

UL v. Certget (Old Bridge)
Letter Brief in opposition to the (1985)
~~letter acknowledging the notice of motion~~
for consolidation or intervention + Tempo
restraints

16 pgs

CAB00058L

CA000058L

P. O. BOX 238

NEW BRUNSWICK, N. J. 08903

LOUIS A. MEZEY

(1929-1982)

FREDERICK C. MEZEY *

JEREMY L. SHANABERGER **

MICHAEL A. TOTO

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ELM RIDGE RD., R. D. 2

PRINCETON, N. J. 08540

(609) 921-1743

April 10, 1985

* MEMBER OF N. J. & D. C. BAR
** MEMBER OF N. J. & N. Y. BAR

OUR FILE NO.

Hon. Eugene D. Serpentelli
Ocean County Court House
Toms River, N.J. 08753

Re: Urban League of Greater New Brunswick, et al.
v. Mayor and Council of Carteret, et al.
No. C-4122-73

O & Y Old Bridge Development Corporation
v. The Township of Old Bridge, et al.
No. L-009837-84 PW

Woodhaven Village, Inc. v. The
Township of Old Bridge, et al.
No. L-036734-84 PW

Oakwood at Madison v. The
Township of Madison and the State
of New Jersey
No L-7502-70 PW

Dear Judge Serpentelli:

We are in receipt of the Urban League's Notice of Motion for Consolidation or Intervention and Temporary Restraints with regard to the above matter. We respectfully submit this letter brief in opposition on behalf of Oakwood at Madison, Inc.

We certainly agree with counsel for the Urban League that its motion is unusual. It is also defective,

Hon. Eugene D. Serpentelli

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however, and should, therefore, be denied. Both consolidation and intervention require the continued existence of an "action" that can be consolidated or into which one can intervene. Oakwood at Madison, however, was settled by written stipulation of the parties on May 26, 1977 which was, in turn, approved by Judge Furman in open court, on the record. Since the status of Oakwood at Madison as an open case was terminated by a judicially approved settlement, it is respectfully submitted that the Court lacks jurisdiction to entertain the instant motion.

Moreover, 1200 units in the Oakwood at Madison, Inc. project have final subdivision approval from Township Planning Board with statutory protection effective through August 23, 1989. [Neisser affidavit, Exhibit E, para. 22]. N.J.S.A. 40:55D-52(b). This grant of final approval was duly advertized as was notice of the hearings that preceded it. Accordingly, the Urban League, which had been actively litigating against the Township since 1970, certainly was on notice that our client was intending to proceed with its project. Any objections it may have had to the design or timing of the project certainly could have and should have been raised before the Planning Board during the approval process or by suit within 45 days of the grant of final approval. Now, almost 7 years later, as an after-thought, the Urban League chooses to act. The Township, having actually approved the project, certainly stands in no better position. Under these circumstances, we respectfully submit that the doctrines of res judicata and laches are applicable and must defeat this motion.

It should be noted that Oakwood at Madison was remanded by the Supreme Court primarily to have the trial court consider the environmental impact of development on the plaintiff's site and elsewhere around the Township. As a matter of fact, the Supreme Court expressly directed the trial court to determine whether the Oakwood site "is en-

April 10, 1985

For Eugene E. Carpentelli

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environmentally suited to the degree of density and type of development plaintiffs propose." Oakwood at Madison, Inc. v. Tp. of Madison, 72 N.J. 481, 551 (1977). The development proposed at the time of the Supreme Court's decision included 2400 units. As the result of the remand, environmental reports were prepared by both sides. Trial of the environmental issues then began before Judge Furman on or about May 23, 1977. After the testimony of plaintiff's environmental expert, Jack McCormick, the Township conceded suitability for 1750 units and the stipulation of settlement was executed and approved on May 26, 1977.

Paragraph 14 of the stipulation provides "[t]he court shall retain jurisdiction as to site plan, sewer, water, subdivision and building code approval as set forth in the decision of the Supreme Court in this matter." This language is an obvious reference to Part XII of the Oakwood at Madison opinion wherein the Supreme Court directed that our client be issued a building permit for its proposed housing project in recognition of it bearing "the stress and expense of this public interest litigation." Id. at 550. The Supreme Court ordered that our client be allowed to build "within the very early future" provided only that it "guarantees the allocation of at least 20% of the units to low or moderate income families." Id. at 551 (emphasis added).

The Supreme Court went on to provide that the approval and construction processes were to be supervised by the trial court rather than the Township. Specifically, the trial court was "to assure compliance with reasonable building code, site-plan, water, sewerage" and other health-safety requirements. Id. The Supreme Court was not directing that the trial court continually police plaintiff's guarantee to provide lower income housing. Rather, the Court was actually seeking to protect our client from further arbitrary and unreasonable action by the Township during the approval process. As the Court itself observed, "[c]onsiderations bearing upon ... justice to plaintiffs ... preclude another generalized remand for another unupervised effort by the defendant to produce a satisfactory ordinance." Id. at 552 (emphasis added). As our client has received all governmental approvals necessary to ob-

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Hon. Eugene D. Serpentelli

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tain building permits for the first sections of its development, the trial court's role, with respect to those units, is limited to ensuring compliance with the building code provisions. Id.

Oakwood at Madison, Inc. strongly resents the implication in the moving papers that it is attempting to avoid its voluntarily assumed commitment to provide 350 low and moderate income units. Oakwood at Madison, Inc. is clearly the pioneer among builders who have voluntarily assumed an obligation to meet a portion of the regional need for lower income housing.

It is true that the 350 lower income units along with the commercial site and 200 market value apartments must obtain site plan approval. These units have not yet been designed as they are located on the portion of the tract that is to be developed last. Even so, we seriously question whether any lower income units are likely to be built sooner if, as the Urban League requests, our client's project is suddenly transformed into a Mount Laurel II action and, hence, subject to further litigation including appeals and a possible legislatively imposed moratorium on builder's remedies.

We respectfully submit that the Urban League, like any other interested party, has the right to be heard during the hearings on site plan approval. The Urban League is certainly free to urge the Planning Board to condition site plan approval upon such income restrictions as it considers necessary to ensure that the lower income units remain in the hands of lower income families. The Township, if it so chooses, may urge Your Honor to credit these 350 units toward satisfaction of its fair share obligation.

Oakwood at Madison, Inc. desires only to proceed with its project, subject to the direction of the Supreme Court expressed in the Oakwood at Madison opinion. Our client has not sat idly during the last 8 years. Attached is a chro-

Hon. Eugene S. Serpenteili

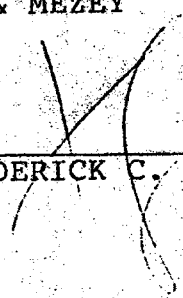
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nology of key events which has brought the Oakwood project to the eve of actual construction. This is much more than the Urban League has been able to accomplish in 15 years of litigation, with no end in sight. In sum, we view consolidation or intervention at this stage (assuming such action jurisdictionally possible) to be a major step backward from the goal of achieving actual construction of lower income housing.

Respectfully yours,

MEZEY & MEZEY

BY


FREDERICK C. MEZEY

JLS:ck

cc: Jerome Convery, Esq.
Thomas Norman, Esq.
Henry Hill, Esq.
Dean Gaver, Esq.
Stewart M. Hutt, Esq.
Eric Neisser, Esq.

- ~~Jan. 1977~~ ~~Decision of the Supreme Court directing issuance~~
~~of 2400 building permits as soon as possible~~
~~after completion of environment trial.~~
- May 26, 1977 Stipulation of Settlement filed during environmental trial agreeing upon 1750 units including 350 low or moderate income units.
- Mar. 17, 1978 Complaint filed in the Superior Court of New Jersey, in the case of Oakwood at Madison, Inc. v. Old Bridge Municipal Utilities Authority, Docket No. L 28916-77 P.W. contesting the January 28, 1977 166% increase in water connection fees from \$300.00 to \$800.00 per unit affecting the Oakwood at Madison project.
- June 30, 1978 Preliminary subdivision and site plan approval.
- Aug. 23, 1979 Final subdivision approval received for 1750 units to be constructed over a period of ten years and final site plan approval for 1200 units.
- Aug. 29, 1979 Submission of application to Old Bridge Sewerage Authority.
- Oct. 15, 1979 Submission of customers agreement to sewer authority offering to bear pro rata costs of study of Deep Run Interceptor.
- Dec. 28, 1979 Submission of revised customers agreement reflecting meeting with sewerage authority Dec. 26, 1979.
- Jan. 21, 1980 Revision of customers agreement.
- Feb. 7, 1980 Judgment entered in suit against Utility Authority reducing and phasing the connection fees, copy of same annexed hereto.
- Aug. 6, 1980 Agreement of Oakwood at Madison and Foxborough Estates to pay \$10,00. to the sewerage authority for a feasibility study for the construction of the Deep Run Trunk Sewer to service this project.
- Dec. 4, 1980 Completion of feasibility study.

- 2 -
- Jan. 9, 1981 Agreement of Oakwood at Madison to pay \$421,353.43 towards construction of the Deep Run Interceptor.
- Feb. 3, 1981 Application to Municipal Utilities Authority for water service filed.
- Mar. 10, 1981 Billing for payment of \$200,000. towards the Deep Run Interceptor.
- Feb. 7, 1983 Completion of Deep Run Interceptor assessing final costs against Oakwood at Madison and other developers
- Jan. 23, 1985 Receipt of sewer approval for Oakwood at Madison 1750 units.
- Mar. 1985 Receipt of indication from Old Bridge Municipal Utilities Authority of approval for water connection service.

ANTONIO & FLYNN
P. O. BOX 515
OLD BRIDGE, NEW JERSEY 08857
(201) 727-7510
ATTORNEYS FOR Defendants

OAKWOOD AT MADISON, INC., and PERINI
CORPORATION, corporations of the State of
New Jersey,

Plaintiffs

vs.

Civil Action

OLD BRIDGE MUNICIPAL UTILITIES AUTHORITY, a
Municipal Authority of the State of New Jersey
and the TOWNSHIP OF OLD BRIDGE,

Defendants

SUPERIOR COURT OF NEW JERSEY
JUDICIAL DISTRICT
MIDDLESEX COUNTY
LOCAL NO. L 28916-77

ORDER FOR JUDGMENT

The above matter being presented to the Honorable Edward J. Sweeney
by the parties to the within action and it appearing that the parties have
consented hereto ;

It is on this *4th* day of *February*, *1979* ordered and adjudged
that the within matter is hereby dismissed with prejudice and without costs,
in accordance with the following terms and conditions:

1. The plaintiffs shall have the right to a connection fee of \$500.00
in the amount of \$500.00 until January 1, 1982 for any Class I dwelling.

2. The plaintiffs shall have the right to a connection fee in the amount of \$450.00 until January 1, 1982. From January 1, 1982 to January 1, 1984 the rate shall be \$500.00 and from January 1, 1984 to January 1, 1986 the rate shall be \$550.00.

3. The Plaintiffs shall have the right to a connection fee in the amount of \$400 until January 1, 1982 for any Class III dwellings. From January 1, 1982 to January 1, 1984 the rate shall be \$450.00 and from January 1, 1984 to January 1, 1986 the rate shall be \$500.00.

4. In the event that low and moderate income units shall be constructed in the development known as Oakwood at Madison the fees for said units will be governed depending on where they come under the categories as set forth under the rate schedule of the Old Bridge Municipal Utilition Authority but as reduced by the within agreement.

5. The plaintiffs acknowledge that they will pay the connection fees by section if the development is built in sections, and the fees will be due upon the application for said connection service.

6. All actual costs of the connections themselves shall be in accordance with the costs for same at the time of the actual connection and are not affected by the within agreement.

7. The parties recognize that the Old Bridge Municipal Utilition Authority does not represent that it has reserved any allocation of water for purposes of the Oakwood at Madison development, but shall treat the plaintiffs in the same manner as any other applicant with respect to water capacity.

CDBG

4-9-85

Joanne Gelman / Kathy Broadway

- 1) how many rehabs since 13 July 84
over \$1500
- 2) how qualify for rehab
we check income now / use HUD guideline.
- 3) mortgage taken back if over \$1500.

Ask Urban League

- What do you want to give
credit?

Cops

herein designated as the Mortgagor(s); and the TOWNSHIP OF OLD BRIDGE, located at One Old Bridge Plaza, Old Bridge, New Jersey herein designated as the Mortgagee;

WITNESSETH, to secure the payment in lawful money of the United States of America of Ten Thousand Six Hundred Ninety Seven Dollars & 70/100 (\$ 10,697.70) DOLLARS, represented by a grant given to the Mortgagor(s) by the Township and its Department of Planning, Housing and Community Development Committee, which grant is evidenced by a note bearing the same date as this Mortgage, the Mortgagor(s) hereby mortgages to the Mortgagee the premises known as 21 Dinnd Ave., Old Bridge, New Jersey

Together with all and singular the buildings, improvements, ways, woods, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; AND also all the estate, right, title, interest, use, possession, property claim and demand whatsoever, of the Mortgagor(s) both in law and in equity of, in and to the premises herein described, and every part and parcel thereof, with the appurtenances, To Have and to Hold the same unto the Mortgagee and to the Mortgagee's proper use and benefit forever;

Provided always, and these presents are upon the express condition that if the Mortgagor(s) shall well and truly pay to the Mortgagee, the sum of money mentioned in the said note, at the time or times and in the manner mentioned therein, according to the true intent and meaning thereof, then these presents shall cease and be void, anything herein contained to the contrary notwithstanding.

The Mortgagor(s) warrants the title to the premises.

The Mortgagor(s) covenants and agrees to perform and abide by the terms and covenants herein and the terms and covenants in the said note contained which are made a part hereof as though set forth herein and at length.

Wherever used herein, the words "Mortgagor" or "Mortgagee" shall be deemed to include succeeding owners of the mortgaged property or holders of this mortgage, respectively, regardless of the means of acquisition thereof and the word "Note" shall include all notes secured hereunder.

All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, administrators, personal or legal representatives, successors and assigns.

In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

NOTWITHSTANDING any terms and conditions set forth herein, the mortgage amount shall become immediately due and payable upon the transfer of title by the Mortgagor(s) or death of the Mortgagor or in the event there is more than one Mortgagor, upon the death of the last surviving Mortgagor.

And the said Mortgagors, the owners of the land above described, do further covenant and agree to and with the said Mortgagee, that the said Mortgagors will pay in full all taxes levied or to be levied upon the

of this mortgage; and upon the breach of this covenant or any part thereof, this Mortgage may become and be due and payable immediately,

PREPARED BY Henry D. Bignell

at the option of the said Mortgagee.

And it is also Agreed, that the said Mortgagors shall and will keep the buildings and improvements now on said premises or which may hereafter be erected thereon, insured against loss or damage against fire and other hazards by insurers and in an amount approved by the said Mortgagee, and will assign the policy and certificates thereof to the said Mortgagee, and in default thereof, it shall be lawful for the said Mortgagee to effect such insurance, and the premiums paid for effecting the same shall be a

improvements now on said premises or which may hereafter be erected there in good and substantial repair. Failure to do so shall be a default in the terms and conditions of this Mortgage and the Note or other obligation accompanying same. It shall be lawful for the Mortgagee, upon such default, to enter upon said premises and repair and keep the same in good and substantial repair; and the cost and expense thereof shall be a lien on the said mortgaged premises, added to the principal sum secured hereby and shall be payable on demand together with interest at the rate of % per year from the time of payment of such costs and expenses.

And the Mortgagors agree that if default shall be made in any of the aforesaid covenants or conditions, then, in addition to all rights remedies and recourses permitted by law, the said Mortgagee shall have the right forthwith, after any such default, to enter upon and take possession of the said mortgaged premises, and to let the said premises, and receive the rents, issues and profits thereof, and to apply the same, after payment of all necessary charges and expenses, on account of the amount hereby secured; and said rents and profits are, in the event of any such default, hereby assigned to the said Mortgagee; and the said Mortgagee shall also be at liberty immediately after any such default, upon proceedings being commenced for the foreclosure of this Mortgage, to apply for the appointment of a receiver of the rents and profits of the said premises, and be entitled to the appointment of such receiver as a matter of right, as security for the amounts due the said Mortgagee, without consideration of the value of the mortgaged premises or solvency of any person or persons liable for the payment of such amounts.

Failure of the Mortgagee, in any one or more instances, to insist upon strict performance by the Mortgagors of any terms, covenants or conditions of this Mortgage, or to exercise any option, or election hereof conferred, shall not be deemed to be a waiver or relinquishment for the future of any such terms, covenants, conditions, elections or options.

THE MORTGAGOR HEREBY DECLARES AND ACKNOWLEDGES THAT THE MORTGAGOR HAS RECEIVED, WITHOUT CHARGE, A TRUE COPY OF THIS MORTGAGE.

IN WITNESS WHEREOF, the Mortgagor has signed and sealed this mortgage, the day and year first above written.

J. Ann Belman
Witness

Elisha H. Conte
ELISHA H. CONTE

Margaret Conte
MARGARET CONTE

STATE OF NEW JERSEY, COUNTY OF MIDDLESEX) SS.: BE IT REMEMBERED
that on April 4th 1978, before me, the subscriber, Kathleen
Bradbury Notarypublic of the state of New Jersey
personally appeared Elisha H. Conte + Margaret Conte
who, I am satisfied, are the persons named in and who
executed the within instrument, and thereupon they acknowledged
that they signed, sealed and delivered the same as their
act and deed, for the uses and purposes therein expressed.

Prepared by: Henry D. Bignell, Administrator
Community Development Block Grant
Township of Old Bridge
One Old Bridge Plaza
Old Bridge, NJ 08857

NOTE MORTGAGE

ELISHA H. CONTE
MARGARET CONTE

TO

TOWNSHIP OF OLD BRIDGE

Dated:

RECORD AND RETURN TO:

Henry D. Bignell
Township of Old Bridge
One Old Bridge Plaza
Old Bridge, NJ 08857

County of Middlesex
I, _____, Notary Public,
do hereby certify that the within instrument
has been fully executed and acknowledged
by the parties named therein, and that the
same is a true and correct copy of the original
of record.

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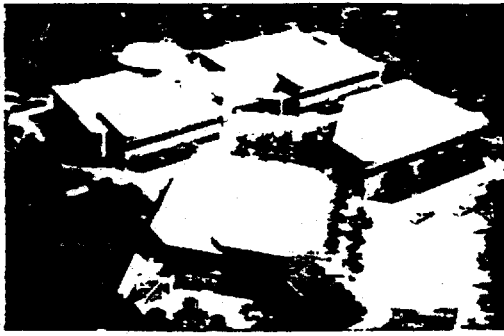
(L.S.)

Signature of _____
certified to be true and
genuine.

Township of Old Bridge

MIDDLESEX COUNTY, N.J.

ONE OLD BRIDGE PLAZA • OLD BRIDGE, N.J. 08857



JEROME J. CONVERY
TOWNSHIP ATTORNEY
51 ROUTE 516
OLD BRIDGE, N.J. 08857
201) 679-0010

April 8, 1985

Honorable Eugene Serpentelli
Courthouse - CN-2191
Toms River, N.J. 08754

Re: Urban League of Greater New Brunsw
et al
vs. Mayor and Council of Carteret,
(Old Bridge Township)
Docket No. C 4122-73
Oakwood at Madison v. Township of
(Old Bridge Township) and State of
Docket No. L 7502-70 PW
O & Y Old Bridge Development Corp.
vs. Township of Old Bridge, et al
Docket No. L 009837-84 PW
Woodhaven Village Inc.
vs. Township of Old Bridge, et al
Docket NO. L 036734-84 PW

Dear Judge Serpentelli:

I am in receipt of a copy of the Notice of Motion for Consolidation or Intervention and for Temporary Restraints, dated April 3, 1985, which has been filed by Eric Neisser on behalf of Plaintiff, Urban League. I have reviewed the Affidavits of Eric Neisser, Esq. and Alan Mallach, the Memorandum of Law in support thereof, and the proposed Order submitted along with the Motion.

I agree that the Motion is unusual, and I further believe that the situation before the Court is unique. In view of the history of the litigation regarding Oakwood at Madison, and in consideration of the Affidavit of Eric Neisser, Esq., I have no objection to the Court either consolidating Oakwood at Madison with the other actions, or alternatively, granting the Urban League Plaintiffs intervention in the Oakwood at Madison action.

In view of the uniqueness of the particular facts involved in this Motion, I believe it is for the sound discretion of the Court to determine whether or not temporary restraints are appropriate regarding the Oakwood at Madison Development only. This position is based upon the fact that the Stipulation of Settlement between the parties provided that "The Court shall retain jurisdiction as to site plan, sewer, water, sub-division and building code approval as set forth in the decision of the



Township of Old Bridge

MIDDLESEX COUNTY, N.J.

ONE OLD BRIDGE PLAZA • OLD BRIDGE, N.J. 08857

JEROME J. CONVERY
TOWNSHIP ATTORNEY
151 ROUTE 516
OLD BRIDGE, N.J. 08857
(201) 679-0010

Honorable Eugene Serpentelli
April 8, 1985
Page 2

Supreme Court in this matter".

Thank you for your attention to this matter.

Respectfully,



Jerome J. Convery,
Township Attorney

JJC/jd

cc: Thomas Norman, Esq.
cc: Frederick Mezey, Esq.
cc: Henry Hill, Esq.
cc: Dean Gaver, Esq.
cc: Stewart Hutt, Esq.