.O. Box 872
Old Bridge, New Jersey 08857

Thomas Norman, Esq.
Planning Board Attorney
Township of Old Bridge
101 Buttonwood Building
Medford, New Jersey 08055

Re: Woodhaven Village, Inc. v. Township of Old Bridge; Urban League v. Carteret, et al

Gentlemen:

We have reviewed the Olympia & York proposal (memorandum dated August 15, 1984) and the counter-proposal for settlement set forth in Mr. Convery's letter to Ms. William's, dated September 4, 1984. In addition, we have reviewed the Urban League's response to said counter-proposal as set forth in Ms. William's letter to Mr. Convery, dated September 24, 1984. Woodhaven Village, Inc. strongly believes that the parties hereto are not all that far apart in their respective positions, and that Woodhaven can be instrumental in closing the gap that now exists.

Therefore, Woodhaven Village is pleased to offer the following proposal which is directed at satisfying the concerns of the Township, Urban League and Woodhaven Village. Inasmuch as we believe that the details of our proposal are better saved for "second stage" negotiations, the following proposal addresses itself to the major principles contained in the aforementioned proposal of the Township. However, with regard to "second stage" details, Woodhaven is in general agreement with the findings and

methodology of Judge Smith in the Mahwah opinion.

FIRST: TWENTY PERCENT (20%) MANDATORY SET ASIDE

We are in agreement that the split between low and moderate income units (hereinafter referred to as "Mount Laurel Units") should be 50%/50%. However, we do not believe that the 20% mandatory set aside in the PD II zone is in the best interest of the Township or the Urban League.

According to the memorandum to Jerry Convery from Carl Hintz, dated August 17, 1984, the PD II zone contains some 6074 acres. At the proposed density of 5 units per acre, there exists a potential for 30,374 units which, using the proposed 20% mandatory set aside, would yield zoning for 6075 units of low and moderate income housing. Since the Township's Fair Share has been adjudged to be 2131 units, the proposed 20% set aside provides nearly three times the zoning required for satisfaction of the Township's Mount Laurel obligation. Certaintly this is not something that the Mount Laurel II decision requires or even contemplates.

Woodhaven Village, with respect to mandatory set aside, proposes the following:

Woodhaven Village, together with Olympia and York own approximately 3900 acres in the Township and propose to construct approximately 18,375 units. Woodhaven Village suggest a mandatory set aside percentage that, if applied to the total units proposed by both developers, will yield the Township's Fair Share requirement. A 12% mandatory set aside on the units proposed by the two Builder-Plaintiffs, would yield zoning for 2205 low and moderate income units. This result would more realistically satisfy the Township's 1990 fair share obligation without a "THREE-TIMES" overzoning as was proposed by the Township and accepted by the Urban League. However, a 12% set aside still constitutes overzoning. Requiring a mandatory set aside of 12%, until 1990, on all lands zoned PD II, would yield zoning for 3644 low and moderate units (6074 acres X 5 u/a X 12%), well beyond the Township's 1990 Fair Share. However, same is well within standard concepts of "overzoning" as required by Mount Laurel II.

Subsequent to 1990, in an effort to satisfy the Township's "1990 to 2000" fair share if any, Woodhaven is willing to commit to a

20% mandatory set aside; provided that 15% of same shall be affordable to Low and Moderate Income Families. The remaining 5% of the units shall be constructed so that Woodhaven, at its option, may produce 2 units affordable to families whose incomes do not exceed 120% of median (Least Cost Housing) in lieu of one Mount Laurel unit.

In summary, Woodhaven proposes the following schedule for satisfying the Township's Mount Laurel obligation:

		Cumulative Set Aside
A)	12 % mandatory set aside of Mount Laurel Units satisfying Fair Share Need to 1990.....	12%
B)	Additional 3% mandatory set aside of Mount Laurel Units satisfying post 1990 Fair Share Need.....	15%
C)	5% Least Cost Housing on a substituted basis of two least cost units in lieu of one Mount Laurel Unit (to be substituted at the option of the developer).....	20%

Given the unique aspects of the Woodhaven Village Project, we submit that where the above mentioned proposal is realistic in terms of actually building a profitable project, a 20% set aside is unrealistic. Woodhaven Village has acquired its land assemblage and has planned its development on the basis of the 4.0 u/a presently permitted by the Oridnance (includes compliance with bonus provisions). An increase in density from 4.0 u/a, presently permitted by ordinance, to 5 u/a, proposed by the Township, is not, coupled with a mandatory 20% set aside, a sufficient increase to permit the Woodhaven Village Project to be developed at a reasonable profit, if any.

In addition, the Woodhaven project would not be economically feasible should a 20% Mandatory Set Aside be imposed. Said project involves unusally high "front-end" development costs for the requisite infrastructure for sewer, water and roads. These substantial "front-end" costs are a result of the absence of any existing infrastructure. In order to construct the first unit, Woodhaven must, "up-front", provide sufficient infrastructure for

its entire project. Importantly, Woodhaven Village is not requesting the Township to contribute to said costs as a part of their Mount Laurel obligation.

Furthermore, Woodhaven disfavors the 20% set aside as unrealistic in light of the general character of the Old Bridge area housing market. Generally, the bulk of the market demand is for housing affordable to middle income families. Therefore, "market priced units" must be priced, in order to satisfy demand, at levels which render the Developer in a weaker position from where to subsidize Mount Laurel Units. There is no "windfall" to the developer with which to subsidize the production of Mount Laurel Units.

SECOND: MAXIMUM DENSITY OF 5 UNITS/ACRE

Viewed in light of our proposal set forth in Paragraph FIRST, regarding mandatory set aside, the maximum gross project density for a PD II of 5 units per acre is wholely acceptable.

THIRD: MANDATORY SET ASIDE APPICABLE TO SUBDIVISIONS LESS THAN 300 ACRES.

Woodhaven Village is in complete agreement with this proposal. In addition, we completely agree with the related comment contained in Item 1 of the above mentioned letter of Ms. Williams in which the Urban League takes the following position:

> "... 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."

In fact, Woodhaven would welcome the inclusion in any agreement of the following language employed in other Mount Laurel settlements:

> "The Township shall enact an ordinance providing that no tracts, other than those rezoned as part of this settlement, may be zoned at gross densities greater than 5 units per acre unless those zones are subject to a mandatory set aside provision requiring that at least 15% of the total number of units to be set aside for low and moderate income households, provided, however, that any such tract zoned at a gross density of 6 or more units per acre shall be subject to a mandatory set aside provision requiring that at least 20% of the total number of units to be set aside for low and moderate income households."

FOURTH: DETERMINATION OF INCOME LEVELS AND AFFORDABILITY

The Township's proposals in this regard are acceptable to us provided that the modifications regarding "30 year restrictive covenants" and "median regional income as 94% of the PMSA" set forth by the Urban are incorporated.

FIFTH: AFFIRMATIVE MARKETING OF LOW AND MODERATE INCOME UNITS

Woodhaven Village has no objection to this item; nor does it object to the Urban League requirements.

SIXTH: REPORTING OF ALL PROPOSED DEVELOPMENTS.

Woodhaven Village has no objection to Item #6.

SEVENTH: HEIGHT LIMITATIONS:

The height limitation as set forth in Item #7 of the Township's proposal is objectionable. The 25%--3 story/75%--30 feet distinction is not presently a requirement of the Ordinance. The 30 foot maximum height is simply too low for construction of multi-family buildings. Woodhaven, like the Urban League, would prefer the holding of the Judge Smith in the Mahwah case wherein he stated that:

> "The 3 story maximum is reasonable; the 35 foot height limitation is not. An increase to 40 feet would give architectual

flexibility and permit construction of gable roofs while complying with the BOCA Code." (slip opinion, at p. 48)

EIGHTH: PHASING-IN OF LOW AND MODERATE UNITS

The phasing schedule proposed by the Township is acceptable to Woodhaven. However, in view of the concerns expressed by Ms. Williams on behalf of Urban League, we approach this issue open-mindedly and we are certain that a phasing schedule agreeable to all concerned can be developed.

NINTH: BEDROOM MIX

Woodhaven Village's major concern in this area is being locked into a rigid Bedroom Mix. The uncertainty of the future housing market makes a "strict" bedroom mix unfavorable. However, we are certain that, if sufficient flexibility can be built into the Bedroom Mix schedule, Woodhaven would agree to the incorporation of same into a revised ordinance.

TENTH: AQUIFER RECHARGE

The Township's proposal requires that Ordinance Section 15-3, regarding aquifer recharge, shall remain in the ordinance. Woodhaven Village is strongly opposed to this requirement for a number of reasons. Without question, the aquifer recharge requirement is highly cost generative and is, therefore, contrary to the Mount Laurel mandate requiring the removal of such requirements. In addition, our expert reports show conclusively that, given the general soil conditions on site, aquifer recharge is technically impossible to carry-out or only available at tremendous costs. The aquifer recharge requirement would, if retained in the Ordinance, make certain that development be substantially impaired and that developments required to subsidize lower income housing be virtually impossible.

ELEVENTH: REQUIREMENT FOR ENVIRONMENTAL IMPACT REPORT

Woodhaven opposes the requirement for an Environmental Impact Report. We join in the statements of Ms. Williams in this regard; particularly, her reliance upon the Mount Laurel II and Mahwah opinions.

TWELFTH: STREAMLINING DEVELOPMENT REQUIREMENTS

Item #12 of the Township's proposal and the related Urban League comments are generally agreeable to Woodhaven Village. We believe that these items are better addressed at "second-stage" negotiations, after agreement has been reached on the major principles set forth herein. When the appropriate time is reached the following areas, in our view, require attention:

1. Streamlined application and approval procedures.

2. Streamlined development standards, i.e., setbacks, distance between buildings, pavement widths, parking stall sizes.

3. Streamlined site development specifications

4. Streamlined fees (i.e. waiver of fees, reduction of fees, reduction of amount of cash to be held in escrow at any point in time for inspection fees.)

THIRTEENTH: MOBILE HOMES

Generally, a provision permitting Mobile Homes is acceptable.

FOURTEENTH: SOME GENERAL COMMENTS.

As a general note regarding the Woodhaven Village development, please be advised that same will include some 400,000 to 500,000 square feet of commercial space on approximately 3% (or 40 acres) of the project; thus there should not be a "10% commercial" requirement in the revised ordinance.

Woodhaven Village does require that the Township provide for Concept Plan Approval. In this regard, we generally favor this Concept Development Plan as defined in Section 1 of the Olympia & York Memorandum of Proposal for Settlement, dated August 15, 1984 (with certain exceptions noted herein).

Although the within proposal sets forth Woodhaven's requirements, requests and desires, those items not requested, we believe, are relevant to the Township's determination. The following represents some of the items Woodhaven is not requiring:

1. Residential structures greater than 3 stories.

2. Woodhaven is not requesting waiver of permit fees, inspection fees, and other fees associated with Mount Laurel

Units, but would agree to the treatment of fees given by Judge Smith in the Mahwah opinion.

3. Tax abatements on Low and Moderate Units.

4. Reimbursement of infrastructure costs related to construction of Low and Moderate Units.

5. Credit for land taxes paid and to be paid.

6. A decrease in time limits established by the Municipal Land Use Law.

7. Commitment of Block Grants to infrastructure for Mount Laurel housing.

Woodhaven, by presenting the within proposal, is not disagreeing with the abovementioned Olympia & York proposal; however, same is presented as an alternative for consideration by the Township.

The foregoing represents Woodhaven Village's proposal toward settlement. We optimistically await the Township's response to same and look forward to productive negotiations in an effort to settle this matter in a manner which is beneficial to all.

Very truly yours,

Stewart M. Hutt

STEWART M. HUTT
For the Firm

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cc: Barbara Williams, Esq.
Henry Hill, Esq.
Honorable Eugene D. Serpentelli
Mr. Joel Schwartz