

U. L. v. Carteret

---

19 Sept. 1986

● Old Bridge

Letter (1) w/ letter from Hall attached (11)

+ Cert of Convey attached

● Pgs 12

CA 000133V

THE STATE UNIVERSITY OF NEW JERSEY  
**RUTGERS**  
Campus at Newark

School of Law-Newark . Constitutional Litigation Clinic  
S.I. Newhouse Center For Law and Justice  
15.Washington Street. Newark . New Jersey 07102-3192 . 201/648-5687

September 19, 1986

Mr. C. Roy Epps, President  
Civic League of Greater New Brunswick  
47-49 Throop Avenue  
New Brunswick, NJ 08901

Dear Roy:

Enclosed please find recent letter from Thomas Hall, Esq., in which he concludes that ". . . if both Woodhaven and O&Y are unable to proceed for some time, it would appear that the Township's plan to meet its affordable housing requirements through the imposition of a ten percent (10%) set-aside on all residential developers can proceed without any additional burden on the Township, and therefore, without any need to re-open this matter."

Jerome Convery's reliance on the Consent in his Certification, which is also enclosed, suggests that he agrees with Thomas Hall.

Sincerely,

*Barbara Stark, jma*

ends

cc/John Payne  
Bob Westreich  
Eric Neisser

# BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET

PRINCETON, NEW JERSEY 08540

(BO) 024-0808

CABLE "PRINLAW" PRINCETON

TELECOPIER: (609) 924-6239

TELEX: 637652

HARRY BRENER  
HENRY A. HILL  
MICHAEL D. MASANOrr\*\*  
ALAN M. WALLACK\*  
GERARD H. HANSON\*  
ROBERT D. HIMCH

EDWARD D. PENN\*  
ROBERT W. BACSO, JR.\*  
MARILYN S. SILVIA  
THOMAS J. HALL\*\*  
ROCKY L. PETERSON  
MICHAEL J. RILMAN  
MARY JANE NIELSEN\*+  
THOMAS R. CARROLL  
MARTIN J. JENNINGS, JR.\*\*  
EDDIE PAGAN, JR.  
JOHN O. CHANG  
JOSEPH A. VALES  
DANIEL J. SCAVONE  
DANIEL J. SHERIDAN  
MATTHEW H. LUSART\*  
L. STEPHEN PASTOR\*\*  
GUY P. LANDER\*  
RUSSELL U. SCHENKMAN\*  
MITCHELL NEIDER\*  
JOEL D. ROSEN\*

\* MEMBER OF M.J. L. O.C. BAR  
\*\* MEMBER OF N.J. P.A. BAR  
\* MEMBER OF N.J. N.V. BAR  
\*\*\* MEMBER OF N.J. I.O.A. BAR  
\* MEMBER OF PA. & MA. BAR ONLY  
\*\* MEMBER OF N.J. & CONN. BAR  
▲ CERTIFIED CIVIL TRIAL ATTORNEY

September 17, 1986

FILE NO.

Thomas Norman, Esquire  
Attorney for the Old Bridge Township Planning Board  
Norman and Kingsbury  
Attorneys at Law  
Jackson Commons  
Suite A-2  
30 Jackson Road  
Medford, New Jersey 08055

Re: Wetlands issues: O&Y Old Bridge Development Corp. ("O & Y")

Dear Mr. Norman:

Pursuant to your telephone call and letter dated September 9, 1986, in which you requested information concerning the progress of the wetlands delineation process on my client's property in Old Bridge, I have prepared the report which follows. Inasmuch as I believe that all parties to this litigation would be served by an update, or "progress report", as to our activities, I have taken the liberty of both expanding on the theme raised in your letter and also sending copies of this letter to all parties in the litigation.

## 1. Wetlands Delineation process: Vegetative indicia.

a) O&Y engaged Amy Greene to review the entire site to delineate area where certain plant species, which are indicative of the presence of wetlands, are present. Ms. Greene has now completed her delineation process.

b) Taylor Wiseman and Taylor are surveying and mapping the wetlands demarcation lines using the data developed through Ms. Greene's field investigation. The survey lines are estimated to total some sixty miles of length, and the survey process is expected to be completed by the end of October, 1986.

**2. Other Wetlands data:**

The presence or absence of certain kinds of vegetation is but one criterion used by the U.S. Army Corps of Engineers ( "CoE") in delineating wetlands. The other two criteria are the presence/absence of "hydric" soils, that is, those soils which show characteristics associated with prolonged saturation with water; and a " hydrological connection", that is, a linkage between a site which shows the presence of wetlands vegetation with a " water of the United States." The presence of one indicator, in the absence of the other two, is not definitive evidence that the site falls under CoE jurisdiction. In addition, a substantial body of factual material must be supplied to the CoE as part of any application for a permit under CoE regulations, and O&Y has the following additional studies underway at the present time:

**a) Groundwater Hydrology:**

Geraghty and Miller, geotechnical engineers, have been hired to investigate and report on the hydrological connections between the areas with wetlands vegetation and "waters of the United States", including any connection (or barrier) between the surface and the ground water table; to determine whether or not any aquifer recharge occurs on the O&Y site, and if so, where it occurs; and to establish the geodetic elevations of the natural water table and relate those elevations to the geodetic elevations of the surface ground level. These reports are now in the drafting stage and final reports are expected to be delivered no later than the end of October, 1986.

**b) Water Quality:**

International Technology Corp. (ITC), an environmental science consulting group, has been hired to investigate those areas with wetlands vegetation to determine the characteristics of the specific sites which enhance or diminish the quality of water which may flow on, over or through the site. These investigations are underway and a final report is expected to be delivered no later than the end of October, 1986.

**c) Flood Storage:**

Elson T. Killam and Associates (ETK), civil engineering consultants, has been hired to prepare a report establishing natural flood storage characteristics which may be present or absent on those sites which show the presence of wetlands vegetation. This work is underway, and a final report is expected to be delivered no later than the end of October, 1986.

d) Wildlife:

Terrestrial Environmental Specialists (TES), a consulting firm specializing in wildlife evaluations, has been hired to report on the presence or absence of wildlife within those areas with wetlands vegetation and to qualitatively evaluate these areas as significant wildlife habitat. Again, this work is well underway and the final report is expected to be delivered before the end of October, 1986.

3. O&Y's proposed plans for development of the site.

A necessary precondition for the development of the site is a resolution of the wetlands issue. O&Y recognizes this, and has been spending substantial sums of money for the above referenced studies, in addition to continuing to bear the carrying costs, currently estimated at well in excess of \$500,000 per month. Given the fact that New Jersey's real estate market is in the most favorable position it has enjoyed during the past fifteen years, O&Y is most anxious to proceed with the development of this site, but recognizes that it is impossible to proceed with its development plans before the Old Bridge Township Planning Board until the wetlands issues are resolved. Similarly, we think it imprudent to proceed with any judicial hearing as to the validity of the settlement until more is known about the CoE determination of permitted activity on site. O&Y is proceeding to move forward with the requisite CoE determination under two approaches:

a) Legal:

O&Y has retained Kaye, Scholer's Washington office to represent it in an effort to clarify the CoE jurisdiction of the O&Y site. An extensive dialogue has taken place at present, with primary emphasis on the methodology which should be used to delineate the extent of federal jurisdiction over the kind of lands found on the O&Y site. It is possible that pursuit of O&Y's legal options may result in litigation; if so, such litigation would take place simultaneously with O&Y's efforts to obtain a permit from the CoE to develop the site.

b) Regulatory:

As indicated above, O&Y's work to obtain extensive data about the site can be used to support an application for a Section 404 permit from the CoE, and the preliminary phases of that application are currently underway. Indeed, the extensive discussions between O&Y and the New York District offices of the CoE have been under a Permit Application since 1985. The New York Office of the CoE has been very helpful and has indicated that a 404 Permit is quite possible, given the extensive field investigations and the quality of the wetlands on site. If a 404 permit is obtained, then appropriate development of the site, following Planning Board review and approval of the specific development plans, would be possible.

Thomas Norman, Esquire  
September 17, 1986  
Page 4

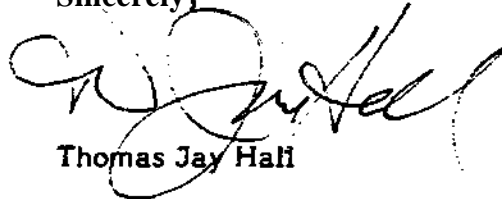
O&Y intends to evaluate its options very carefully as the data, described above, becomes available. Our appraisal of the situation is suggesting that if a *UOU* permit is achievable, O&Y will most likely apply for a permit for the entire project, which would mean that the basic land development plan, presented as Plate A, would remain viable. If it decides to go forward with a 404 permit application, O&Y will file a copy of the application and supporting data with the Township, and will continue to keep the Township and the Court informed as to progress.

It is impossible, at this time, to project how long this process will take. From discussions with the CoE New York District offices, it appears as though a permit process could take a full year to conclude; and as you know, it is sheer speculation to predict how long litigation would take, if that path were chosen.

Until such time as O&Y is ready to report to the Township and to the Court that it has resolved the wetlands issue and is ready to proceed with the developmental process, I would suggest that it would be a misuse of judicial and Township resources to move to reopen the judgment. O&Y's land will not be the subject of a development application (with the possible exception of the senior citizen housing) until the wetlands issue is resolved, and therefore the Township will be under no pressure to grant approvals of either market or non-market units on the O&Y site. I do not know what effect this impasse has on Woodhaven Village's development plans and suggest that you inquire further of Mr. Hutt; but if both Woodhaven and O&Y are unable to proceed for some time, it would appear that the Township's plan to meet its affordable housing requirements through the imposition of a ten percent (10%) set-aside on all residential developers can proceed without any additional burden on the Township, and therefore, without any need to re-open this matter.

I hope that this information is helpful, and I would welcome the opportunity to discuss this matter with you or any other party to this litigation.

Sincerely,



Thomas Jay Hall

cc. The Hon. Eugene D. Serpentelli  
All parties on the Old Bridge Service List  
James Haggerty, U.S.A.CoE



**TOWNSHIP OF OLD BRIDGE**  
MIDDLESEX COUNTY, N.J.

**JEROME J. CONVERY**  
TOWNSHIP ATTORNEY

September 17, 1986

Clerk of the Superior Court  
CN-971  
Trenton, NJ 08625

Att: Chancery Division

Re: Urban league, et al  
vs. Mayor and Council of Borough  
of Carteret, et al  
Docket No. C 4122-73

Dear Sir:

Enclosed please find an original and copy of Certification of Jerome J. Convery In Opposition To Motion For Attorneys' Fees And Costs. Please file and return a conformed copy to my office in the envelope enclosed. Thank you.

Very truly yours,

Jerome J. Convery

JJC/jd

Encs.

cc: Honorable Eugene D. Serpentelli (w/enc.)

cc: All attorneys on attached service list (w/enc.)

JEROME J. CONVERY, ESQ.  
151 Route 516  
P.O. Box 642  
Old Bridge, NJ 08857  
(201) 679-0010  
Attorney for Def. Township of Old Bridge

URBAN LEAGUE OF GREATER	:	SUPERIOR COURT OF NEW JERSEY
NEW BRUNSWICK, et al.,	:	CHANCERY DIVISION
	:	MIDDLESEX/OCEAN COUNTY
Plaintiffs,	:	
	:	Docket No. C 4122-73
vs.	:	
	:	<u>Civil Action</u>
THE MAYOR AND COUNCIL OF	:	
THE BOROUGH OF CARTERET,	:	CERTIFICATION OF
et al.,	:	JEROME J. CONVERY
	:	IN OPPOSITION TO MOTION
Defendants.	:	FOR ATTORNEYS' FEES AND COSTS
	:	
	:	

JEROME J. CONVERY, of full age, certifies as follows:

1. I am an attorney at law of the State of New Jersey and I am the Township Attorney for the Township of Old Bridge. As the Township Attorney for the Township of Old Bridge, I became involved in the above referenced matter when Old Bridge was consolidated for purposes of compliance with Mount Laurel II. I therefor am fully familiar with the facts and circumstances of the case involving the Township of Old Bridge which was not initially involved in the Court proceedings. This Certification is submitted in opposition to the Urban League Plaintiff's application for expert fees, attorneys fees and costs as they relate to



the Township of Old Bridge. In regard to the Statement for Professional Services Rendered, dated May 12, 1984, from Carla Lerman to "all counsel" which is annexed as Exhibit A to the Certification of Barbara Stark, Esq., this Statement was never provided to the Township of Old Bridge to my knowledge, because the Township of Old Bridge was not involved in the proceedings at that time. The review of the Statement, dated April 18, 1984, indicates that the various Planners<sup>1</sup> Consensus Group meetings and the preparation of the report occurred between August 28, 1983 and March 31, 1984. The Township of Old Bridge was not involved in these proceedings, was not represented by counsel at that time, and had no input or participation in the proceedings.

2. Regarding the additional Statement for Professional Services Rendered, which is attached as Exhibit B to the Certification of Barbara Stark, Esq., the Urban League alleges that it paid \$87.50 in connection with this bill and seeks reimbursement from Old Bridge, in the amount of \$43.75. This Statement, dated May 12, 1984, is further evidence that the preceding expert fees were not in regard to Old Bridge Township. The fee for the services rendered by Carla L. Lerman concerning the Township of Old Bridge is covered by the Settlement Agreement dated January 24, 1986, wherein the parties agreed that the Master's fees should be divided evenly by O & Y, Woodhaven and the Township of Old Bridge, with each party bearing one-third of the total cost. If the Township of Old Bridge is ordered to reimburse the Urban League for an additional \$43.75, pursuant to the Settlement Agreement, the Township of Old Bridge should bear one-third of that amount, with the remainder being paid by O & Y and Woodhaven.

3. The Urban League seeks an additional \$180.80 for reimbursement of Ms. Lerman concerning attendance and testifying at trial. Since the

Township of Old Bridge was not involved in the trial in question, the Township of Old Bridge should not be required to reimburse the Urban League for any part of said testimony. Again, the Township of Old Bridge was not a participant in said trial, was not a party to any of the legal determinations made at that time, and should not be responsible for reimbursement of these fees. In the event that the Court orders the Township of Old Bridge to participate in the reimbursement for said fees, the Settlement Agreement should be controlling, and O & Y and Woodhaven should participate in said reimbursement.

4. The Township of Old Bridge takes no position regarding the expert fees concerning Rogers, Golden & Halpern, since there is no claim by the Urban League against the Township of Old Bridge regarding those services.

5. Concerning the Plaintiff's expert planner, Alan Mallach, a review of his invoices indicates that the great majority of the work performed was performed prior to June 22, 1984 and, therefor, was in regard to municipalities other than the Township of Old Bridge. Furthermore, the Settlement Agreement voluntarily entered into by the parties was intended to resolve all issues and to be a final judgment. In fact, the parties to the Settlement Agreement, in Section V-F.4, agreed that the Master's fees should be divided evenly by O & Y Woodhaven and the Township of Old Bridge, and that the Urban League would not be liable for any portion of the Master's fee. This is clearly an indication that the parties discussed and agreed as to the payment of expert fees. At no time, during the settlement negotiations, was there a demand by the Urban League for payment of its own expert's fees regarding Alan Mallach, nor did the Township of Old Bridge seek the payment of its expert fees from any other

party. Since the Urban League and the Township of Old Bridge entered into a settlement at that time, and resolved the issue of the payment of the Master's fees, it was implicit that each party would be responsible for its own attorneys fees, expert fees, and cost of suit. Therefore, the Township of Old Bridge should not be held accountable at this time for the payment of Mr. Mallach's fees, Urban League attorney fees, or costs of suit.

6. In regard to the depositions, a review of the Certification of Barbara Stark, Esq. indicates that there were no depositions in regard to the Township of Old Bridge. The Township of Old Bridge therefor takes no position regarding this aspect of the Urban League's Motion.

7. Pursuant to the Settlement Agreement involving the Township of Old Bridge and the Urban League, the Township of Old Bridge has paid the amount due to Carla Lerman, pursuant to a voucher properly submitted by Carla Lerman. The Township of Old Bridge respectfully submits that it should not be responsible for any other attorneys<sup>1</sup> fees, experts' fees or costs of suit in this matter.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

DATED: Sept. 16, 1986



---

JEROME J. CONVERY, ESQ.

Attorney (s): JEROME J. CONVERY, ESQ.  
Office Address & Tel. No.: 151 Route 516 - P.O. Box 642  
Old bridge, NJ 08857  
(201) 679-0010

Attorney(s) for Def. Township of Old Bridge

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al.,

Plaintiff(s)

vs.

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

Defendant(s)

SUPERIOR COURT OD NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX/OCEAN COUNTY  
Docket No. C 4122-73

CIVIL ACTION  
PROOF OF MAILING

1. I, the undersigned, am secretary to  
JEROME J. CONVERY, ESQ.  
attorney(s) for Defendant, TOWNSHIP OF OLD BRIDGE

in the above entitled action.

2. On September 17, 1986, I mailed in the U.S. Post Office in  
New Jersey, a sealed, envelope with postage prepaid thereon, by regular  
mail, addressed to an attorneys on the attached list  
at said addressee's last known address <\$

containing CERTIFICATION OF JEROME J. CONVERY IN OPPOSITION TO MOTION FOR  
ATTORNEYS' FEES AND COSTS

R.1:5-3 ~~XX~~

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing state-  
ments made by me are wilfully false, I am subject to punishment.

Dated: September 17, 1986 .

JUDITH C. DARAGO  
*C. Darago*

SERVICE LIST

✓ Barbara Stark, Esq.  
Constitutional Litigation Clinic  
Rutgers Law School  
15 Washington Street  
Newark, NJ 07102

Joseph Benedict, Esq.  
Township of South Brunswick  
Benedict & Altman  
247 Livingston Avenue  
New Brunswick, NJ 08901

Stewart M. Hutt, Esq.  
459 Amboy Avenue  
Woodbridge, NJ 07095

Bertram Busch, Esq.  
Busch & Busch  
99 Bayard Street  
New Brunswick, NJ 08903

Thomas Hall, Esq.  
2-4 Chambers Street  
Princeton, NJ 08540

Thomas Norman, Esq.  
Jackson Commons  
30 Jackson Road  
Medford, NJ 08055

William C. Moran, Jr., Esq.  
Township of Cranbury  
Huff, Moran & Balint  
Cranbury-South River Road  
Cranbury, NJ 08512

John Pidgeon, Esq.  
Mattson, Madden & Polito  
Gateway 1  
Newark, NJ 07102

Leslie Lefkowitz, Esq.  
Township of North Brunswick  
1500 Finnegans Lane  
North Brunswick, NJ 08902

Frank A. Santoro, Esq.  
Borough of South Plainfield  
1500 Park Avenue  
South Plainfield, NJ 07080

Mario Apuzzo, Esq.  
Township of Monroe  
Municipal Complex  
Perrineville Road  
Jamesburg, NJ 08331

Philip Paley, Esq.  
Township of Piscataway  
Kirsten, Friedman & Cherin  
17 Academy Street  
Newark, NJ 07102