

CA - Old Bridge

3-Apr-85

- Plaintiffs' Brief in support of motion to ~~consolidate~~ consolidate or intervention and for temporary restraints
- Affidavit in support
- ~~Copy~~ Certificate of service

pgs. ~~67~~ 67

Notes: Some of the exhibits are of poor quality

CA 002359B

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

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION
 MIDDLESEX COUNTY

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

Docket No. C-4122-73

Defendants

 O&Y OLD BRIDGE DEVELOPMENT
 CORP.,

LAW DIVISION-MIDDLESEX COUNTY

Plaintiff

Docket No. L-009837-84 P.W.

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

 WOODHAVEN VILLAGE, INC.,
 Plaintiff

LAW DIVISION-MIDDLESEX COUNTY

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

Docket No. L-036734-84 P.W.

 OAKWOOD AT MADISON, INC.,
 et al.,

LAW DIVISION-MIDDLESEX COUNTY

Plaintiffs

Docket No. L-7502-70 P.W.

v.
 THE TOWNSHIP OF MADISON
 and THE STATE OF NEW JERSEY,
 Defendants

 MEMORANDUM OF LAW IN SUPPORT OF URBAN LEAGUE PLAINTIFFS'
 MOTION FOR CONSOLIDATION OR INTERVENTION
 AND FOR TEMPORARY RESTRAINTS

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INTRODUCTION

This motion is unusual. It asks the Court to consolidate two of the most celebrated and ancient Mount Laurel actions and to enter an injunction in order to enforce not one but two Supreme Court judgments. These steps are mandated, however, by the Township of Old Bridge's failure over 15 years to adopt a constitutional zoning ordinance and the substantial risk that allowing the developer and Township to ignore the Supreme Court's mandate in Oakwood at Madison would undermine the realistic opportunity for construction of the Township's 1990 fair share by developers, such as O&Y and Woodhaven Village, who stand ready to construct housing that is in compliance with constitutional requirements.

FACTS

In Oakwood at Madison, Inc. v. Township of Madison, No. L-7502-70 P.W., filed in 1970, a developer challenged the zoning ordinance of what is now the Township of Old Bridge. On appeal from Judge Furman's ruling of invalidity, the Supreme Court of New Jersey held that the Township was a developing community and thus subject to the nonexclusionary zoning requirements of Southern Burlington Cty. NAACP v. Township of Mount Laurel, 67 N.J. 151, 336 A.2d 713, appeal dismissed and cert. denied, 423 U.S. 808 (1975). The Court not only required rezoning but also held that the corporate landowner was entitled to a permit to build its development, pursuant to its own plans "which, as they originally represented, will guarantee the allocation of at least 20% of the

units to low and moderate income families", defined by reference to the Statewide Housing Allocation Rep[ort]. Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481, 551 & n.49, 371 A.2d 1192, 1227 & n.49 (1977) (emphasis added). On remand, the Township and Oakwood at Madison agreed upon a Stipulation of Settlement permitting the construction of 1750 dwelling units of which 350 were to be "low and moderate income units." The Stipulation provided that the Court was to retain jurisdiction for site plan, subdivision, and other necessary approvals. The Stipulation was never signed by the Court and no further action has occurred in that case since May 31, 1977, nearly 8 years ago.

The developer did, however, obtain preliminary and final subdivision approval for its 1750 unit development from the Old Bridge Planning Board, although the final approval, issued on August 23, 1979, expressly provided that the 350 low and moderate income units were still subject to site plan approval.¹ The developer has never sought site plan approval for the low and moderate units. However, the developer has recently submitted detailed plans for the first 120 market units and, once the plats are signed, will have done everything necessary to obtain building permits. A meeting to review the plats and proposals for the first 120 market units is scheduled for this week. It is clear that the

¹ For reasons that are not clear, Paragraph 21 of the Final Approval states that site plan approval is necessary for "550 dwelling units included in the multi family housing sites." Whether this is a typographical error and should read "350" or refers as well to some other, non-Mount Laurel units, it is clear from Mr. Norman's letter of February 22, 1985 and conversations with the Township Planner and Engineer that all of the 350 lower

final subdivision approval adopted by the Planning Board allows the developer to obtain building permits for all 1400 market units with merely administrative approval but requires formal Planning Board site plan approval for construction of the 350 low and moderate income units. Moreover, because there is no apparent link between the two, it appears that the developer could complete all 1400 market units without building any lower income units.

As this Court is well aware, the Urban League case is a Mount Laurel challenge to the zoning ordinances of 23 communities in Middlesex County. At trial in 1976, Judge Furman held the ordinances of 11 towns, including Old Bridge, to be unconstitutional. Seven towns appealed, but Old Bridge neither appealed nor sought a judgment of compliance. In Southern Burlington Cty. NAACP v. Township of Mount Laurel, 92 N.J. 158, 456 A.2d 390 (1983), the New Jersey Supreme Court affirmed Judge Furman's rulings of unconstitutionality and remanded for a determination of region, regional need, fair share allocation, and each defendant's fair share. On July 13, 1984, this Court entered an Order, pursuant to a Stipulation between the Urban League plaintiffs and the Township of Old Bridge, determining that Old Bridge had a fair share allocation of 2414 low and moderate income units, but a credit of 279 units, for a net fair share of 2135 units to be constructed by 1990. The Court also found the existing zoning ordinance, enacted in 1983, to be not in compliance with Mount Laurel II and directed the parties to attempt to agree upon a

income units are subject to the site plan approval requirement.

remedial plan. By orders dated July 2 and August 3, 1984, the Court consolidated with the Urban League case, for remedial purposes, the suits by O&Y Old Bridge Development Corporation and Woodhaven Village. When voluntary efforts among the parties failed, the Court, by Order dated November 13, 1984 appointed a Master to recommend ordinance revisions. The deadline for that process has not been extended past January 31, 1985 but the Master has not yet submitted a remedial recommendation.

By this motion, Urban League plaintiffs seek first to consolidate Oakwood at Madison with the three other cases involving Old Bridge's Mount Laurel obligation, or, in the alternative, to intervene in Oakwood at Madison, and then to restrain defendants from granting any further approvals to Oakwood at Madison for construction of its development unless there are firm requirements to insure that 20 percent of the units constructed will be affordable to low and moderate income households as required by both Oakwood at Madison and Mount Laurel II, or until Old Bridge adopts Mount Laurel-compliant ordinances that are approved by this Court.

I. CONSOLIDATION OR INTERVENTION

A. Consolidation

Rule 4:38-1 provides for consolidation of actions involving common questions of law or fact arising out of the same transaction or series of transactions. The benefits of this procedure are "the avoidance of multiplicity of litigation, duplication of judicial labor, inconsistent judgments, delay and expense." Holmes v. Ross, 113 N.J. Super. 445, 449, 274 A.2d 75 (Law Div. 1971). Urban League, O&Y, Woodhaven and Oakwood at Madison meet the requirements of Rule 4:38-1 and, therefore, should be consolidated.²

In all these cases, the issue of how the Township of Old Bridge is to meet the requirements of Mount Laurel is central. Determination of such an issue ordinarily requires the

² In the Mount Laurel opinion, 92 N.J. at 217, 456 A.2d at 419, the Supreme Court indicated that the Chief Justice would determine whether to reassign pending Mount Laurel litigation to one of the three assigned special judges or to the judge who originally handled it. Oakwood at Madison has presumably not been reviewed for this purpose because no formal proceedings have occurred since issuance of the Mount Laurel II opinion. However, following the rationale for assignment of the Urban League case, it would appear likely that the Oakwood at Madison case, which had also been originally decided by Judge Furman who is now sitting on the Appellate Division, would be assigned to Judge Serpentelli. We assume that the Court has authority to determine the suitability of consolidation of Oakwood at Madison with three other cases already formally assigned to the Court, without a formal assignment by the Chief Justice. If the Court deems it necessary or appropriate, however, Urban League plaintiffs would be willing to seek a formal assignment of Oakwood at Madison from the Chief Justice.

consideration of complex and extensive expert testimony. The Court will have to review the same legal, economic, zoning, and technical engineering and planning issues in all cases. Three of the four cases have already been consolidated for this purpose. The resolution of the fourth will directly affect the resolution of the other three, and vice versa. Thus, in order to avoid multiplicity of litigation, duplication of judicial labor, and unnecessary extra expenses, these cases that arise out of common questions of law and fact should be consolidated.

B. Intervention

Rule 4:33-1 of the New Jersey Court Rules provides for intervention as of right where those who seek intervention claim an interest relating to the subject matter of the action that may, as a practical matter, be impaired or impeded by disposition of the action, that interest is not adequately represented by the existing parties, and the application for intervention is timely. Because all the requirements are satisfied here, Urban League plaintiffs are, alternatively, entitled to intervene in this action as a matter of right. Township of Hanover v. Town of Morristown, 118 N. J. Super. 136, 286 A.2d 728 (Ch. Div. 1972).

1. The Urban League interest in prompt construction of Old Bridge's fair share could be seriously impaired by the disposition of Oakwood at Madison

The developer in Oakwood at Madison has final subdivision approval for 1750 housing units. Fourteen hundred of these units will be sold at market rates without bearing the cost of subsidizing Mount Laurel low and moderate income housing and there is no obligation to build the 350 lower income units. This will create an unfair competitive advantage in favor of Oakwood at Madison and against the sale of market rate housing by developers who will bear the Mount Laurel subsidy costs. This will render unrealistic the development of Mount Laurel low and moderate income housing in Old Bridge. If the developers who will bear the Mount Laurel subsidies cannot compete with the prices of Oakwood at Madison, they simply will not build low and moderate income housing.

Therefore, if the interest of the Urban League is not taken into consideration before Oakwood at Madison is allowed to construct any of its market units, the construction of low and moderate income housing in Old Bridge would be set back at least four years, and would seriously frustrate the possibility of meeting any of the Township's significant fair share of the regional need by 1990.

2. The interest of the Urban League is not adequately represented

This case is a perfect example of the vital need for a public interest representative in Mount Laurel litigation. The Urban League's interest is to expedite construction of low and moderate income housing. On July 13, 1984, this Court determined that the Township of Old Bridge's fair share of the regional need of low and moderate income housing through 1990 is 2,135 housing units. None of those 2,135 housing units has yet been built. The Stipulation of Settlement submitted by the developer Oakwood at Madison and the Township of Old Bridge on May 31, 1977 purports to provide a contribution to Old Bridge's fair share of the regional need for low and moderate income housing. Yet, Oakwood at Madison has received final approval to build 1400 market units and needs only administrative clearance for construction of those units to begin, without any requirement assuring construction of genuine Mount Laurel units.

The fact that the eight years of negotiations between Oakwood at Madison and the Township of Old Bridge have not produced a contribution to meet the need for Mount Laurel housing in the Township makes it most important that the Court allow the Urban League to intervene in this action now. It is evident that the Urban League will add to these proceedings a vital perspective not represented by the original parties to this action.

3. The motion to intervene is timely

There is no single fixed standard for deciding whether one has timely applied to intervene in a lawsuit. The court must take

account of all circumstances involved in the litigation. United States v. Blue Chip Stamp Co., 272 F. Supp. 432 (D.C. Cal. 1967), aff'd sub nom. Thrifty Shoppers Co. v. United States, 389 U.S. 580 (1968). Courts do not consider simply the amount of time that may have elapsed since the relevant action warranting intervention, but rather examine primarily whether the granting of the motion would entail appreciable prejudice to the other parties or to the Court. See, e.g., Clarke v. Brown, 101 N.J. Super. 404, 244 A.2d 514 (Law Div. 1968).

In the case at hand, even though Oakwood at Madison was filed in 1970 and the Supreme Court remand was issued in 1977, no action had been taken by the developer since obtaining final subdivision approval in 1979, until its recent submission of plats regarding the first 120 units. Meanwhile, the appeal of the Urban League case was pending from 1976 to 1983. This Court did not invalidate the new zoning ordinance until July 1984 and only in November 1984 ordered commencement of the formal remedial process. In late February 1985 it became apparent that voluntary compliance by the Township, even assisted by the Master, was not to occur and the Urban League plaintiffs became aware in late March that Oakwood at Madison was prepared to move towards construction at an early date. This motion was brought promptly thereafter.

The parties in Oakwood at Madison can hardly claim prejudice with a straight face. The Township of Old Bridge has managed to lose 15 years' worth of zoning litigation and yet has still not enacted, or been forced to enact, a constitutional ordinance. Oakwood at Madison was granted a Supreme Court judgment in January

1977, obtained the Town's Stipulation of Settlement in May 1977, and the Planning Board's preliminary and final subdivision approvals in June 1978 and August 1979, respectively, and then stopped dead in its tracks. It took no further action in more than five and one-half years of its 10-year approval, until its sudden recent submission. Moreover, the parties adopted a settlement that purported to comply by producing "low and moderate income" units but in fact evaded the Supreme Court's mandate, by allowing construction of all the market units without any lower income units. Both parties would be hard put to oppose intervention by one seeking to make them comply with the mandate of their state's highest court.

In order to avoid significant impairment of the interests of the Urban League, and thereby the public interest, the motion for consolidation or intervention should be granted.

II. TEMPORARY RESTRAINTS

By this motion, the Urban League plaintiffs seek to preserve their opportunity for adequate and appropriate relief against defendant Township of Old Bridge by restraining the Township, its Council and Planning Board from taking action that would irreparably harm the Urban League's opportunity for the development of housing for low and moderate income families. Developer Oakwood at Madison has final subdivision approval on 1750 units, 1400 of which can be constructed first, after only administrative approval, and sold at market rates without bearing the cost of subsidizing Mount Laurel II low and moderate income housing. This will create a competitive disadvantage against the sale of market rate housing forced to bear such subsidies and, thereby, undermine the key Mount Laurel II principle that the opportunity for the development of housing for low and moderate income families be realistic.

The familiar standard that plaintiffs must meet to obtain temporary relief has recently been restated by the Supreme Court in Crowe v. DeGioia, 90 N.J. 126, 447 A.2d 173 (1982). Plaintiffs must show (1) a valid legal theory and a reasonable probability of ultimate success on the merits, (2) irreparable harm not adequately redressable by money damages, and (3) a relatively greater harm to the plaintiffs if relief is denied than to the defendants if relief is granted. Id. at 133. Plaintiffs amply meet this test.

Probability of Success. In light of the decision in Mount Laurel II, 92 N.J. 158, 456 A.2d 390 (1983) and this Court's Orders of July 13 and November 13, 1984, it is clear that the plaintiffs

will succeed in obtaining Mount Laurel compliance even by the Township of Old Bridge. The exact nature of that compliance is, obviously, not yet determined. Yet, it is reasonable to assume that with only five years remaining in this fair share period, the Court will look to two key factors: the Township's existing zoning for Planned Unit Developments (PUDs) and the availability of ready, willing and able landowners or developers. The Oakwood at Madison site, as well as the O&Y and Woodhaven Village sites, is already part of the Township's PUD zone. Moreover, these are the only three developers with active large proposals in the PUD zone, and the only three to have filed Mount Laurel actions. We respectfully submit, therefore, that it is very probable that Oakwood at Madison's site will be part of the ultimate Court-ordered Mount Laurel remedy for Old Bridge.

Moreover, rezoning of the Oakwood at Madison site is not only not precluded by the Supreme Court's decision in Oakwood at Madison v. Madison Twp., 72 N.J. 481, 371 A.2d 1192 (1977), but is affirmatively required by that opinion. In Oakwood at Madison, the Supreme Court directed issuance of construction permits subject to the guarantee that the developer would provide 20 percent of the units for "low and moderate income" families. Id. at 1227. Furthermore, the Oakwood at Madison Court specifically defined "low and moderate income" by reference to the Statewide Housing Allocation Report. Id. at n. 49, a standard substantially the same as that used in Mount Laurel II. In the May 31, 1977 Stipulation of Settlement, the Township of Old Bridge and Oakwood at Madison agreed to provide 350 units for "low and moderate income" families.

Furthermore, under both the Supreme Court decision and the Stipulation the Superior Court was to retain jurisdiction. Clearly Oakwood at Madison cannot complain if its land is rezoned to effectuate the remedy it won.

Rezoning of the Oakwood at Madison PUD to comply with Mount Laurel II is also not barred by the Planning Board's final approval. First, the Stipulation of the parties, in conformance with the Supreme Court's opinion, assured continuing Superior Court jurisdiction for purpose of subdivision as well as site plan, water and other normal approval processes. Yet, neither party ever submitted either the preliminary or the final subdivision approval of the Oakwood at Madison project to the Court as mandated by their own Stipulation. Thus, the approvals are not "final" in the sense of vesting any nondefeasible rights to zoning or construction. More importantly, the Supreme Court in Mount Laurel II expressly held that, where necessary to effectuate the constitutional obligation, even subdivision approval may be rescinded or modified.

It is one thing to exclude in a fair share calculation land that has actually been developed for middle and upper income people - land with houses on it - but a totally different thing to exclude land that may in some sense be said to be "committed" to the same exclusionary uses even though not even one single home has been built. Our society may not be willing to rip down what we now have in order to right the wrongs of the past, but we certainly will not allow what are no more than present intentions - in the form of an approved subdivision to be developed over the next 20 years - to perpetuate these wrongs.
92 N.J. at 301, n.51, 456 A.2d at 464, n.51.

Not a single home has been developed by Oakwood at Madison. Oakwood at Madison has now, as it has had for 15 years, no more

than present intentions to build, and, as currently formulated, those intentions are to develop for middle and upper income people and to exclude any fair share obligations. The developer has done nothing for five and a half years since getting the Planning Board's approval. Now it appears interested in building 120 market units. But the Supreme Court clearly said that it will not allow what are at best present intentions to develop to perpetuate a wrong. Rezoning of the Oakwood at Madison PUD will correct the perpetuation of the exclusionary wrong. Furthermore, the fact that not a single home has yet been developed and no site plans have yet been submitted for lower income units, makes the rezoning of Oakwood at Madison a viable, indeed, a probable remedy.

Irreparable harm. Satisfaction of the Mount Laurel doctrine -- creation of a realistic opportunity for low and moderate income housing -- depends on affirmative inducements. The affirmative inducement in the Township of Old Bridge is the builder's remedy. It is clear that the creation of housing for low and moderate income families is made possible by the subsidizing profit a developer can earn on the Mt. Laurel-linked market rate housing. However, because of the competitively less attractive housing market and higher infrastructure costs in Old Bridge, developers face a far less profitable market to start with.

If Oakwood at Madison units can be sold without the subsidy costs of a true low and moderate income set-aside, their sale price would be substantially lower than that of the market rate units in a true inclusionary development. This market disadvantage will offset the delicate market balance and undermine the Urban League

plaintiffs' realistic opportunity for the development of low and moderate income housing. The central theory of Mount Laurel II is that if the builder's remedy cannot be profitable, the incentive to build is lost. If the defendants are not restrained from granting site approval, the construction of low and moderate income units will become economically infeasible, and the builder's incentive will almost surely be lost. As a result, low and moderate income units will not be constructed and the Urban League plaintiffs will be irreparably harmed.

Balancing the Harms. The defendants as public bodies would suffer little if any harm should temporary relief be granted. First, their proper role is that of regulator rather than of landowner or principal. The Township has already zoned the Oakwood land as a PUD with higher densities and provision for "affordable housing." The proposed injunction would not impair but rather implement that scheme. Second, in this context the defendants' only legitimate interest is in enacting zoning ordinance revisions to comply with the Court's July 13 and November 13, 1984 Orders, not to mention all the other Court orders concerning the Township's invalid zoning ordinances over the last 15 years of litigation. The restraints sought by plaintiffs seek only to permit the rezoning of the Oakwood at Madison PUD to comply with the Township's Mount Laurel II fair share requirement. In fact, rezoning of the Oakwood at Madison PUD will credit the Township of Old Bridge with 350 low and moderate income housing units, and assist the Township in meeting its fair share obligation without subjecting more vacant developable land to set-aside requirements,

or requiring additional construction. Fifteen years without a constitutional zoning ordinance is enough.

Even when the developer's interests are considered in the balance, the balance still remains overwhelmingly in the Urban League plaintiffs' favor. The public interest in getting housing built for low and moderate income families in Old Bridge weighs heavily in favor of the plaintiffs. If Oakwood is allowed to proceed with its present proposed project, not only will its promised 350 lower income units not be built, but its competitive advantage will seriously undermine the likelihood that any other developer, subject to a true Mount Laurel set-aside, will proceed to build any other units in the next four years. The injunction would certainly cause Oakwood to lose the possibility of a quick-sale market windfall. But it was certainly not the intention of the Court to make low and moderate income families suffer for the windfall benefit of the Oakwood at Madison developer. Oakwood at Madison convinced the Supreme Court, and agreed with defendant, that 350 "low and moderate income" units should be built in the Oakwood at Madison PUD. The developer has not kept its word and can hardly complain of prejudice or harm from being forced to accept no more than it won in a considered opinion of this state's highest court. It is clear that Urban League plaintiffs will suffer a substantially greater harm if relief were denied than Oakwood at Madison would suffer if relief were granted.

Plaintiffs thus submit that they fall amply within the requirements of Crowe, having shown a probability of success on the merits, irreparable harm, and a balancing of interests that is

overwhelmingly in their direction. Accordingly, plaintiffs respectfully move for entry of an order that restrains any approval necessary for construction at the Oakwood at Madison site, unless such approval is conditioned upon construction of "low and moderate income" units as defined in both the Oakwood at Madison and Mount Laurel II decisions, or until this Court approves a comprehensive compliance remedy for Old Bridge, after 15 years of noncompliance.

Dated: April 3, 1985

Respectfully submitted,



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Counsel wish to acknowledge the assistance of Peter Liguori and Martin Perez, Class of 1986 of Rutgers Law School, in the preparation of this Memorandum of Law and some of the other motion papers.

CERTIFICATE OF SERVICE

I, Elizabeth Urbanowicz, hereby certify that I am a secretary at the Rutgers Constitutional Litigation Clinic-Newark. On Wednesday, April 3, 1985 I placed in the U.S. Mail depository, Broad Street, Newark, with first-class postage prepaid, the within NOTICE OF MOTION FOR CONSOLIDATION, AFFIDAVITS OF ERIC NEISSER, ESQ. and ALAN MALLACH, MEMORANDUM OF LAW IN SUPPORT OF URBAN LEAGUE PLAINTIFFS' MOTION FOR CONSOLIDATION OR INTERVENTION AND FOR TEMPORARY RESTRAINTS, and proposed ORDER, addressed to

The Hon. Eugene D. Serpentelli
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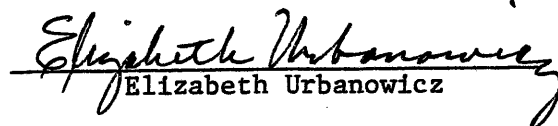
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WOODHAVEN VILLAGE, INC.,
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THE TOWNSHIP OF MADISON
and THE STATE OF NEW JERSEY,
Defendants

Docket No. L-7502-70 P.W.

challenging the validity of its zoning ordinance. After extensive proceedings, the Superior Court, per Furman, J., held the amended 1973 zoning ordinance unconstitutional. 128 N.J. Super. 438, 320 A.2d 223 (Law Div. 1974). On appeal, the Supreme Court of New Jersey affirmed on January 26, 1977, holding that the town had violated the state constitutional ban against exclusionary zoning set forth in the first Mount Laurel opinion -- Southern Burlington Cty. NAACP v. Mount Laurel Township, 67 N.J. 151, 336 A.2d 713, appeal dismissed and cert. denied, 423 U.S. 808 (1975). The Supreme Court further held that, in light of its extensive litigation efforts, the corporate developer plaintiff, Oakwood at Madison, was entitled to a specific remedy, namely, issuance of "a permit for the development on their property of the housing project they proposed to the township prior to or during the pendency of the action, pursuant to plans which, as they represented, will guarantee the allocation of at least 20% of the units to low and moderate income families." Oakwood at Madison v. Township of Madison, 72 N.J. 481, 551, 371 A.2d 1192, 1227 (1977). In defining "low and moderate income", the Court expressly referred at that point to the Statewide Housing Allocation Report. Id. at note 49.

3. Shortly after remand from the State Supreme Court, after motions by each side seeking responses to interrogatories, Oakwood at Madison and the Township of Old Bridge, filed on May 31, 1977, a Stipulation of Settlement with the Superior Court in Oakwood at Madison. A copy of that Stipulation is attached hereto and made a

part hereof as Exhibit A. That Stipulation provides for construction of 1750 units total, of which 350 were to be affordable by "low and moderate income" households. Para. 1 and Exhibit A. The Stipulation further provides that "All approvals of the Township and other governmental bodies normally required of a major subdivision and site plan are required of this corporate plaintiff" and that "The Court shall retain jurisdiction as to site plan, sewer, water, subdivision and building code approval as set forth in the decision of the Supreme Court in this matter." Paras. 13 & 14. The Court never signed that Stipulation or a Consent Decree and the docket sheet of the Superior Court in that action confirms that there have been no orders or any other activity in that case since the filing of that Stipulation of Settlement on May 31, 1977. Attached hereto and made a part hereof as Exhibit B is a copy of the complete docket sheet in Oakwood at Madison, Inc. v. Township of Madison as provided to me in person on March 6, 1985 by the Clerk of the Superior Court.

4. Subsequent to entry of that Stipulation, Oakwood at Madison obtained on June 30, 1978 preliminary subdivision approval for development of 1750 units from the Old Bridge Planning Board. On August 23, 1979, Oakwood at Madison obtained final subdivision approval from the Planning Board. The resolution of final subdivision approval, which vested approval for 10 years, expressly provides that it did not grant site plan approval for the low and moderate income units. Paras. 21, 22 of Final Approval. See

Letter of Thomas Norman, Attorney for Old Bridge Planning Board, dated February 22, 1985. A copy of Mr. Norman's letter and of the preliminary and final subdivision approvals are attached hereto and made a part hereof as Exhibits C, D, and E. Neither the preliminary nor the final subdivision approval was submitted to the Superior Court, as required by the parties' Stipulation of Settlement and the Supreme Court's opinion.

5. In telephone conversations on March 28 and 29, 1985, Harvey Goldie, the Old Bridge Township Engineer, and Henry Bignell, the Township Planner, informed me that Oakwood at Madison has recently submitted the plats and detailed plans for the first two sections of its development, comprising approximately 120 market units. As soon as the sewer, water, and other relevant agencies provide approvals and the Engineer confirms that the proposals are in conformance with the ordinance and the Planning Board's final subdivision approval, the plats can be signed by the Engineer and the Chairman and Secretary of the Planning Board and filed with the County. Once that occurs, according to Mr. Goldie, nothing further is legally required for the developer to obtain building permits for those two sections. Mr. Goldie further stated that a meeting between Oakwood's engineers and the Township Engineering Department is scheduled for this week to go over the plans in detail. Both Mr. Bignell and Mr. Goldie confirmed that, in contrast, the developer would, under the Planning Board's final approval resolution of August 1979, still have to get site plan approval

from the Planning Board for the low and moderate income units. They stated that to date no submissions have been made concerning the low and moderate income units.

6. The action of Urban League of Greater New Brunswick v. Mayor and Council of Carteret, et al., No. C-4122-73, was brought in 1973 against 23 townships in Middlesex County, including the Township of Old Bridge. Trial in that matter occurred in 1976 leading to a judgment on July 9, 1976 that the zoning ordinances of Old Bridge and 10 others were unconstitutional. Old Bridge did not appeal that Judgment nor did it obtain a Compliance Order. On January 20, 1983, the Supreme Court of New Jersey affirmed the Judgment of Judge Furman in this action insofar as it found the zoning ordinances at issue to be unconstitutionally exclusionary under Mount Laurel. Southern Burlington Cty. NAACP v. Mount Laurel Township, 92 N.J. 158, 456 A.2d 390 (1983) (Mount Laurel II). On July 13, 1984, this Court entered an Order determining that the Township of Old Bridge's fair share through 1990 was 2135 units of low and moderate income units and that the then-existing zoning ordinance, enacted in 1983, was unconstitutional in that it failed to provide the required realistic opportunity for construction of that fair share. The Court directed the parties to seek agreement on proposed ordinance revisions within 45 days or, failing that, the Court would appoint a master. On July 2, 1984, this Court consolidated Woodhaven Village Inc. v. Township of Old Bridge, No. L-036734-84 P.W., with Urban League for purposes of ordinance

revision and on August 3, 1984, this Court consolidated O&Y Old Bridge Development Corp. v. Township of Old Bridge, No. L-009837-84 P.W., with the Urban League action for that purpose. On November 13, 1984, this Court appointed Carla Lerman to assist in ordinance revision and ordered the Master to report her recommendations for revision within 45 days. On January 21, 1985, this Court confirmed its prior oral approval of Ms. Lerman's request for extension of time until January 31, 1985. No further extensions have been granted by the Court in writing and no compliance recommendations have been submitted to date by the Master. Copies of this Court's orders of July 2, July 13, August 3, and November 13, 1984 and its January 21, 1985 letter are attached hereto and made a part hereof as Exhibits F, G, H, I and J.

7. The calculation of low and moderate income households in the Statewide Housing Allocation Report, which the Supreme Court directed be used in providing a remedy to Oakwood at Madison, is substantially the same as that used by the Court in Mount Laurel II. See Affidavit of Alan Mallach, Para. 2. Nevertheless Thomas Norman, counsel to the Old Bridge Planning Board, in a letter dated January 31, 1985 to my co-counsel Barbara Williams, stated that, based on his conversations with Frederick Mezey, the attorney for Oakwood at Madison, it was Mr. Norman's understanding that the lower income units in the Oakwood development would not meet Mount Laurel II requirements, that there are no occupancy restrictions to insure re-sale or re-rental only to qualified lower income

households, and that there were no requirements for phasing the construction of the lower income units with the construction of the market units. A copy of that letter was sent to Mr. Mezey. No reply has been received. A copy of Mr. Norman's letter of January 31, 1985 is attached hereto and made a part hereof as Exhibit K.

8. For the reasons stated here, in Alan Mallach's Affidavit, and in the Memorandum of Law in Support of Plaintiffs' Motion for Consolidation or Intervention and for Temporary Restraints, I respectfully submit that plaintiffs are entitled as a matter of law and fact to consolidation or intervention and, until a comprehensive Mount Laurel remedy for Old Bridge is approved by this Court, to restraints against construction of the Oakwood at Madison project without adequate protections to insure construction and continued ownership by low and moderate income households as defined in the Oakwood at Madison and Mt. Laurel II decisions.


 ERIC NEISSER

SWORN TO and SUBSCRIBED before me
 this 3rd day of April, 1985.


 Attorney at Law, State of New Jersey

REC'D

127

MAY 31 1977

J. J. ...
Clerk

31

LOUIS J. ALFONSO, ESQ.
Township Attorney
Township of Old Bridge
325 County Highway 516
Old Bridge, New Jersey 08857
(201) 623-2230
Attorney for Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO. L-7502-70 P.W.

OAKWOOD AT MADISON, INC.
a corporation of the State
of New Jersey, et als.

Plaintiffs,

Civil Action

-vs-

STIPULATION OF SETTLEMENT

THE TOWNSHIP OF MADISON,

Defendants.

and

THE STATE OF NEW JERSEY,

Defendant.

This matter being opened to the Court by Louis J. Alfonso
Esq., and Richard F. Plechner, Esq., Attorneys for the Township of

Exh. A

214

Old Bridge, in the presence of Frederick C. Mezey, Esq. (Mezey & Mezey, Esqs.) attorneys for plaintiffs, in regard to the settlement of the specific claims of the corporate plaintiffs Oakwood at Madison, Inc. and Beren Corporation, it is hereby stipulated and agreed as follows:

1. Plaintiffs Oakwood at Madison, Inc. and Beren Corporation (hereinafter referred to as "corporate plaintiffs") shall construct 1,750 units of varied housing on 390 acres substantially in accordance with the "Schedule of Proposed Development" annexed hereto as Exhibit "A". It is understood that regardless of the number of acres or the alignment thereof which may result from necessary administrative proceedings, corporate plaintiffs shall be entitled to a fixed total of 1,750 units, except that the number of dwelling units are to be proportionally reduced to the extent that the total tract is less than 390 acres. Land previously foreclosed by the Township shall be counted towards the 390 acres provided the Judgment of Foreclosure is vacated. If said Judgment is vacated, the taxes and interest may be paid as set forth below. The units will specifically include 350 designed for occupancy by low or moderate income persons, of which at least 175 units will be designed for occupancy by senior citizens.

2. No use variance shall be required in regard to the development of this project and no bulk variance shall be required unless corporate plaintiffs seek to vary from the type of development as shown on the accompanying sketches, annexed hereto as Exhibits "B" through "G". It is agreed that all performance bonds required shall be 120% surety bonds. It is hereby agreed that the property is environmentally suitable for this project.

as to the number of units and mix of units as set forth in Exhibit A and no further proof in this regard shall be required.

3. The parties agree to promptly prosecute preliminary site plan and subdivision approval and mutually agree to cooperate and to use all due diligence and best efforts to achieve prompt approval of this project.

4. Defendant Township agrees to pass a resolution of need for moderate income housing in form required to obtain federal and state subsidies for such housing, provided the prior resolution of need duly adopted is not adequate.

5. Corporate plaintiffs will convey to the defendant Township land to be used for Green Acres and school purposes. Said Green Acres and school land to be as shown and more particularly described on schedule attached hereto. The land, unless conveyed and accepted voluntarily sooner, will be deeded to the Township upon the granting of final subdivision and site plan approval, which deed shall be subject to reasonable easements for roads, water lines, sewers and utilities, said easements to be placed so as not to interfere with the reasonable use and enjoyment of said property for Green Acres purposes. Said land conveyed shall not include drainage or retention basins nor improvements or structures except for said easements above. The Township shall not be responsible for maintaining any of said easements. All outstanding taxes on said Green Acres land is to be paid as set forth below. At the conveyance of said land, the parties shall execute and file appropriate Stipulations of Dismissal and Consent Orders to discharge the various Green Acres condemnation proceedings effecting

said tract brought by the Township and presently pending in the Superior Court of New Jersey and neither party shall be entitled to reimbursement of costs and expenses regarding said condemnation proceedings. The Corporate plaintiffs are to receive as compensation for said conveyed Green Acres land from Township Green Acres funds the amount of back taxes paid on said land since the execution of this agreement.

6. A school site, as noted above, of approximately 18 acres shall also be conveyed by said corporate plaintiff and payment for said site shall also be equal to the actual amount of taxes paid for said site after the execution of this agreement. Said conveyance, unless conveyed and accepted voluntarily sooner, will be deeded to the Township upon the granting of final subdivision and site plan approval. The Township shall not require back taxes to be paid on said parcel.

7. A suitable protective conservation easement along Deep Run and Black Brook shall be conveyed by the corporate plaintiff to the Township but the Township shall not maintain same.

8. All other outstanding plus current taxes on said tract are to be paid by the corporate plaintiff. However, the corporate plaintiff shall be given until the sooner of either May 23, 1979 or until funds are received by said plaintiff from first construction mortgage advances to pay said taxes, whichever occurs first. If said taxes are not paid as set forth above, the parties agree that the Township shall have the right to institute In Rem foreclosure proceedings, and the usual statutory procedure as to tax sales shall be followed except no In Rem suits to be instituted

Upon the execution of this Stipulation of Settlement, the parties shall execute and file appropriate Stipulation of Dismissal and Consent Orders to discharge -4- all other Green Acres condemnation proceedings affecting the property of the corporate plaintiffs.

brought by the Township and presently pending in the Superior Court of New Jersey and neither party shall be entitled to reimbursement of costs and expenses regarding said condemnation proceedings.

unless payment in accordance with this agreement is not made. All statutory interest is to keep running on said taxes. Payment from funds drawn from said first construction mortgages are to be used and pay only those taxes from the tax block and lots covered by said mortgage.

The commercial shopping center of approximately 10-18.5 acres, as shown on the proposed site development in the area of Route 9 shall be relocated so as not to surround or encompass existing single family homes. Said relocation shall be subject to the reasonable approval of the Township Planner and Planning Board.

10. Nothing in this agreement shall be construed to in any way excuse the developer from obtaining full and complete site plan approval as though this action never existed except as to the number of units permitted and mix of units and payment of taxes.

11. Except for the land shown on the above noted schedule, nothing in the Agreement is to be construed as acceptance by the Township of any additional Green Acres land and the Township reserves the right as to additional land to reject additional land offered and in which case no payment for lands so offered will be made and taxes shall continue to be due.

12. All approvals of the Township and other governmental bodies normally required of a major subdivision and site plan are required of this corporate plaintiff. In no way is this Agreement to be construed as an approval of the site plan shown on the plans or sketches submitted for this litigation or the drainage, roadway, recreation, open space, building locations or environmental factors considered, proposed and/or shown on said tract. Engineering data


is to be submitted by the corporate plaintiff reasonably satisfactory to the Township Engineer to show the total area, size and acreage of the tract.

13. All land, except for real property taxes which are the responsibility of the corporate plaintiff and are treated above, and the above noted easements shall be conveyed free and clear of all liens and encumbrances and title shall be marketable.

14. The court shall retain jurisdiction as to site plan, sewer, water, subdivision and building code approval as set forth in the decision of the Supreme Court in this matter.

MEZEY & MEZEY

By 
FREDERICK C. MEZEY


LOUIS J. ALFONSO


RICHARD F. PLECHNER

Dated: May 26, 1977

SCHEDULE OF PROPOSED DEVELOPMENT

EXHIBIT "A"

Low-Moderate Income Units	350*
Apartments	200
Townhouses	200
Patio Houses	315
Cluster Houses	300
Single Family Lots 7,500 S.F.	295
Single Family Lots 12,000 S.F.	65
Single Family Lots 15,000 S.F.	25
	<hr/>
	1,750

All of the above numbers except for the number of the units in the Low-Moderate income units, 15,000 sq. ft. and 7,500 sq. ft. single family units may be varied by $\pm 10\%$, the total number of units, however, shall not exceed 1,750.

(* includes 175 senior citizens units)

SCHEDULE OF ZONING CODE VARIATIONS

A. The Senior Citizens units shall be designed in accordance with Section 20-4.42 of the Old Bridge Zoning Ordinance with the following exceptions:

20-4.422 Playgrounds and Pools:

Shall not apply.

20-4.424 Building Proximity:

Shall read thirty (30) feet instead of fifty (50) feet.

20-4.426 Density:

Shall read eighteen (18) units per acre instead of ten (10) units per acre.

20-4.427 Dwelling Units:

Shall not apply.

20-4.428 Entrances:

Shall not apply except that all entrances shall be designed in accordance with the Building Code Standards.

20-4.430 Senior Citizens:

Shall apply except that the last sentence shall read: "No walk, grade or ramp shall exceed 6% angle of inclination". The remainder of that sentence shall be deleted.

B. The Garden Apartments shall be designed in accordance with Section 20-4.42 of the Old Bridge Zoning Ordinance with the following exceptions:

20-4.424 Building Proximity:

Shall read thirty (30) feet instead of fifty (50) feet.

20-4.426 Density:

Shall read twelve (12) units per acre instead of ten (10) units per acre.

Exhibit "C"

C. The Townhouses shall be designed in accordance with Section 20-4.43 of the Old Bridge Zoning Ordinance with the following exceptions:

20-4.431 Lot Size:

The lot size shall be one thousand four hundred (1,400) square feet (rather than two thousand (2,000) square feet) and the minimum lot width shall be eighteen (18) feet (rather than twenty (20) feet).

20-4.432 Density:

Shall read eight (8) units per acre instead of six (6) units per acre.

20-4.433 Height:

This Section shall read: "No units shall exceed two (2) stories in height".

20-4.434 Setbacks:

This Section shall read: "No townhouse dwelling structure and no common facilities shall be located within twenty (20) feet of the pavement or row of a street, whichever is greater, or within fifty (50) feet of existing property boundary lines; or within thirty (30) feet of another townhouse dwelling structure".

20-4.436 Design:

This Section shall read: "No townhouse dwelling structure shall have more than four (4) contiguous townhouse dwelling units located on the same setback line and no more than twelve (12) dwelling units (instead of six (6) dwelling units in a townhouse dwelling structure). The remainder of the Section shall apply.

D. The Patio Homes and Cluster Houses shall be designed in accordance with Section 20-4.44 of the Old Bridge Zoning Ordinance with the following exceptions:

20-4.441 Lot Size:

A Patio Home and Cluster House dwelling lot shall have a minimum total lot area of two thousand (2,000) square feet and a minimum lot width of thirty-two (32) feet lot width instead of forty (40) feet lot width; however, no more than eighty (80%) percent (instead of fifty (50%) percent) of the lots in a patio house complex shall be built upon at the minimum lot size.

20-4.442 Density:

Shall read seven (7) units per acre instead of five (5) units per acre.

20-4.443 Height:

This Section shall read: "The height of patio house dwelling units shall not exceed two story or thirty (30) feet, whichever is less".

20-4.446 Yards and Patios:

This Section shall apply in its entirety except that the rear yard patio need not extend more than eighteen (18) feet in width.

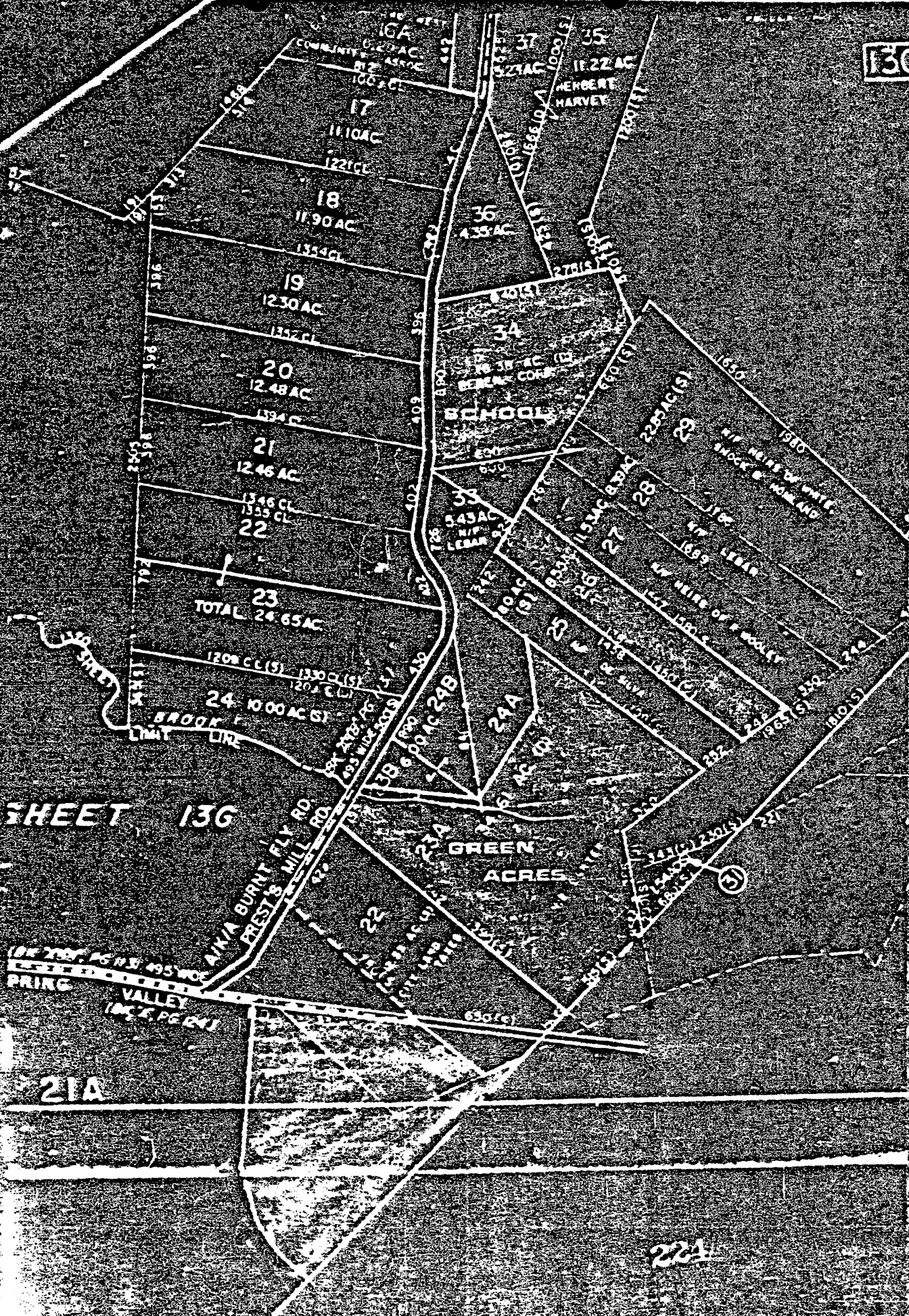
E. The 7,500 Single Family lots shall be designed in accordance with the schedule in Section 20-4.5 with the following exception:

One side yard shall be ten (10) feet minimum, total of two (2) side yards shall be twenty (20) feet minimum. In all other respects the 7,500 square feet lots shall follow the requirements of the R-7 zone.

EXHIBIT "E"

Exhibits "B" to "D" inclusive are tentatively approved by the Township Planner. However, without examining and reviewing the actual overall site plan, subdivision and schedule of buildings and individual site plan, the Township Planner and Township Planning Board reserve the right to require reasonable changes to exhibits "B" to "D" consistent with good planning practices and environmental factors. No ~~use~~ variances shall be required by the corporate plaintiff.

13C



SHEET 136

104 280' PG 113, 495' WOC
104 280' PG 113, 495' WOC
PRING VALLEY
(104 280' PG 113)

21A

22A

7502
 CASE NO.
 Middlesex
 COUNTY
 P.W.
 NATURE OF CASE

Dakewood et Madison Inc
 PLAINTIFF
 The Corp. of Madison - State of N.J.
 DEFENDANT
 Meyer & M
 ATTORNEY FOR PLAINTIFF

sig

	MONTH	DAY	YEAR	PLEADINGS
Saint	Nov	4	1971	1 Order by Judge
	"	16	"	2 Order staying Judgment
	"	15	"	3 Copy of case appeal, R.F. Richard 5-
	Jan	31	1972	4 (3) Copies of Transcripts
	Feb	9	"	5 (2) Copies of Transcript
	"	18	"	6 Transcript (0-0)
	"	25	1974	7 Ana to Amended Compl. R.F. Richard 30-
1 DC Case	"	13	"	8 Amended + Suppl. Compl.
	Mar	8	"	9 Pretrial Order
	Apr	1	"	10 Notice of Motion
	"	29	"	11 Opinion
	May	16	"	12 Judgment see to Done
	Mar	29	1977	13 Notice of Motion
	Apr	4	"	14 Re-Notice of Motion
	May	31	"	15 stip of settlement
				16
				17
				18
				19
				20
				21

8721
 CASE NO.
 Mercer
 COUNTY
 Me
 NATURE OF CASE

Roberto Massaro Jr.
 PLAINTIFF
 Radio Corp. of America
 DEFENDANT
 Bellottini + Rabatoni
 ATTORNEY FOR PLAINTIFF

Haber

MONTH	DAY	YEAR	PLEADINGS

NORMAN AND KINGSBURY

ATTORNEYS AT LAW
JACKSON COMMONS
SUITE A-2
30 JACKSON ROAD
MEDFORD, NEW JERSEY 08055

February 22, 1985

THOMAS NORMAN
ROBERT E. KINGSBURY

(609)654-5220

(609)654-1778

rec'd 3/1

Eric Neisser, Esq.
Rutgers Law School
15 Washington Street
Newark, NJ 08102

Re: Oakwood at Madison

Dear Eric:

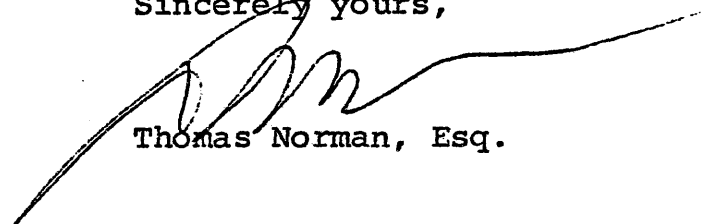
Enclosed is a copy of final approval dated August 23, 1979, and also preliminary approval dated June 30, 1978.

The final approval in paragraph 21 does not grant site plan approval for the Mt. Laurel units.

Paragraph 22 establishes a 10 year period of effectiveness for final approval.

As soon as I can track down the various Court Orders, I will forward them to you.

Sincerely yours,


Thomas Norman, Esq.

TN:mk

Exh. C

Jersey, that:

WHEREAS, Oakwood and Madison, Inc., has made application #6-78P for preliminary approval of a Major Subdivision Plat and a Site Development Plan known as Block 13000, 13003, 13264, 21004 and all those certain lots therein.

- (1) Environmental Impact Assessment, Jack Mc Cormack and Associates - 3 May 1978.
- (2) Traffic Engineering Investigation, Abbington - Ney Associates - 17 May 1978.
- (3) Preliminary Soil Analysis, Frank H. Lehr Associates 18 May 1977.
- (4) Traffic and Circulation Plan, Abbington-Ney Associates, December 1, 1977.
- (5) Architectural Plans, Sheets A2, A3, A4, A5, A6, A7, A8, A9, L1, L2, L3, L4, L5, Chester & Van Dalen Associates - November 1977.
- (6) Preliminary Plats and Details, Abbington-Ney Associates - 1 December 1977 with revisions through 10 May 1978.
- (7) Tree Disturbance Plan, Chester & Van Dalen Associates 26 June 1978.
- (8) Commercial Landscaping Plan, Chester & Van Dalen 16 June 1978.
- (9) Site Plan, Chester & Van Dalen, 28 April 1978.
- (10) Recreation Plan, Chester & Van Dalen, 19 May 1978 as revised.
- (11) Staging Plan, Chester & Van Dalen, 8 June 1978.

AND WHEREAS, public hearings were held in the Municipal Building of the Township of Old Bridge on May 22, June 9, June 22, and June 30.

NOW, THEREFORE, BE IT RESOLVED that the major subdivision plat and site plan development plans referred to herein be and the same is hereby granted preliminary approval in accordance with the following conditions.

(SEAL)

-1-

Exh. D

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Township of Old Bridge .

June 30, 1978

and in that respect a true and correct copy of its minutes.

Mary G. Brown
Secretary of Planning Board

1. That the procedures and requirements of the Subdivision and Site Plan Committee of the Middlesex County Planning Board are satisfied.

AND NOW, THEREFORE, BE IT FURTHER RESOLVED that the major subdivision plat, and Site Development Plan referred to herein be and the same is hereby granted preliminary approval according to the following terms:

- (1) Applicant will design, provide plans and specifications and construct the bridge crossing over Deep Run so as to extend the Trans Old Bridge Roadway to Route 9 provided the township takes the administrative steps to acquire the right of way and process all governmental applications to obtain all approvals.
- (2) Prior to the beginning of construction at the end of stage three, the township will provide not less than \$65,000 to the cost of construction which represents the fair share of prospective developers to the east benefiting from said stream crossing and road extension and agrees to remit to applicant all future fair shares; all which are further subject to the following conditions:
 - a. All cul-de-sacs and Eagle Road will have no sidewalks.
 - b. There will be sidewalks on one side of Prest-Mill Road, Sandpiper Road, Oakwood Road and Oakland Road.
 - c. There will be no curbs on Eagle Road.
 - d. All cul-de-sacs will be 27 feet wide.
 - e. Eagle Road will be 26 feet wide.
 - f. Parking areas for the town houses, patio homes, garden apartments and cluster homes will be paved to specifications of 1½ inches FABC on top of 3½ inches BSBC on top of stone if necessary.
 - g. All cul-de-sacs and Cooper Hawk Road except Trans Old Bridge shall be paved with a section 1½ inches FABC on 3½ inches BSBC on top of stone if required.

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Township of Old Bridge

(SEAL)

-2-

June 30, 1978

and in that respect a true and correct copy of its minutes.

William G. Brown
Secretary of Planning Board

- h. Trans Old Bridge Highway shall have a minimum section of 3 inches FABC-2 on top of 6 inches BSBC-2 on a prepared sub base.
- i. Fees for final subdivisions and Site Plan Approval will be waived.
- (3) The proposed drainage system and detention ponds have not yet been approved pending a complete review by the engineering department.
- (4) The developer must make provisions to insure that any homeowners in the area whose wells are affected by the construction of the Oakwood project will be continuously supplied with an adequate and potable quantity of water.

Moved by Vice Chairman Mintz; seconded by Mr. Stone and so ordered on the following roll call vote:

AYES: Mayor Fineberg, Messrs. Hueston, Messenger, Stone, Vice-Chairman Mintz.

NAYS: None.

ABSENT: Messrs. Donatelli, Fennessey, Horowitz, Chairman Olivera.

(SEAL)

-3-

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Township of Old Bridge

June 30, 1978

and in that respect a true and correct copy of its minutes.


Secretary of Planning Board

Be it Resolved, by the Planning Board of the Township of Old Bridge, County of Middlesex,

New Jersey, that:

WHEREAS, Oakwood at Madison, Inc. (hereinafter applicant) has made Application #6-78P for Final Approval of a Major Subdivision Plan known as Block 13000, 13003, 13264, 21004, on the Tax Map of the Township of Old Bridge, which is to be developed as indicated on a set of drawings and plans identified as follows:

1. Traffic and circulation plans, Abington Ney Associates, Aug. 16, 1979.
2. Architectural plans, 5 sheets, November 19, 1977, with revisions through July 1979, Chester Van Dalen Associates.
3. Final Construction plans and details, 53 sheets, May 1, 1979, with revisions through August 14, 1979, Abington Ney Associates.
4. Landscaping and woodland protection plan, 20 sheets, 1 May 1979, with revisions through 14 August 1979, Abington Ney Associates.
5. Staging plan, August 13, 1979, Abington Ney Associates.
6. Final plans, Feb. 1, 1979, with revisions through 14 Aug. 1979, 28 sheets, Abington Ney Associates.

NOW, THEREFORE, BE IT RESOLVED that the major subdivision plat referred to herein be and the same is hereby granted Final Approval in accordance with the following conditions:

1. That the procedures and requirements of the Subdivision and Site Plan Committee of the Middlesex County Planning Board are satisfied.
2. The construction or reconstruction of streets, curbs or sidewalks shall be in accordance with the provisions of N.J.S.A. 52:32-14 et seq.
3. Approval by the DEP of stream encroachment lines. Any dwelling units located within the stream encroachment line must be removed and redesigned by the applicant with the approval of the Planning Board.
4. Final approval by the Old Bridge Township Municipal Utilities Authority for water connections and the Old Bridge Township Sewerage Authority for sewerage disposal. Approval herein shall not be interpreted as vesting any rights in the applicant with regard to service by the Old Bridge Township Municipal Utilities Authority for water or sewer.
5. The applicant shall furnish a Performance Guarantee in favor of the Township of Old Bridge, in an amount not to exceed 120% of the cost of installation for improvements it may deem necessary or appropriate. The Performance Guarantee for the construction for the bridge required in provision 14 herein shall be submitted and approved prior to commencement of construction of Stage 3.

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Township of Old Bridge

August 23, 1979

and in that respect a true and correct copy of its minutes.

Mary M. Brown
Secretary of Planning Board

Exh. E

6. Applicant shall deposit a certified check or cash with the Township Clerk in the amount of 5% of the value of the site improvements which are required to be inspected as estimated by the Township Engineer to cover the cost of all inspections required under the Land Development Ordinance.

7. The proposed open space dedication should now be accomplished by forwarding to the Administrative Officer a bargain and sale deed and three survey maps showing the metes and bounds description of the land to be conveyed for approval and acceptance by the Township Council in accordance with provisions of paragraph 5 and a Council Resolution dated May 23, 1977. Said lands shall consist of the following tracts.

- Block 11315, Lot 8 - 12.17 acres.
- Block 13001, Lot 21A - 2.13 acres.
- Block 13003, Lot 26 - 8.55 acres.
- Portion of Block 13003, Lots 23A and 24A - 34.61 acres.
- Portion of Block 13003, Lots 23B and 24B - 6 acres.
- Block 21004, Lot 17 - 18.65 acres.
- Block 21004, Lot 18 - 5.26 acres.

8. The proposed right of way dedication along Spring Valley Road should now be accomplished by forwarding to the Administrative Officer a bargain and sale deed and three survey maps showing the metes and bounds description of the land to be conveyed for approval and acceptance by the Township Council in accordance with provisions of paragraph 5 and a Council Resolution dated May 23, 1977.

9. The proposed conservation easements along Burnt Fly Brook and Deep Run should now be accomplished by forwarding to the Administration Officer the standard Township easement agreement and three survey maps showing the metes and bounds description of the land to be conveyed for approval and acceptance by the Township Council, in accordance with provisions of paragraph 5 of the Council Resolution dated May 23, 1977.

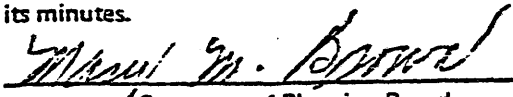
10. All construction equipment vehicles shall be restricted to Point of Woods Road from Spring Valley Road during the time of construction. If said access shall become impossible for use by construction vehicles, the applicant may apply to the Planning Board for relief from this provision for good cause.

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Township of Old Bridge

August 23, 1979

and in that respect a true and correct copy of its minutes.


Secretary of Planning Board

As it Resolved, by the Planning Board of the Township of Old Bridge, County of Middlesex,
New Jersey, that:

Resolution. Page Three
#6-78P Oakwood at Madison, Inc.

11. Applicant agrees to construct the so called nature or hiking trail also known as Winter Berry Trail, along Burnt Fly Brook, off tract on Township owned land to a point known as the nature center in the general vicinity of the intersection of Prests Mill Road and the Trans Old Bridge, also described on a map known as Burnt Fly Bog Trail. It is agreed and understood that all of the hiking trails both on tract and off tract, shall be constructed in its entirety as heretofore described prior to the beginning of the construction of Stage 3.

12. Applicant agrees to construct all recreational facilities located within the respective section as the residential units are constructed and in any event, prior to the commencement of construction of the subsequent section.

13. At the end of Stage 2 and prior to the commencement of construction of Stage 3, applicant agrees to construct playfields, according to standards approved by the Director of the Department of Recreation, consisting of a baseball field, softball field, soccer field, in playable condition and/or their equal, on land being dedicated to the Township of Old Bridge, and also known as Block 21004, Lots 17 and 18, subject to the finding of the Township Environmental Commission that said land can be developed for said purpose, without doing environmental damage.

14. Prior to the commencement of construction of Stage 2, a "complete" set of final plans satisfying application requirements of the State DEP and DOT for the Deep Run bridge crossing and the intersection design at the Ferry Road jughandle shall be submitted to the Township Engineering Department, New Jersey Department of Transportation and the New Jersey Environmental Protection for review and approval. In accordance with the provision of Paragraph 2 in the Resolution of Preliminary Approval dated June 30, 1978, applicant agrees to extend the Trans Old Bridge roadway to Route 9, prior to the end of construction of Stage 3.

15. It is agreed and understood that Prests Mill Road and all of the Trans Old Bridge shall be constructed and in place and functioning, from the Route 9 jughandle to the applicant's property line in Section 6, prior to the beginning of the construction of Stage 4.

16. Applicant agrees to desnag, selectively thin and generally clean up Burnt Fly Brook along its entire course through Sections 7, 13, 14, 15, 16, 24, and 25.

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Township of Old Bridge

August 23, 1979

and in that respect a true and correct copy of its minutes.


Secretary of Planning Board

It is Resolved, by the Planning Board of the Township of Old Bridge, County of Middlesex, New Jersey, that:

Resolution, Page Four
#6-78P Oakwood at Madison, Inc.

17. The proposed bikeway along the Trans Old Bridge shall be extended along the frontage of the proposed school site to applicant's easternmost property line.

18. It is agreed and understood the Township will accept for dedication only those collector streets, known as Nathan Drive, Oakland Road, Prests Mill Road and Point of Woods Drive and all streets in the single family area meeting Township Standards, and the major arterial known as the Trans Old Bridge. All of the streets, cul-de-sacs and the so called courts serving patio homes, cluster homes and townhouses, will be owned and maintained by the respective homeowners association.

19. The Open Space Organization documents are subject to final review by the Township Planner and the Planning Board Attorney and thereafter, same shall be recorded simultaneously with the recording of the subdivision plat and a copy of same returned to the Administrative Officer with the recording information thereon.

20. Upon submission by the applicant of subsections approved by this Resolution, the Chairman and Secretary of the Planning Board shall sign said subsections of the final plat for recording with the Middlesex County Clerk. This approval is divided into 28 subsections.

21. The approval herein given does not in any way grant site plan approval of any of the commercial sites in Sections 6, 7, 24, and 25 or for 550 dwelling units included in the multi family housing sites located in Sections 22, 23, 26, 17 and 28.

22. The effectiveness of this final approval shall be extended for a 10 year period in order to permit the applicant to reasonably rely upon this approval in light of the size of the project which exceeds 150 acres and the number of units which exceeds the statutory requirements of N.J.S.A. 42:55D-52(b)

23. The applicant agrees to conform to all requirements contained in the memorandum of the Township Engineer dated August 23, 1979, with the exception of regulation #6, which is superceded by the terms contained in Condition #15 of this Resolution.

24. Final approval contained herein shall also conform to all of the requirements contained in the Resolution of preliminary approval granted

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Township of Old Bridge

August 23, 1979

and in that respect a true and correct copy of its minutes.


Secretary of Planning Board

Be it Resolved, by the Planning Board of the Township of Old Bridge, County of Middlesex,

New Jersey, that:

Resolution, Page Five.
#6-73P Oakwood at Madison, Inc.

by this Board June 30, 1978, with the exception of any condition of preliminary approval which has been expressly modified by this Resolution of final approval.

Moved by Mr. Stone, seconded by Mr. Mintz, and so moved on the following roll call vote:

AYES: Mr. Fennessy, Mayor Fineberg, Mr. Horowitz, Mr. Stone,
Mr. Mintz, Chairman Olivera.

NAYS: Mr. Donatelli, Mr. Hueston.

ABSTAIN: None.

ABSENT: Mr. Messenger.

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Township of Old Bridge

August 23, 1979

and in that respect a true and correct copy of its minutes.

William M. Brown
Secretary of Planning Board

consolidating t within action with the n League of
Greater New Brunswick v. Carteret, et al. action (Docket No.
C-4122-73), and for an Order requiring all discovery in the
Urban League Consolidated case to be made available to
Plaintiff; the Court having discussed this matter with all
counsel desiring to be heard and good cause appearing for the
entry of this Order;

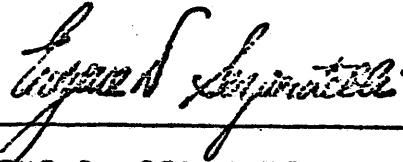
IT IS ON this 2 day of July, 1984, ORDERED that:

1. The within action is hereby consolidated with the
Urban League of Greater New Brunswick v. Carteret, et al.
action (Docket No. C-4122-73) solely as follows: in the event
the Court determines that Old Bridge Township's land use
regulations do not comply with Mount Laurel II, then
Plaintiff, Woodhaven Village, Inc., shall have the right to
participate in the ordinance revision process before the Master
and before this Court; and shall have the right to assert a
Builder's Remedy with respect to the property described in the
Complaint herein, and shall have the right to prosecute and/or
defend any appeal arising in this case.

2. Paragraph one (1), above, notwithstanding, Plaintiff
Woodhaven Village, Inc., shall the right to participate in any
and all Motions for Partial Summary Judgment.

3. Such consolidation is conditioned upon there being
no discovery between Plaintiff, Woodhaven Village, Inc., and

Defendant, Old Bridge Township prior to the completion of the trial segments on region, fair share and Old Bridge Township's compliance or lack of compliance with Mount Laurel II, except that all documents, deposition transcripts, expert reports or other discovery respecting Old Bridge Township in the consolidated Urban League cases shall be made available to Plaintiff, Woodhaven Village, Inc., for inspection and copying.



EUGENE D. SERPENTELLI, J.S.C.

IT IS, THEREFORE, THIS 13 DAY OF JULY, 1984,

O R D E R E D and A D J U D G E D:

1. For purposes of determining present housing need, the appropriate region for Old Bridge Township is the eleven county region identified in the Fair Share Report prepared by Carla L. Lerman, P.P., dated April 2, 1984.

For purposes of determining prospective housing need, the appropriate region for Old Bridge Township is the five county commutershed region, comprised of Middlesex, Monmouth, Ocean, Somerset and Union Counties and based on the methodology contained in Ms. Lerman's Report of April 2, 1984.

2. The Township of Old Bridge's fair share of the regional need for low and moderate income housing through 1990 is 2414 housing units, as per the Report on Fair Share Allocations for Old Bridge Township, prepared by Rintz/Nelessen Associates and dated June 15, 1984. Application of the methodology set forth in Ms. Lerman's Report of April 2, 1984 yields a fair share number for Old Bridge Township through 1990 of 2782 housing units. The methodology set forth in Alan Mallach's Expert Report of November 1983, as modified by his memorandum in this case of May 11, 1984, produces a fair share number for Old Bridge Township through 1990 of 2645 housing units, without including a category for financial need.

The Township of Old Bridge's fair share obligation includes 746 units of present need and 1668 units of prospective need. Of these 2414 units, 1207 shall be low income housing and 1207 units shall be moderate income housing.

3. The Township of Old Bridge is entitled to a credit against its fair share obligation of 2414 units for the following units built or rehabilitated since 1980: 204 units at the Rotary Senior Citizens Housing project which are occupied by low or moderate income households and are subsidized under the

Section 8 New Construction Housing program, and 75 units which have been substantially rehabilitated by Old Bridge Township under the Community Development Block Grant program.

4. The Township of Old Bridge's existing zoning ordinance is not in compliance with the constitutional obligation set forth in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II).

5. The Urban League plaintiffs and the Township of Old Bridge shall seek to reach an agreement as to ordinance revisions and shall submit the proposed revisions to the Court within 45 days of the date of this Order. Any such agreement as to ordinance revisions shall be binding on the developer plaintiffs only if they accept the agreement and join in presenting it to the Court. To assist the Court in determining whether to approve any proposed ordinance revisions, a full hearing shall be held, and the Court shall appoint Ms. Carla Lerman as the Court's expert for the limited purpose of reviewing the proposed revisions to determine whether they are reasonable in light of the Township's obligation under Mount Laurel II. The requirement of a hearing and reference to Ms. Lerman shall apply regardless of whether the agreement is presented by all the parties to the consolidated actions or only by the Township and the Urban League plaintiffs. If no agreement is reached within 45 days of the date of this Order, the Urban League plaintiffs shall seek appointment of, and the Court shall appoint, a master to assist Old Bridge Township in the revision of its zoning ordinance to achieve compliance with its obligation under Mount Laurel II. The proposed ordinance revisions and the master's report with respect to the proposed revisions shall be submitted to the Court within 45 days of the appointment of the master.

6. The time periods set forth in this Order and Judgment may be extended by mutual written consent of the parties, subject to the approval of the Court and on letter notice to all parties.

Eugene D. Serpente

EUGENE D. SERPENTELLI, J.S.C.

BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540
(609)924-0808
**ATTORNEYS for Plaintiff O&Y Old Bridge
Development Corporation**

FILED AUG 3 1984

D. SERPENTELLI, J.S.C.

**URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,**

Plaintiffs,

v.

**THE MAYOR AND COUNCIL of the
BOROUGH OF CARTERET, et al.,**

Defendants,

Plaintiff

**O&Y OLD BRIDGE DEVELOPMENT
CORPORATION, a Delaware
Corporation**

v.

Defendant

**THE TOWNSHIP OF OLD BRIDGE in the
COUNTY OF MIDDLESEX, a municipal
corporation of the State of New
Jersey, THE TOWNSHIP COUNCIL
OF THE TOWNSHIP OF OLD BRIDGE
and the PLANNING BOARD OF THE
TOWNSHIP OF OLD BRIDGE**

: **SUPERIOR COURT OF NEW JERSEY**
: **CHANCERY DIVISION/**
: **MIDDLESEX COUNTY**

: **Docket No. C-4122-73**

: **SUPERIOR COURT OF NEW JERSEY**
: **LAW DIVISION**
: **MIDDLESEX COUNTY/**
: **OCEAN COUNTY**
: **(Mount Laurel II)**

: **Docket No. L-009837-84 P.W.**

: **CIVIL ACTION**

: **ORDER**
: **Granting Partial**
: **Consolidation**

TO: Jerome J. Convery, Esq.
P.O. Box 872
Old Bridge, NJ 08857

Thomas Norman, Esq.
Jackson Commons
Suite A-2
30 Jackson Road
Medford, NJ 08055

Eric Neisser, Esq.
John Payne, Esq.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street
Newark, NJ 07102

Bruce S. Gelber, Esq.
National Com. Against Discriminatio
In Housing
733 Fifteenth Street, N.W., Suite 101
Washington, D.C. 20005

This matter having been opened to the Court by Brener, Wallack & Hill, Attorneys for Plaintiff, O&Y Old Bridge Development Corporation, Thomas J. Hall, Esq., appearing in the presence of Defendant, Jerome J. Convery, Esq. and Thomas Norman, Esq. appearing; and in the presence of Plaintiff, Urban League of Greater New Brunswick, Eric Neisser, Esq. appearing, and the Court having reviewed the papers, affidavits and briefs or memorandum submitted and considered the arguments of Counsel; and having made findings of fact and conclusions of law;

It is on this 3 day of Aug 1984:

Ordered that the cause of Plaintiff, Olympia and York/Old Bridge Development Corporation be consolidated with the action of the Urban League plaintiffs against the Township of Old Bridge, et. al. for the purpose of participating in the ordinance revision process to the extent set forth on the record for the purposes of complying with constitutional mandates enunciated in Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983).

It is further Ordered that Plaintiff, Olympia and York/Old Bridge Development Corporation be consolidated with the Urban League plaintiffs for purposes of determining the appropriateness of awarding a builder's remedy in the Township of Old Bridge, as requested by Plaintiff, Olympia and York/Old Bridge Development Corporation.

It is further Ordered that Plaintiff Olympia and York/Old Bridge Development Corporation not be consolidated with the Urban League plaintiffs for purposes of determining Old Bridge Township's:

- (a) housing region, or
- (b) fair share of housing for persons of low and moderate income.

It is further Ordered that the Motion for Summary Judgment brought Plaintiff Olympia and York/Old Bridge Development Corporation be scheduled to heard before this Court on Friday, July 6, at 10:00.

Eugene D. Serpentelli
The Honorable Eugene D. Serpentelli,
J.S.C.

- ___ NOTICE OF MOTION RETURNABLE _____
- ___ MOVANTS' AFFIDAVITS DATED _____
- ___ MOVANTS' BRIEF DATED _____
- ___ ANSWERING AFFIDAVITS DATED _____
SUBMITTED ON BEHALF OF _____
- ___ ANSWERING BRIEF DATED _____
SUBMITTED ON BEHALF OF _____
- ___ CROSS-MOTION DATED _____
FILED BY _____
- ___ MOVANTS' REPLY DATED _____
- ___ OTHER _____

BARBARA J. WILLIAMS, ESQ.
Constitutional Litigation Clinic
Rutgers Law School, 15 Washington St., Newark, N.J. 07102
201/648-5687

BRUCE GELBER, ESQ.
National Committee Against Discrimination in Housing
733 15th St. NW, Suite 1026
Washington, D.C. 20005

ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

v.

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

Defendants.

Civil Action C 4122-73

ORDER FOR THE APPOINTMENT OF A
MASTER

Urban League plaintiffs having moved for the Appointment of a Master, the Court having reviewed all documents submitted, and having considered the arguments of all interested parties set forth therein, and for good cause shown:

It Is on this 13th day of November, 1984,

O R D E R E D, that Ms. Carla Lerman is hereby appointed as the Master to assist in the revision of the ordinances of the Township of Old Bridge; and

IT IS FURTHER O R D E R E D, that pursuant to Paragraph 5 of the Order of this Court of July 13, 1984, the Master shall report to the Court within forty-five (45) days as to the Master's recommendations for revision of the ordinances of the

Township of Old Bridge.

Eugene D. Serpente

EUGENE D. SERPENTELLI, J.S.C.



Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE
C.N. 2191
TOMS RIVER, N.J. 08754

January 21, 1985

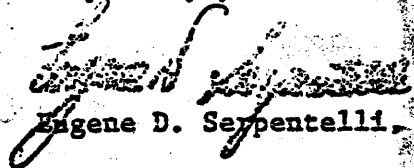
Ms. Carla Lerman, P. P.
413 W. Englewood Avenue
Teaneck, N. J. 07666

Dear Ms. Lerman:

I wish to belatedly acknowledge receipt of your letter of December 30, 1984.

This will confirm my oral approval of the request to extend the compliance period for Old Bridge to January 31, 1985.

Very truly yours,


Eugene D. Serpentelli, JSC

EDS:RDH

copy to:

cc:

Jerome J. Convery, Esq.

Thomas J. Hall, Esq.

Stewart M. Hutt, Esq.

Thomas Norman, Esq.

Barbara Williams, Esq. ✓

Exh. J

NORMAN AND KINGSBURY

**ATTORNEYS AT LAW
JACKSON COMMONS
SUITE A-2
30 JACKSON ROAD
MEDFORD, NEW JERSEY 08055**

**THOMAS NORMAN
ROBERT E. KINGSBURY**

January 31, 1985

(609)654-5220
(609)654-1778

rec'd 2/4

Barbara J. Williams, Esq.
Rutgers School of Law
Constitutional Litigation Clinic
15 Washington Street
Newark, N.J. 07102

Re: Application for Final Site Plan
and Subdivision Approval
Oakwood At Madison

Dear Barbara:

This is in response to your query as to the status of the above captioned application in light of the current Mt. Laurel II controversy in Old Bridge Township.

In a phone discussion I had with Frederick Mezey, Esq., attorney for the applicant, it was indicated that 375 units of housing are being proposed by the developer in conformance with the requirements of the Supreme Court decision in the Oakwood at Madison controversy. It is my impression that these proposed units will not be qualified in accordance with Mt. Laurel II requirements. Specifically, I don't know whether the sale price or rental figure complies with the low and moderate income requirements of Mt. Laurel II and I doubt very much if the applicant intends to restrict the resale or rental of the units over a 25 or 30 year period in compliance with Mt. Laurel II requirements.

Additionally, I do not believe a phasing schedule has been established tying construction of market units to low and moderate income units.

Obviously, the Planning Board of the Township of Old Bridge seeks credit for these units against the fair share housing requirement established by Judge Serpentelli in the event the low and moderate dwelling units are constructed.

Exh. K

Barbara J. Williams, Esq.
Oakwood at Madison
January 30, 1985

-2-

By copy of this letter to the Township Planner of Old Bridge, Henry Bignell, I am requesting that a copy of the Resolution granting final approval to the proposed Oakwood at Madison development be forwarded to you along with a copy of the Order of the Superior Court implementing the Supreme Court decision. Once you have had an opportunity to review this material, I suggest that we confer with Frederick Mezey, Esq., for the purpose of insuring that Old Bridge Township receives credit against its fair share housing requirement for units built in the Oakwood at Madison project.

Sincerely yours,



Thomas Norman, Esq.

TN:mk

CC: Henry Bignell, Planner Old Bridge Township
Jerome Convery, Esq., Township Attorney
Frederick Mezey, Esq.