U.L. v. Carteret, Old Bridge 1986

- U.L. Co-counsel letter to Judge re Old Bridge case management conference

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July 9, 1986

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

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

Dear Judge Serpentelli:

To facilitate the Old Bridge case management conference which has been scheduled for Monday, July i4 at 2 p.m., we thought it best to set out briefly our position on the matters raised by the letters of the attorneys for the Township and Planning Board.

Wetlands

With regard to the wetlands issue, no action is required at this time for two reasons. First, the agreed-upon procedure for revising the settlement has not yet been invoked; second, possible development limitations posed by the wetlands in no way affect the validity of the final Judgment.

The Order and Judgment of Repose and the incorporated Settlement Agreement expressly provide a specific, detailed procedure that is adequate to handle the revisions resulting from the wetlands problem. The possibility of revision was expresssly anticipated by the parties and the wetlands problem, therefore, does not destroy the "final judgment" status of the Order. Under this procedure, the Planning Board will review the plans submitted by 0 & Y and Woodhaven (designated Plates A and B). If the Board does not approve a Plate, or makes modifications not

acceptable to the affected developer, "the Court shall refer the matter to the Master for recommendations and shall thereafter schedule a hearing to determine what modifications, if any, would be necessary in order to make the Plate acceptable to the Court." Settlement Agreement, Para. V-B.3.a(d). See also Judgment, Para. 5. From the information provided thus far to the Urban League by the other parties, it appears that the Planning Board has neither approved nor disapproved either Plate, but has simply, and we might add responsibly, sought additional information and expert assistance concerning the impact of the wetlands upon the developments. If, after further presentations, the Board should disapprove a Plate, the affected developer or the Urban League may seek review by the Court. Present indications are that all parties are being realistic about the matter and that most likely the developers will be able to submit a revised Plate that not only reflects the wetlands limitations but is consistent both with the settlement and sound planning principles and would be acceptable to the Planning Board.

The second reason why no action is required at this time is that the unfortunate discovery of more extensive wetlands does not affect the Township's ability to comply with its fair share obligation as embodied in the final judgment of this Court. The Settlement Agreement was intended to vest development rights in 0 & Y and Woodhaven for 20 years, but the fact that these developers may ultimately produce fewer than the number of vested units does not furnish a basis for the Township to abrogate its agreement.

The 0 & Y and Woodhaven projects would have entailed, on the original estimates, some 16,460 total units, of which 10 percent or 1,646 would have been lower income units. But these two developments were not expected to produce these units, or even most of them, in the initial 6-year fair share period covered by the Judgment. Indeed, Paragraph 2 of the Judgment makes clear that O & Y was expected to produce only 500 lower income units and Woodhaven only 260 units of the Township's six-year fair share of 1668 agreed to by all parties. Even the most dire estimate of the wetlands problem has not suggested that anything like half of the land would be unavailable for development, and the basic planning reality is that substantial parts of the wetlands can be used to satisfy the necessary open space requirement within a planned development.

Thus, there is no basis at all to assume that O & Y and Woodhaven will not be able to produce their respective 500 and 260 units within the next 6 years. At most the wetlands problem will reduce the total size of the development beyond the first 6 years and result in a build-out in fewer than 20 years. Indeed, the whole basis for spreading the fair share obligation among

other developments and modes was to prevent undue reliance upon any single developer, because of the possibility of economic or other difficulties.

In summary, the Judgment•s spreading out of the obligation and its express provision for Court review of Planning Board action as to the two major developments establishes that unknown problems like this'one were envisioned and were well provided for in the Settlement Agreement. The wetlands revisions afford the Township no basis on which to back out of the settlement.

The Council's Fair Share

Of course, the Affordable Housing Council's circulation of draft criteria and guidelines does not affect the final judgment either. The Council's draft is expressly tentative, and necessarily so given the numerous legal, planning, and conceptual problems with it. In any case, whatever the final regulations, it is clear that the Council has already dealt with the situation of a town, like Old Bridge, that has previously had a final court judgment entered for this fair share period. Proposed Rule 5:92-. 6.1(b) provides that a town which has a fair share from a court judgment for this period in excess of that which the Council methodology would have assigned will have the excess credited against its next fair share. The Council has not asserted, and obviously could not in light of the Hills Development decision, any authority to modify final court judgments.

It is also far from clear that application of the Council regulations would be of benefit to the Township or the developers. Obviously, the Township could not pick and choose among the regulations. For example, proposed Rule 5:92-8.4 requires a minimum gross density of 6 units per acre and a 20 percent set-aside. Throughout our negotiations, the Township fought vigorously against a density of that level and the settlement provides for 4 units to the acre, for all PD land, not just O & Y's and Woodhaven's land. Further, the settlement requires only a 10% set-aside and only a $3,000 contribution per market unit for small developments. In short, the final judgment is not only final as a matter of law, but it is, like all good settlements, a reasonable blend of provisions that accommodates the Township's as well as the developers' and the Urban League's interests. Should the Township believe that the Judgment is other than final or that the Supreme Court did not mean to say that a case with a final judgment cannot be transferred, the Urban League is prepared to respond to any formal motion and obtain a definitive legal ruling on these questions.

We hope these comments will be of assistance to your Honor in preparation for the conference.

Sincereiy your's,

Eric Neisser
Urban League Co-Counsel

cc/Old Bridge Service List
Carla Lerman

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