

UL v. Castlet (Old Bridge)

(1985)

Order partially granted for consolidation
of Oak wood at Madison w/ UL
+ copy (s)
+ letters of receipt

18 pgs

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(bundled together)

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15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

M E M O R A N D U M

TO: Counsel in Urban League v. Carteret (Old Bridge)
FROM: Eric Neisser
DATE: June 4, 1985

A copy of Judge Serpentelli's Order of May 31, 1985 is enclosed.

encls

cc/Jerome Convery, Esq.
Dean Gaver, Esq.
William Flynn, Esq.
Thomas Hall, Esq.
Stewart Hutt, Esq.
Frederick Mezey, Esq.
Thomas Norman, Esq.

ERIC NEISSER, ESQ.
JOHN M. PAYNE, ESQ.
BARBARA J. WILLIAMS, ESQ.
Rutgers Constitutional Litigation Clinic
15 Washington Street
Newark, New Jersey 07102
201-648-5687
ATTORNEYS FOR URBAN LEAGUE Plaintiffs

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,
Plaintiffs,
v.
THE MAYOR AND COUNCIL OF
CARTERET, et al.,
Defendants.

O&Y OLD BRIDGE DEVELOPMENT
CORP.,
Plaintiff,
v.
THE TOWNSHIP OF OLD BRIDGE,
THE TOWNSHIP COUNCIL OF THE
TOWNSHIP OF OLD BRIDGE and
THE PLANNING BOARD OF THE
TOWNSHIP OF OLD BRIDGE,
Defendants.

WOODHAVEN VILLAGE, INC.,
Plaintiff,
v.
THE TOWNSHIP OF OLD BRIDGE,
THE TOWNSHIP COUNCIL OF THE
TOWNSHIP OF OLD BRIDGE and
THE PLANNING BOARD OF THE
TOWNSHIP OF OLD BRIDGE,
Defendants.

CARWOOD AT MADISON, INC.,
et al.,
Plaintiffs,
v.
THE TOWNSHIP OF MADISON and
THE STATE OF NEW JERSEY,
Defendants.

] SUPERIOR COURT OF NEW JERSEY
] CHANCERY DIVISION
] MIDDLESEX COUNTY

] Docket No. C-4122-73

] LAW DIVISION-MIDDLESEX COUNTY

] Docket No. L-009837-84 P.W.

] LAW DIVISION-MIDDLESEX COUNTY

] Docket No. L-036734-84 P.W.

] LAW DIVISION-MIDDLESEX COUNTY

] Docket No. L-7502-70 P.W.

Plaintiffs in Urban League having moved on April 3, 1985, to consolidate the Oakwood at Madison action with the other actions or, alternatively, to intervene in the Oakwood at Madison action and at the same time having moved to restrain defendants from issuing building permits or granting other approvals for construction by Oakwood at Madison, Inc., unless such approvals insure that 20 percent of the units constructed are affordable to, and maintained for 30 years for occupancy solely by, low and moderate income households and that construction of those units is phased with the construction of the market units, and Urban League plaintiffs having filed in support of said motion Affidavits of Eric Neisser, Esq., and Alan Mallach and a Memorandum of Law, and the defendant Township of Old Bridge having filed a letter-brief on April 8 interposing no objection to consolidation or intervention and leaving to the Court's sound discretion the matter of temporary restraints, and the Oakwood at Madison plaintiff having filed letter-briefs on April 10 and 13, 1985 in opposition to consolidation, intervention and temporary restraints, and Woodhaven plaintiff having filed a letter brief on April 16, 1985 opposing consolidation but taking no position with regard to intervention and temporary restraints, and the Urban League plaintiffs having filed a reply letter-brief on April 12, 1985, and the Court having reviewed all the papers submitted and having heard oral argument in open Court on May 10, 1985 from Eric Neisser, Esq. for Urban League plaintiffs, Frederick Mezey, Esq. for Oakwood at Madison plaintiff,

Stewart Hutt, Esq. for Woodhaven plaintiff, and Thomas Norman, Esq. for defendant Old Bridge Planning Board,

IT IS HEREBY O R D E R E D this 31 day of May, 1985, that:

1. The motion for consolidation or intervention is denied but Oakwood at Madison, Inc. and Beren Corp. are herewith joined as parties-defendant in Urban League of Greater New Brunswick, et al. vs. Mayor and Council of Carteret, et al., (Old Bridge), No. C-4122-73, for the limited purpose of insuring that 20 percent of the units they construct in Old Bridge are affordable to low and moderate income households, that adequate restrictions are imposed on the re-sale and re-rental of those units to assure continued occupancy for 30 years by low and moderate income households, and that construction of these units is phased with construction of the market units to guarantee construction of the former units, and provided further that the earlier service upon the attorney for Oakwood at Madison, Inc. and Beren Corp. of the motion papers herein, which included this Court's Orders of July 2, July 13, August 3, and November 13, 1984, concerning the Urban League and consolidated cases involving Old Bridge, shall constitute sufficient service to join Oakwood at Madison, Inc. and Beren Corp. as parties-defendant for the limited purpose specified in this paragraph.

2. Defendants Old Bridge Township, Old Bridge Township Council and Old Bridge Planning Board, and all their agents, employees, and other persons and entities acting in concert with them are hereby enjoined, pending further Order of this Court approving a phasing, affordability and re-sale/re-rental restriction plan for

Oakwood at Madison's project, from issuing building permits for construction of any units by Oakwood at Madison, Inc. or Beren Corp., pursuant to the Old Bridge Planning Board's Resolution of Final Subdivision Approval dated August 23, 1979 or the Planning Board's Resolution of Preliminary Approval of June 30, 1978, which is incorporated therein, after the issuance of building permits for the first 120 market units; Provided, however, that nothing herein shall prevent the municipal defendants from reviewing and processing any requests for additional approvals in connection with this project, including requests for site plan approval for the low and moderate income units, but not including requests for building permits.

3. Attorneys for Urban League plaintiffs, the municipal defendants, and defendants Oakwood at Madison, Inc. and Beren Corp. are hereby directed to attempt to agree upon a phasing, affordability, and re-sale/re-rental restriction plan for the Oakwood at Madison project and, should agreement prove impossible, to seek the assistance of Carla Lerman, the Master for Old Bridge, appointed by this Court's Order of November 13, 1984. Should agreement still prove unattainable, any party may apply to this Court on seven (7) days' written notice for a formal Order establishing phasing, affordability, and re-sale/re-rental restrictions for the Oakwood at Madison project.

4. Oakwood at Madison, Inc. and Beren Corp. are parties-defendant only for the specific purposes set forth herein. They shall be under no obligation to participate in any other aspect

of the instant cases, but may, should they so desire, elect to participate in any and all issues, *relating to them.*

Eugene D. Serrentelli
EUGENE D. SERRENTELLI, J.S.C.

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May 13, 1985

The Honorable Eugene D. Serpentelli
Judge, Superior Court
Ocean County Court House
Toms River, New Jersey 08754

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 P.W.

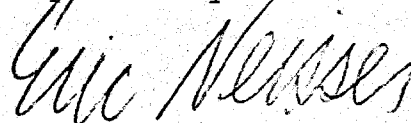
Woodhaven Village, Inc. v. the Township of Old
Bridge, et al.
No. L 036734-84 P.W.

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

Dear Judge Serpentelli:

In accordance with your oral ruling on the record on Friday on our motion concerning Oakwood at Madison, Urban League plaintiffs herewith submit an Order under the five-day rule. I took the liberty of adding to your oral ruling an express provision that our prior service of the motion on Oakwood's attorney was sufficient to join them as a party-defendant in our case for the limited purpose stated.

Respectfully submitted,



Eric Neisser
Attorney for Urban League Plaintiffs

encls

cc/Carla Lerman, Master
Jerome Convery, Esq.
Thomas Norman, Esq.
William Flynn, Esq.
Thomas Hall, Esq.
Stewart Hutt, Esq.
Frederick Mezey, Esq.

ERIC NEISSER, ESQ.
 JOHN M. PAYNE, ESQ.
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URBAN LEAGUE OF GREATER
 NEW BRUNSWICK, et al.,
 Plaintiffs,
 v.
 THE MAYOR AND COUNCIL OF
 CARTERET, et al.,
 ----- Defendants.

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION
 MIDDLESEX COUNTY

Docket No. C-4122-73

O&Y OLD BRIDGE DEVELOPMENT
 CORP.,
 Plaintiff,
 v.
 THE TOWNSHIP OF OLD BRIDGE,
 THE TOWNSHIP COUNCIL OF THE
 TOWNSHIP OF OLD BRIDGE and
 THE PLANNING BOARD OF THE
 TOWNSHIP OF OLD BRIDGE,
 ----- Defendants.

LAW DIVISION-MIDDLESEX COUNTY

Docket No. L-009837-84 P.W.

WOODHAVEN VILLAGE, INC.,
 Plaintiff,
 v.
 THE TOWNSHIP OF OLD BRIDGE,
 THE TOWNSHIP COUNCIL OF THE
 TOWNSHIP OF OLD BRIDGE and
 THE PLANNING BOARD OF THE
 TOWNSHIP OF OLD BRIDGE,
 ----- Defendants.

LAW DIVISION-MIDDLESEX COUNTY

Docket No. L-036734-84 P.W.

OAKWOOD AT MADISON, INC.,
 et al.,
 Plaintiffs,
 v.
 THE TOWNSHIP OF MADISON and
 THE STATE OF NEW JERSEY,
 ----- Defendants.

LAW DIVISION-MIDDLESEX COUNTY

Docket No. L-7502-70 P.W.

O R D E R

Plaintiffs in Urban League having moved on April 3, 1985, to consolidate the Oakwood at Madison action with the other actions or, alternatively, to intervene in the Oakwood at Madison action and at the same time having moved to restrain defendants from issuing building permits or granting other approvals for construction by Oakwood at Madison, Inc., unless such approvals insure that 20 percent of the units constructed are affordable to, and maintained for 30 years for occupancy solely by, low and moderate income households and that construction of those units is phased with the construction of the market units, and Urban League plaintiffs having filed in support of said motion Affidavits of Eric Neisser, Esq., and Alan Mallach and a Memorandum of Law, and the defendant Township of Old Bridge having filed a letter-brief on April 8 interposing no objection to consolidation or intervention and leaving to the Court's sound discretion the matter of temporary restraints, and the Oakwood at Madison plaintiff having filed letter-briefs on April 10 and 18, 1985 in opposition to consolidation, intervention and temporary restraints, and Woodhaven plaintiff having filed a letter brief on April 16, 1985 opposing consolidation but taking no position with regard to intervention and temporary restraints, and the Urban League plaintiffs having filed a reply letter-brief on April 12, 1985, and the Court having reviewed all the papers submitted and having heard oral argument in open Court on May 10, 1985 from Eric Neisser, Esq. for Urban League plaintiffs, Frederick Mezey, Esq. for Oakwood at Madison plaintiff,

Stewart Hutt, Esq. for Woodhaven plaintiff, and Thomas Norman, Esq. for defendant Old Bridge Planning Board,

IT IS HEREBY O R D E R E D this _____ day of May, 1985, that:

1. The motion for consolidation or intervention is denied but Oakwood at Madison, Inc. is herewith joined as a party-defendant in Urban League of Greater New Brunswick, et al. vs. Mayor and Council of Carteret, et al., (Old Bridge), No. C-4122-73, for the limited purpose of insuring that 20 percent of the units Oakwood at Madison, Inc. constructs in Old Bridge are affordable to low and moderate income households, that adequate restrictions are imposed on the re-sale and re-rental of those units to assure continued occupancy for 30 years by low and moderate income households, and that construction of these units is phased with construction of the market units to guarantee construction of the former units, and provided further that the earlier service upon the attorney for Oakwood at Madison, Inc. of the motion papers herein, which included this Court's Orders of July 2, July 13, August 3, and November 13, 1984, concerning the Urban League and consolidated cases involving Old Bridge, shall constitute sufficient service to join Oakwood at Madison, Inc. as a party-defendant for the limited purpose specified in this paragraph.

2. Defendants Old Bridge Township, Old Bridge Township Council and Old Bridge Planning Board, and all their agents, employees, and other persons and entities acting in concert with them are

hereby enjoined, pending further Order of this Court approving a phasing, affordability and re-sale/re-rental restriction plan for Oakwood at Madison's project, from issuing building permits for construction of any units by Oakwood at Madison, Inc., pursuant to the Old Bridge Planning Board's Resolution of Final Subdivision Approval dated August 23, 1979 or the Planning Board's Resolution of Preliminary Approval of June 30, 1978, which is incorporated therein, after the issuance of building permits for the first 120 market units; Provided, however, that nothing herein shall prevent the defendants from reviewing and processing any requests for additional approvals in connection with this project, including requests for site plan approval for the low and moderate income units, but not including requests for building permits.

3. Attorneys for Urban League plaintiffs, the municipal defendants, and defendant Oakwood at Madison, Inc. are hereby directed to attempt to agree upon a phasing, affordability, and re-sale/re-rental restriction plan for the Oakwood at Madison project and, should agreement prove impossible, to seek the assistance of Carla Lerman, the Master for Old Bridge, appointed by this Court's Order of November 13, 1984. Should agreement still prove unattainable, any party may apply to this Court on seven (7) days' written notice for a formal Order establishing phasing, affordability, and re-sale/re-rental restrictions for the Oakwood at Madison project.

EUGENE D. SERPENTELLI, J.S.C.

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May 17, 1985

The Honorable Eugene D. Serpentelli
Judge, Superior Court
Ocean County Court House
CN 2191
Toms River, New Jersey 08754

RE: Urban League v. Carteret
(Old Bridge)

Dear Judge Serpentelli:

I am in receipt of Mr. Mezey's letter of May 15 and attached proposed Order. We strenuously object to the Order because it misstates your Honor's rulings in several key respects.

Most importantly, your Honor clearly stated that the Town was enjoined from granting building permits beyond the first 120 units but Mr. Mezey for the first time now suggests the number 196, never mentioned in his papers or in Court, and then proposes that only "construction", and not "issuance" of "permits" is restrained (see his proposed Findings 8 and 9 and his proposed Order, Para. 2). We believe that permitting more than the first 120 units would seriously jeopardize Urban League's rights to "guaranteed" production of the set-aside and that enjoining the municipal defendants' formal permit issuance is both easier and more appropriate than enjoining the use of bulldozers by a private party. Second, your Honor stated that the injunction would continue until there was a Court-approved plan for phasing of construction, affordability and re-sale/re-rental controls, as required by Mount Laurel II, although you urged some flexibility in the phasing of this particular project. We believe that the wording of Mr. Mezey's Finding 5 and Order Paragraph 1 ("accomplish a reasonable and appropriate method of development") is far too general to reflect your Honor's ruling and to protect the Urban League's rights.

The Hon. Eugene D. Serpentelli
May 17, 1985
Page 2

For the reasons stated here and by your Honor in Court, we submit that the proposed Order which we submitted to your Honor and the parties on May 13 should be signed, with appropriate amendments, most importantly to Paragraph 1 of our proposed Order, to reflect the fact, first made apparent by Mr. Mezey's proposed order, that Beren Corp. as well as Oakwood at Madison, Inc. should be joined as parties-defendant for the limited purpose stated. We would also have no objection to adding to Paragraph 1 of the Order the last sentence of Mr. Mezey's proposed Finding 10 that "They shall not be involved, unless they voluntarily choose to become so involved, in the other issues of this case." Please let me know if you wish us to submit a revised Order with these two or other modifications.

Sincerely yours,

Eric Neisser
Attorney for Urban League
Plaintiffs

cc: Frederick Mezey, Esq.
Thomas Hall, Esq.
Dean Gaver, Esq.
Stewart Hutt, Esq.
Jerome Convery, Esq.
Thomas Norman, Esq.
William Flynn, Esq.

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May 23, 1985

The Honorable Eugene D. Serpentelli
Judge, Superior Court
Ocean County Court House
Toms River, New Jersey 08754

Re: Urban League vs. Carteret, et al. (Old Bridge)
C-4122-73

Dear Judge Serpentelli:

We are in receipt of Mr. Mezey's second proposed order and the accompanying letter of May 20. The Order, to the degree that it adopts most of the language from our proposed Order, is far more acceptable than its predecessor. However, it retains some of the defects noted in our letter of May 17 -- e.g., vague and imprecise findings and building permits for 196 rather than 120 units -- and inexplicably drops reference to Beren Corp. in Paragraphs 1-3 of the Order. With regard to the numbers, we note that 196 units would be 16 1/3% of the 1200 market units approved by the Township and that the Planning Board agrees with us that the Order should permit no more than 120 units.

Far more importantly, however, it attempts through a vague reference to the 1977 Stipulation and modification of the language to "low or moderate income households" (Proposed Order Para. 1) to introduce an interpretation of Oakwood's Mount Laurel obligation first presented to the Court through Mr. Mezey's accompanying letter, which is in all but form a motion for rehearing. The motion is untimely, inappropriate, and in any case wrong on the merits. Mr. Mezey's position appears to be that Oakwood's obligation is not to build 10% low and 10% moderate, but all moderate, of which, half are to be age-restricted. Mr. Mezey seeks to introduce unsworn allegations, unsupported by either official documents or reference to sources, which were clearly available to him during the five weeks between the service and the hearing of the motion. If he wishes to suggest that Judge Furman placed some interpretation upon the language of the Stipulation, which does not say that the 350 units were to be moderate income only, when he considered the matter in open Court, it is clearly Mr. Mezey's burden to provide this Court and the parties with a copy of the transcript of Judge

Furman's ruling, which was, as I established, neither noted on the case docket nor embodied in a written order. Moreover, even if Mr. Mezey is correct that he was to build 175 senior citizen housing units and 175 moderate income family units, that does not mean that the senior citizen units could not be affordable to low income senior citizens, thus providing the 10%-10% mix for which he denies responsibility. Moreover, the Stipulation expressly provides for Court review of all subdivision and site approvals, this Court has already ruled that it stands in Judge Furman's shoes, and the Supreme Court has already ruled that even final approvals can be modified to satisfy the Mount Laurel obligation.

More importantly, however, your Honor did not rule on May 10th on either the mix or affordability standards in granting the Urban League's motion for restraints. Rather, as our first proposed Order stated, your Honor enjoined building permits beyond the first 120 market units "pending further Order of this Court approving a phasing, affordability and re-sale/re-rental restriction plan for Oakwood at Madison's project" and directed the parties to attempt to resolve these matters through negotiation, with the help of the Master or, failing that, to return to the Court for formal adjudication. Should we fail to reach agreement, and the Urban League would have much preferred to have spent the last two weeks in serious negotiations rather than in insuring implementation of your Honor's unambiguous oral ruling, then it would be appropriate for Mr. Mezey to present, through sworn affidavits, official documents, transcripts, and, if necessary, live testimony, his position on the appropriate affordability standards and mix. The Court could then resolve the issue in light of the history of the Oakwood case, including the conduct of the developer and the Township, present economic realities, and the mandates of our State Supreme Court concerning the constitutional obligation.

For the Court's convenience, we are submitting herewith, a revised form of our prior Order, joining Beren Corp. and adding Paragraph 4 of Mr. Mezey's latest Order, which indicates, as your Honor ruled, that these new parties-defendant may, but need not, participate in any of the other issues involved in these actions.

Please let us know if anything further would be of assistance to the Court.

Respectfully submitted,



Eric Neisser
Co-Counsel for Urban League

cc/Carla Lerman
Thomas Norman, Esq.
William Flynn, Esq.
Frederick Mezey, Esq.
Dean Gaver, Esq.
Thomas Hall, Esq.
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of the instant cases, but may, should they so desire, elect to participate in any and all issues.

EUGENE D. SERPENTELLI, J.S.C.