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Letter Brief. Planning Board of Twp. of Old Bridge.
opposition to the Motion of Woodhaven
village for reconsideration.

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December 11, 1987

The Honorable Eugene D. Serpentelli
Assignment Judge
Superior Court of New Jersey
Ocean County court House
CN 2191
Toms River, New Jersey 08754

RE: Woodhaven Village, Inc. v. Old Bridge Township
Docket No. L-036734-84 P.W.

Dear Judge Serpentelli:

Please accept this Letter Brief on behalf of the Planning Board of the Township of Old Bridge in opposition to the Motion of Woodhaven Village for reconsideration of your decision in the above captioned matter.

Plaintiff's Brief does not contain any new factual matter not already considered by the Court. Essentially, Plaintiff continues to argue that Woodhaven Village must be treated separately from Olympia & York relative to changes caused by additional wetlands. However, this argument ignores the basic fact that the Planning Board and Governing Body of Old Bridge Township would not have entered into the consent agreement with Woodhaven Village solely. In fact, it was the benefits which the Township saw eminenting from the Olympia & York application that induced the Municipality and Planning Board to consent to the settlement agreement. Moreover, Olympia & York was to include a major, 18 hole golf course on this property. Olympia & York was to provide for substantial areas of office and commercial development along Routes #9 & 18. Finally, Olympia & York was to provide a Trans Old Bridge Expressway through its properties linking the development sites with the remainder of the Township.

If only Woodhaven Village were involved at the time of the settlement negotiations it would have been more to the benefit of Old Bridge Township to have requested a transfer from the Court to the Council on Affordable Housing rather than agree to the settlement. Since it was clear at the time that the Township had everything to gain and nothing to lose by requesting the transfer.

There is clearly no question that the Woodhaven parcel is physically distinct and different from the Olympia & York parcel. However, this alone does not justify the basic proposition put forth by Woodhaven Village that the settlement as it applies to Woodhaven Village must remain in force because less wetlands are involved in the Woodhaven parcel.

More specifically, the factual statement set forth in the Plaintiff's Brief does not alleged new factual material for the Courts consideration. Moreover, the factual statement in the Brief is essentially composed of legal argument solely.

More specifically, the arguments raised in the Plaintiff's Brief are treated below following the points raised by Plaintiff:

1. Woodhaven argues initially under the heading of "Facts" that the settlement applied to three parties and that the two developers could not develop according to the original set of plans because of wetland problems. The Planning Board objects to this characterization which is misleading. The Township and Planning Board agreed to a settlement which assumed that both Woodhaven and Olympia & York could build jointly. The Township and Planning Board were not willing or prepared to settle with Woodhaven separately because Woodhaven had nothing in terms of benefits of the Township. Moreover, it is clear that the Township and Planning Board were induced primarily by the considerations offered by Olympia and York. The existence of Woodhaven directly adjacent to Olympia & York, basically as a tag along, simply permitted Woodhaven Village to receive the benefits of the settlement enjoyed by Olympia & York.

2. The Planning Board continues to assert that the plats were a binding component of the settlement and the benefits bargained for by the municipality were lost due to the increased wetland acreage.

3. Argument #1 of Woodhaven Village that "the Court has overlooked the fact that Woodhaven's plat has not been substantially modified" is misleading. Again, the Township and Planning Board entered into an agreement contemplating the development of the Olympia & York tract. The Planning Board and Township also expected to receive the benefits of the settlement which emanated primarily from the O&Y tract. The golf course and extension of the Trans-Old Bridge Expressway were to be constructed through the O&Y tract. The majority of non-residential development including the employment generating activities were to be constructed adjacent to Route #9 and #18 on the O&Y tract. All of these areas are now lost due to wetlands difficulties. While the

shrinkage of usable lands on the Woodhaven tract represent approximately 200 acres, it must be emphasized that the benefits of the settlement were to be derived from the lands located in the O&Y tract.

4. The testimony of the Court Master George Raymond was not relevant to the issue at hand. The Court Master testified that the revised plans of Woodhaven and Olympia & York represented sound planning. However, the real question or issue to be decided was whether the Township had lost the benefits of the settlement it negotiated for by virtue of the existence of many acres of wetlands. In this context, the Court Master's testimony was not irrelevant.

5. Woodhaven argues that the reduction in its plans of additional 200 acres of wetlands is insubstantial and can be easily remedied. This is incorrect. The areas of wetland on the Woodhaven parcel eliminate large areas originally planned for commercial use. It also renders additional areas on the Woodhaven Village parcel undevelopable even though they are not wetlands because of the irregular pattern of wetlands which isolates properties and requires difficult access by use of bridges which are extremely expensive to maintain. The maintenance of these roadways will become the responsibility of the Township which never bargained for this type of maintenance cost or operation.

6. The Planning Board seeks to point out to the Court that the final delineation of Woodhaven Village by the Corps of Engineers has not yet made and the Corps of Engineers has not yet certified the full extent of wetlands on the Woodhaven parcel. However,, the Planning Board also concedes that for purposes of the Motion it was agreed that approximately 490 acres were to be considered wetlands.

7. Woodhaven's argument that it was "assumed guilty" by association with the O&Y plan is correct. The two plans must be treated as one for purposes of settlement considerations. The Township and Planning Board did so and so also must the Court. The separation of the two tracts by Woodhaven Village is erroneous and was never contemplated by the Township or Planning Board.

8. Plaintiff argues that there are factual disputes which require a hearing. The real issue regards the impact of the extent of wetlands on the parcels and it is clear from the facts that completely revised plans must be submitted to the Township for both parcels.

9. Plaintiff's second argument concerning newly discovered evidence not pertaining to Woodhaven Village is incorrect since Plaintiff again incorrectly treats Woodhaven Village independently of Olympia & York.

10. Plaintiff's third argument that the Court overlooked facts and low in ruling that the settlement is non-severable is incorrect. The Township and Planning Board treated both development dependently and sought to achieve benefits for the Township of Old Bridge through development of both tracts. Therefore, all the arguments under point three of Plaintiff's Brief are incorrect since the initial assumption is invalid. Plaintiff's argument under subparagraph B that Plaintiff did not bargain for an integrated development is also erroneous. The plans of both developments are integrated in terms of transportation, water and sewer. They were treated as on plan and cannot be separated now.

11. Lastly, Plaintiff's argument that the Court has the power to transfer to COAH those issues remaining after the settlement is upheld as to Woodhaven, again assumes that Woodhaven should be victorious in its argument that it should be treated as a separate entity. This is incorrect.

For the arguments submitted herein the Planning Board moves that the Motion of Plaintiff, Woodhaven Village, be denied.

Sincerely yours,



THOMAS NORMAN, ESQ.

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CC: Mailing List