

Old Bridge 1985

U.L. v. Carteret

- Revised draft of Consent Order + Appendix A
Att: Cover letter to convey

Pg. 30

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

December 18, 1985

Jerome Convery, Esq.
151 Route 516
P.O. Box 872
Old Bridge, N.J. 08857

Dear Mr. Convery,


Enclosed is the revised draft of the Consent Order which we discussed this morning.

Please note, as we discussed, that although the two ordinances you provided go a long way towards resolution of the matter, some amendments will be necessary, should the Council approve this Consent Order. Most importantly, the land development ordinance amendment, which provides for a 10 percent set-aside on all residential development in Old Bridge, fails to specify that developers of less than 100 units may, in the alternative to constructing those units, pay a sum equal to no less than \$3,000 per market unit. In addition, in light of the separate provision for 150 senior citizen units in the Consent Order, the plaintiffs believe that the ordinance will have to be revised to limit the percentage of senior citizen units in other developments to 20 percent, which is approximately the percentage of persons over 62 years old in the current low and moderate income population. Some minor adjustments in the affordable housing ordinance will also be necessary, for example, the modification of the hardship exception as discussed at last Thursday's meeting and the addition of the sales and rental tables referred to on the final pages.

Finally, I must note, as we discussed, that if the Township Council approves the Consent Order, which is a settlement, that the pending motion to transfer to the Affordable Housing Council will be moot and would have to be withdrawn as a condition of settlement.

Please contact me upon receipt of this if you or Mr. Norman have any questions.

Sincerely yours,



Eric Neisser
Urban League Co-Counsel

cc: Carla Lerman, Master
Messrs. Gaver, Hall, Hutt, Norman

12/18/85

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

v.]
THE MAYOR AND COUNCIL OF]
CARTERET, et al.,]
Defendants,]
OAKWOOD AT MADISON, INC. and]
BEREN CORP.,]
Additional Defendants.]

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. C-4122-73
(Old Bridge)

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.

CONSENT ORDER

This matter having been opened to the Court by the Urban League plaintiffs seeking to modify and enforce this Court's Judgment of July 9, 1976, and the Court having entered a Consent Order on July 13, 1984 which established the Township of Old Bridge's fair share obligation through 1990 (after granting 279 credits) at 2135 units, half low income and half moderate income, which declared the existing land use ordinance unconstitutional for failure to provide a realistic opportunity to meet this fair share, and which directed the parties to seek agreement on compliance measures within 45 days, and,

The Court having appointed Carla Lerman as Master, by Order dated November 13, 1984, to assist the parties in reaching agreement on compliance measures, the parties having failed to reach voluntary agreement pursuant to the July 13, 1984 Order, and

The Court by Order entered on May 31, 1985, having joined as defendants Oakwood at Madison, Inc. and Beren Corp. and having enjoined issuance of building permits to Oakwood or Beren in excess of 120 market units pending court approval of a phasing plan for lower income units in that development, and

The parties and Master having held extensive meetings, and having agreed that the size of the fair share and the scale of the proposed developments required that some phasing of the fair share obligation beyond the initial 6-year period was necessary, and having further agreed that the special circumstances in Old

Bridge justify unusual measures to assure compliance and that the inability to make firm and realistic estimates of market developments and government funding sources requires that compliance mechanisms be reconsidered during the phased period should present projections prove unrealistic,

IT IS HEREBY ORDERED THIS _____ DAY OF _____ 198_:

1. The fair share obligation of the Township of Old Bridge shall be phased as follows;

a. 1668 units, half low income and half moderate income , by January 1, 1992;

b. the remaining 467 units, half low income and half moderate income, by January 1, 1994.

2. The initial phase of 1668 units shall be satisfied as follows:

a. 500 units to be provided in the O & Y Old Bridge Development Corp. (O& Y) development, and 260 units to be provided in the Woodhaven Village, Inc. (Woodhaven) development pursuant to the Order and Judgment entered by this Court on _____, 198_, and the Settlement Agreement annexed thereto, both separately agreed to by the parties signing this Consent Order and O & Y and Woodhaven and incorporated herein by reference;

b. 263 units to be provided in the Oakwood at Madison, Inc. and Beren Corp. (Oakwood) development as set forth below in Paragraph 4;

c. 180 units to be provided in the Brunetti development, as set forth below in Paragraph 5;

d. 50 units to be provided in the Rondinelli development, as set forth below in Paragraph 6;

e. 208 units to be provided through rehabilitation of existing units, as set forth below in Paragraph 7;

f. 150 units to be provided in a new senior citizen development as set forth below in Paragraph 8; and

g. 57 units to be provided through a mandatory set-aside on all other residential development within the Township, as set forth below in Paragraph 9.

3. Any additional units developed by January 1, 1992 and the first 467 low and moderate income units developed after January 1, 1992, whether as a result of the O & Y and Woodhaven projects, or otherwise, shall be credited towards the 1990 fair share before any units are credited towards the subsequent fair share, if any.

4. Oakwood development. The previous approval by the Planning Board on August 23, 1979 of this development on Block ___, Lots ___, is reaffirmed insofar as it permits development of

5 dwelling units per acre, or 1750 total units on 350 acres, on condition that 350 of those units be low and moderate income units. The realistic expectation, however, is that no more than 263 units reserved for low and moderate income households as defined by the Settlement Agreement as to O & Y and Woodhaven will be produced within the initial 6-year phase defined in Paragraph 1(a) of this Order. The Order of May 31, 1985 prohibiting issuance of more than 120 building permits shall remain in full force and effect until entry of an order of this Court approving a phasing plan to insure that the low and moderate income units will be constructed while the market units are being constructed. Such phasing plan shall also require payment by Oakwood of \$5 per low income unit per year directly to the Urban (now Civic) League of Greater New Brunswick for purposes of monitoring compliance with this Consent Order. If the parties and Oakwood cannot agree on a revised site plan and phasing plan by March 31, 1986, the Master shall recommend a revised site plan and phasing plan for Court consideration by April 30, 1986.

5. Brunetti development. The Planning Board may, subject to the land use development ordinance as amended on December 19, 1985, approve development of Block ____, Lots ____, by Brunetti or his corporate development entity at a density of 4 dwelling units per acre or 1800 units on 450 acres, on condition that 10 percent

or 180 units shall be lower income units, half low income and half moderate income as defined by the Settlement Agreement as to O & Y and Woodhaven, that the developer pay prior to final approval \$5 per low income unit per year directly to the Urban (now Civic) League of Greater New Brunswick for purposes of monitoring compliance with this Consent Order, and that the project shall be phased to assure that the low and moderate income units will be constructed while the market units are being constructed. If the parties cannot reach agreement as to an appropriate phasing schedule, any party may move for Court determination of the appropriate phasing schedule. If no application for such development is received by the Planning Board by June 30, 1986, or if such application is not granted preliminary approval by the Planning Board by December 31, 1986, the plaintiffs may file a motion under Paragraph 10 of this Order with regard to the 180 lower income units to be provided by this development.

6. Rondinelli development. The Planning Board may, subject to the land use development ordinance as amended on December 19, 1985, approve development of Block ____, Lots ____, by Rondinelli or his corporate development entity at a density of 4 dwelling units per acre or 500 units on 125 acres, on condition that 10 percent 50 units shall be lower income units, half low income and half moderate income, as defined by the Settlement Agreement

as to O & Y and Woodhaven, that the developer pay prior to final approval \$5 per low income unit per year directly to the Urban (now Civic) League of Grater New Brunswick for purposes of monitoring compliance with this Consent Order, and that the project shall be phased to assure that the low and moderate income units will be constructed while the market units are being constructed. If the parties cannot reach agreement as to an appropriate phasing schedule, any party may move for Court determination of the appropriate phasing schedule. If no application for such development is received by the Planning Board by June 30, 1986, or if such application is not granted preliminary approval by the Planning Board by December 31, 1986, the plaintiffs may file a motion under Paragraph 10 of this Order with regard to the 50 lower income units to be provided by this development.

7. Rehabilitation units. In light of the attached memorandum of November 4, 1985 from JoAnn Gelman to Jerome Convery, indicating that 28 rehabilitation grants have been made by the Township since July 1, 1984 averaging \$8,000 per unit, the Township is hereby awarded 28 credits towards its fair share. The Township shall commit sufficient Community Development Block Grant (CDBG) funds to assure rehabilitation of an additional 30 units per calendar year for six years, beginning January 1, 1986, for a total of 180 additional units by January 1, 1992. In case

sufficient CDBG funds are not available, the Township shall apply for all available funds from the federal, state, and county governments. If sufficient external funding is not available, the Township shall commit its own funds, or propose an alternative mechanism to achieve the units not funded. To be credited under this provision, rehabilitation grants must be to units currently occupied by low or moderate income households, in any calendar year must average \$7,500 each, must be used to bring the units up to existing fire, building or health code standards, and must be secured by a lien on the property so that the Township is repaid at the time of sale.

8. Senior Citizen Project. A development of 150 units, 75 low income and 75 moderate income units, restricted to persons 62 years and older, shall be implemented by the Township, using tax exempt financing and either a redevelopment agency, housing agency, or nonprofit corporation. O & Y has agreed to contribute sufficient land, to construct the project at cost, and to present a cost certification to the Master. Woodhaven has agreed that, if there is no realistic opportunity to obtain sufficient public or tax exempt financing to finance this project, Woodhaven will, as ✓ a last resort, contribute up to \$500,000 towards the project. The Township shall apply to the New Jersey Housing and Mortgage Finance Agency (NJHMFA) by January 31, 1986 for funds made available under the Fair Housing Act, P.L. 1985, ch. 222. If the

Township fails to apply by January 31, 1986, or fails to present to the Master a complete and realistic financing plan, including the tax-exempt financing, by June 30, 1986, if O & Y fails to deed the land deemed necessary by the Master to the relevant entity when necessary to obtain financing, if Woodhaven does not provide the necessary financial support up to \$500,000 in case sufficient other financing is not obtained, or if construction has not started by March 31, 1987, the plaintiffs may make a motion under Paragraph 10 of this Order with regard to the 150 lower income units to be provided by this development.

9. Residential Development Setaside or Monetary

Contribution. Forthwith, but no later than January 31, 1986, the Township shall amend its land use development ordinance to provide that all residential developments that have not received preliminary site plan approval as of December 2, 1985, shall be conditioned upon production of 10 percent lower income units, half low income and half moderate income, or, where a development involves less than 100 total units, payment of a minimum of \$3,000 per market unit approved to the Old Bridge Affordable Housing Trust Fund established by such ordinance, such amount to be adjusted annually to account for changes in construction costs, in lieu of construction of the 10 percent lower income units. That Fund shall be used to increase opportunities for the development of low and moderate income units, including

subsidization of rents, rehabilitation of existing units, and subsidization of construction of new units. Final approval of any residential development shall be conditioned upon payment by the developer directly to the Urban (now Civic) League of Greater New Brunswick of \$5 per year per lower income unit to be developed or for which the alternative payment to the Fund was made, for purposes of monitoring compliance with this Consent Order. If, in any calendar year starting with 1986, the Planning Board does not grant preliminary site plan approvals providing for 100 total units, or 10 lower income units or the monetary alternative for such units, the plaintiffs may file a motion pursuant to Paragraph 10 of this Order with regard to that portion of the 57 lower income units to be provided by this Paragraph that have not yet been approved or provided.

10. Review Procedure.

a. If any of the conditions set forth in Paragraphs 4, 5, 6, 8, and 9 is not satisfied or not satisfied by the time specified or if any provision of this Consent Order is challenged in litigation by any third party, the Urban League plaintiffs may, at any time after January 1, 1987, file a motion with this Court for an order directing the Master to report to the Court within 60 days with her recommendations for a realistic alternative mechanism to provide the lower income units at issue. If the Master's submission is made without the agreement of all

the parties, the Court will schedule an evidentiary hearing on the motion within 30 days of receipt of the report at which the Master will be a witness, whom all parties may examine; and at which the parties may present appropriate documentary evidence and testimony. The Court will then make a decision as to her recommendations and issue an order, which will be final, binding on all the parties, and not appealable in any manner or before any forum. In no case shall the issues of fair share number, initial non-compliance, or overall phasing be reopened in any proceedings pursuant to this Paragraph.

b. Beginning on January 1, 1987, any party may move the Court to reopen this Consent Order because of a new statute or a new rule of a state agency, of general applicability and dealing with Mount Laurel issues, which but for the existence of this Consent Order would govern the relationship of the parties concerning the subjects of this Consent Order.

Upon such a motion, the parties shall first have thirty days to consult and to attempt to reach agreement on a modification of this Consent Order. Upon application by any party and in its discretion, the Court may request the Master to assist the parties in these negotiations.

The parties hereby agree that this Consent Order may be modified by the Court as follows:

i. Upon submission of a proposed consent modification, the Master shall review the proposal and thereafter the Court shall

consider the proposal and the Master's report and determine whether to permit the modification.

ii. In the absence of a proposed consent modification, the Court may amend the Consent Order if it appears appropriate and just to do so. In reaching its determination, it is the intention of the parties that the Court should consider, inter alia, the following factors:

-- Whether applicable principles of law normally permit or prohibit retroactive application of the type of new law or rule sought to be applied.

-- The impact of the proposed modification on the "realistic opportunity" to construct lower income housing. Without limiting other forms of impact, the Court should consider the degree to which developments subject to this Consent Order have been economically and socially successful up to the date of the proposed modification and whether failure to modify may place these developments at a significant competitive disadvantage over the entire period of this Consent Order.

-- The degree to which the party or parties seeking modification have adhered in good faith to the existing provisions of this Consent Order.

-- The degree to which any party or other affected person may be irreparably injured by modification because of legitimate reliance on this Consent Order as it presently exists.

Before permitting any modification of this Consent Order, the Court shall permit all parties to be heard and to present such legal arguments and factual proofs, including testimony, as shall be appropriate. During the pendency of any motion to modify, the existing Consent Order shall remain in full force and effect unless the Court determines that to do so would cause irreparable injury to a party or other affected person, in which case the Consent Order may be modified on an interim basis pending the outcome of the motion.

Except pursuant to motions based on this Paragraph, the parties hereby agree that there shall be no modification of this Consent Order.

11. Affordable Housing Ordinance. To insure that the units produced pursuant to this Consent Order are affordable to and maintained as affordable to lower income households, the Township shall by January 31, 1986, adopt an affordable housing ordinance which shall, at the minimum:

a. Establish an agency, or contract with a qualified existing agency, to qualify households, review developers' housing plans, and set and enforce maximum sale and resale prices and rental charges, bedroom mix and other requirements of this Order.

b. Impose legal restrictions that insure that lower income units remain affordable to lower income households for a minimum period of 30 years after initial sale or lease.

c. Assure that no more than 50 percent of lower income units shall be efficiency or one-bedroom units, that no less than 35 percent of lower income units shall be two bedroom units and that no less than 15 percent of such units shall be three bedroom or larger units, distributed evenly in each case between low and moderate income households.

d. Assure that lower income efficiency units are no smaller than 480 square feet, that one bedroom units are no smaller than 550 square feet, that two bedroom units are no smaller than 750 square feet, and that three bedroom units are no smaller than 990 square feet.

e. Assure that only households earning less than 50 percent of the regional median income (defined as 94 percent of the median income for the PMSA including Middlesex County), with adjustments for household size, shall be eligible for low income units and only households earnings between 50 and 80 percent of that regional median income, with adjustments for household size, shall be eligible for moderate income units.

f. Assure that the maximum sales prices and rental charges shall be affordable, on the average, to households earning 90 percent of the incomes defined in subparagraph (e) above.

g. Assure that no building, cluster, or section contain more than one-third lower income units unless necessary to obtain public or tax exempt funding, that lower income housing units are to be located so as to afford similar access to transportation, community shopping, recreation and other amenities as is provided to other residents of the same development, and that the landscaping buffers provided within a cluster or section containing lower income housing areas not be different from those generally used in other portions of the development nor the landscaping or buffers used to separate clusters or sections with lower income units be different from those generally used to separate sections with different types of housing.

h. Assure that every residential developer submit as part of its affordable housing plan an affirmative marketing plan and that such marketing plans include assurances that opportunities for low and moderate income units will be advertised throughout the 11-county region including Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties and specifically including newspapers of general circulation in Elizabeth, Hackensack, Jersey City, Newark, New Brunswick, Paterson and Perth Amboy. In addition, the plan shall require that developers notify the Civic League of Greater New Brunswick, the Housing Coalition of Middlesex County, the Middlesex County Office of Community Development, the Council on Affordable Housing, the New Jersey

Housing Mortgage and Finance Agency, and all fair housing centers, housing referral organizations, and government social service department in the aforementioned 11 counties.

i. Assure that site plan approvals are conditioned upon an express phasing schedule that assures that the lower income units are constructed while the market units are being constructed.

12. Reporting Requirements. The Township shall provide to the Urban (now Civic) League of Greater New Brunswick, or its designee, every three months starting March 31, 1986, a report on the implementation of this Order during those three months containing at least the following:

a. Details on all residential development applications received by any Township board or agency, including the name of the applicant and the principal individual if the applicant is corporate, the name of the attorney for the applicant, the proposed site, number and nature of units, bedroom size, provisions for development of lower income units or for financial contribution to the Old Bridge Affordable Housing Trust Fund, and all action taken by the Township, its boards, agencies and officials in response thereto, including preliminary and final approvals, variances, and the number of building permits and certificates of occupancy issued for market and lower income units.

b. Copies of all housing and affirmative marketing plans.

c. The sale price and rental charges on all lower income units and all market units that have been sold or rented.

With regard to residential developments, the Township may satisfy some of these requirements by providing copies of reports provided by developers with regard to relevant data.

13. Repose. If all requirements herein for action by March 31, 1986 are met to the satisfaction of the Court and Master after a compliance hearing at which the Urban League plaintiffs have had an opportunity to present evidence and objections, the Township of Old Bridge shall be entitled to a Judgment of Compliance granting repose from any Mount Laurel litigation for six years from July 2, 1985 to July 1, 1991.

14. Severability. Invalidation of any provision of this Consent Order, in whole or in part, shall not affect the continued effectiveness of any other provision, but plaintiffs may then invoke the provisions of Paragraph 10.

15. Retained Jurisdiction and Enforcement Mechanism. This Court shall retain jurisdiction over this case to assure implementation of this Consent Order and all other aspects of the compliance settlement. Any party may enforce the provisions

hereof by a motion to enforce litigant's rights under Rule 1:10-5.

EUGENE D. SERPENTELLI, A.J.S.C.

We consent to the form, substance and entry of this Order.

DATE

Jerome Convery
Attorney for Township of
Old Bridge and Township
Council of Old Bridge

Thomas Norman
Attorney for Old Bridge
Planning Board

Eric Neisser
Attorney for Urban League of
Greater New Brunswick

John M. Payne
Attorney for Urban League of
Greater New Brunswick

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

"Adjusted Median Income" shall mean and refer to the product of multiplying the published median income of the Middlesex-Hunterdon-Somerset Primary Metropolitan Statistical Area by 94%, as may be adjusted by an agency of the United States Government from time to time.

"Affordable Housing" shall mean and refer to housing setaside 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; and
- 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.

"Approving Board" shall mean either the Planning Board or the Zoning Board of Adjustment, as appropriate.

"Building" is any continuously enclosed structure containing one or more separate dwelling units.

"Cluster" is any grouping of buildings in close physical proximity to each other, usually arranged around a common feature such as a court yard or parking area.

"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 adjusted 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 adjusted 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.

"Order" shall mean and refer to the Order and judgement issued by the Hon. Eugene D. Serpentelli, A.J.S.C., dated _____, dismissing resolving the litigation between Olympia and York Old Bridge Development Corp. and the Township of Old Bridge et al, and shall also mean and refer to all appendices and memoranda attached thereto.

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

"Section" is any building or grouping of buildings, or any cluster or grouping of clusters set apart by natural features, landscaping or buffers from other parts of the development so as to constitute an identifiably separate portion of the development. A separately named building or grouping as defined herein is presumptively a section.

"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 application for housing for resale within the Township of Old Bridge shall set aside ten (10%) percent of all housing units which shall be affordable to lower income households. Once a Certificate of Occupancy is issued for a lower income housing unit, the Township of Old Bridge shall receive a credit for such unit against its fair share housing requirement.

A.3.2 Distribution:

Five (5%) percent of all housing units built within planned developments within the Township of Old Bridge shall be affordable to low income households; and five (5%) percent of all housing units built within planned developments within the Township of Old Bridge shall be affordable to households of moderate income.

A.3.3. Developments governed by this Order shall, as a matter of general policy, physically disperse the lower income units as follows:

a. No more than 24 lower income units may be located in any single building. No building, cluster or section shall be required to contain any lower income units. In any cluster or section, no more than one-third of the total number of units may be lower income units.

b. The restrictions contained in paragraph a above shall not apply to any building, cluster or section when necessary to finance the development of the building, cluster or section through public or tax exempt funding, but in no event shall any one building, cluster or section developed pursuant to this paragraph contain more than 150 lower income units.

A.4. Affordable Housing Plan:*

Applicants seeking approval for any residential development for resale shall submit a proposed affordable housing plan for approval by the Approving 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, or, if the application is for development of housing for resale via the variance process, as part of the variance application.

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 a thirty (30) year period. ~~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 thirty (30) year period ~~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 Settlement Agreement provides a different filing schedule for O&Y and Woodhaven.

A.5 Screening Procedures, Other Regulations:

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.

The Affordable Housing Agency shall also have the authority to adopt other regulations necessary to implement the program. These regulations shall include a proviso whereby the Agency, after determining that any builder providing lower income housing, has made a good-faith effort to market such lower income housing and failed to find qualified lower income buyers after sixty (60) days following issuance of a certificate of occupancy, shall allow such builder to sell such unit to non-lower income qualified households so long as all lower income deed restrictions are placed on such units.

A.5.1. Hardship exemptions

A Developer may apply to the Agency for a Hardship Exemption, as follows:

a) The Developer may only apply to the Agency for a Hardship Exemption after the later of (i) six (6) months after the Developer has commenced marketing the Lower Income Unit and (ii) ninety (90) days after the Developer has received the Certificate of Occupancy for such Lower Income Unit.

b) In order for the Developer to be entitled to a Hardship Exemption from the Agency, the Developer must show the Agency that (i) the time periods set forth in subsection (a) above have lapsed, and (ii) that the Developer has been marketing such Lower Income Unit for such time period and (iii) no Qualified Purchaser is obligated under a contract to purchase or a lease to rent, as the case may be, for such Lower Income Unit.

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 Adjusted 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 Adjusted Median Income for the Middlesex-Hunterdon-Somerset Primary Metropolitan Statistical Area (P.M.S.A).

A.7 Bedroom Mix and unit size:

Lower income housing units shall be provided in combinations of efficiency, one bedroom, two bedroom and three bedroom or larger units. While the distribution of units should be reasonably reflective of the market units to be provided, the lower income units shall include not more than 50% efficiency and one bedroom units; not less than 35% two bedroom units; and not less than 15% three bedroom units. Unit sizes shall not be required to exceed HUD current minimum standards, but shall not, in any case, be less than current HUD minimum standards. If there are no HUD minimum standards, the following minimum unit standards shall apply:

Unit type	Minimum size
efficiency units	480 s.f.
one Bedroom	550 sf
2 Bedroom	650 725 sf
3 Bedroom	750 900 sf

A.8 Phasing Schedule:*

The total number of units to be provided in a planned development shall be established through a memorandum of agreement between the Planning Board and the developer. Set forth below is an illustration of a phasing schedule for Olympia and York, based on the present land holdings, and assuming the present projected build-out of 10, 560 units, of which 1,056 shall be lower income housing units. The numbers set forth below are based on issuances of certificate of occupancy.

<u>MARKET RATE HOUSING UNITS</u> <u>Maximum</u>	<u>LOW & MODERATE INCOME HOUSING UNITS</u> <u>Minimum</u>	TOTAL
<u>Up to 800 units</u>	<u>No immediate lower income housing required</u>	800
<u>801 units</u>	<u>89 lower income units in place</u>	890
<u>each 202 units thereafter:</u>	<u>202 lower income units</u>	
		890+200+ <u>202</u>

* Section A.8 and A.8.1. apply to O&Y. Woodhaven Village (or other developers of inclusionary housing) shall supply their own schedules.

Notwithstanding the foregoing, there shall be a "cap" of 10% of the total market units, currently projected to be 10,560 units. If Olympia and York acquires land, additional lower income housing units shall be provided, on the basis of ten (10%) percent of residential units constructed on such lands. Further, it is understood that while the development will be inclusionary as a whole, no section, complex or building of 160 units or less will be required to have lower income housing included within its boundaries.

In addition, the following items are understood:

1. A subdivision of any size can be submitted by a developer, so long as the affordable housing is supplied in accordance to the above schedule.
2. There shall be no prohibition placed on obtaining building permits. The phasing is based on the issuance of certificate of occupancy.
3. Woodhaven is bound by the same phasing schedule as set forth above, i.e., Woodhaven may obtain certificates of occupancy for up to 800 units without providing an immediate lower income housing provision, but as of the date the 801 certificate of occupancy is issued, Woodhaven shall provide 89 lower income housing units. It shall provide additional lower income housing thereafter at the rate of 202 lower income units with each 200 units of market housing constructed.

It is further understood that the Planning Board shall be flexible in its review procedures, and not insist on mathematical precision in assuring that reasonable progress is being made in providing the required lower income housing. So long as the target goals set forth above are being reached on an annualized basis, it is not necessary for each application for development to have a specific percentage of lower income units included.

A.8.1 Anticipated Applications

O&Y and Woodhaven intends to submit their initial applications for preliminary approval of the first section of the development as soon as the Order, of which this is an Appendix, is entered. It is anticipated that O&Y's subdivision will be for approximately 890 residential units; and Woodhaven's subdivision will be for approximately 900 residential units. Thereafter, O&Y and Woodhaven will be submitting development applications for other phases of its development, which will include market units, lower income units and industrial and commercial phases of the development. Actual applications for development will be submitted in accord with marketing, financing, and other considerations. Any application which includes lower income units shall identify the approximate location of such 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:

- (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

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). The Township Agency shall supply copies to the Urban League, the Court-appointed Master, and all interested parties. This report shall set forth:

- a) the total number of all certificates of occupancy issued for residential units within the development during that particular three-month period;
- b) the total number of Certificate of Occupancy issued for low and moderate housing units 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 Certificate of Occupancy issued during the three-month period expressed as a percentage of the total number of residential units Certificate of Occupancy issued within the development during the same three-month period;
- e) whether there is a surplus or deficit of low and moderate income units Certificate of Occupancy issued during the three-month period measured against the ten (10) percent low and moderate housing requirement for the development;
- f) the sales prices and rents charged for lower income housing.

A.10.2 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 by filing with the Township Clerk. A copy of such report shall also be filed with the Court, the Urban League and any interested developer providing lower income housing in the Township

A.11: Review and appeal procedures

A.11.1. Accelerated Review and Approval Schedule:

The following schedule will apply to all development applications submitted by O&Y or Woodhaven:

A. As to Preliminary Subdivision and Site Plan applications:

<u>ACTION TAKEN</u>	<u>CUMULATIVE TIME</u>
i. Application submitted to Board	0 days
ii. Checklist review completed	10 days
iii. Written notice of completeness	15 days
iv. Planning Board Staff reviews (Applicant may submit additional material)	45 days
v. Documentation available to public	46 days
vi. Public hearing to be held	57-81 days
vii. Board action by resolution	95 days

B. As to Minor Subdivision and Final Major Subdivision applications:

<u>ACTION TAKEN</u>	<u>CUMULATIVE TIME</u>
i. Application submitted to Board	0 days
ii. Declaration of completeness	10 days
iii. Staff Reviews	30 days
iv. Public Hearing held	45 days
v. Board action by Resolution	45 days

The applicant may grant extensions of time; but it is anticipated that such extensions will not be routinely sought or granted. The Planning Board will not be required to schedule more than two (2) special meetings per month for all applicants using the accelerated review and appeal procedure.

A.11.2 Appeal to the Master

If O&Y and/or Woodhaven shall have complied with all the requirements of the processes set forth in the Order and the appendices thereto, and have not received approvals from the Planning Board within ninety-five (95) or forty-five days from the date on which the application was deemed complete, depending on the type of application, they may appeal to the Master, using the procedures set forth in Appendix B.

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 residential development for resale 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 or for such other purposes as the Agency may determine useful in providing lower income housing.

A.13: Concept Plan Approval Hearings:

The Planning Board shall have hearings to approve Plates A and B, using the standards set forth in the Settlement Agreement. The hearings shall be scheduled as soon as feasible in January, 1986, and may continue to March 14, 1986.

The Planning Board shall schedule a minimum of two meetings per month, which meetings shall be devoted exclusively to reviewing the applications submitted by O&Y and Woodhaven. At least one meeting per month shall be devoted to each developer's application. The applicant shall deposit a processing fee in the amount of \$ 5.00 per residential unit contemplated to be built in the overall development. Such sums as are directly attributable to the review of the specific application shall be charged against these funds; any funds not expended in this review process shall be refunded to the applicant. Copies of invoices or vouchers substantiating time expended for professional reviews shall be submitted to the applicant on a monthly basis, and a full accounting of all monies used shall be provided to the application within thirty (30) days following the Board's decision.

The Planning Board Attorney shall instruct the Board as to the limited nature of the Board's jurisdiction and the nature of the plans to be reviewed, and shall indicate that the Plates are at the "master-plan-concept" level and are part of a settlement of litigation, and cannot be changed without sound reasons. Each applicant may present such testimony as the applicant feels is necessary to provide information to the Board. In the event the Board, at the conclusion of any specific hearing, feels that it needs additional information or testimony on a specific point, the Board shall so inform the applicant, in writing, no later than three (3) days following the conclusion of the specific hearing.

The Court-appointed Master shall be invited to attend any hearing on Plates A and B, and may offer comments, suggestions and recommendations to the Planning Board and the applicants.