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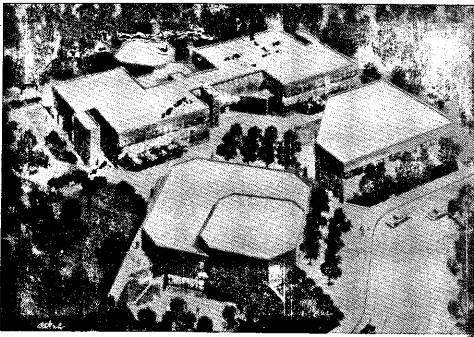
O&Y Old Bridge Development Corp. v. Twp.
of Old Bridge

Plaintiff's

Notice of Motion for Partial Summary
Judgment (R. 4:46) and Dismissal
of ~~Court~~ Ten of the Complaint ⊕
Cover letter ⊕ certification

pgs = 15

CA002310N



Township of Old Bridge

MIDDLESEX COUNTY, N.J.

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TOWNSHIP ATTORNEY
Louis J. Alfonso, Esq.
325 County Highway 516
Old Bridge, New Jersey 08857
(201) 238-2230

April 16, 1981

Honorable John C. Demos
Middlesex County Court House
New Brunswick, New Jersey 08903

Re: O & Y Old Bridge
Development Corp. vs.
The Township of Old
Bridge, et als.
Docket No. L-32516-80

Dear Judge Demos:

Enclosed please find herewith a copy of the Notice of
Motion for partial summary judgment, Brief and
supporting Certifications for Motion, returnable
May 1, 1981.

Supplemental Certifications, and Reply Certifications
and Brief to Plaintiff's Motion also returnable
May 1, 1981 will follow.

Copies have ben filed with the County Clerk and
Clerk of the Superior Court.

Respectfully yours,

Louis J. Alfonso
LOUIS J. ALFONSO

LJA:aab
Enclosures

cc: Brener, Wallack & Hill, Esqs.
Thomas Norman, Esq.
William E. Flynn, Esq.
Louis E. Granata, Esq.

REC'D AT CHAMBERS

APR 16 1981

JUDGE DEMOS

CA002310N

LOUIS J. ALFONSO, ESQ.
325 County Highway 516
Old Bridge, New Jersey 08857
(201) 238-2230
Attorney for Defendant,
Township Council of the Township of Old Bridge

| | | |
|---|---|--|
| O & Y OLD BRIDGE DEVELOPMENT CORP., a Delaware Corpora- tion, | : | SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY DOCKET NO. L-32516-80 |
| Plaintiff, | : | |
| -vs.- | : | Civil Action |
| THE TOWNSHIP OF OLD BRIDGE in the County of Middlesex, et als., | : | NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT (R. 4:46) AND DISMISSAL OF COUNT TEN OF THE COMPLAINT |
| Defendants. | : | |

TO: THOMAS NORMAN, ESQ.
Suite 101, Olde Buttonwood Building
414 Stokes Road
Medford, New Jersey 08055

BRENER, WALLACK & HILL, ESQS.
15 Chambers Street
Princeton, New Jersey 08540

WILLIAM E. FLYNN, ESQ.
P. O. Box 515-550
Highway 9
Old Bridge, New Jersey 08857

LOUIS E. GRANATA, ESQ.
210 Main Street
P. O. Box 389
Matawan, New Jersey 07747

PLEASE TAKE NOTICE that on May 1, 1981, Louis J.
Alfonso, Esq., attorney for defendants, Township of Old Bridge
and Township Council of the Township of Old Bridge, will make

application to the above named Court for an Order granting partial summary judgment in favor of the aforesaid defendants on Count Ten of the Complaint and alternately, for more specific pleadings. Defendants attorney will rely upon the attached Brief and Certifications in support thereof.

DATED: April 16, 1981

181 Louis J. Alfonso

LOUIS J. ALFONSO
Attorney for Defendant
Township of Old Bridge and
Township Council of the
Township of Old Bridge

CERTIFICATION

I hereby certify that the original of the within Notice of Motion has been filed with the Clerk of the Superior Court of New Jersey, State House Annex, P. O. Box 1300, Trenton, New Jersey 08625; a copy sent to Brener, Wallack & Hill, Esqs., attorneys for plaintiff, 15 Chambers Street, Princeton, New Jersey 08540; a copy sent to Thomas Norman, Esq., Suite 101, Olde Buttonwood Building, 414 Stokes Road, Medford, New Jersey 08055; a copy sent to William E. Flynn, Esq., P. O. Box 515-550, Highway 9, Old Bridge, New Jersey 08857; a copy sent to Louis E. Granata, Esq., 210 Main Street, P. O. Box 389, Matwan, New Jersey 07747; a copy to Honorable John C. Demos, Middlesex County Court House, New Brunswick, New Jersey 08903 and a copy to the Middlesex County Clerk, Administration Building, Kennedy Square, New Brunswick, New Jersey 08903.

DATED: April 16, 1981

15/ Louis J. Alfonso

LOUIS J. ALFONSO, ESQ.
Attorney for Defendants
Township of Old Bridge and
Township Council of the
Township of Old Bridge

O & Y OLD BRIDGE DEVELOPMENT CORP., :
a Delaware Corporation, :
Plaintiff, :
-vs.- :
THE TOWNSHIP OF OLD BRIDGE :
in the County of Middlesex, :
et als., :
Defendants. :

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO. L-32516-80

Civil Action

BRIEF AND CERTIFICATIONS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT ON BEHALF OF TOWNSHIP OF
OLD BRIDGE AND TOWNSHIP COUNCIL OF THE TOWNSHIP
OF OLD BRIDGE

LOUIS J. ALFONSO, ESQ.
325 County Highway 516
Old Bridge, N.J. 08857
Attorney for Defendants,
Township of Old Bridge and
Township Council of the
Township of Old Bridge

On the Brief: Louis J. Alfonso, Esq.

THE TENTH COUNT OF THE COMPLAINT
AGAINST THE DEFENDANT, TOWNSHIP
COUNCIL, ALLEGING CONSPIRACY SHOULD
BE DISMISSED AND/OR SUMMARY JUDGMENT
ENTERED IN FAVOR OF DEFENDANTS.

The plaintiff in the Tenth Count alleges a conspiracy among the defendants to preserve exclusionary land use policies within the Township, to violate the specific orders of the Supreme Court in OAKWOOD AT MADISON V. MADISON TOWNSHIP, 72 N.J. 481 (1977), and to prevent development of federal or state subsidized low and moderate income housing. No specific facts are pleaded to show when, where and how said alleged conspiracy took place but rather the count consists of a series of conclusions and no factual basis.

Our N.J. Courts have defined a 'conspiracy' as an agreement, manifesting itself either in deeds or words, by which two or more persons confederate to do an unlawful act, or to use unlawful means to accomplish a lawful result. HILL DREDGING CORP. V. RISLEY, 18 N.J. 501 (1955). Additionally, the essential elements of a conspiracy are a combination of two or more persons, a real agreement or confederation with a common design, existence of an unlawful purpose or of a lawful purpose to be achieved by unlawful means. BOARD OF EDUCATION OF CITY OF ASBURY PARK V. HOCK, 66 N.J. Super. 231 reversed in part 38 N.J. 213 (AD 1961), NAYLOR V. HARKINS, 27 N.J. Super. 594, affirmed in part and reversed in part 32 N.J. Super. 559 (1953).

As the Certifications show Old Bridge hired a full time qualified licensed New Jersey Planner in December, 1974. One of

his duties as his Certification shows was to develop a new Zoning Ordinance and ensure compliance with both the mandate of the Supreme Court in OAKWOOD, Supra. and the Superior Court in URBAN LEAGUE V. BOROUGH OF CARTERET, 142 N.J. Super. 11 (1976).

He firmly states in his Certification that never did he receive any influence either direct or indirect from any Council member or municipal official to draft the new Ordinance in such a way to exclude or hamper development. He says that he did all he could in his professional opinion and using his professional abilities to meet Court guidelines and directives and that he had submitted the 1978 Ordinance to the Council and Planning for its adoption. He says in his Certification that he is aware of no changes in his draft Ordinance which were initiated by any of the defendants which would in any manner, shape or form amount to excluding low or moderate income housing from Old Bridge, preserve exclusionary policies, violate Court Orders or guidelines. On the contrary, he state that he was given a copy of both the Oakwood and Urban League decisions by the Township Attorney and told to do all he could to make sure the new Ordinance fully complied and that he met with representatives of the Department of Community Affairs to get input from them to insure the new Ordinance was a proper exercise of police powers.

Additionally, the Certifications of the Mayor and Councilmen who made up the defendant Township Council clearly shows there was no conspiracy as alleged in Count Ten. There were no meetings among the defendants, no confederation, no design and

no purpose to have the 1978 Ordinance nor any other Ordinance be exclusionary or violate any Court guidelines or orders.

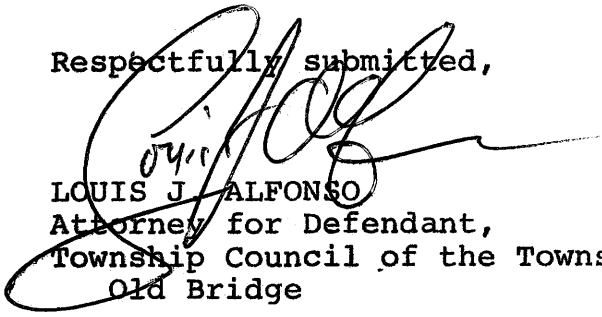
In HILL, SUPRA., the Court said that an essential element of a conspiracy was a real agreement or confederation. Here there was none and, in fact, there was the opposite, a desire and interest to have an Ordinance meet the burden of the region and contained least cost provisions. Since this defendant never entered into any agreement to exclude or not comply with Court orders, there was no conspiracy and hence, the Tenth Count of the Complaint should be dismissed as to this defendant.

Additionally, a land developer in alleging that defendants conspired to deny its substantive due process rights in action alleging, inter alia, that defendants wrongfully denied Zoning Variance and site plan approval had a heavy burden of proof since the zoning authority is afforded utmost latitude in justifying its action and since, if any legitimate public interest supports the zoning decision, the decision is not lacking due process. SIXTH CAMDEN CORP. V. EVESHAM TOWNSHIP, BURLINGTON COUNTY, 420 F. Supp. 709 (DC N.J. 1976). In SIXTH CAMDEN CORP., SUPRA., the Court held that where a Complaint which was altogether bereft of any reference to individual defendant's activities and which did not allege facts indicating individual defendant's participation in an alleged conspiracy failed to state a cause of action for conspiracy to violate a land developer's civil rights. In the case at bar, a review of the Tenth Count also shows it is bereft of any reference to the defendant's

activities and does not allege any facts indicating participation or a conspiracy. Rule 4:5-2 requires a claim for relief to contain a statement of the facts upon which the claim is based. The rules of Court though liberal for promotion of substantial justice, still require that a defendant be fairly apprised of the claim he is called upon to meet by a leading of facts supporting the claim. BROWN V. BROWN, 2 N.J. 252 (1949). In the case at bar, only conclusions that there is or was a conspiracy are in the complaint.

The Certifications show, in fact, that there was no conspiracy and absence the plaintiff showing facts which counter these Certifications there is no genuine issue of fact before the Court. Summary judgment should be granted when there is no genuine issue of material fact for a Court or jury to decide. FELBRANT V. ABLE, 80 N.J. Super. 587 (1963). Since there was no real agreement or confederation by defendant and no attempt or influence on the 1978 Ordinance to make it exclusionary or violate Court orders that summary judgment should be entered in favor of the defendant herein.

Respectfully submitted,


LOUIS J. ALFONSO
Attorney for Defendant,
Township Council of the Township of
Old Bridge

LOUIS J. ALFONSO, ESQ.
325 County Highway 516
Old Bridge, New Jersey 08857
(201) 238-2230
Attorney for Defendant,
Township Council of the Township of Old Bridge

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|---|---|--|
| O & Y OLD BRIDGE DEVELOPMENT CORP., a Delaware Corpora- tion, | : | SUPERIOR COURT OF NEW JERSEY LAW DIVISION |
| | : | MIDDLESEX COUNTY |
| | : | DOCKET NO. L-32516-80 |
| Plaintiff, | : | |
| -vs.- | : | Civil Action |
| THE TOWNSHIP OF OLD BRIDGE in the County of Middlesex, et als., | : | CERTIFICATION |
| Defendants. | : | |

E. FLETCHER DAVIS, of full age, hereby certifies as follows:

1. I am the Township Planner in Old Bridge and have been the full time Planner since December, 1974. I am a registered Professional Planner of New Jersey (#1617) and am a full member of the American Institute of Certified Planners, a member of the American Planning Association and a member of the New Jersey Federation of Planning Officials. I received my Master of City Planning Degree (Summa Cum Laude) from Yale University, New Haven, Connecticut in 1958.

2. The most recent Zoning Ordinance in Old Bridge was adopted in 1978. Prior to its adoption, I met with the Township Attorney and was given a copy of the Oakwood at Madison and Urban League Decisions. I was instructed by the Attorney and

the Manager and Mayor and Council to ensure that our new Ordinance fully complied with these decisions and that the Ordinance contain provisions for least cost housing.

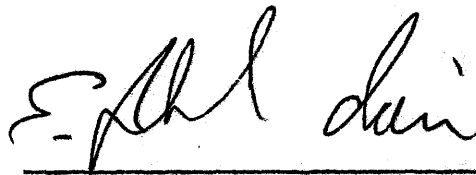
3. I was never approached directly or indirectly by any of the defendants or any other municipal official and asked, told or instructed not to comply with the Court decisions noted above or to try and avoid them. Additionally, no one ever approached me to try to influence me to change any part of the Ordinance or draft the Ordinance in such a way it would be exclusionary or contain provisions to keep down the number of housing units that could be built.

4. I met with representatives of the Department of Community Affairs while drafting the Ordinance to get input to have the Ordinance not be exclusionary. Additionally, the Planning Board and Council conducted various public forums to get public input while the Ordinance was being put together. I honestly did all I could in putting the Ordinance together to ensure that the Court orders referred to were followed and I as the drafter of the Ordinance never got any instructions or directions or influence from any defendant council member to change any zone to make that zone more exclusionary or to have that zone allow less units. The Ordinance and Zones are based on what and how I believe the zones should be in support of the general welfare. The areas which larger lots and less units are provided for are done that way to fit in with the character of the Township and environmental factors.

5. When the Ordinance was adopted, the record will show that substantially what was adopted was what I proposed and no restrictive provisions were added by the defendants.

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

DATED: April 16, 1981

A handwritten signature in cursive script, appearing to read "E. Fletcher Davis". The signature is written in dark ink and is positioned above a horizontal line.

E. FLETCHER DAVIS

LOUIS J. ALFONSO, ESQ.
325 County Highway 516
Old Bridge, New Jersey 08857
(201) 238-2230
Attorney for Defendant,
Township Council of the Township of Old Bridge

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|------------------------------|---|------------------------------|
| O & Y OLD BRIDGE DEVELOPMENT | : | SUPERIOR COURT OF NEW JERSEY |
| CORP., a Delaware Corpora- | : | LAW DIVISION |
| tion, | : | MIDDLESEX COUNTY |
| | : | DOCKET NO. L-32516-80 |
| | : | |
| Plaintiff, | : | |
| | : | |
| -vs.- | : | Civil Action |
| | : | |
| THE TOWNSHIP OF OLD BRIDGE | : | CERTIFICATION |
| in the County of Middlesex, | : | |
| a municipal corporation of | : | |
| the State of New Jersey, THE | : | |
| TOWNSHIP COUNCIL OF THE | : | |
| TOWNSHIP OF OLD BRIDGE, the | : | |
| PLANNING BOARD OF THE TOWN- | : | |
| SHIP OF OLD BRIDGE, the QLD | : | |
| BRIDGE TOWNSHIP SEWERAGE | : | |
| AUTHORITY and the OLD BRIDGE | : | |
| TOWNSHIP MUNICIPAL UTILITIES | : | |
| AUTHORITY, | : | |
| | : | |
| Defendants. | : | |

SONJA FINEBERG, of full age, hereby certifies as follows:

1. I am a councilwoman of the Township of Old Bridge and have been since 1974. I served as Mayor in 1978 and 1979. One of my concerns as a public official has been to ensure that there is adequate low and moderate income housing in Old Bridge and that Old Bridge meets its housing burden in the region.

2. The 1978 Zoning Ordinance which is under attack in this case is one which I sincerely believe was best for our

town and would meet the general welfare and not be exclusionary.

3. I personally spoke to and met with our Township Planner on a number of occasions in 1977 and 1978 to let him know that it was important to me and our other council members that Old Bridge meet its regional housing burdens and our new 1978 Ordinance meet all court directives and guidelines. Under a previous administration our town had spent years in Court and much money in defending the Oakwood case. I did not want to see our town go through this again. When the Urban League Decision which invalidated over a dozen Zoning Ordinances of Middlesex County municipalities was rendered, I and the Council decided that we would comply fully with Judge Furman's decision rather than appeal and we had our Ordinance (the one prior to 1978) modified to reflect his decision. We also told the Planner to incorporate his decision and the Oakwood decision in the 1978 Ordinance which was adopted as a result of the final Oakwood decision of our Supreme Court.

4. I never met with any council member, municipal official or water or sewer authority member or any other defendant in this action for the purpose of making our 1978 Ordinance or any other land subdivision enactment exclusionary. I never met or had any discussion with any of the above to violate, circumvent or disregard the orders of the Court in Oakwood or the Urban League matter nor to advance or promote exclusionary zoning policies. Neither myself or any member of the council attempted to change any part of that Ordinance, so that less units could be

built in any area. On the contrary, we had requested the Planner to add as much high density zones as he felt he possibly could. When I and my fellow council members discussed the Ordinance we did so with a view, desire and intent to make sure it was not exclusionary and not in violation of any laws or court orders. In fact, we authorized an extra payment to our Planning Board attorney to help draft the Ordinance and ensure it was proper.

5. On no occasion did any of the defendants either directly or indirectly lead me to believe they wanted to see an Ordinance get adopted that did not comply with law and that was exclusionary.

6. I also have been active with HUD and helped set up subsidized housing units in our town and as part of our HUD program we now have subsidized housing and are attempting to increase the number of qualified units.

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

DATED: April 16, 1981

[Signature]
SONJA FINEBERG