

UL v. Carteret, Old Bridge

July 20, 1987

Certification in support of Motion to set aside judgement
(Eugene Dunlop)

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Attorney for Defendant, TOWNSHIP OF OLD BRIDGE

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.

Plaintiffs,

vs.

: 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,

and

: DOCKET NO. C-4122-73

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

and

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

WOODHAVEN VILLAGE, INC., a New
Jersey Corporation,

Plaintiffs,

vs.

: DOCKET NO. L-009837-84 PW
: and NO. L-036734-84 PW

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,

: CIVIL ACTION

: CERTIFICATION IN SUPPORT OF
: MOTION TO SET ASIDE JUDGMENT

Defendants.

I, EUGENE DUNLOP, of full age, do hereby certify as follows:

1. I am a Councilman of the Township of Old Bridge and have been a member of the Township Council since January 1, 1984. I am personally familiar with all of the negotiations of the Township Council leading to the approval by the Township Council of the Settlement Order, dated January 24, 1986, which, at that time, was intended to resolve the controversy in the above referenced matter.

2. At all times during the negotiations in the above referenced matter, it had been represented to me that O & Y OLD BRIDGE DEVELOPMENT CORPORATION (O & Y) was a fully owned subsidiary of Olympia & York Development Corporation, an International Corporation based in Canada with corporate assets in excess of seven billion dollars. Moreover, Olympia & York was portrayed as the largest privately owned development corporation in the world. Furthermore, it was at all times stressed to me that Olympia & York was one of the largest developers of large scale commercial development, including office buildings, regional shopping centers and other non-residential development, including many major commercial structures in New York City. Concerning WOODHAVEN VILLAGE, INC., at all times it was represented to me that Woodhaven was a major development firm, headed by Sam Halpern and was fully able to finance and actually build and develop the property as proposed in the Settlement Agreement. At all times during the settlement negotiations, and until very recently, I have always believed that O & Y and Woodhaven were fully able and ready to develop the entire project as outlined in the Settlement Agreement.

3. The development of the O & Y and Woodhaven tracts were at all times proposed as a new town development, which provide its own employment base and tax base. Both developers stressed the importance

of a strong tax base to be utilized to pay for the municipal cost of servicing and maintaining the new town. Both developers also stressed the provision of a strong employment generating base in conjunction with the number of new residents which would be brought into the Township of Old Bridge by said development.

4. It is my understanding that during the negotiations leading up to the settlement, O & Y indicated that it had approximately 2,550 buildable acres out of its total tract of 2,640 acres. At all times I was led to believe that only about 100 acres were undevelopable on the O & Y tract. Furthermore, it was my understanding that the O & Y Development was to include a professionally designed 18 hole golf course which would be available to the residents of the development for recreation. It was further represented that 35 acres would be available for active recreational activities and public facilities, in addition to the golf course.

5. During negotiations leading to the settlement, there was a very strong concern on the part of the Township Council concerning commercial development on the tracts belonging to O & Y and Woodhaven.

I have a specific recollection of one particular meeting wherein Lloyd Brown of O & Y and various representatives of Woodhaven Village, came before the Town Council to specifically discuss commercial development.

The representatives of Woodhaven Village indicated that they could only build approximately five (5%) percent commercial on their property due to its relationship to the various highways. Lloyd Brown, however, indicated that the overall development of commercial property for O & Y and Woodhaven would exceed ten (10%) percent commercial because O & Y was going to be developing such an extensive amount of industrial/commercial office space and a shopping center on the site. Mr. Brown

pointed out that when you look at the overall development by O & Y and Woodhaven, that over ten (10%) percent commercial would be developed. Based upon this argument advanced by the developers, the Township Council found the proposal concerning commercial development to be acceptable, insofar as the percentage of commercial property on the two tracts.

6. Also during negotiations leading to the settlement, there was a serious concern regarding "staging performance". During these negotiations, Lloyd Brown of O & Y made the argument that the staging requirements of the Old Bridge Land Development Ordinance should be modified in the case of Olympia & York and Woodhaven, since Olympia & York needed additional time to market the high level office space and shopping center which they had proposed. Mr. Brown indicated that O & Y could meet the requirements of the Land Development Ordinance by providing smaller and less appropriate industrial/commercial properties, but that he represented to the Township of Old Bridge that he wanted the time to market a shopping center that would be a show-place for the Township of Old Bridge. The negotiations concerning this aspect of "staging performance" came very near the end of the negotiations, and these representations by Mr. Brown were extremely important to me as a Council member in approving the settlement. At all times during the negotiations and regarding the vote to approve the settlement, I relied upon the representations of the developers, especially Lloyd Brown, that the proposed commercial development was to be built, and that such commercial development was just as important to Olympia & York as it was to the Township of Old Bridge. If I had been told by the developers that they could not build the commercial properties as proposed, I would not have approved the settlement in question.

7. Regarding the fair share responsibility of the Township of Old Bridge, I, as a Council member, was at all times concerned as to whether or not the Township of Old Bridge would be able to meet its fair share number. As a member of the Council, I sat through meetings wherein various numbers were presented regarding the fair share number starting with the "consensus" number of approximately 27 35.

I later was aware that our expert, Carl Hintz, on the basis of the consensus formula, believed that Old Bridge's number should be 24 14, but he indicated that the number would be less if he could get the data concerning vacant developable land within Middlesex County. Unfortunately, we learned that that data was not available and Mr. Hintz indicated that the best estimate that he could propose would be 24

14. When the final settlement figures were negotiated, it was proposed to me as a Council member that the obligation of the Township of Old Bridge would be 1,668 units, half to be low income and the other half to be moderate income. It was very important to me that the proposed mechanism for the development of these units would be that Olympia & York would provide 500 units and Woodhaven would provide 260 units.

It was proposed that these units would be developed during the six-year period of repose. As a Council member, it was always important to me that a settlement with O & Y and Woodhaven would provide the bulk of the fair share responsibility of the Township of Old Bridge concerning Mount Laurel housing, and that the main reason for settling with O & Y and Woodhaven would be to meet our Mount Laurel obligation.

As a member of the Township Council, I was convinced that the ten (10%) percent set aside was proper in this case because of the vast number of units that were to be, in fact, developed by O & Y and Woodhaven at the site in South Old Bridge. I represent to the Court that

if I had known that O & Y and Woodhaven were not in a position to build the number of residential units which were represented in the settlement, I would have never approved the settlement, nor would I approve the concept of a ten (10%) percent set aside. The settlement agreement calls for O & Y to build a total of 1,056 units of low or moderate income housing, and for Woodhaven to build 582 such units. Obviously, due to the vast amount of wetlands regarding this property, neither developer can meet this commitment. Certainly a ten (10%) percent set aside for O & Y and Woodhaven is no longer appropriate if Old Bridge is to meet its Mount Laurel obligation.

8. At the time that the settlement was negotiated, I was led to believe by all of the Planners in this matter that the "new town" which would be developed in South Old Bridge would be one that would have an adequate transportation network, an adequate number of support facilities, including schools, fire houses, first aid buildings, and adequate employment opportunities in the area for the new residents, including the persons of low or moderate income who would be living in the Mount Laurel II units. I have now been advised, through the report of Carl Hintz, our Planning Consultant, that, due to the vast amount of wetlands on the site, that neither O & Y nor Woodhaven can develop their projects as originally contemplated. Furthermore, I am advised by Mr. Hintz that the proposals recently advanced by the developers do not constitute "good planning" in his opinion. He specifically indicates, in his report, that the recently proposed development is not in the best interest of the Township of Old Bridge, and, as a Councilman, I accept the opinion of our consultant. I would not have consented to the settlement if I had known that O & Y and Woodhaven could not possibly build the "new town" that had been proposed.

9. It is now my understanding that the U.S. Army Corps of Engineers has certified that the O & Y tract contains approximately 1,450 acres of wetlands. Additionally, it is my understanding, based upon the report of our Planning Consultant, that of the remaining 1,150 acres, only 700 acres are developable and that the remaining 450 acres are scattered in a piecemeal manner throughout the tract and are, in most cases, inaccessible without the construction of bridges through wetland areas. Furthermore, it is my understanding that the application for wetlands certification submitted by Woodhaven Village has not been certified at this time, but that Woodhaven Village contains at least thirty (30%) percent wetlands which prevents them from building their project which was proposed prior to the settlement.

I have read the report of Carl Hintz concerning these matters, said report being dated May 1987 and attached hereto as Exhibit A of this Certification. Based upon this information, as a member of the Township Council, I believe that the settlement between O & Y and Woodhaven, and the Township of Old Bridge is no longer viable. As I understand it now, these developers will at best only be able to provide a token amount of neighborhood commercial development instead of the "showplace" industrial office and regional shopping center space promised by Mr. Brown, can not provide active open space nor a golf course, and can not provide the lands necessary for public services, including schools, fire houses and first aid buildings. Furthermore, it is my understanding that the transportation plan proposed can not possibly serve the needs of the Township of Old Bridge. I am sure that the developers for O & Y and Woodhaven would never have made the representations to the Township Council concerning their property if they did not believe them to be true. I personally heard the representa-

tions and promises of Lloyd Brown concerning the regional shopping center, and I believe that when he made those statements he thought that O & Y could, in fact, build these commercial properties. When he pointed out to the Township Council that O & Y's commercial development would insure that O & Y and Woodhaven had over ten (10%) percent commercial development, I believe that he thought that this would come to fruition. It is clear now to all concerned that there was a mutual mistake of fact in this case, and that this mutual mistake is of such a magnitude that the settlement based upon those mistaken facts should be set aside. I sincerely believe that the Township of Old Bridge and its residents should not be compelled to proceed with the skeleton of a settlement which contains none of the "meat" which made the entire package palatable to the Town Council and one that was in the best interest of the residents of Old Bridge Township. To allow the settlement to go forth with a ten (10%) percent set aside for O & Y and Woodhaven, merely rewards them for building less Mount Laurel II units, and compels the Township of Old Bridge to look for other sources of low and moderate income housing. This is clearly unfair to the Township of Old Bridge, since it entered into the agreement with O & Y and Woodhaven based upon the fact that a ten (10%) percent set aside would produce the vast majority of low and moderate income housing units from these two major developers.

10. As a present member of the Township Council of the Township of Old Bridge, I strongly believe that the Motion to set aside the settlement should be granted at this time, and that this entire matter should be transferred to the Council on Affordable Housing to develop a new plan for Old Bridge Township. I believe that the Township Council of the Township of Old Bridge has, at all times, acted diligently to try to meet its Mount Laurel II obligation. At a time when many towns were

stone walling the Court concerning its Mount Laurel obligation, Old Bridge was sitting down with the Court Master and the parties to, in good faith, negotiate a fair and equitable settlement. At a time when other towns were refusing to follow Court orders, and were appealing the Court's decision that certain matters should not be transferred to the Council on Affordable Housing, Old Bridge was, in good faith, listening to the representations of O & Y and Woodhaven about the major developments which they would build in the best interest of the Township. As a Councilman, I am now aware that many of those other Township matters had been, in fact, transferred to the Council on Affordable Housing in compliance with the intent of the New Jersey Legislature. I must ask why the Township of Old Bridge would be forced to comply with an agreement which is no longer viable, rather than allow Old Bridge to meet its Mount Laurel obligation in accordance with the rules and regulations of the Council on Affordable Housing. I believe it would be grossly unfair to require the current residents of the Township of Old Bridge to live with a settlement which no longer provides the benefits which were bargained for by the Township Council and the Township Planning Board. Since there was such a tremendous mistake of fact as to the developers ability to meet the settlement, in fairness to all parties the settlement should be set aside. As a Councilman, I believe that I speak for all of the residents of the Township of Old Bridge when I ask the Court to put this settlement aside and allow the transfer of this matter to the Council on Affordable Housing.

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

Dated: July 20, 1987


EUGENE DUNLOP