

CA

Old Bridge

3-26-87

Respondent's brief re: opposition  
to the appeal of Oakwood at Madison  
from judgment of repose of 1-24-86

155-48

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SUPERIOR COURT OF NEW JERSEY  
 APPELLATE DIVISION

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

Docket No. A-3795-85T1

vs.

THE MAYOR AND COUNCIL OF  
 CARTERET, et al.,  
 Defendants, and

OAKWOOD AT MADISON, INC., and  
 BEREN CORP.,  
 Defendant-Appellants.

**FILED**  
 APPELLATE DIVISION

APR 15 1987

*John J. Manning*  
 Acting Clerk

O&Y OLD BRIDGE DEVELOPMENT  
 CORP.,  
 Plaintiff-Respondents,

LAW DIVISION-MIDDLESEX  
 COUNTY  
 Docket No. L-009837  
 P.W.

vs.

THE TOWNSHIP OF OLD BRIDGE, THE  
 TOWNSHIP COUNCIL OF THE  
 TOWNSHIP OF OLD BRIDGE and THE  
 PLANNING BOARD OF THE TOWNSHIP  
 OF OLD BRIDGE,  
 Defendant-Respondents.

WOODHAVEN VILLAGE, INC.,  
 Plaintiff-Respondents,

LAW DIVISION-MIDDLESEX  
 COUNTY  
 Docket No. L-036734-84  
 P.W.

vs.

THE TOWNSHIP OF OLD BRIDGE, THE  
 TOWNSHIP COUNCIL OF THE TOWNSHIP  
 OF OLD BRIDGE and THE PLANNING  
 BOARD OF THE TOWNSHIP OF OLD  
 BRIDGE,  
 Defendant-Respondents.

RESPONDENT'S BRIEF

TABLE OF CONTENTS

	Page
PROCEDURAL HISTORY .....	1
ARGUMENT	
POINT I	
DEFENDANTS OAKWOOD AND BEREN WERE NOT ENTITLED TO NOTICE BECAUSE THEY WERE PARTIES TO THE PROCEEDINGS BELOW ONLY FOR THE LIMITED PURPOSES SET FORTH IN THE MAY 31, 1985 ORDER .....	2
POINT II	
EVEN IF DEFENDANTS HAD BEEN ENTITLED TO NOTICE, SUBSEQUENT PROCEEDINGS HAVE RENDERED THE ISSUE MOOT .....	5
CONCLUSION .....	7

APPENDIX INDEX

	Page
Joint Application of Civic League and Oakwood and Beren .....	Pa1
Old Bridge Opposition to Joint Application ....	Pa20
Old Bridge Motion to Vacate .....	Pa24
Planning Board Motion to Vacate .....	Pa36
Appellate Division Order Denying Stay .....	Pa38

This brief is respectfully submitted in opposition to the appeal of Oakwood at Madison and Beren Corp. ("Oakwood and Beren") from the Order and Judgment of Repose entered January 24, 1986 (the "Judgment") (Da77) which in pertinent part continues an Order dated May 31, 1985 (the "Order") (Da66) enjoining Old Bridge Township from issuing more than 120 building permits for defendants Oakwood at Madison project.

#### PROCEDURAL HISTORY

There have been several requests for extensions of time in this matter, filed by both parties. As set forth in the certifications of counsel, the extensions were requested because the Civic League and Oakwood and Beren were negotiating in an attempt to resolve this matter. In fact, the parties have entered into a Settlement and on February 13, 1987 they filed a joint application seeking the approval of the trial court in connection with same (Pa1). Paragraph 20 of that Settlement provides for the dismissal of this appeal upon its approval by the court below. That application has been opposed by the Township of Old Bridge and the Old Bridge Planning Board (Pa20) which have argued that no consent can be given in view of the pending motions before the Honorable Eugene D. Serpentelli to reopen the Judgment in issue (Pa24, Pa36). This matter is scheduled to be heard by Judge Serpentelli on April 3, 1987.

Prior to their settlement with Oakwood and Beren on February 9, 1987, the Civic League filed a motion with this court requesting the dismissal of the within appeal, on the grounds that the Township of

Old Bridge and the Old Bridge Planning Board, also parties to the Judgment, had sought to reopen same in the court below. In the alternative, the Civic League requested a stay of this matter pending the determination of the court below. By Order dated March 10, 1987, received March 19, 1987, the Appellate Division denied the Civic League 's application (Pa38). As set forth in the Certification of Barbara Stark submitted herewith, counsel was advised on the same day that an Order of Suppression was being entered in connection with this brief.

While the foregoing applications for extensions, dismissal and stay were pending, the time in which plaintiffs should have filed this brief expired. A motion to vacate suppression and permit an extension of time for the immediate filing of this brief nunc pro tunc is submitted herewith. As set forth in the Certification of Barbara Stark submitted in support of the motion to vacate, counsel for defendants has no objection to the Civic League's request for an extension of time in which to file this brief.

#### ARGUMENT

##### POINT I

DEFENDANTS OAKWOOD AND BEREN WERE NOT ENTITLED  
TO NOTICE BECAUSE THEY WERE PARTIES TO THE  
PROCEEDINGS BELOW ONLY FOR THE LIMITED PURPOSES  
SET FORTH IN THE MAY 31, 1985 ORDER

Defendants Oakwood and Beren were not parties to this action until the entry of the Order by Judge Serpentelli on May 31, 1985. The cited Order provided in pertinent part that joinder was:

"[F]or the limited purpose of insuring that 20% of the units they construct in Old Bridge are affordable to low and moderate income households, that adequate restrictions are imposed on the resale and re-rental of those units to assure continued occupancy for 30 years by low and moderate income households, and that construction of these units is phased with construction of the market units to guarantee construction of the former units." (Da68)

It is noteworthy that this joinder was over the vociferous objection of Oakwood and Beren. Since the January 24, 1986 Judgment neither modified nor superceded this Order, it is respectfully submitted that the Civic League was under no obligation to notify Oakwood and Beren prior to the entry of same.

As defendants concede, the Judgment merely requires that Oakwood and Beren provide that 263 of its units or 15% of the 1750 units defendants plan to construct shall be affordable to lower income households (Da78). The Order required that 20% of Oakwood and Beren's units were to be affordable to lower income households. Defendants contend that: "Given the undisputed fact that the [Judgment] patently imposed a greater low and moderate income obligation upon Oakwood and Beren, we respectfully submit that the appellants had, as a matter of law, the constitutional right of notice and an opportunity to be heard." (Db6). This is a blatant attempt to mislead this Court. Defendants' obligation may have been proportionally greater than that of the other developers, but the obligation set forth in the Judgment was less than that previously imposed on Oakwood and Beren.

Defendants object to the Judgment on the grounds that other

developers were only required to provide a 10% set aside (Db3). There were no prior court orders entered against such developers. The crucial point, however, is that the imposition of an obligation with respect to other developers in no way affected Oakwood and Beren's rights and obligations as set forth in the Order. Oakwood and Beren, accordingly, had no right to participate in the proceedings resulting in the Judgment.

Defendants' reliance on R. 1:6-2(a) and R. 1:5-1(a) is misplaced. Both rules refer to parties in a proceeding. As provided by the Order, defendants were parties "only for the specific purposes set forth herein." (Da69). Paragraph 4 of the Order further provided that defendants' participation would be permitted, but not required, in issues "relating to them." The Judgment did not "relate" to them since it did not change their rights and obligations under the Order.

The authority cited in defendants' brief is accordingly inapposite here. There is no constitutional right of notice to a nonparty. In any event, defendants do not deny that they were aware of the proceedings (Db4). They merely insist that they never received written notice of same. Since they were not entitled to such notice because of their nonparty status, it is respectfully submitted that their demand to vacate the Judgment should be denied.



## POINT II

EVEN IF DEFENDANTS HAD BEEN ENTITLED TO NOTICE,  
SUBSEQUENT PROCEEDINGS HAVE RENDERED THE ISSUE MOOT

As set forth above, the Civic League and Oakwood at Madison and Beren have settled their dispute. This matter is to be heard by Judge Serpentelli on April 3, 1987. If the Settlement is approved, defendants have agreed to dismiss the within appeal. If the Settlement is not approved, the matter will be referred to the Master pursuant to Paragraph 3 of the Order (Da 69). In neither case would the relief demanded of this Court, i.e., the vacation of the Judgment, affect the rights of either plaintiffs or defendants as set forth in the Order and the Settlement entered into pursuant to its terms.

Indeed, the only parties affected would be the parties to the proceedings below, i.e., the Township of Old Bridge, O & Y Old Bridge Development Corp. and Woodhaven Village, Inc.; who would find that the continuing validity of the Judgment in dispute in those proceedings had been decided by this Court notwithstanding the pendency of the identical issue before Judge Serpentelli.<sup>1</sup>

Moreover, assuming arguendo that defendants Oakwood and Beren retain any interest in the vacation of the Judgment and its remand, the pending proceedings below afford them precisely the same opportunity to participate which they demand in the within appeal. Defendants do not deny that they have received notice of these

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<sup>1</sup> This matter has not yet been set for hearing below because the parties, including the Township of Old Bridge, the Planning Board, O & Y Development Corp. and Woodhaven, are in the process of preparing detailed analyses of the complex issues involved.


proceedings, yet have made no attempt to participate in same. Defendants' contention that they can ignore these proceedings, while insisting upon their relitigation before this Court, demonstrates a complete disregard for judicial economy.

Nor do defendants deny that this matter should be decided by Judge Serpentelli, whose invaluable role in this litigation has already been recognized by the New Jersey Supreme Court. It is respectfully submitted that there is no justification whatsoever for defendants' failure to join in the motions below and their effort to exert improper leverage in connection with those proceedings by means of this appeal should not be permitted by this Court.

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the defendants' demands that the Judgment be vacated and the matter remanded should be denied.

Dated: March 26, 1987



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John M. Payne  
Barbara Stark  
Attorneys for the ACLU of NJ and  
On Behalf of the Civic League  
Plaintiffs

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9201) 545-6011  
Attorneys for Defendant  
Oakwood at Madison, Inc. & Beren Corp.

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al,

Plaintiff

v.

THE MAYOR AND COUNCIL OF  
CARTERET, et al,

Defendants and

OAKWOOD AT MADISON, INC., and  
BEREN CORP.,

Defendants

-----  
O & Y OLD BRIDGE DEVELOPMENT  
CORP.,

Plaintiff

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

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

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
OCEAN COUNTY  
DOCKET NO. C-4122-73

NOTICE OF MOTION  
REUTURNABLE MARCH  
13, 1987

LAW DIVISION-MIDDLESEX COUNTY  
DOCKET NO. L-009837 P.W.

LAW DIVISION-MIDDLESEX COUNTY  
DOCKET NO. L-036734-84 P.W.

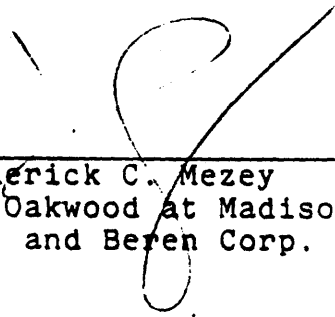
TO ALL COUNSEL ON ATTACHED LIST:

**PLEASE TAKE NOTICE** that the undersigned, attorneys for Oakwood at Madison, Inc. and Beren corp. and attorneys for the Urban (now Civic) League of Greater New Brunswick, will apply to the above named Court at Toms River on March 13, 1987, at 9:00 A.M. o'clock, or as soon thereafter as counsel may be heard for an Order confirming and entering a consent judgment establishing phasing, affordability and resale/re-rental restrictions for the Oakwood at Madison project.


The undersigned shall rely upon the annexed certification of Frederick C. Mezey and Barbara Stark.

Mezey & Mezey

BY

  
\_\_\_\_\_  
Frederick C. Mezey  
for Oakwood at Madison,  
Inc. and Beren Corp.

BY

  
\_\_\_\_\_  
Barbara Stark, Esq.  
Attorneys for Urban (now  
Civic) League of Greater  
New Brunswick

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URBAN LEAGUE OF GREATER  
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Plaintiff

v.

THE MAYOR AND COUNCIL OF  
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O & Y OLD BRIDGE DEVELOPMENT  
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OF OLD BRIDGE and THE PLANNING  
BOARD OF THE TOWNSHIP OF OLD  
BRIDGE,

Defendants

WOODHAVEN VILLAGE, INC.,

Plaintiff-

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

SUPERIOR COURT OF NEW JERS  
LAW DIVISION  
OCEAN COUNTY  
DOCKET NO. C-4122-73

CERTIFICATION OF FREDERICK  
C. MEZEY AND BARBARA STARK

LAW DIVISION-MIDDLESEX COUN  
DOCKET NO. L-009837 P.W.

LAW DIVISION-MIDDLESEX COUNT  
DOCKET NO. L-036734-84 P.W.

Frederick C. Mezey and Barbara Stark hereby certify as follows:

1. We are attorneys at law of the State of New Jersey and counsel for Oakwood at Madison, Inc. and Beren Corp. and the Urban (now Civic) League of Greater New Brunswick, respectively;

2. On May 31, 1985, this Court entered an Order joining Oakwood at Madison and Beren Corp. as parties-defendant in the instant suit for the limited purpose of insuring that the long-approved Oakwood at Madison project provided an appropriate amount of low and moderate income housing and that a phasing, affordability and resale/re-rental restriction plan be developed;

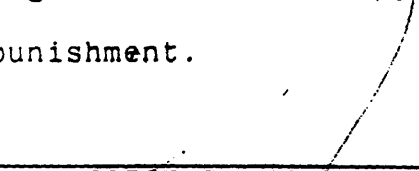
3. In accordance with paragraph 3 of said Order of May 31, 1985 and in settlement of existing litigation between Oakwood, Beren and the Urban League, we have developed and our clients have agreed upon such an affordability, phasing and transfer restriction plan.

4. We have finalized this plan in the form of a consent order for judgment, a true copy of which is annexed hereto.

5. On behalf of the Urban League, Oakwood at Madison, Inc. and Beren Corp., we respectfully request formal Court approval of said plan.

We certify that the foregoing statements by us are true. We are aware that if any of the foregoing statements made by us are wilfully false, we are subject to punishment.

  
\_\_\_\_\_  
BARBARA STARK

  
\_\_\_\_\_  
FREDERICK C. MEZEY

**MEZEY & MEZEY**  
93 Bayard Street, P.O. Box 238  
New Brunswick, NJ 08903  
Attorneys for Defendant  
Oakwood at Madison, Inc. & Beren Corp.

---

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

**Plaintiffs**

v.

**THE MAYOR AND COUNCIL OF  
CARTERET, ET AL,**

**Defendants and**

**OAKWOOD AT MADISON, INC., AND  
BEREN CORP.,**

**Defendants**

---

**O & Y OLD BRIDGE DEVELOPMENT  
CORP.,**

**Plaintiff**

v.

**THE TOWNSHIP OF OLD BRIDGE, THE  
TOWNSHIP COUNCIL OF THE TOWNSHIP  
OF OLD BRIDGE and THE PLANNING  
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**Defendants**

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**WOODHAVEN VILLAGE, INC.,**

**Plaintiff,**

v.

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OF OLD BRIDGE and THE PLANNING  
BOARD OF THE TOWNSHIP OF OLD  
BRIDGE**

**Defendants**

**SUPERIOR COURT OF  
NEW JERSEY  
LAW DIVISION  
OCEAN COUNTY  
DOCKET NO. C-4122-73**

**Civil Action**

**CONSENT JUDGMENT**

**LAW DIVISION-MIDDLESEX  
COUNTY  
DOCKET NO. L-009837-84 P.W.**

**LAW DIVISION-MIDDLESEX  
COUNTY  
DOCKET NO. L-036734-84 P.W.**



This matter having been opened to the Court by Mezey and Mezey, Esqs., attorneys for defendants Oakwood at Madison, Inc. and Beren Corp. (Frederick C. Mezey, appearing), in the presence and with the consent of Barbara Stark, Esq., attorney for the plaintiff Urban (now Civic) League of Greater New Brunswick, Norman and Kingsbury, attorneys for defendant Planning Board for the Township of Old Bridge (Thomas Norman, Esq., appearing), Jerome J. Convery, Esq., attorney for Township of Old Bridge and the Township Council of the Township of Old Bridge, and Antonio & Flynn, Esq., attorneys for the Township of Old Bridge Municipal Utilities Authority, for an Order for Judgment and it appearing that:

1. In the case of Oakwood at Madison, Inc. v. Tp. of Madison, 72 N.J. 481 (1977), the Supreme Court awarded a builder's remedy to Oakwood at Madison, Inc. and Beren Corp. and ordered the issuance of 2400 building permits to Oakwood at Madison, Inc. and Beren Corp. "within the very early future";

2. The Supreme Court directed that Oakwood at Madison, Inc. and Beren Corp. allocate at least 20% of the units to low or moderate income families;

3. In directing that the 20% low or moderate income

units be provided, the Supreme Court, in Oakwood, set income standards but did not set any other standards such as phasing requirements or resale/rental restrictions;

4. Following remand by the Supreme Court, a stipulation of settlement was entered into with the Township of Old Bridge wherein Oakwood at Madison, Inc. and Beren Corp. were to build 1750 units, instead of the awarded 2400 units, of which 20% or 350 units would be low or moderate units, 175 thereof to be for senior citizens.

The parties hereby modify that stipulation and agree that Oakwood at Madison, Inc. and Beren Corp. shall build 1750 units of which 183 shall be low and moderate income units, as specified herein;

5. As set forth in the Order of January 24, 1986, the Urban League plaintiffs and Old Bridge township have settled with Olympia & York and Woodhaven Associates based upon a 10% low and moderate income set aside, phasing, resale and rental and income requirements. The parties agree that the same basic standards should apply to Oakwood at Madison, Inc. and Beren Corp. as set forth herein;

6. The Urban League plaintiffs, the municipal defendants and defendants Oakwood at Madison, Inc. and Beren Corp. have agreed upon a phasing, affordability and resale/rental restriction plan for the Oakwood at Madison project, as directed by paragraph 3 of the May 31, 1985

Order, and for good cause shown:

IT IS on this                    day of                    , 1986

ORDERED that Judgment shall be entered as follows:

1. The lower income housing obligation of defendants Oakwood at Madison, Inc. and Beren Corp. shall be 183 units, of which 91 shall be affordable to persons of low income and 92 shall be affordable to persons of moderate income; both low income and moderate income hereinafter being referred to as "lower income";

2. Low and moderate income housing for rental or for sale shall be priced so that, on the average, it will be affordable to households earning ninety (90) percent of the limits established for each of the income groupings, such that the housing provided for low income households shall, on the average, be affordable to families earning forty-five (45) percent of the adjusted median income for the Middlesex, Somerset, Hunderdon Primary Metropolitan Statistical Area (P.M.S.A.) and housing for moderate income households shall, on the average, be affordable to persons earning seventy-two (72) percent of the adjusted P.M.S.A. median income for the region, provided that in no event shall the "affordability" criteria of units for low income families exceed fifty (50) percent of the adjusted P.M.S.A. median income for the region or in the case of moderate income families, eighty (80) percent of the adjustment P.M.S.A. median income for the region. "Adjusted" P.M.S.A. median income refers to the process of multiplying the current year P.M.S.A. income by ninety-four (94%) per-

cent so as to yield a lower figure, which approximates the income figure for the eleven county Northern New Jersey region, for which data is no longer conveniently available.

3. Oakwood at Madison, Inc. and Beren Corp. [Oakwood and Beren] shall supply, upon filing their application for preliminary site plan approval for the 550 multi-family units referred to in paragraph 21 of the August 23, 1979 resolution of Old Bridge Township Planning Board, a copy of which is annexed hereto as Exhibit A, a "housing plan" which shall set forth the mechanisms whereby Oakwood and Beren will construct the 183 lower income units. Such housing plan shall indicate the approximate sizes, numbers, types, locations, price ranges, price controls, deed restrictions and marketing strategies for the lower income housing and phasing schedule for the actual delivery of such units within the Oakwood at Madison project. Said housing plan shall provide a mechanism to insure that the units remain affordable to lower income households for a period of thirty (30) years from the date of issuance of the initial Certificate of Occupancy for each such lower income housing unit;

4. Oakwood and Beren Corp. shall have all the rights and privileges, specific unit counts, development rights and land development standards set forth herein vested for a period of nine (9) years from the date of entry of this Order. The final subdivision approval granted to Oakwood and Beren Corp. on August 23, 1979 shall also be extended for a period of nine (9) years from the date of entry of this Order;

5. The Township Planning Board shall review and issue a decision upon any application by Oakwood or Beren Corp. for any preliminary site plan approval or revised subdivision or site plan whether for lower income or market units within ninety-five (95) days of application including applications pertaining to the commercial aspect of the development. The Planning Board shall further adhere to the review schedule detailed in paragraph 15 hereof.

In order to accommodate this schedule, the Township Planning Board agrees to hold special meetings not to exceed two (2) meetings per month for applications which are part of an inclusionary development, and to allocate staff, either Township employees or special consultants, to review such applications on a timely basis.

Developers seeking Township approval of applications under these procedures shall provide the Township with such funds as are reasonably necessary to assure competent professional review throughout the application process. Such funds will be placed in a Township-managed escrow account, and invoices for professional services rendered by or on behalf of the Township for such reviews will be required by the administrator of the account prior to release of such funds. Fees charged by consultants to the Township shall not exceed the normal and customary fees charged by such consultants, and the developers shall have an opportunity to review such charges. In the event that a developer regards the review fees as excessive, the developer may appeal such

Charges to the court-appointed Master, whose decision shall be final;

6. It is specifically Ordered that lower income housing is to be located so as to afford similar access to transportation, community shopping, recreation, and other amenities as provided to other residents of developments constructed as a result of this Settlement Agreement. The landscaping buffers provided for lower income housing areas shall not be substantially different from those generally used other portions of the development, nor different from those buffers generally used separate section of the development with different types of housing.

7. Oakwood and Beren Corp. shall be permitted to construct a maximum of 600 market units prior to any obligation to construct lower income units. Thereafter, the 183 lower income units shall be constructed according to the following schedule:

Number of Market Units	Number of Moderate Income Units	Number of Low Income Units	Cumulative Total of Lower Income Units	Cumulative Total of All Units
601-800	50	--	50	850
801-1200	--	--	50	1200
1201-1400	42	58	150	1550
1401-1475	--	33	183	1658
1476-1567	--	--	183	1750

There shall be no prohibition placed upon the obtaining of building permits; phasing shall be controlled by the issuance of Certificates of Occupancy;

8. Notwithstanding any ordinance requirement of the Township

of Old Bridge, the applicable Township approving agency shall waive the following fees for lower income units:

- (a) Planning Board application fees;
- (b) Engineering review fees;
- (c) Building permit fees;
- (d) Certificate of Occupancy fees; and
- (e) Inspection fees for all on-tract improvements and structures;

9. The affordable housing plan referred to in paragraph (3) of this Order shall contain the following major elements.

(a) Description of the units, by number, size and probable location;

(b) Description of the affordability control mechanism, such as deed restrictions, rental price controls, resale controls, etc.;

(c) Description of means of assuring affordability over a thirty (30) year period;

(d) Description of the duration of the affordability controls (minimum requirement for lower income housing is thirty (30) years); minimum requirement for maintenance as rental units, if contemplated, is ten (10) years, but after conversion to sale units, such units must remain price controlled for the balance of the thirty year period;

(e) Description of any proposed conversion process, if applicable, involving the rental units;

(f) Description of the proposed marketing scheme for the lower income housing units which, as a minimum, shall include the affirmative marketing requirements set forth in the procedures

for occupancy of lower income housing, established in Section V(F) of Ordinance No. 54-85.

(g) Such marketing plans shall include assurances that the opportunities for low and moderate income units will be advertised throughout the eleven (11) county region, including Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren counties, and specifically including newspapers of general circulation in Elizabeth, Jersey City, Newark, New Brunswick, Paterson and Perth Amboy. In addition, the plan shall require that the developers notify the Civic League of Greater New Brunswick, the Housing Coalition of Middlesex County, the Middlesex County Office of Community Development, the Council on Affordable Housing, the New Jersey Housing Mortgage and Finance Agency, and all fair housing centers and housing referral organizations in the aforementioned eleven (11) counties; and

(h) Description of a disclosure statement to be attached to all contracts for rental or sale of all housing units within the development, whether market or price controlled.

10. The Township of Old Bridge, by ordinance, shall establish an affordable housing agency, which shall review all affordable housing plans and certify them to the Planning Board. The affordable housing agency shall also establish, by rules and regulations, mechanisms whereby lower income households can be screened for income eligibility and for potential placement in available affordable housing.

11. Oakwood and Beren Corp. may apply to the Agency



for a Hardship Exemption, as follows:

(a) The Developers may only apply to the Agency for a Hardship Exemption after the later of (i) six (6) months after the Developer has commenced marketing the Lower Income Unit and (ii) ninety (90) days after the Developer has received the Certificate of Occupancy for such Lower Income Unit.

(b) In order for the Developer to be entitled to a Hardship Exemption from the Agency, the Developer must show the Agency that (i) the time periods set forth in subsection (a) above have lapsed, and (ii) that the Developer has been marketing such Lower Income Unit for such time period and in accordance with the affirmative marketing plan approved as part of the housing plan, and (iii) no Qualified Household is obligated under a contract to purchase, or a lease to rent, as the case may be, for such Lower Income Unit.

If a Developer has complied with the requirements of (a) and (b) above, and despite best efforts, has not been able to obtain a Qualified Household, from the waiting lists maintained by the agency or by the Urban League, the Developer may offer such unsold unit to a person or household whose income is up to fifty (50%) higher than the ceiling income for the category for which the unit was intended. In the event, that an additional one hundred (120) days elapse with the units remaining unsold, despite the best efforts of the developer to sell the unit, the Developer, with the permission of the Agency, may offer the unit to any person or household

whose income is up to 100% above income ceilings.

However, all units built as affordable housing units under this Order and receiving a Hardship Exemption, are to be sold and rented at no more than the maximum price permitted by this Order and are to be price-controlled and deed-restricted so that the sale and resale prices reflect the price category for which the unit was originally intended to be offered, and future sales of units receiving Hardship Exemptions shall be subject to the original requirements for purchaser eligibility.

12. Oakwood and Beren Corp. for each subdivision and/or site plan approval, following the initial submission of the housing plan, shall demonstrate to the Planning Board how the applicant is meeting the commitments and schedules set forth in the affordable housing plan.

Oakwood and Beren Corp. shall demonstrate that affordable housing units are being priced so that, on the average, they are affordable to households earning ninety (90%) percent of the limits established for the income groupings, such that housing for low income households shall, on the average, be affordable to persons earning forty-five (45%) percent of the Adjusted Median Income and housing for moderate income households shall, on the average, be affordable to persons earning seventy-two (72%) percent of the Adjusted Median Income.

13. Lower income housing units shall be provided in combinations of efficiency, one bedroom, two bedroom and three

bedroom or larger units. While the distribution of units should be reasonably reflective of the market units to be provided, the lower income units shall include not more than 50% efficiency and one bedroom units and not less than 15% three bedroom or larger units. Unit sizes shall not be less than the following:

<u>Unit type</u>	<u>Minimum size</u>
efficiency units	480 s.f.
1 Bedroom	550 s.f.
2 Bedrooms	750 s.f.
3 Bedrooms	950 s.f.

14. The following schedule will apply to all development applications submitted by Oakwood or Beren Corp.

A. As to Preliminary Subdivision and Site Plan applications:

<u>Action Taken</u>	<u>Cumulative Time</u>
i. Application submitted to board	0 days
ii. Checklist review completed	10 days
iii. Written notice of completeness	15 days
iv. Planning Board Staff reviews (applicant may submit additional material)	45 days
v. Documentation available to public	46 days
vi. Public hearing to be held	57-81 days
vii. Board action Resolution	95 days
viii. Bond estimate to Developer	110 days
ix. Action after submission of bond	125 days
x. Signing of Maps	140 days

B. As to minor subdivision and Final Major subdivision applications:

<u>Action Taken</u>	<u>Cumulative Time</u>
i. Application submitted to Board	0 days
ii. Declaration of completeness	10 days
iii. Planning board staff reviews	30 days
iv. Public Hearing held	45 days
v. Board action by resolution	45 days
vi. Documentation available to public	46 days
vii. Bond estimate to developer	60 days
viii. Action after submission of bond	75 days
ix. Signing of Maps	90 days

The applicant may grant extensions of time; but it is anticipated that such extensions will not be routinely sought or granted. The Planning board will not be required to schedule more than two (2) special meetings per month for all applicants using the accelerated review and appeal procedure.

15. Nothing herein shall require any specific building, cluster, section or subdivision to have any lower income units within it, and the distribution shall be as outlined in Section A-3.3 of Appendix A. It is specifically understood by the parties that the developments contemplated to be undertaken as a result of this agreement are to be inclusionary, as a whole, and the developers shall provide (10%) percent of the total residential units within the development as housing for lower income households.

16. All developers with a lower income housing obligation shall provide the township agency with a Compliance Status Report as more fully set forth in Appendix A attached hereto.

17. The applicant shall comply with the standards set forth in the Appendices, and in particular, Appendix B, when seeking development approvals. The applicant shall respond to issues in the Township's Natural Resources Inventory. Further, the applicants shall abide by the State requirement that the rate of post-development storm water runoff shall not exceed the pre-development rate, and shall provide natural aquifer recharge through non-structural means whenever practical and feasible. Reports, other than those set forth in Appendices A & B, shall not be required.

18. Letters of credit shall be accepted in lieu of bonding for all public inspection costs. No cash bond or deposit shall be required. Inspection fees shall not exceed five percent (5%).

19. The restraints imposed in paragraph 2 of this Court's Order of May 31, 1985 against the Township of Old Bridge, the Old Bridge township Council, the Old Bridge Planning Board and their agents, employees and other action in concert with them, from issuing any more than 120 building permits for market units to Oakwood at Madison, Inc. and Beren Corp. are and the same hereby dismissed.

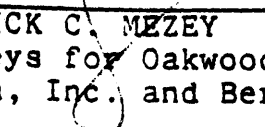
20. Oakwood and Beren shall provide the Civic League with a signed Stipulation of Dismissal with prejudice of Oakwood and Beren's pending appeal, to be held in escrow by the Civic League pending execution and approval by the court of

this Consent Judgment.

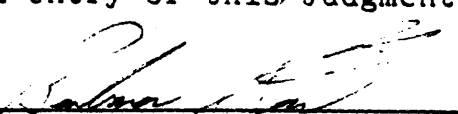
We hereby consent to the form  
and entry of this Judgment

MEZEY & MEZEY, ESQS.

BY

  
\_\_\_\_\_  
FREDERICK C. MEZEY  
Attorneys for Oakwood at  
Madison, Inc. and Beren  
Corp.

We hereby consent to the form  
and entry of this Judgment

  
\_\_\_\_\_  
BARBARA STARK, ESQ.  
Attorney for the Urban  
(now Civic) League of  
Greater New Brunswick


We hereby consent to the form  
and entry of this Judgment

\_\_\_\_\_  
THOMAS NORMAN, ESQ.  
Attorney for Planning Board  
for the Township of Old  
Bridge

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

We hereby consent to the form  
and entry of this Judgment

BY

  
\_\_\_\_\_  
C. Roy Epps, President  
Civic League of Greater  
New Brunswick

We hereby consent to the form  
and entry of this Judgment

\_\_\_\_\_  
JEROME J. CONVERY, ESQ.  
Attorney for the Township  
of Old Bridge & The Council  
of the Township of Old Bridge

We hereby consent to the form  
and entry of this Judgment

\_\_\_\_\_  
ANTONIO & FLYNN, ESQS.  
Attorneys for the Township  
of Old Bridge Municipal  
Utilities Authority

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

---

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al,

Plaintiff,

v.

TH MAYOR AND COUNCIL OF  
CARTERET, et al,

Defendants and

OAKWOOD AT MADISON, INC., and  
BEREN CORP.,

Defendants.

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION  
: OCEAN COUNTY  
: DOCKET NO. C-4122-73

:  
: CERTIFICATION IN OPPOSITION  
: TO NOTICE OF MOTION  
: RETURNABLE MARCH 13, 1987

-----  
O & Y OLD BRIDGE DEVELOPMENT  
CORP.,

Plaintiff,

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

:  
: LAW DIVISION-MIDDLESEX COUNTY  
: DOCKET NO. L-009837 P.W.

-----  
WOODHAVEN VILLAGE, INC.,

Plaintiff,

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

:  
: LAW DIVISION-MIDDLESEX COUNTY  
: DOCKET NO. L-036734-84 P.W.

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

1. I am the attorney for the Township of Old Bridge and am fully familiar with the facts of the within matter, and make this Certification in Opposition to the Notice of Motion returnable March 13, 1987, for an Order confirming and entering a Consent Judgment establishing phasing, affordability and resale/re-rental restrictions for the Oakwood at Madison project.

2. As attorney for the Township of Old Bridge, I note that the Township of Old Bridge and the Old Bridge Township Planning Board have a Motion pending before this Court to set aside the judgment and settlement in the above referenced matter. I incorporate by reference the Notice of Motion, Certifications in support thereof, and Brief submitted by Thomas Norman, Esq. It is my understanding that that Motion has been adjourned without date so that the parties in this matter would have an opportunity to meet with Carla Lerman, Court Master in this matter, and to exchange experts' reports concerning the delineation of wetlands for the O & Y and Woodhaven properties. I have just received a copy of the wetlands delineation report of Amy Green, on behalf of Olympia & York, and I am in the process of forwarding said report to the Township Council for full discussion. Furthermore, I am aware of the fact that copies of this report have been forwarded to various professionals on behalf of the Township of Old Bridge and Old Bridge Township Planning Board for their review and comment. It is anticipated that the reports of the professionals for Old Bridge Township and the Old Bridge Township Planning Board will be available within thirty (30) days. Following the exchange of these experts' reports, I anticipate that it may be possible to reach a Stipulation of Facts



concerning wetlands delineation, so that the parties can argue the merits of the Motion to set aside the judgment and settlement.

3. I believe it is obvious that no Consent Judgment can be entered in this case without the knowing and voluntary consent of the Township of Old Bridge, the Old Bridge Township Planning Board, and the Old Bridge Township Municipal Utilities Authority. I represent to the Court that this Consent Order between Oakwood at Madison and the Urban League of Greater New Brunswick has been discussed by me with the Township Council of the Township of Old Bridge, and I have been instructed not to enter into any further agreement on this matter until such time as the Court has ruled on the Motion to set aside the judgment and settlement. On this basis, I submit that I can not sign any Consent Order on behalf of the Township of Old Bridge in this matter.

4. The documents submitted in this matter, consist of a copy of the proposed Consent Judgment, and a joint Certification by Frederick C. Mezey, Esq. and Barbara Stark, Esq., in support of said Motion. It is respectfully submitted that the Certification in question is no basis for the Court to finalize any so-called "Consent Order" in this matter. Obviously, if the Township of Old Bridge is unwilling to sign the Consent Order, there is no basis for the entry of a "Consent Order". On the basis of the objection of the Township of Old Bridge, the Motion to confirm and enter a Consent Judgment must be denied. It is note worthy that there is no Motion pending to modify the Judgment in question, and no attempt to present evidence justifying a modification of the Judgment and Settlement in this case. Since the only request is for the Court to confirm and enter a "Consent Order", the Court must deny this request at this time.

5. For the above reasons, I respectfully request that the Motion in this matter be denied.

DATED: March 5, 1987



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JEROME J. CONVERY, ESQ.  
Attorney for Defendant,  
TOWNSHIP OF OLD BRIDGE

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

---

URBAN LEAGUE OF GREATER NEW  
BRUNSWICK, et al.,

Plaintiffs,

v.

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

Defendants,

and

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

and

WOODHAVEN VILLAGE, INC., a  
New Jersey Corporation,

Plaintiffs,

v.

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, THE MUNICIPAL  
UTILITIES AUTHORITY OF THE  
TOWNSHIP OF OLD BRIDGE, THE  
SEWERAGE AUTHORITY OF THE  
TOWNSHIP OF OLD BRIDGE and  
THE PLANNING BOARD OF THE  
TOWNSHIP OF OLD BRIDGE,

Defendants.

---

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY/  
OCEAN COUNTY  
(Mount Laurel II)

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

Civil Action

NOTICE OF MOTION

TO: BRENER, WALLACK & HILL  
2-4 Chambers Street  
Princeton, NJ 08540

Stewart Hutt, Esq.  
459 Amboy Avenue  
P.O. Box 648  
Woodbridge, NJ 07095

William Flynn, Esq.  
P.O. Box 515  
Old Bridge, NJ 08857

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

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

GENTLEMEN and LADY:

PLEASE TAKE NOTICE that on January 16, 1986 at 9:00 A.M. in the forenoon, or as soon thereafter as counsel may be heard, JEROME J. CONVERY, Attorney for the Township of Old Bridge, will move before the Honorable Eugene Serpentelli, A.J.S.C., for an Order as follows:

1. To set aside the Order and Judgment of Repose concerning the Township of Old Bridge, dated January 24, 1986, pursuant to Rule 4:50-1;
2. For an Order transferring jurisdiction over this matter from the Court to the New Jersey Council on Affordable Housing;
3. For such other relief as the Court deems fair and reasonable.

The undersigned counsel will rely upon the Certification of Jerome J. Convery, Esq. attached hereto, as well as the Certifications of Henry Bignell, Old Bridge Township Planner, Carl Hintz, P.P., Old Bridge Township Planning Consultant, and appendices attached thereto. The Certifications of

Mr. Bignell, and Mr. Hintz , and the Letter Brief will be forwarded under separate cover.

DATED: December 23, 1986



---

JEROME J. CONVERY, ESQ.  
Attorney for Defendant, Township of  
Old Bridge

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

URBAN LEAGUE OF GREATER NEW  
BRUNSWICK, et al.,

Plaintiffs,

v.

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

Defendants,

and

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

and

WOODHAVEN VILLAGE, INC., a  
New Jersey Corporation,

Plaintiffs,

v.

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, THE MUNICIPAL  
UTILITIES AUTHORITY OF THE  
TOWNSHIP OF OLD BRIDGE, THE  
SEWERAGE AUTHORITY OF THE  
TOWNSHIP OF OLD BRIDGE and  
THE PLANNING BOARD OF THE  
TOWNSHIP OF OLD BRIDGE,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY/  
OCEAN COUNTY

(Mount Laurel II)

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

Civil Action

CERTIFICATION OF  
JEROME J. CONVERY

1. I am the attorney for the Township of Old Bridge and am fully familiar with the facts of the within matter.

2. On January 24, 1986, the Township of Old Bridge entered into a settlement concerning this Mount Laurel matter, which is more fully indicated in the document known as "Settlement Agreement". This Settlement Agreement was the basis for the Order and Judgment of Repose for the Township of Old Bridge, dated January 24, 1986. The Settlement Agreement was incorporated by reference and deemed to be a part of the Order and Judgment. The Order and Judgment also encompassed the overall development plans for O & Y and Woodhaven known as Plats A and B, which were the subject matter of hearings before the Old Bridge Township Planning Board. Pursuant to the Order and Judgment, the Old Bridge Township Planning Board was to complete hearings on the Plats and forward its recommendations to the Court no later than March 14, 1986. The Settlement Agreement included a "proposed mechanism" indicating that it was the intention of the parties that the Affordable Housing Units be provided in part through the development of five hundred (500) units of Affordable Housing to be provided via the O & Y project, and two hundred sixty (260) units to be provided via the Woodhaven project. On behalf of the Township of Old Bridge, it is respectfully submitted that it is now clear that the facts upon which the Final Judgment and Order were based were incorrect and constituted, at the very least, a mutual mistake of fact. Furthermore, it is now clear that newly discovered evidence which was not known to the Township of Old Bridge on January 24, 1986, clearly reveals that two of the parties, namely, O & Y and Woodhaven can not comply with the terms of the Judgment and Order in very substantial aspects, thereby causing irreparable harm to the interest of the Township of Old Bridge in this matter. Although it is submitted that, at the present

time, there is no indication that there has been fraud, misrepresentation, or other misconduct by any adverse party in this matter, the Township of Old Bridge reserves its right to allege such facts, if same were to be discovered in this matter. This Certification is hereby submitted in support of a Motion for relief from said Judgment and Order, with the request that said Judgment and Order be set aside by the Court at this time.

3. The facts in this matter will indicate that after approximately one year of diligent negotiations by all parties, a settlement was proposed whereby O & Y Old Bridge Development Corp., hereafter O & Y, would develop ten thousand five hundred sixty (10,560) units on its holdings of two thousand six hundred forty (2,640) acres within the Township of Old Bridge. The Settlement further provided that Woodhaven would build five thousand eight hundred twenty (5,820) units on its holdings of one thousand four hundred fifty-five (1,455) acres within the Township of Old Bridge. The Settlement called for ten percent (10%) of said units to be set aside for Affordable Housing, namely, One Thousand Fifty-Six (1,056) units for O & Y; five hundred eighty-two (582) units for Woodhaven. It was implicit in this Settlement that the holdings of O & Y and Woodhaven were vacant developable land which was available for Mount Laurel development. Therefore, the Judgment and Order of Repose provided a proposed mechanism whereby five hundred (500) units of Affordable Housing was to be provided by O & Y and two hundred sixty (260) units were to be provided by the Woodhaven project within the six-year period, dated from January 24, 1986. Based upon information that has now come to light concerning the amount of wetlands within the property of O & Y and Woodhaven, it is now clear that the terms of the Settlement Agreement can not be met by O & Y and Woodhaven.



4. After the Judgment and Order was signed on January 24, 1986, the parties made arrangements for O & Y and Woodhaven to go before the the Old Bridge Township Planning Board in Public Session for a review of Plat A and Plat B in accordance with the Agreement. It was proposed that the Planning Board would review the Plats in question with public input and same would be approved as part of the Settlement Agreement. Once it became clear that O & Y and Woodhaven had substantial wetlands which would severely hamper development on holdings, both O & Y and Woodhaven withdrew their proposed developments from review by the Old Bridge Township Planning Board, thereby making it impossible for the Planning Board to approve the proposed developments by March 14, 1986. Furthermore, by removing their plans from consideration, these parties have made it impossible for the Court to review the findings of the Planning Board, pursuant to the Judgment and Order.

5. After it became known that both O & Y and Woodhaven had substantial wetlands which would prevent the proposed development intended by the Settlement Agreement, the Township of Old Bridge and the Township of Old Bridge Planning Board met with the parties and the Court at a status conference wherein it was determined that O & Y and Woodhaven would submit to the Planning Board and the Township, copies of any wetlands delineation so that the parties would all be fully informed prior to any Motion or other legal action being filed with the Court. It was agreed at said Status Conference that the developers would submit their wetlands delineations to the other parties shortly, and it is submitted that the Township of Old Bridge expected to have these wetlands delineations by September 30, 1986. When that date had passed, this attorney contacted the attorneys for O & Y and Woodhaven and received indications that the documents would be submitted by the end of October 1986. On or about October 30, 1986, Thomas J. Hall, Esq. indicated to

me that the materials would be received during the first week of November. Thereafter, it was indicated that the materials would be supplied to the Township of Old Bridge by the end of November 1986. After the materials were not forthcoming, I indicated to Thomas J. Hall, Esq. that if the materials were not submitted to the Township by December 15, 1986, that I would file the within Motion to set aside the Judgment. As of this date, no materials have been received from O & Y concerning the wetlands delineation. (See letter dated October 30, 1986 from Thomas J. Hall, Esq. attached hereto as Exhibit A.) As the attorney for the Township of Old Bridge, I withheld filing this Motion pending receipt of the wetlands delineation material, obviously the Township of Old Bridge has been patient, but can not wait any longer to seek legal action in this matter.

6. Based upon information and belief, it has been indicated that the O & Y property contains fifty to sixty percent wetlands. Furthermore, this has been described as a "swiss cheese" configuration, which may have an extremely negative impact upon the development of a road network within the proposed development site. According to published reports, the Army Corps of Engineers has indicated that it has wetlands jurisdiction over more than one thousand three hundred sixty-two (1,362) acres. Furthermore the Army Corps of Engineers, based upon a published report, has indicated that the "development in wetlands area owned by O & Y could have considerable environmental impact". (See Exhibit B - Asbury Park Press Article dated December 14, 1986 attached hereto)

7. Based upon discussions with Carl Hintz, Old Bridge Consultant concerning Mount Laurel matters, it would appear that, due to the vast amount of wetlands on the O & Y and Woodhaven property, the viability of building the Trans Old Bridge Expressway through the property is very slim. Furthermore, Mr. Hintz indicates that the configuration of

the wetlands on the O & Y property makes it extremely questionable as to producing a reasonable road network, and utility network. Furthermore, according to Mr. Hintz, the site proposed for commercial development along Route 18 is entirely wetlands, thereby eliminating this commercial development which would provide jobs for the residents in the housing units. It has been previously indicated to the Court that the Agreement to build commercial properties along Route 18, near Route 9, was extremely important to the Township Council of the Township of Old Bridge in reaching a decision to settle this matter.

8. Mr. Hintz had indicated that his approval of the proposed Settlement, on behalf of the Township of Old Bridge, was based upon his understanding of the amount of vacant developable land owned by O & Y and Woodhaven, which would contribute to the building of Affordable Housing. Mr. Hintz had indicated to me that the "Fair Share" number should be reduced if over two thousand (2,000) acres of land owned by O & Y and Woodhaven is not available for development. Furthermore, Mr. Hintz had indicated to me that if he had known that this amount of land was not available for development by O & Y and Woodhaven, he never would have agreed to a ten (10%) percent set aside for these developers. The ten (10%) percent set aside was primarily based upon the fact that O & Y and Woodhaven had so much land available that ten (10%) percent would produce over fifteen hundred (1,500) Mount Laurel units. It has been indicated in the news media that O & Y is prepared to propose a development of approximately twenty-five hundred (2,500) units. Obviously, at a ten (10%) percent set aside, this would produce two hundred fifty (250) Affordable Housing Units. According to Mr. Hintz, under no circumstances could this have been acceptable to him as Consultant for Old Bridge Township, if these facts were known prior to January 24, 1986. Mr.

Hintz has indicated to me that he is preparing a Certification on behalf of Old Bridge Township and the Old Bridge Township Planning Board in this matter, and will more fully delineate his opinions in that document. However, based upon his representations to me, this information is being submitted to the Court in support the Motion to set aside the Judgment and Order on behalf of the Township of Old Bridge.

9. It is my understanding that Thomas Norman, Esq., Carl Hintz, and Henry Bignell will be meeting within the next week to prepare documents for submission to the Court concerning this matter. Furthermore, it is my understanding that Mr. Norman will be preparing a Motion to Set Aside the Settlement on behalf of the Township of Old Bridge Planning Board.

10. The Township of Old Bridge and the Township of Old Bridge Planning Board have waited patiently to receive all the data before filing this Motion, but same has been unsuccessful in regard to O & Y. (See letter, dated September 9, 1986 to attorneys for developers, from Thomas Norman, Esq. attached as Exhibit C) Therefor, Mr. Norman has contacted James W. Haggerty, Area Manager, for the Army Corps of Engineers concerning the status of these matters. (See letter, dated December 12, 1986 attached hereto as Exhibit D) Furthermore, Mr. Norman has been in contact with Dr. Norbert Psuty of Rutgers University concerning the preparation of a report on behalf of the Township of Old Bridge regarding the amount of vacant developable land on the O & Y and Woodhaven tract, as well as the amount of wetlands, buffer area for wetlands protection and marginal lands which may or may not qualify as wetlands.

11. The Township of Old Bridge is also seeking a Court Order permitting a transfer of this matter to the Council on Affordable Housing. It is the position of the Township of Old Bridge that once the Settlement

is set aside, that this matter should be within the jurisdiction of the Council on Affordable Housing, since the legislature has specifically set up this body to review Mount Laurel requirements and implementation of same. Thomas Norman, Esq., on behalf of the Township of Old Bridge, has advised the Council on Affordable Housing that the Township of Old Bridge intends to file a Motion seeking a transfer to the Council. Furthermore, Mr. Norman has advised the Council on Affordable Housing that the Township of Old Bridge will be in an immediate position to file for Certification of a Housing Element and Fair Share Plan. (See letter, dated September 8, 1986, from Thomas Norman, Esq. to Arthur Kondrup concerning said transfer, attached as Exhibit E) Mr. Norman has indicated to the Council on Affordable Housing that said letter constitutes a "letter of intent" on behalf of the Township of Old Bridge to comply with the requirements of the Council on Affordable Housing.

12. The Judgment and Order in this matter indicated that the parties shall conclude an Agreement concerning the provision of an adequate supply of potable water for the O & Y and Woodhaven Developments no later than March 15, 1986. On information and belief, it is my understanding that no such Agreement has been reached by the parties. Furthermore, based upon my conversations with Carl Hintz, Consultant to the Township of Old Bridge, it would appear that the amount and configuration of wetlands within the O & Y property make it extremely unlikely that proper utilities can be built throughout the development. It would appear that it is impossible for the parties to reach an agreement concerning this aspect of the case within the immediate future, and that the agreement should be set aside due to impossibility of performance. The facts regarding this particular aspect of the agreement will be amplified by

the Certifications of Carl Hintz and Henry Bignell.

13. It should be noted that the Settlement Agreement included a paragraph known as "Reopening Clause" (Section III-A.3). This provision of the agreement indicated that upon good cause shown, any party to the agreement may apply to the Court for modification of this agreement, based upon "no reasonable possibility of performance". It is respectfully submitted that the agreement in question can not possibly be performed and that the Settlement Agreement and the Judgment should be set aside. In the event that the Court believes that the Judgment should not be set aside, it is the position of the Township of Old Bridge that the "Reopening Clause" provides for substantial modification of the agreement, based upon no reasonable possibility of performance of the agreement in its present context. Although the Township of Old Bridge believes that the Judgment must be set aside, based upon the facts of this case, and further believes that the matter should be thereafter transferred to the jurisdiction of the Council on Affordable Housing, the Township of Old Bridge reserves its rights to address the issue of modification of this Agreement, pursuant to the "Reopening Clause", in the event that the Court denies the within Motion.

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

DATED: December 23, 1986



JEROME J. CONVERY,  
Attorney for Deft. Township of Old Bridge

THOMAS NORMAN, ESQ.  
NORMAN & KINGSBURY  
Suite 2A  
Jackson Commons  
30 Jackson Road  
Medford, NJ 08055  
Attorney for Defendant Planning Board

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

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

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

: DOCKET NO. C-4122-73

and

O & Y OLD BRIDGE DEVELOPMENT CORPORATION, a Delaware Corporation,  
and  
WOODHAVEN VILLAGE, INC., a New Jersey Corporation,

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

Plaintiffs,

v.

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, THE MUNICIPAL UTILITIES AUTHORITY OF THE TOWNSHIP OF OLD BRIDGE, THE SEWERAGE AUTHORITY OF THE TOWNSHIP OF OLD BRIDGE and THE PLANNING BOARD OF THE TOWNSHIP OF OLD BRIDGE,  
Defendants.

: DOCKET NO. L-009837-84 P.W.  
: and NO. L-036734-34 P.W.

Civil Action

NOTICE OF MOTION

TO: BRENNER, WALLACE & HILL  
2-4 Chambers Street  
Princeton, NJ 08540

Stewart Hutt, Esq.  
459 Amboy Avenue  
P.O. Box 648  
Woodbridge, NJ 07095

William Flynn, Esq.  
P.O. Box 515  
Old Bridge, NJ 08857

Jerome J. Convery, Esq.  
151 Route 516  
P.O. Box 642  
Old Bridge, NJ 08857

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

GENTLEMEN and LADY:

PLEASE TAKE NOTICE that on January 16, 1986 at 9:00 A.M. in the forenoon, or as soon thereafter as counsel may be heard, THOMAS NORMAN, Attorney for the Planning Board of the Township of Old Bridge, will move before the Honorable Eugene Serpentelli, A.J.S.C., for an Order as follows:

1. To set aside the Order and Judgment of Repose concerning the Township of Old Bridge, dated January 24, 1986, pursuant to Rule 4:50-1;
2. For an Order transferring jurisdiction over this matter from the Court to the New Jersey Council on Affordable Housing;
3. For such other relief as the Court deems fair and reasonable.

The undersigned counsel will rely upon the Certification of Carl Hintz, Old Bridge Township Planning Consultant, and Brief and exhibits attached hereto.

Dated: December 30, 1986

Pa37

Thomas Norman, Esq.  
Attorney for Defendant,  
Planning Board of Old Bridge



10-3511

ORDER ON MOTION

URBAN LEAGUE OF GREATER  
NEW BRUNSWICK, et al

v.

THE MAYOR AND COUNCIL OF  
CARTERET, et al

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3795-85T1  
MOTION NO. M-2893-86  
BEFORE PART: B  
JUDGE(S): KING

DEIGHAN  
MUIR

MAR 12 1987

MOTION FILED: FEBRUARY 11, 1987  
ANSWER(S) FILED: FEBRUARY 19, 1987 BY: OAKWOOD AT MADISON JNC et al  
BY: \_\_\_\_\_  
BY: \_\_\_\_\_  
BY: \_\_\_\_\_  
SUBMITTED TO COURT: \_\_\_\_\_

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS

10th DAY OF MARCH, 1987, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT/RESPONDENT  
ACLU/CIVIC LEAGUE TO DISMISS APPEAL  
OR IN THE ALTERNATIVE FOR STAY OF  
APPELLATE PROCEEDINGS

GRANTED	DENIED	OTHER
	X	

SUPPLEMENTAL:

FILED  
APPELLATE D

MAR 12 1987

*John J. ...*  
Acting Clerk

I hereby certify that the foregoing  
is a true copy of the original on file  
in my office.

*John J. ...*  
Acting Clerk

FOR THE COURT:

*Michael Patrick King*  
MICHAEL PATRICK KING P.J.A.D.

MM