

Old Bridge 1987

Draft Motion

letter Brief

Proposed Form of Order

Att.: inter office communication

pgs. 10

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INTERDEPARTMENT COMMUNICATION

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John and Eric:

Attached please find, for your review, draft motion, letter brief and proposed form of Order. The Certification is coming.

Barbara

10/13/87

attchmt

JOHN M. PAYNE, ESQ.
BARBARA STARK, ESQ.
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ATTORNEYS FOR CIVIC LEAGUE PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

Civil No. C 4122-73
(Mount Laurel)

NOTICE OF MOTION FOR
IMPOSITION OF CONDITIONS
ON TRANSFER (Old Bridge)

TO: Clerk of the Court
All Counsel of Record

PLEASE TAKE NOTICE that on the ____ day of November, 1987 at 10 o'clock in the forenoon or as soon thereafter as counsel may be heard, the undersigned, attorneys for the Urban League plaintiffs, shall move before the Honorable Eugene D. Serpentelli, at the Court House, Toms River, New Jersey, for an Order as follows:

1. That there shall be no further commitment of water or sewer access in Old Bridge, either to residential or non-residential users, except as provided below, pending substantive certification by the Council on Affordable Housing ("COAH");

2. That the Township may furnish either water or sewer to a

maximum of five single family homes per year (or an equivalent amount to non-residential use, which would reduce the amount allocable to residential use), recognizing that such modest growth has little bearing on Mount Laurel compliance;

3. That the Township may permit additional residential or non-residential use financed exclusively by the developer thereof, provided that a portion of the new infrastructure, or a cash equivalent, is reserved for subsequent Mount Laurel developments;

4. That to the extent that any water or sewer infrastructure development is financed by the Township, one unit of existing capacity shall be released from the proposed restraint for every two units of new capacity created. The effect of this is to reserve one-half of any new capacity for Mount Laurel purposes; and

5. For such further relief as this Court may deem equitable and just.

In support of this application, plaintiffs shall rely upon the Certification of Alan Mallach and the Letter Brief submitted herewith.

A proposed form of Order is submitted herewith pursuant to R. 1:6-2.

Dated:

Barbara Stark

October , 1987

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. (Old Bridge)

Dear Judge Serpentelli:

This letter brief is respectfully submitted in support of the Civic League's motion for the imposition of conditions on transfer. In Hills Development Co. v. Bernards, 103 N.J. 1, _____ (hereinafter Hills), the Supreme Court of New Jersey held that "the judiciary has the power, upon transfer, to impose those same conditions designed to conserve scarce resources that the Council might have imposed were it fully in operation." Although the Council on Affordable Housing ("COAH") is now "fully in operation" / Old Bridge has as of this date failed to file any housing plan with COAH. The Township, accordingly, cannot ~~properly~~ be considered a "participating municipality" within the meaning of N.J.A.C. 5:91-

11.1. It is respectfully submitted that this motion, which merely seeks to preserve the status quo until COAH can act, should therefore be decided by this Court. In its recent motion to transfer, moreover, Old Bridge argued at great length that the Township could not accommodate further development. It should not impose any hardship on the Township to require it to be bound by its own allegations, at least until it has properly placed this matter before COAH.

The central problem in Old Bridge is limitation of infrastructure. By its own admission, and based on data that is now at least ____ months old, Old Bridge can accommodate at most ____ new homes within its sewer system and ____ within its water system. Assuming that new homes require both water and sewer, the effective upper limit therefore is slightly over ____ new units, approximately ____% of COAH's proposed fair share number of 400, without any consideration of the market units that might be necessary to support provision of this fair share.

The need for preservation of this limited capacity is therefore obvious. Old Bridge's past conduct, moreover, increases the urgency of the Civic League's request. To date in these protracted Mount Laurel proceedings, the Township has chosen to rely on the mandatory set aside approach to compliance, which requires nine market rate units for each Mount Laurel unit built. It is reasonable to predict that most of Old Bridge's fair share, whatever it is, will be tied to a mandatory set-aside, thus increasing ten-fold the number of units for which adequate sewer and water provision must be made. Thus, the loss of the limited amount of water and sewer available "is likely to have a substantial adverse impact on the ability of the municipality to provide lower income housing in the future."

Id. at .

Nor is this conclusion altered by the fact that it may be technologically feasible for Old Bridge to expand its water and sewer systems in the future. As of this date there are no certain plans and no realistic cost estimates. All of southern Middlesex

County and adjacent areas are growing rapidly, and the necessary regional solutions are unlikely to come either quickly or cheaply. When the existing infrastructure is used up there may be realistic constraints on all future development, including Mount Laurel development, that are beyond the capacity of the Court or COAH to solve.

Furthermore, it is clear that O&Y and Woodhaven are now under tremendous financial pressure to renegotiate their respective developments with the Township. There is no reason to expect that such negotiations will include any provision for Mount Laurel housing. Absent the imposition of appropriate restraints, approvals may be granted, effectively precluding^{which would} the provision of crucial infrastructure for Mount Laurel housing before Old Bridge has even filed its housing element.

For the foregoing reasons, it is respectfully requested that the following conditions be imposed on Old Bridge's transfer:

1. Except as provided below, no further commitment of water

or sewer access in Old Bridge should be permitted, either to residential or non-residential users.

2. The Township may furnish either water or sewer to a maximum of five single family homes per year (or an equivalent amount to non-residential use, which would reduce the amount allocable to residential use), recognizing that such modest growth has little bearing on Mount Laurel compliance.

3. The Township may permit additional residential or non-residential use financed exclusively by the developer thereof, provided that a portion of the new infrastructure, or a case equivalent, is reserved for subsequent Mount Laurel developments.

4. To the extent that any water or sewer infrastructure development is financed by the Township, one unit of existing capacity shall be released from the proposed restraint for every two units of new capacity created. The effect of this is to reserve one-half of any new capacity for Mount Laurel purposes.

Respectfully yours,

cc/Old Bridge Service List

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Defendants.

Civil No. C 4122-73
(Mount Laurel)

ORDER (Old Bridge)

This matter being opened to the Court on the Motion of John M. Payne, Esq. and Barbara Stark, Esq., attorneys for the Civic League plaintiffs, to restrain the use of water and sewer capacity within the Township of Old Bridge, and on notice to all counsel appearing on the attached service list, and the Court having considered the papers appearing at the foot hereof, and good cause having been shown,

It is, on this _____ day of _____, 1987,

O R D E R E D:

1. That there shall be no further commitment of water or sewer access in Old Bridge, either to residential or non-residential users, except as provided below, pending substantive certification by the Council on Affordable Housing ("COAH");

2. That the Township may furnish either water or sewer to a maximum of five single family homes per year (or an equivalent amount to non-residential use, which would reduce the amount allocable to residential use), recognizing that such modest growth has little bearing on Mount Laurel compliance;

3. That the Township may permit additional residential or non-residential use financed exclusively by the developer thereof, provided that a portion of the new infrastructure, or a cash equivalent, is reserved for subsequent Mount Laurel developments;

4. That to the extent that any water or sewer infrastructure development is financed by the Township, one unit of existing capacity shall be released from the proposed restraint for every two units of new capacity created. The effect of this is to reserve one-half of any new capacity for Mount Laurel purposes.

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

PAPERS CONSIDERED:

___ Notice of Motion
___ Movant's Affidavit
___ Movant's Brief
___ Answering Affidavit
___ Answering Brief
___ Cross Motion
___ Movant's Reply
___ Other _____