Old Bridge 1985
U.L. v. Carteret
-Objections to proposed settlement

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October 31, 1985

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Dear Tom,

I write to set forth the major objections and concerns of the Urban League with regard to the proposed settlement between O & Y and Old Bridge, which I yesterday outlined in a telephone conference call with Jerry Convery and Carla Lerman. After you and the others have reviewed this, perhaps we could talk or meet in attempt to resolve them.

PHASING

The single most objectionable feature of the proposal is the schedule for phasing, set forth on page 4 of Appendix A. (My references are all to the October 2nd draft which is all I had when I was reviewing the document, although your letter forwarding the October 15 draft indicates no changes with regard to the points set forth here.) As we understand it, it would allow O & Y to construct 2055 market rate units before doing any lower income units and then only 110 lower income units would be required before you could proceed to the next 1000 market units. Although we have consistently recognized in all settlements that developers must be allowed to build and sell some significant number of market units upfront to generate funds for subsidization, your proposal appears to impose a 3-4 year waiting period before any of the fair share is produced.

We propose that we go back to the idea O & Y initially advocated -- an annualized set-aside. Quite simply, this means that 10 percent of each year's production would be lower income units, split evenly between low and moderate. This could easily be enforced by prohibiting issuance of any additional building permits in a new season until the developer had obtained CO's for lower income units equal to 10 percent of the prior year's production. This would not be designed to limit your initial or any subsequent application to any specific total number of units. As I understand it, O & Y wants to start with 950 units. We have no problem with that as long as 95 of them are lower income units.

CONTROLS

At several points the document talks about maintaining affordability for 20 years. In all other situations, we have insisted upon 30 years. This is primarily derived from the typical 30-year mortgage period, although it must be applied as well to rental units. The length of the control period should be of no significance to the builder, at least with regard to sales units, since s/he can reap no additional benefits from a decontrolled re-sale.

In this connection, we note an ambiguity in subsection A.4(e) on page 3 of Appendix A, which refers to maintenance of rentals for 10 years. The document must be specific in clarifying that rental units that are converted and sold after 10 or more years must still be maintained as affordable for a total of 30 years (which, of course, includes the first 10 or more years in rental status).

BEDROOM MIX

Section A.7 on the bottom of page 3 of Appendix A states that the lower income units shall include at least 45% efficiency and one-bedroom units, 30% two-bedroom and 10% three-bedroom. Because your figures total only 85%, they would permit construction of up to 60% one-bedroom units, which is not acceptable because not reflective of household distribution and the existing and predictable need. We have generally settled for provisions permitting at most 50% one-bedrooms, with at least 30% two-bedroom and 20% three-bedroom or larger units.

MID-RISE APARTMENTS

We find very objectionable the provision in Subsection V-C.4(a) on the top of page 18 of the settlement document, which seeks to preclude any lower income units within the mid-rise apartments. It must be recalled that this is an exclusionary zoning case.

We recognize that HUD precludes family housing in buildings with elevators and that perhaps this was the articulated rationale for this provision. However, HUD does not fund any buildings with a mixture of lower income and market apartments and thus, in all contexts in which its regulation governs, the policy is applicable to all units within the development. We do not see any explicit provision in the proposed settlement, nor do we understand it to be O & Y's intent, to limit the mid-rise buildings to households without children. If families who pay market price may live in these buildings, we see no non-paternalistic reason why lower income families cannot.

DISPERSION OF LOWER INCOME UNITS

This leads us to the lack of provision for dispersion of the lower income units throughout the development. We recognize that economies of scale and marketing demands require some bunching of building types. Nevertheless, it is essential that the lower income units not be isolated or in some other way perceived as entirely separate from the community. We suggest three guidelines:

a) that lower income units not be separated from market units by buffers or barriers of any kind;
b) that lower income units be comparably located with respect to neighborhood facilities (shopping, etc.) and internal roads;
c) that no building or section have more than 150 lower income units exclusively.

REPORTING

We must, of course, insist that all reports, such as those set forth in A.10.1 on page 5 of Appendix A, be provided to the Urban League as well as the Township. Moreover, we think at least in the initial period, it would be useful to have the reports go to the Master as well. Finally, the reports would have to show the sales and rental prices of all lower income units, as well as the other information listed.

APPLICATION OF STATUTES AND ORDINANCES

We have difficulty with the breadth of the language of both V-F.1 concerning application of any new state legislation (page 20) and V.B.4.1 concerning the applicability of later passed Old Bridge land use ordinances (page 15). As to the former, for example, we think that the sentence "nothing contained herein shall deny any other benefits which may accrue to the Township of Old Bridge as a result of any legislation" needs clarification. Similarly, the earlier sentence precluding increases in densities, lower income obligations, and constraints, must also prohibit decreases in those areas. Likewise, as to subsequently passed local ordinances, we question whether the open-ended language is appropriate. Clearly subsequent land development ordinance amendments cannot alter vested rights as to the development, but I am not sure that you can be fully freed from any generally applicable procedures nor is it clear why the settlement must be exclusively for these developers if the Township and the Urban League believe that it would be appropriate to apply them to other developers.

There are, of course, a number of other drafting and form concerns -- including the suggestion that upon settlement the action be dismissed, rather than that a Consent Judgment be entered, but we do not wish to needlessly burden this letter with

such details and are sure that they can be worked out if the main concepts are.

We look forward to hearing from you, Stew, and Jerry at your earliest convenience.

Sincerely yours,

Eric Neisser

Eric Neisser
Co-Counsel for Urban League

cc: Carla Lerman, Master
Old Bridge Service List
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Urban League v. Carteret, Civ C 4122-73 (Superior Court, Chancery Div., Middlesex County) (OLD BRIDGE)

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