

UL v. Certoret (Old Bridge)

(1985)

Letter ^{objecting to} ~~submitting~~ that UL's motion for
consolidation
+ corresponding letters

10 pgs

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MEZEY AND MEZEY

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April 18, 1985

* MEMBER OF N.J. & D.C. BAR
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Hon. Eugene D. Serpentelli
Assignment Judge, Superior Court
Ocean County Court House
CN 2191
Toms River, N.J. 08753

OUR FILE NO.

Re: Urban League's Motion for Consolidation

Dear Judge Serpentelli:

Please accept this letter brief in reply to the Urban League's letters of April 12, 1985 in the above.

We must object to counsel's continued reference to Oakwood at Madison as an "exclusionary project." In the first place, zoning ordinances are exclusionary or nonexclusionary, not the development which proceeds under them. By labelling the Oakwood project "exclusionary," counsel seems to imply that our client is making a conscious decision to discriminate against lower income households as one might discriminate on the basis of race or religion. Secondly, Oakwood at Madison, as a project, does in fact contain a 20% set-aside for lower and moderate income families, a commitment that was voluntarily assumed and represented before the New Jersey Supreme Court. Thus, it is rather unfair of counsel to repeatedly imply that Oakwood has somehow sought to and succeeded in avoiding that commitment. Oakwood's commitment is documented and a matter of record.

It is rather ironic that the Urban League chooses to juxtaposition our client's interests with the interests of the builder-plaintiffs in the current Mt. Laurel II

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action. Counsel pleads, "[a]bsent restraints, ... the builder-plaintiffs' hard-won fight to a builder's remedy will be made meaningless in the economic sense." It is, of course, common knowledge that the Oakwood at Madison project represents the first award of a builder's remedy in this State. Some eight years of "hard-won," valid approvals since the Supreme Court decision have finally brought a development project with a 20% low-moderate income set-aside to the verge of actual construction. The Urban League cannot seem to accept this but, rather, seems content to rely upon speculation and third-party newspaper accounts about the Oakwood project in an effort to persuade this Court to do the procedurally inappropriate and grant consolidation. The net effect being only to raise serious doubts as to whether any units of any type will be built in Old Bridge Township in the foreseeable future.

We respectfully submit that the grant of a builder's remedy to Oakwood at Madison by the Supreme Court was sui generis and intended to be limited to that one case. The jurisdiction of the Superior Court regarding Oakwood at Madison ended when the matter was settled and approved. Moreover, counsel's assertion that the Superior Court must approve the final subdivision approval obtained in 1979 is unsupportable. Subdivisions are by statute approved only by Planning Boards, not by Courts. Counsel conveniently omits the most important language, that the Court's involvement is limited "as set forth in the decision of the Supreme Court in this matter." [Neisser affidavit Exhibit "A," para. 14]. Counsel grossly distorts the language of the Stipulation and ignores the apparent intent of the Supreme Court in the Oakwood decision: to prevent the Township from making the administrative approval process a series of procedural pitfalls frustrating the project. The Urban League apparently desires not only frustration but outright cessation.

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Hon. Eugene D. Serpentelli
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Again, we respectfully submit that the Urban League's motion is jurisdictional defective and antithetical to the objective of achieving low and moderate income housing and should, therefore, be denied.

Respectfully submitted,

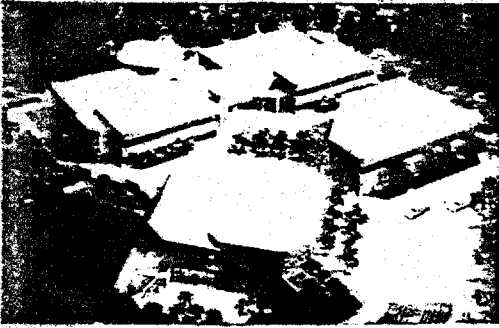
MEZEY & MEZEY

ORIGINAL SIGNED

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.



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
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MEMO:

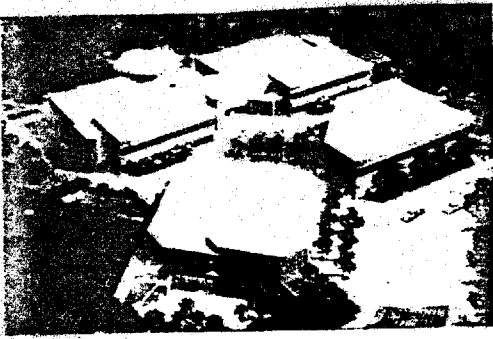
TO: HARVEY P. GOLDIE, Township Engineer & HENRY BIGNELL, Township Planner
FROM: JEROME J. CONVERY, Township Attorney
RE: Urban League v. Township of Old Bridge (Motion to Restrain Township
from granting Oakwood at Madison Approvals
DATE: April 16, 1985

Gentlemen:

Please be advised that I am in receipt of a Notice of Motion filed by the Urban League to restrain the Township of Old Bridge, the Planning Board and the Municipal Utilities Authority from granting any approvals in regard to the Oakwood at Madison project. The Motion was originally returnable on April 19, but the MUA attorney, William Flynn, has requested an adjournment until May 10, 1985. The Urban League will consent to the adjournment upon the representation of the attorneys for the municipal entities representing, in writing, that no approvals will be granted pending the outcome of the Motion on May 10, 1985.

As Township Attorney, I believe that the Township should not take any action regarding the Oakwood at Madison Development until the Court has had an opportunity to review the legal documents, and to hear the arguments of counsel. In view of the legal matter that is pending before Judge Serpentelli, and in further consideration of the fact that William Flynn has requested the adjournment in this matter, it is my position that no Township employee should take any action whatsoever regarding the Oakwood at Madison Development. This specifically would include the issuance of Building Permits concerning the initial stage of construction.

By copy of this Memorandum I am advising Eric Neisser, Esq., Co-Counsel for the Urban League, of my position in this matter. If any representative of Oakwood at Madison contacts any member of your



Township of Old Bridge

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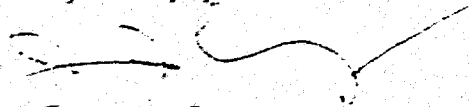
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MEMO - Page 2
TO: HARVEY P. GOLDIE and HENRY BIGNELL
April 16, 1985

Departments concerning their Development, please immediately refer that individual to me to discuss this matter.

Thank you for your attention to this matter.

Very truly yours,


Jerome J. Convery,
Township Attorney

JJC/jd

cc: Eric Neisser, Esq.
cc: Thomas Norman, Esq.
cc: William Flynn, Esq.
cc: Thomas Hall, Esq.



Township of Old Bridge

MIDDLESEX COUNTY, N.J.

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April 16, 1985

Honorable Eugene D. Serpentelli, J.S.C.
Ocean County Courthouse
CN 2191
Toms River, N.J. 08753

Re: Urban League, et al
v. Township of Old Bridge
(O & Y's Motion For Restraints)

Dear Judge Serpentelli:

Please accept this letter in lieu of Formal Brief on behalf of the Township of Old Bridge in opposition to O & Y's Motion For Restraints Against Further Development Approvals. This letter is a supplement to the Affidavit in Opposition previously filed by me. First of all, this letter is being submitted solely on behalf of the Township of Old Bridge, with the understanding that the Planning Board and Municipal Utilities Authority have separate counsel in this matter. Specifically in regard to the argument concerning limited water resources, this is an area within the knowledge and understanding of the representatives of the Municipal Utilities authority, and I leave that issue for an appropriate response by the Municipal Utilities Authority.

Secondly, this letter is directed solely to the Motion for Restraints filed by Olympia & York. I have previously filed a letter response concerning the Motion concerning Oakwood at Madison which had been filed by the Urban League. I believe that these are separate Motions primarily because of the history of litigation concerning Oakwood at Madison.

Olympia & York seeks to enjoin the Township of Old Bridge from issuing any Building Permits for any residential, commercial or individual developments. The restraint requested is obviously overly broad and constitutes an attempt by Olympia & York to coerce the Township of Old Bridge into a settlement, regardless of the adverse effect upon the Township, other builders, and individual residents who seek to make improvements to their property. The restraints sought by Olympia & York would literally prevent a homeowner from adding a much needed addition to his house, would prevent clean, light industries with very little demand for water, as well as the commercial development



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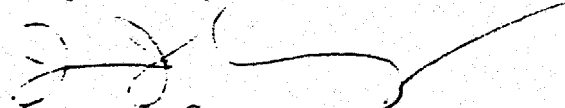
Honorable Eugene D. Serpentelli, J.S.C.
April 16, 1985
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which had received approval prior to the institution of the Mt. Laurel II lawsuit by Olympia & York.

Counsel for Olympia & York in its Brief, dated April 2, 1985, attempts to make a case against the Township for being "hostile" towards low and moderate income housing. I rely my Affidavit in Opposition concerning this issue. However, it is significant because ultimately Olympia & York is relying upon the "remedies for non-compliance", Mt. Laurel II 92 NJ 158, 285, when seeking to restrain the Township of Old Bridge from issuing any Building Permits. The Township of Old Bridge has negotiated in good faith with the builders in this matter, have reached a tentative agreement with those builders which has been submitted to the Urban League, and submits that there is no basis to the claim by Olympia & York that the Township has reached the stage of non-compliance. Based upon the facts of this case, there is no reason for the Court to consider imposing such a drastic remedy as requested by Olympia & York.

On the other hand, the Township of Old Bridge admits that it has agreed to a proposal with the builders whereby the PD Zone which encompasses approximately 6,000 acres would be subject to a mandatory set aside of 12% regarding low and moderate income housing. The PD Zone obviously includes the O & Y, Woodhaven and Oakwood at Madison properties. To the extent that the Township believes that the PD Zone should be subject to a mandatory set aside, there would seem to be a rational basis for a voluntary restraint by the Township of Old Bridge concerning the issuance of Building Permits for any residential PD Zone Development, pending resolution of the Mt. Laurel II lawsuits. This position by the Township of Old Bridge is based solely upon the fact that it has reached an agreement with the builders concerning a proposal for a set aside within the PD Zone. Furthermore, it would appear to be within the best interest of the Township of Old Bridge to receive credit for any residential development within the PD Zone concerning its Mt Laurel II obligation. The Township of Old Bridge, however, is adamant in its position that there is no rational basis for any restraint concerning anything other than residential PD Zone development.

Respectfully submitted,


Jerome J. Convery,
Township Attorney

JJC/jd
cc: All counsel of record

Law Offices

Hutt, Berkow & Jankowski

A PROFESSIONAL CORPORATION

Park Professional Bldg.

459 Amboy Avenue

P.O. Box 648

Woodbridge, N. J. 07095

April 16, 1985

Reply to

P. O. Box 648

(201) 634-6400

Our File # 4427

*Gordon Berkow
Stewart M. Hutt
Joseph J. Jankowski
Janice H. Scherer
D. Bruce Unger
Ronald L. Shimansowicz
Wayne J. Peck*

Honorable Eugene D. Serpentelli, A.J.S.C.
Ocean County Courthouse
CN 2191
Toms River, New Jersey 08753

Re: Urban League v. Township of Old Bridge (Docket No. C-4122-73)
O & Y v. Township of Old Bridge (Docket No. L-009837-84 P.W.)
Woodhaven v. Township of Old Bridge (Docket No. L-036734-84 P.W.)

Dear Judge Serpentelli:

I am writing with regard to the Urban League's Motion to Consolidate the Oakwood at Madison action with the above captioned consolidated cases. Please be advised that Plaintiff, Woodhaven Village, Inc., opposes the Motion to Consolidate.

During the past several months, the consolidated parties have been engaged in active negotiations with the guidance of the Court appointed Master, Carla Lerman. The numerous settlement talks have included a multitude of complex issues ranging from mandatory set aside, water supply and ordinance revision to aquifer recharge, provision of rental units and not-for-profit Housing Corporation. Often, some fifteen to twenty individuals would take their respective places around the conference table. Needless to say, where the issues are as burdensome as the most certainly are in Old Bridge, the addition of another party, here Oakwood at Madison, would serve only to further complicate a most complicated proceeding. Without question, the Master, Urban League, O & Y and Woodhaven, have enough complexity to solve and, the consolidation of Oakwood would serve only to frustrate the settlement process.

In light of the foregoing, Plaintiff, Woodhaven Village, Inc., respectfully requests the Court to deny the Motion to Consolidate.

With regard to Urban League's request for Intervention and Temporary Restraints, this Plaintiff takes no position and leaves these decisions to the sound discretion of the Court. Since Plaintiff Woodhaven was not a party to the Oakwood at Madison litigation and is not, therefore, intimately familiar with the long and complex history of the litigation, Plaintiff refrains from comment. This issue must be decided independently from the Motion to Consolidate.

Hutt, Berkow & Jankowski

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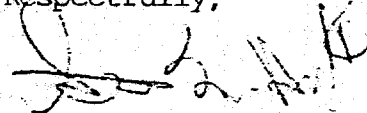
Honorable Eugene D. Serpentelli, A.J.S.C.

Page Two

April 16, 1985

Thanking you for your consideration of the above, I am

Respectfully,



STEWART M. HUTT
For the Firm

SMH:pt

cc: Eric Neisser, Esq.
Jerome Convery, Esq.
Thomas Norman, Esq.
Frederick Mezey, Esq.
Henry Hill, Esq.
Dean A. Gaver, Esq.
William Flynn, Esq.
Mr. Joel Schwartz

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*Reply to
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Our File #*

April 17, 1985

Honorable Eugene D. Serpentelli, A.J.S.C.
Ocean County Courthouse
CN 2191
Toms River, New Jersey 08753

Re: Urban League, et al v. Township of Old Bridge
(Consolidated Cases) Docket No. C-4122-73

Dear Judge Serpentelli:

I am writing with regard to O & Y's Motion for Restraints against Old Bridge Township and Old Bridge Township M.U.A. Please be advised that Plaintiff, Woodhaven Village, Inc., joins in and supports said Motion for the reasons set forth in the letter memorandum submitted on behalf of O & Y.

However, I would like to advise the Court that we are in substantial agreement with the factual statements contained in the Affidavit of Jerome J. Convery submitted on behalf of Old Bridge in opposition to the subject Motion. Although a final settlement has not been reached between the parties with regard to the primary Mount Laurel issues, the Township of Old Bridge has been negotiating in good faith with regard to same. On the contrary, the Old Bridge Township Municipal Utilities Authority has not been negotiating actively in order to reach a long term solution to the problem of providing potable water to Mount Laurel developments within the Township. In short, the thrust of Woodhaven's problem with regard to water supply is directed at the Old Bridge Township M.U.A. as opposed to the Township.

Thanking you for your consideration of the above, I am

Respectfully yours,

RLS:pt

cc: Jerome J. Convery, Esq.
Thomas Norman, Esq.
Henry Hill, Esq.
Eric Neisser, Esq.
Dean Gaver, Esq.
Frederick Mezey, Esq.
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