

Old Bridge

(1985)

Stipulation of settlement
+ letter (3 pgs)
- w/ draft order

36

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FILE NO.

July 15, 1985

Jerome J. Convery
Township Attorney
Township of Old Bridge
1 Old Bridge Plaza
Old Bridge, New Jersey

Re: O&Y (et al) v. Twp of Old
Bridge

Dear Jerry:

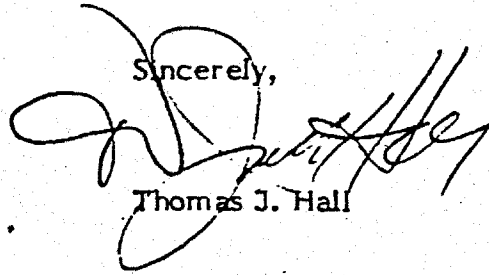
I have been instructed by my client, O&Y Old Bridge Development Corp. ("O&Y") to prepare and transmit the attached draft Stipulation of Settlement, with an attachment, as a means of moving the discussion concerning a possible settlement between our clients forward.

Within the document, wherever possible, I have attempted to resolve issues which will be of importance to Woodhaven Village, but I must stress that this document has not been seen by, much less approved by, Woodhaven Village or its legal representatives. As the Township is aware, O&Y and Woodhaven have been working cooperatively in attempting to resolve their common differences with the Township. That spirit of cooperation still prevails, but due to the exigent circumstances, it has not been possible for O&Y to confer with Woodhaven in preparation of this draft. Accordingly, the Township should be aware that the concepts contained in the draft represent only O&Y's position and we do not purport to speak for Woodhaven. In this same context, the references to Woodhaven contained in the draft have been made out of courtesy to Woodhaven, and we do not know whether they would accept or reject the language which we have taken the liberty to include on their behalf.

Mr. Jerome Convery
Township Attorney
July 15, 1985

Please be assured of our continued willingness to meet with you and with the Township at any time to discuss the litigation, and be assured of our firm desire to enter into a comprehensive settlement with the Township and the other parties.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas J. Hall', written over the printed name.

Thomas J. Hall

cc: All parties on Service List

SEND FEDERAL EXPRESS

SERVICE LIST FOR PARTIES IN URBAN LEAGUE/O & Y DEVELOPMENT CASE

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Co-Counsel for Plaintiff

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et. al.,

Plaintiffs,

v.

THE MAYOR AND COUNCIL of the
BOROUGH OF CARTERET, et al.,

Defendants,

and

O&Y OLD BRIDGE DEVELOPMENT
CORPORATION, a Delaware
Corporation,

Plaintiff,

v.

THE TOWNSHIP OF OLD BRIDGE in
the COUNTY OF MIDDLESEX, a
Municipal Corporation of the
State of New Jersey, THE TOWNSHIP
COUNCIL OF THE TOWNSHIP OF
OLD BRIDGE, THE MUNICIPAL
UTILITIES AUTHORITY OF THE
TOWNSHIP OF OLD BRIDGE, THE
SEWERAGE AUTHORITY OF THE
TOWNSHIP OF OLD BRIDGE and
THE PLANNING BOARD OF THE
TOWNSHIP OF OLD BRIDGE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

DOCKET NO. C-4122-73

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY/
OCEAN COUNTY
(Mount Laurel II)

DOCKET NO. L-009837-84 P.W.

Civil Action

ORDER

This matter having been opened to the Court by O&Y/Old Bridge Development Company, Henry A. Hill, Esquire and Dean A. Gaver, Esquire appearing, and in the presence of plaintiff Woodhaven Village, Stewart Hutt, Esquire appearing, and in the presence of the Urban League, Eric Neisser and John Payne, Esquires appearing, and in the presence of the Township of Old Bridge Municipal Utilities Authority, William E. Flynn, Esquire appearing, and the Township of Old Bridge Planning Board, Thomas Norman, Esquire appearing, and the Township of Old Bridge and the Township Council of Old Bridge, Jerome J. Convery, Esquire appearing; and the Court having reviewed the papers and memoranda submitted and good cause having been shown:

IT IS on this day of , 1985:

ORDERED, that the following Stipulation is hereby accepted by all parties hereto and by the Court:

STIPULATION OF SETTLEMENT

I. Parties to the Settlement

This is an agreement which has been reviewed and accepted by this Court and may be enforced by a motion brought pursuant to Rule 1:10-5 for enforcement of litigant's rights. This agreement is between the following parties:

1. O&Y Old Bridge Development Corporation, a Delaware Corporation, qualified to do business in the State of New Jersey. As used in this Stipulation, O&Y Old Bridge Development Corporation (hereinafter "O&Y") also refers to any successors or assigns of O&Y Old Bridge Development Corp.
2. Woodhaven Village, a corporation organized to do business in the State of New Jersey. As used in this Stipulation, Woodhaven Village (hereinafter "Woodhaven") also refers to any successors or assigns of Woodhaven Village.

3. The Urban League of Greater New Brunswick (a/k/a The Civic League of Greater New Brunswick), (hereinafter "Urban League"), a nonprofit corporation organized under the laws of the State of New Jersey. As used in this Stipulation, Urban League also refers to any successors or assigns of Urban League.

4. The Township of Old Bridge in the County of Middlesex, State of New Jersey which includes, but is not limited to, the following entities and officials:

- (a) The governing body of the Township of Old Bridge;
- (b) The Planning Board of the Township of Old Bridge;
- (c) The Mayor; all elected officials and professional employees of the Township of Old Bridge, including but not limited to, the construction code official, and Township Engineer, the Township Planning Consultant, the Township Attorney and any other individuals providing consultative services to the Township with reference to the land development process. Hereinafter, all entities or individuals associated with the Township of Old Bridge shall be referred to as "Township".

5. The Township of Old Bridge Municipal Utilities Authority, (hereinafter "O.B.M.U.A."), a body corporate and politic organized under the laws of the State of New Jersey, and any successor agency which may be created within the Township of Old Bridge to purvey water within the corporate boundaries of the Township. Hereinafter, O.B.M.U.A. shall mean and refer to any officer, employee or member of the Board of the O.B.M.U.A. as well as the Authority itself.

II. Recitations

WHEREAS, O&Y owns approximately 2,600 contiguous acres of land within the Municipality of the Township of Old Bridge, and has held this land assembly for a number of years with intent to develop, and;

WHEREAS, Woodhaven owns approximately 1,400 contiguous acres of land within the Municipality of the Township of Old Bridge and have held their land assembly for a number of years with intent to develop; and

WHEREAS, Woodhaven and/or O&Y intend to construct residential housing, commercial buildings, office buildings and industrial buildings within the Township of Old Bridge in conformity with an overall plan of development; and

WHEREAS, on August 9, 1979, O & Y formally requested the Old Bridge Planning Board to amend the application procedures of the Land Development Ordinance to permit O & Y to develop its lands in conformity with an overall development plan; and

WHEREAS, O & Y filed suit on February 18, 1981, Docket No. L-32516-80 P.W. seeking relief from the Old Bridge Land Development Ordinance then prevailing; and

WHEREAS, by formal resolution of Council, enacted May 3, 1982, the governing body of the Township of Old Bridge directed:

- (a) that O & Y be allowed to develop its lands in accordance with an overall development plan;
- (b) that O & Y be permitted to use its lands for residential, industrial, commercial and office development;
- (c) that O & Y be accorded an overall residential density of four (4) dwelling units per acre applicable to the 2,565 acres it then owned, for a total of 10,260 units; and
- (d) that the Land Development Ordinance be amended accordingly; and

WHEREAS, on April 5, 1983, The Old Bridge Township Council adopted a new Land Development Ordinance; and

WHEREAS, on May 22, 1983, O & Y filed an application for approval of a plan to develop its lands; and

WHEREAS, on December 14, 1983, 206 days after filing, Planning Board voted to deny O & Y's development application without prejudice; and

WHEREAS, on January 8, 1984, O & Y reinstated its inactive 1981 lawsuit; and

WHEREAS, on February 14, 1984, O & Y withdrew its 1981 complaint and substituted therefor an action against the Township of Old Bridge and the other defendants, Docket No. L-009837-84 P.W. alleging, inter alia, that the Old Bridge Township Land Development Ordinance was not in conformance with the constitutional requirements set forth in Southern Burlington County NAACP v. Township of Mt. Laurel 92 N.J. 158 (1983), hereinafter Mount Laurel II and that the Old Bridge Township Land Development Ordinance was procedurally and substantively defective, which defects impaired the ability of the Township to provide realistic housing opportunities for lower income households; and

WHEREAS, in the suit, O & Y sought relief from the Court to assist O & Y in realizing its development in return for offering the public interest benefit of providing substantial housing affordable to lower income households; and

WHEREAS, Woodhaven filed suit against the Township of Old Bridge and related defendants on May 31, 1984, also alleging violations of the standards of Mount Laurel II and similarly seeking relief; and

WHEREAS, on June 18, 1984, O & Y amended its Complaint to include the Old Bridge Municipal Utilities Authority (O.B.M.U.A.) and the Old Bridge Township Sewerage Authority, as co-defendants; inasmuch as these parties control utilities essential to the resolution of the litigation; and

WHEREAS, O & Y and Woodhaven have reached an agreement with the Old Bridge Township Sewerage Authority for the provision of sewerage systems to

serve their developments and the Old Bridge Township Sewerage Authority has now been dismissed as a defendant in this litigation; and

WHEREAS, on July 2, 1984, the Township entered a stipulation acknowledging its obligation to provide 2,414 lower income housing units by 1990; which number has been modified by the acceptance on the part of all parties hereto of credits for prior housing efforts, so that the number of housing units agreed by all parties and the Court to be Old Bridge Township's fair share obligation by 1990 is 2,131 affordable housing units; and

WHEREAS, on July 13, 1984, this Court found Old Bridge Township's 1983 Land Development Ordinance not to be in compliance with the constitutional requirements of Mount Laurel II and Old Bridge Township was afforded reasonable time to redraft and adopt a compliant Ordinance; and

WHEREAS, the Township of Old Bridge did not enact a compliant Ordinance and on November 13, 1984 this Court appointed Carla Lerman, P.P. AICP as Special Master to review the Township's Land Development Ordinances and to assist the parties to negotiate a settlement of all issues in this case; and

WHEREAS, Ms. Lerman's assistance has been instrumental in inducing the parties to resolve the issues of this case; and

WHEREAS, the Township is willing to meet its constitutional obligation by modifying its existing Land Development Ordinance; and

WHEREAS, both O & Y and Woodhaven have committed themselves to incorporate substantial opportunities for housing for lower income families in their developments; and

WHEREAS, the Urban League concurs in the methodology proposed to provide such lower income housing; and

WHEREAS, the Board of Commissioners of the O.B.M.U.A. on May 22, 1985 unanimously passed a Resolution,

- a) recognizing that there is a pressing need to obtain additional water supplies to serve their franchise area;
- b) recognizing that the New Jersey Department of Environmental Protection (N.J.D.E.P.) has curtailed additional groundwater diversion rights;
- c) recognizing that the N.J.D.E.P. will substantially reduce present groundwater diversion rights effective January 1, 1987;
- d) recognizing that the O.B.M.U.A. has conducted an extensive investigation of all possible water sources;
- e) recognizing that the most dependable long term source of water in the quantity required is from the Middlesex Water Company (hereinafter, "M.W.C.") in Edison;
- f) recognizing that O & Y and Woodhaven have offered to finance a plan to construct a transmission pipeline to connect the O.B.M.U.A. facilities to those of the M.W.C.; and
- g) directing the O.B.M.U.A. attorney and engineer to negotiate with O & Y, Woodhaven, the M.W.C. and the Borough of Sayreville regarding an agreement to finance and construct a water transmission main connecting the M.W.C. facilities to the O.B.M.U.A. facilities; and

WHEREAS, O & Y and Woodhaven's proposal to finance construction of the water transmission facilities is conditional upon satisfactory resolution of all other matters under the jurisdiction of the Township that are necessary to proceed with their developments; and

WHEREAS, comprehensive settlement of all issues currently in litigation between the Township, O & Y, Woodhaven, and the Urban League would provide

additional potable water supplies to the entire Township, thus providing enhanced opportunities for the construction of lower income housing, additional market housing and increased non-residential development potential for the Township of Old Bridge in general; and

WHEREAS, the parties agree to the terms and conditions of the stipulation as set forth below and the Master has reviewed and recommended to this Court the acceptance of this Stipulation of Settlement which the Master has found to be in compliance with the constitutional requirements set forth in Mt. Laurel II; and

WHEREAS, the settlement of all issues in this case would be in the public interest, and such settlements are encouraged by this Court.

III. MATTERS RESOLVED BY AGREEMENT

III-A. Mount Laurel II Compliance

III-A.1 Establishment of an Agency:

Old Bridge Township shall establish or contract with an agency ("Township Agency") to screen and place all applicants for low and moderate (hereinafter, generally referred to collectively as "lower income") housing. The Township Agency shall also be responsible for maintenance of income restrictions, resale controls, and other mechanisms which may be necessary in order to assure that these units will continue to be affordable to lower income households over time. This Agency shall either be part of the Municipal Government of the Township of Old Bridge or directly controlled by the Township of Old Bridge; or, if a contract is entered into with another entity to carry out the responsibilities of the Township Agency, the Township of Old Bridge shall be exclusively responsible for the execution and implementation of this contract.

III-A.2 Ten (10%) percent Set-aside:

All developers building upon Planned Development zoned lands within the Township of Old Bridge shall set aside ten (10) percent of the total number of the

residential dwelling units within their developments as housing affordable to low and moderate income families.

Low and moderate income housing for rental or for sale shall be priced so that, on the average, it will be affordable to households earning ninety (90) percent of the limits established for each of the income groupings, such that the housing provided for low income households shall, on the average, be affordable to families earning forty-five (45) percent of the median income for the Middlesex, Somerset, Hunterdon Primary Metropolitan Statistical Area and housing for moderate income households shall, on the average, be affordable to persons earning seventy-two (72) percent of the P.M.S.A. median income for the region, provided that in no event shall the "affordability" criteria of units for low income families exceed fifty (50) percent of the P.M.S.A. median income for the region or in the case of moderate income families, eighty (80) percent of the P.M.S.A. median income for the region.

11 county region

The Township's Land Development Ordinance shall be amended, substantially in accord with Appendix A, to include a requirement of a ten percent (10%) setaside for housing designed to be affordable to lower income households, which requirement shall be applicable to all residential developments zoned "Planned Development", regardless of size or classification.

III-A.3 Provisions for Lower Income Housing

Such lower income housing opportunities shall be provided as follows:

- a) If the low income housing units are "for sale":
 - (i) Housing units shall be provided which shall be housing affordable to families of low income equal to four (4) percent of the total number of housing units sold or rented within a particular subdivision within the development; and
 - (ii) Housing units shall be provided which shall be housing affordable to families of moderate income equal to six (6)

MS 50-80

percent of the total number of housing units sold or rented within a particular subdivision within the development.

b) If Developers elect to provide low income rental housing;

- (i) Rental housing units shall be provided which shall be affordable to families of low income equal to three (3) percent of the total number of all housing units sold or rented within a particular subdivision within the development; and
- (ii) seven (7) percent of the total number of housing units sold or rented within a particular subdivision within the development shall be housing affordable to moderate income households, as that term is defined herein and such moderate income units may be units either for rent or for sale.

III-A.4 Compliance Status Report

All developers with a lower income housing obligation shall provide the Township Agency with a Compliance Status Report as more fully set forth in Appendix A, attached hereto.

III-A.5 Housing Plan

Developers shall supply, as part of their initial application for development within any Planned Development to the Old Bridge Planning Board, a "Housing Plan". This Housing Plan shall set forth the mechanisms whereby the developer will construct lower income housing. Such a Housing Plan shall indicate the approximate sizes, the numbers, types, locations, price ranges, price controls, deed restrictions and marketing strategies for the lower income housing, with a phasing schedule for the actual delivery of such units as part of the overall development in tandem with the market units. In particular, the Housing Plan shall provide a mechanism to insure that the units remain affordable to lower income households for a period of twenty (20) years from the date of issuance of the initial Certificate of Occupancy for each such lower income housing unit.

III-A.6 Waiver of Township Fees

Old Bridge Township agrees to waive all applicable application and permit fees related to lower income housing. It is expressly understood this waiver applies only to those housing units specifically designated as "lower income housing" as that term is defined in this Order.

III-B.1 Rent Controls

All developments providing a ten percent (10%) low income housing setaside shall be exempt from all Municipal rent control regulations except such controls as provided herein that are specifically applicable to low^{er} income housing.

III-B.2 Suspension of Lower Income Housing Obligation

The Township's lower income housing obligation to the year 1990 is 2,131. Upon 2,131 lower income housing units being constructed in the Township prior to the end of the year 1990, the Township will have the right to suspend the construction of further lower income housing units. Such suspension shall continue until such time as the Township's obligation for lower income housing beyond the year 1990 is determined. Such suspension of lower income housing shall not affect O & Y or Woodhaven's right to construct market housing.

IV. LAND DEVELOPMENT STANDARDS

IV-A Ordinance Revisions

The Township of Old Bridge agrees to amend its Land Development Ordinance to meet its constitutional as directed by this Court on July 13, 1984, which amendments will be enacted by the Governing Body of the Township in accordance with a time schedule acceptable to this Court.

IV-A.1 Objectives

The Ordinance Amendments to be adopted by the Township shall have the following objectives:

- a. Ensuring the construction of affordable housing, maintained as affordable over time, using procedures substantially in accord with the concepts contained in Appendix A, attached hereto;
- b. Ensuring the rapid processing of development applications, using a simplified two-stage subdivision/site plan review process, with procedures substantially in accord with the concepts contained in Appendix B, attached hereto;
- c. Eliminating cost-generative standards, using standards substantially in accord with the concepts contained in Appendix C, attached hereto.

IV-A-2 Accelerated Review Process:

1. Expedited Processing

Applications for subdivisions and/or site plans within a Planned Development will, in lieu of any application or other review fees, supply sufficient funds to permit adequate professional assistance to review such development application.

As provided in Appendix A, developers supplying lower income housing as part of Planned Developments shall have available to them an optional "expedited processing" procedure set forth in Appendices A and B.

Under the "expedited processing" procedure, a developer may request the Township to engage "outside professionals", to supplement the planning/engineering review by the Township, to be paid for by funds supplied by the applicant. Such funds will be placed in escrow, and invoices for professional services rendered on behalf of the Township for such professional reviews will be required prior to release of such funds. The developer shall receive full credit for all application fees paid to the Planning Board as required by Ordinance, and may be charged an additional amount not to exceed fifty (50%) percent of the base application fees to provide such additional reviews.

2. Master's Review

Only those Planned Developments utilizing the Expedited Processing procedures shall have available to them a procedure to appeal to the Court-Appointed Master which appeal procedure is more fully set forth in Appendix A.

V. PROVISIONS SPECIFIC TO O & Y AND WOODHAVEN

V-A Vesting

Under the terms of this settlement, O & Y and Woodhaven shall have all the rights and privileges, specific unit counts, specific development rights and specific land development standards set forth herein, vested for a period of twenty (20) years from the date of entry of this Order.

V-A.1 O & Y Unit Count

O & Y shall be permitted to build four (4) units per gross acre (10,560 units based on their present holdings of 2,640 acres), ten percent (10%) of which, (1,056 units), shall be reserved as housing affordable to lower income households, and the remainder of which shall be housing without price controls or rent control restrictions.

V-A.2 Woodhaven Unit Count

Woodhaven shall be permitted to build four (4) units per gross acre (5,820 units based on their present holdings of 1,455 acres), ten percent (10%) of which, (582 units), shall be reserved as housing affordable to lower income households, and the remainder of which shall be housing without price controls or rent control restrictions.

V-B Development Rights Specific to O & Y and Woodhaven

V-B.1 Settlement Plan

Attached hereto as Plate A is the O & Y Settlement Plan and attached hereto as Plate B is the Woodhaven Settlement Plan, each of which shows their land holdings in the Township of Old Bridge that are subject of this Stipulation of Settlement; and

- a) designates those lands to be used for residential development;
- b) designates those lands to be used for retail commercial development;
- c) designates those lands to be used for industrial and/or office and/or hotel-motel development;
- d) designates those lands to be set aside for open space use;
- e) designates those specific areas within the residential lands that may be used for midrise apartment development; and
- f) shows the approximate alignment of the basic internal road system.

V-B.2 Additional Lands

O & Y or Woodhaven may acquire additional lands ("outparcels") from time to time which, provided they are contiguous to their lands owned at this time as listed in Schedules B and C, shall be treated as if they are part of the original land holdings of O & Y and/or Woodhaven and incorporated into their Settlement Plan. Specifically, such outparcels may be developed at four (4) dwelling units per acre and the number of dwelling units attributable to the outparcels shall be added to the total number of residential dwelling units permitted within their respective developments provided, however, that the number of low income housing units required to be built within the development shall also be increased by ten percent (10%) of the number of additional dwelling units attributable to the acquired outparcels.

V-B.3 Approval Procedures

O & Y and Woodhaven shall each have the right to develop their lands in accordance with the Settlement Plan applicable to their lands immediately upon entry of this Order provided:

- a) a Preliminary Plan of Subdivision or a Preliminary Site Development Plan shall be submitted to the Township Planning Board for its review and approval after a public hearing each time any of the lands within the Settlement Plan are proposed for development;

- b) a Final Plan of Subdivision or Final Site Development Plan shall be submitted to the Township Planning Board which shall be approved without public hearing;
 - i) provided the Final Plan is in conformity with the Preliminary Plan, as approved by the Board; and
 - ii) provided such Preliminary and Final Subdivision and Site Development Plans as submitted shall be consistent with the land uses and general alignment of the major road systems as shown on the Settlement Plan; and
 - iii) provided such Preliminary and Final Subdivision and Site Development Plans as submitted shall be in conformity with the Development Standards and Procedures attached hereto as Appendices B and C.

V-B.4 Development Standards:

V.B.4.1: General Standards

The Township, O&Y and Woodhaven agree to abide by the procedures, principles and standards set forth in Appendices A, B and C, attached hereto and made part hereof. The provisions in the attached appendices shall be applicable exclusively to O&Y and Woodhaven immediately upon entry of this Order and such Land Development Ordinance amendments purporting to affect Planned Developments as may be subsequently adopted by the Township shall not apply to O&Y and Woodhaven without their written consent.

V.B.4.2. Additional Standards, Studies and Reports

The Township agrees that as to O&Y and Woodhaven's specific sites, set forth in the Landholdings List referenced below, there shall be no Environmental Impact Statement, Community Impact Statement, Fiscal Impact Statement, Historical Features Study, or other similar reports or studies required.

The Township agrees that as to O&Y and Woodhaven's specific sites, there shall be no aquifer recharge requirement, inasmuch as O&Y and Woodhaven have made arrangements with the O.B.M.U.A. for potable water, and have agreed to abide by the State requirement that post-development runoff will not exceed the pre-development rate, and will provide such natural recharge through non-structural means whenever practical and feasible.

V-B.5 Housing Plan

O & Y and Woodhaven shall each file a Housing Plan with the Planning Board, but their Housing Plans shall not be required until O & Y or Woodhaven receive Certificates of Occupancy for ten percent (10%) of the market housing units constructed within their respective developments. They shall, however, be obligated to commence construction of the required low income housing component in accordance with the Phasing Schedule set out in Appendix A.

V-C Site Phasing Provisions

V-C.1 Industrial/Commercial Development

O & Y shall be permitted to construct office/retail, commercial/industrial space on their PD/SD zoned lands which are included in the Settlement Plan at an average overall Floor Area Ratio of fifty percent (50%), which lands are contained in two separate parcels as follows:

- a) 237 acres on the northerly side of Texas Road in the vicinity of State Highways 9 & 18;
Total Permitted Gross Floor Area 5,162,000 square feet;
- b) 42 acres on the southerly side of Texas Road in the vicinity of State Highways 9 & 18;
Total Permitted Gross Floor Area 915,000 square feet, with no lower income housing obligation attendant upon this right.

V-C.2 Shopping Center Site

O & Y shall also be permitted to construct a regional shopping center of up to 1,500,000 square feet on approximately eighty-five (85) acres of their lands designated for this purpose, located on the southerly side of the proposed Trans Old Bridge Connector Road in the vicinity of its juncture with State Highway 18, with no lower income housing obligation attendant to this right.

V-C.3 Optional Shopping Center Site

O & Y shall have the option of constructing the shopping center referred to in paragraph V-C.2 on the PD/SD lands referred to in subparagraph V-C.1. If this option is exercised, the total permissible Gross Floor Area of all buildings to be built on these lands (exclusive of the shopping center) shall be reduced by fifty percent (50%) of the total land area of the parcel developed as a shopping center. In the event of the exercise of this option those lands reserved for a shopping center referenced in paragraph V-C.2 may be used for the construction of housing.

V-C.4 Midrise Apartments

O & Y shall be permitted to construct midrise apartments not exceeding eight (8) stories in height on its lands which apartments may be for rent or for condominium ownership subject to the following limiting conditions:

- a) no dwelling unit within a midrise apartment will be made available as a lower income housing unit;
- b) midrise apartments will be limited to those areas designated on the Settlement Plan and will not be permitted in any other location without a specific approval from Planning Board.
- c) the total number of apartment units within all midrise apartments shall not exceed ten percent (10%) of the total number of dwelling units permitted within the development;

*rental
but no
MFL rental*

- d) no building permit will be issued to construct a midrise apartment until at least twenty-five percent (25%) of the residential units within the development have been built.

V-D Off-Tract Improvements

It is specifically stipulated and understood that the portion of the existing Old Bridge Township Land Development Ordinance setting forth a scheme for offtract improvements is null and void, as a result of New Jersey caselaw. Under the applicable caselaw, the developers shall only be responsible for the provision of reasonable off-tract improvements directly attributable to and necessitated by their developments.

V-D.1 Storm Drainage

To the extent storm drainage matters are under the jurisdiction of the County, such matters shall not be subject to review by the Township and provided the developers meet the State law requirements that post-development stormwater runoff not exceed pre-development runoff rates, the Township shall not require exactions with regard to offsite stormwater facilities.

V-D.2 Offsite Traffic

O & Y's development is essentially bounded by roads not under the jurisdiction of the Township. Specifically State Highways 9 and 18 are within the jurisdiction of the State of New Jersey. Englishtown Road as well as that portion of Texas Road easterly of Englishtown Road are County roads. It is mutually agreed that Old Bridge Township may not condition approvals, require contributions or demand improvement relative to those roads within the jurisdiction of other governmental entitites.

O & Y recognizes that it has an obligation to provide improvements necessitated by its development to that portion of Texas Road westerly of Englishtown Road which is a Municipal road.

All other municipal roads that are impacted by O&Y's development are internal to the development; accordingly, with this single exception there are no offsite municipal roads affected by O&Y's development.

V-E Essential Utilities

V-E.1 Sanitary Sewerage System

The parties signatory hereto acknowledge that an agreement has been reached with the Old Bridge Township Sewerage Authority with respect to the provision of sewage service adequate to serve the complete projected requirements of both O & Y and Woodhaven. This agreement has previously been filed with the Court and is referenced herein as Addendum I.

V-E.2 Water

The parties signatory hereto acknowledge that an agreement to provide potable water supplies, not only to developments to be undertaken by O & Y and Woodhaven but also to serve other portions of Old Bridge Township, is being negotiated between O & Y, Woodhaven and the O.B.M.U.A. To resolve their mutually shared concern regarding the shortage of dependable long term potable water supplies, an informal Consortium has been formed consisting of the Borough of Sayreville, the O.B.M.U.A. and the two developers, O & Y and Woodhaven. The Consortium proposes to construct an eight mile water transmission pipeline from M.W.C. facilities in Edison, across the Raritan River, through the Borough of Sayreville, into the Township of Old Bridge and terminate at the O.B.M.U.A. treatment plant on Highway 18.

The line will be capable of delivering 30 M.G.D. at the point of crossing of the Raritan River. This capacity will be allocated: 10 M.G.D. to Sayreville, 10 M.G.D. to the developers with the remaining 10 M.G.D. covering the existing and future needs of the Township exclusive of the southwest quadrant where O & Y and Woodhaven have their developments.

While the O.B.M.U.A. recognize it is essential that it participates in this project and has passed a formal resolution acknowledging this fact, there are constraints making it difficult for the O.B.M.U.A. to commit to the project without a reasonably firm cost estimate and a public hearing.

To address unresolved issues concerning funding, O & Y and Woodhaven have proposed a financial plan. Under this plan, the developers will pay one-half of the O.B.M.U.A.'s cost of constructing the pipeline provided future water connection fees from their developments are allowed to offset against this cost plus interest. The developers have also proposed to carry the O.B.M.U.A.'s share of the construction cost of the pipeline until the O.B.M.U.A. can obtain the required funds from a bond issue. Although the O.B.M.U.A. is not in a position to grant formal approval at this time, the developers' proposal was very favorably received by the Board of Commissioners. Settlement of all housing, planning and development issues is a necessary precondition to reaching an agreement on the water issue. This Order constitutes such settlement.

V-F Additional Considerations

V-F.1 New Legislation. This Consent Order shall not be affected by any State, County or municipally imposed moratorium or phasing schedule which may become an option due to the passage of legislation or for any other reason. There shall be no increase in the densities provided to O & Y or Woodhaven, no increase in lower income housing obligations, nor any constraints placed on O & Y and Woodhaven as to timing, marketing considerations or price controls as a result of any legislation purporting to deal with "Mount Laurel II" considerations. O & Y has the right to build 10,560 housing units, and the obligation to provide 1,056 housing units affordable to lower income households, on the 2,640 acres it currently owns. Woodhaven has the right to build 5,280 housing units, and the obligation to provide 582 housing units affordable to lower income households, on the 1,455 acres it currently owns.

However, nothing contained herein shall deny any other benefits which may accrue to the Township of Old Bridge as a result of any legislation as affecting any other developer, nor shall the Township of Old Bridge be constrained, as a result of this Stipulation, from applying for and using any subsidy funds which may come into existence as a result of new legislation.

V-F.2 Potential Conflict. It is further provided that if there is conflict between any Ordinance now in existence or passed subsequent to this Order, this Order and the attached Appendices, as affecting the rights of O&Y, Woodhaven or the Township, shall control. In the event that any Ordinance passed by the Township which is designed to incorporate the concepts materially affects the rights intended to accrue to the parties through this Order, such Ordinance provisions shall not affect O&Y or Woodhaven without their written consent.

IT IS FURTHER ORDERED:

Upon entry of this Order and completion of final agreement as to water supply, this litigation is dismissed, and Old Bridge Township shall be entitled to a period of repose from further Mount Laurel litigation for six (6) years or as may be further provided by law. This Court retains jurisdiction of the case, and shall issue such further orders as necessary to achieve the construction of the proposed projects, including lower income housing, as provided herein.

DRAFT

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

Date:

We consent to the form and entry of this Order.

Henry A. Hill, Esquire
Attorney for O&Y Old Bridge Development Corp.

Dean A. Gaver, Esquire
Co-Counsel, O&Y Old Bridge Development Corp.

Stewart Hutt, Esquire
Attorney for Woodhaven Village

Jerome J. Convery, Esquire
Attorney for the Township of Old Bridge
and the Township Committee of the
Township of Old Bridge

Thomas Norman, Esquire
Attorney for the Planning Board
of the Township of Old Bridge

Eric Neisser, Esquire
Attorney for The Urban League

John Payne, Esquire
Co-Counsel, Urban League

William E. Flynn
O.B.M.U.A.

LIST OF APPENDICES ATTACHED HERETO:

1. Appendix A: Sets forth procedures to enable Old Bridge Township to meet its constitutional obligations regarding lower income housing.

APPENDICES NOT ATTACHED HERETO BUT REFERENCED HEREIN:

1. Appendix B. Proposed revisions to the Old Bridge Land Development Ordinance developed by the Developers-Township working group and embodied in Carl Hintz's memo of February 22, 1985. These revisions have been submitted to the Planning Board and the Township Engineer for their review, and are not included herein inasmuch as the Planning Board has not yet issued its report.
2. Appendix C. Sets forth substantive reforms proposed for the Old Bridge Township Land Development Ordinance. These revisions have been submitted to the Planning Board and the Township Engineer for their review, and are not included herein inasmuch as the Planning Board has not yet issued its report.

ADDENDUM REFERENCED HEREIN BUT NOT ATTACHED HERETO:

Addendum I: The Sewer Agreement

ADDITIONAL MATERIAL TO BE SUPPLIED

Plate A: The O&Y Concept Plan;

Plate B: The Woodhaven Concept Plan.

Schedule I: List of Landholdings as of July __, 1985: O&Y

Schedule II: List of Landholdings as of July __, 1985: Woodhaven Village.

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APPENDIX A

A.1. Purpose:

The material set forth herein is intended to form both a framework for the Township's adoption of Ordinance amendments, as well as to provide a mechanism to permit O&Y and Woodhaven to commence development immediately without waiting for the promulgation of a new Township Ordinance.

A.2 Definitions

"Affordable Housing" shall mean and refer to housing set aside for qualified Lower Income Households which is priced as follows:

- i. Housing for sale: The combination of costs for principal, interest, taxes and insurance (or homeowners association assessments, if applicable) shall not exceed 28% of total Lower Income Household Income;
- ii. Housing for rent: The combination of contract rent plus an allowance for utility costs shall not exceed 30% of total Lower Income Household Income.

"Agency" shall mean and refer to the Township Agency referenced below.

"Household" shall mean and refer to all persons living as a single non-profit housekeeping unit, whether or not related by blood, marriage or other affiliation.

"Housing Plan" shall mean and refer to a proposed scheme for providing affordable housing for lower income households within the Township of Old Bridge, submitted to and approved by the Planning Board.

"Lower Income" shall mean and refer to both low and "moderate" income housing.

"Low Income" shall mean and refer to incomes which are 50% or less than the median income established for the Middlesex-Hunterdon-Somerset Primary Metropolitan Statistical Area (PMSA), and as adjusted from time to time by agencies of the United States government.

"Moderate Income" shall mean and refer to incomes which are between 50% and 80% of the median income for the Middlesex-Hunterdon-Somerset Primary Metropolitan Statistical Area (PMSA), as may be adjusted by an agency of the United States government from time to time.

"Region" shall mean and refer to the Middlesex-Hunterdon-Somerset Primary Metropolitan Statistical Area (PMSA).

"Township Agency" shall mean and refer to any entity established by the Township of Old Bridge to administer any portion of the lower income housing program within the control of the Township of Old Bridge.

"Total Household Income" shall mean and refer to all gross income from all sources of all members of the household or family.

A.3 Lower Income Residential Requirement

A.3.1 Requirement:

Every planned development built within the Township of Old Bridge shall set aside ten (10%) percent of all residential development as housing units which shall be affordable to lower income households.

A.3.2 Distribution:

A.3.2.(1) . If all affordable housing units are offered "for sale":

Four (4%) percent of all housing units built within planned developments within the Township of Old Bridge shall be affordable to low income households; and six (6%) percent of all housing units built within planned developments within the Township of Old Bridge shall be affordable to households of moderate income.

A.3.2.(2) If "low income" units are offered for rent:

Provided that the applicant for Planning Board approval guarantee that such units shall remain as rental units for a minium of ten (10) years, for any applicant who provides lower income units as rental units within any development application, the mix shall be as follows:

Three (3%) percent of all housing units built within planned developments within the Township of Old Bridge shall be affordable to low income households; and seven (7%) percent of all housing units built within planned developments within the Township of Old Bridge shall be affordable to households of moderate income.

A.4. Affordable Housing Plan:*

Applicants seeking approval for any planned development shall submit a proposed affordable housing plan for approval by the Planning Board as part of the documentation required for the first section of the development, wherein preliminary approval is requested for either subdivision or site plan.

The affordable housing plan shall contain the following major elements:

- (a) Description of the units, by number, size and probable location;
- (b) Description of the affordability control mechanism, such as deed restrictions, rental price controls, resale controls, etc.;
- (c) Description of means of assuring affordability over time;
- (d) Description of the relationship of lower income housing units to Township screening procedure;
- (e) Description of the duration of the affordability controls (minimum requirement for lower income housing is twenty (20) years; minimum requirement for maintenance as rental units, if contemplated, is ten (10) years);
- (f) Description of any proposed conversion process, if applicable, involving the rental units.
- (g) Description of the proposed marketing scheme for the lower income housing units; and
- (h) Description of a disclosure statement to be attached to all contracts for rental or sale of all housing units within the development, whether market or price controlled.

* The Stipulation of Settlement provides that, specifically as to O&Y and Woodhaven, the Affordable Housing Plan need not be filed until such time as they have received Certificates of Occupancy for ten (10%) percent of their contemplated developments.

A.5 Screening Procedures:

The Township of Old Bridge, by ordinance, shall establish an affordable housing agency, which shall review all affordable housing plans and certify them to the Planning Board. The affordable housing agency shall also establish, by rules and regulations, mechanisms where by lower income households can be screened for income eligibility and for potential placement in available affordable housing.

A.6 Affordability Standards:

Applicants for each subdivision and/or site plan approval, following the initial submission of the housing plan, shall demonstrate to the Planning Board how the applicant is meeting the commitments and schedules set forth in the affordable housing plan.

Applicants shall demonstrate that affordable housing units are being priced so that, on the average, they are affordable to households earning ninety (90%) of the limits established for the income groupings, such that housing for low income households shall on the average, be affordable to persons earning forty-five (45%) percent of the median income for the Middlesex-Hunterdon-Somerset Primary Metropolitan Statistical Area (P.M.S.A) and housing for moderate income households shall on the average be affordable to persons earning seventy-two (72%) percent of the median income for the Middlesex-Hunterdon-Somerset Primary Metropolitan Statistical Area (P.M.S.A).

A.7 Bedroom Mix:

Lower income housing units shall be provided in combinations of efficiency, one bedroom, two bedroom and three bedroom units. While the distribution of units should be reasonably reflective of the market units to be provided, the lower income units shall include at least 45% efficiency and one bedroom units; 20% two bedroom units; and 10% three bedroom units.

*low % of
2 & 3
BR units*

A.8 Phasing Schedule:

The total number of units to be provided in a planned development shall be established by memorandum of agreement* between the developer and the Planning Board. Thereafter, lower income housing units shall be provided in tandem with market rate housing units, according to the schedule set forth below. The percentages set forth below are based on issuances of certificate of occupancy.

<u>MARKET RATE HOUSING PERCENTAGE</u> <u>Maximum</u>	<u>LOW & MODERATE INCOME HOUSING PERCENTAGE</u> <u>Minimum</u>
Up to 25%	0% (none required)
25% plus one unit	At least 10%
Up to 50%	At least 25%
Up to 75%	At least 50%
75% plus one unit	At least 75%
Up to 100%	100%

100% phased

* The number of residential units to be built by O&Y is 10,560, of which 1,056 shall be lower income housing units. The number of units to be built by Woodhaven is 5,820, of which 582 are to be lower income units.

A.9 Fee Waivers:

Notwithstanding any ordinance requirement of the Township of Old Bridge, the applicable Township approving agency shall waive the following fees for lower income units within every development which includes lower income housing:

- (a) Planning Board application fees;
- (b) Engineering review fees;
- (c) Building permit fees;
- (d) Certificate of occupancy fees;
- (e) Inspection fees for all on-tract and fees for off-tract improvements and structures; and
- (f) Any other fees which would otherwise be charged for housing applications.

A.10: Certification Procedures:

Developers constructing lower income housing under these provisions shall report progress to the Township Agency as follows:

A.10. 1. Quarterly Report.

Each developer providing lower income housing shall provide the Township Agency with a report at the end of any calendar quarter (defined as the period ending March 31, June 30, September 30 and December 31 of each year) which shall set forth:

- a) the total number of all residential units sold or rented within the development during that particular three-month period;
- b) the total number of low and moderate housing units provided within the development during that particular three-month period;
- c) whether the low income units are rental units or "for sale" units;
- d) the percentage of low and the percentage of moderate income units provided during the three-month period expressed as a percentage of the total number of residential units sold or rented within the development during the same three-month period;
- e) whether there is a surplus or deficit of low and moderate income units provided for during the three-month period measured against the ten (10) percent low and moderate housing requirement for the development;
- f) whether there is a surplus or deficit of low income housing units as measured against the four (4) percent low income housing

requirement or as measured against the three (3) percent low income housing requirement in the case of low income rental units.

A.10. Letters of Certification

The Township Agency shall, within thirty (30) days of receipt, issue a Letter of Certification, certifying that the Status Report is correct or advise in writing that is incorrect and specifying the inaccuracies therein, whereupon:

- (a) the developer will correct and resubmit the Status Report; or
- (b) will formally appeal by representation before the Board of Directors of the Township Agency; or
- (c) if the Status Report remains an issue of contention between the Township Agency and the developer, the matter will be placed before the Court Appointed Master whose adjudication will be final and binding upon both the Township Agency and the developer.

A.10.3 Certificate of Compliance

There shall be no penalty to the developer if any quarterly Status Report reveals noncompliance with the requirements to provide low and moderate income housing units provided:

- (a) that the developer show compliance on an annual basis supported by the Letters of Certification for the previous four (4) quarters which Letters of Certification, taken together, substantiate compliance for that fiscal period and which Letters of Certification showing annual compliance shall be submitted to the Court Appointed Master, whereupon
- (b) the Court appointed Master shall, within thirty (30) days, issue a "Statement of Annual Compliance" certifying that the development is, as of the date of accounting, in compliance with the mandate of the Court with respect to providing low and moderate income housing in accordance with Mount Laurel II.

A.10.4 Annual Report

No later than June 30 of each calendar year during which lower income housing has been constructed within the Township, the Township Agency shall file a report setting forth the progress being made to supply affordable housing under these procedures. Such report shall be provided to the Mayor and Council and be made available as a public document. A copy of such report shall also be filed with the Court.

A.11: Review and appeal procedures*

A.11.1. Appeal to the Master

If O & Y and/or Woodhaven shall have complied with all the requirements of the Expedited Approval process specified in Appendix B** and have not received approvals from the Planning Board within forty-five days from the date on which the application was deemed complete may initiate an appeal to the Court-appointed Master.

A.11.2 Independent Professionals

The Master shall arrange to have immediate access, if the need arises, to a Professional Planner, an Architect and a Professional Civil Engineer, all of which shall be currently licensed to practice their professions in the State of New Jersey and all of which shall have substantial experience pertaining to subdivision and development of land. These independent professionals shall not have any conflict of interest with the proposed development or the Township.

A-11.3 Independent Review

Upon an appeal concerning an unapproved application being filed with the Master, the Master shall refer the application to independent professionals appointed by the Master for an Independent Technical Review ("I.T.R."). The Master shall oversee the I.T.R. and may actively participate in the I.T.R. which shall review the application for compliance in accordance with the standards appended to this Stipulation of Settlement as Appendix C and within two weeks, report their findings in writing to the Master whereupon.

- (a) if the I.T.R. determines that the O & Y or Woodhaven submission is in compliance with the standards set out in Appendix C, the Master shall advise the Planning Board in writing that the application is approved and the Planning Board shall forward notice of such approval to all of the Township's departments and divisions and to all other bodies or agencies normally notified of such approvals by the Planning Board;

* The procedures, as set forth herein, have been restricted to O&Y and Woodhaven. The developers would not object if the Township wished to extend this right to other developers supplying lower income housing.

** The procedures set forth in Appendix B should contain the following elements:

- a. Simplified review processes applicable to all developers;
- b. an "Expedited Approval" process which would apply only:
 - i. to development applications which included lower income housing;
 - ii. to development applications which were so designated, and for which the developer had paid a surcharge to provide additional professional review by independent consultants retained by the Township; and
 - iii. for which strict time deadlines were set.

- (b) if the I.T.R. finds that O & Y or Woodhaven's submission is not in compliance with the standards of Appendix C attached to the Stipulation of Settlement, the I.T.R. shall specify all matters of noncompliance and so advise O & Y or Woodhaven in writing within two weeks of the I.T.R. receiving the application, whereupon O & Y or Woodhaven shall have thirty (30) days to bring the application into compliance and resubmit to the I.T.R. for its further action in accordance with subparagraph (a) of this section, failing which this remedial procedure will be considered abandoned.

A-11.3 Other Professionals

The Master may appoint such additional expert or experts as considered necessary to assist the I.T.R. in its review of a particular application.

A-11.4 Fees:

Detailed bills shall be submitted to the Master for approval and paid by the developer within ten (10) days from the date of approval. If the developer fails to pay a voucher within ten (10) days after approval by the Master, processing of its application shall cease, no building permits shall be granted and no Certificates of Occupancy shall issue until payment is made.

A.12: Contributions in Lieu of Development:*

The Township Agency shall prepare and recommend for adoption by the Township Council an arrangement whereby applicants for development of twenty (20) units of housing or less may make a contribution of funds, equivalent to the pro-rata cost of providing affordable housing units, in lieu of building such units within their lands. The Township Agency shall use these funds to purchase sites and construct lower income housing units.

A.13: Lower Income Housing Alternatives**

Should O&Y or Woodhaven choose to provide any or all of their lower income housing obligation by means of purchase of existing off-tract rental units within the Township of Old Bridge and subsequent conversion of such units so as to be affordable to lower income households, such procedures are deemed acceptable and there shall be no reduction in the density of lands currently held by O&Y and/or Woodhaven, zoned for Planned Development; nor shall there be any increase in the amount of lower income housing to be provided by O&Y and/or Woodhaven.

* It is stipulated that this option shall not be available to O&Y and/or Woodhaven.

** It is stipulated that this option shall not be available to any other developer.