

UL v Cartset (Old Bridge)

(1985)

letter discussing settlement, request of judge
for opposing party to submit a report on
compliance if settlement hasn't been
reached by a certain date

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April 26, 1985

Hon. Eugene D. Serpentelli
Assignment Judge of the
Superior Court of New Jersey
Ocean County Courthouse
CN 2191
Toms River, New Jersey 08754

Re: Urban League of Greater New Brunswick v.
Borough of Carteret, C-4122-73 [Old Bridge]

Dear Judge Serpentelli:

I am writing with regard to the state of the settlement discussions in the Old Bridge case.

As Your Honor is aware, the Township of Old Bridge, Woodhaven Village, and Olympia and York, meeting without the Urban League, reached tentative agreement on a settlement proposal based on a 12% set aside. Although our client understands that a 20% set aside may be infeasible in Old Bridge because of its unique conditions, we nevertheless felt that the set aside percentage being offered was unnecessarily low, and we therefore offered a counterproposal on April 9, 1985, one that we feel comes closer to the Mount Laurel II standard of maximizing the "realistic opportunity" for the construction of low and moderate income housing. We also requested that developers provide us with a more detailed economic justification for their position that a very low set aside was required.

Against this background, we are concerned for a number of reasons by Mr. Shimanowitz's letter of April 22, 1985, for Woodhaven Village, a copy of which was sent to Your Honor. (I note parenthetically that Olympia and York has yet to respond at all.) First, we had understood that our settlement discussions outside the quasi-public meetings chaired by the Master would be in the

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customary setting of confidentiality, leaving to each party the independent decision whether to disclose its position to the Court. While the Urban League plaintiffs respect and appreciate the instances in which the Court has assisted in settlement discussions in the nine towns involved in this litigation, opposing counsel have heretofore always afforded each other the courtesy of approaching the Court jointly for such aid.

Second, Mr. Shimanowitz does not adequately or completely state the Urban League's counter offer, as we will make clear when and if it becomes necessary to place the compliance issue before the Court for resolution.

Third, although Mr. Shimanowitz seeks our comments on Woodhaven's report and invites further discussions, the letter is tantamount to a rejection of our proposal in toto. Unfortunately, the report on which this position is based does not really address the central economic question of the profitability of various set aside percentages, but rather packages in conclusory form what we already know - that the developer would prefer a lower set aside than we think is realistically possible.

As soon as our expert has had an opportunity to review the Woodhaven report, we will seek to arrange a further settlement meeting in one last effort to conclude this matter without Court action. Frankly, however, we are not optimistic at this point that agreement can be reached, and we therefore feel that the time is rapidly approaching for us to request that the Court intervene.

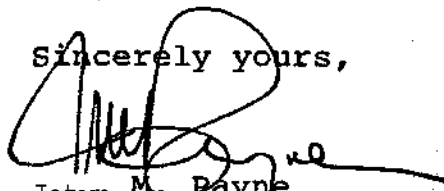
It is our intention, should solid progress towards an agreement not be reached by May 10, 1985, to ask Your Honor on that date (when the pending Old Bridge motions are scheduled to be heard) to instruct Ms. Lerman to submit a report on compliance. Our suggestion is that all of the parties be given an opportunity to submit their preferred packages to Ms. Lerman and that she either recommend one of them favorably or devise a plan of her own, should she feel that the latter is necessary. After Ms. Lerman has reported, the recommended plan could be set down for hearing and Old Bridge at last brought into compliance with the constitutional mandate of Mount Laurel.

While we regret the probability of burdening the Court's already

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full calendar, we have been pursuing these negotiations for almost a year and feel that our duty to our clients requires that we move more rapidly to the day when actual construction of lower income housing can begin.

Sincerely yours,



Jotyn M. Payne

Eric Neissej

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