

CA - Old Bridge

18-NOV-88

Letter Brief in support of Woodhewen's motion for
Consolidation of appeals

pg. 56

CA 002423B

LAW OFFICES
HUTT & BERKOW

A PROFESSIONAL CORPORATION

459 AMBOY AVENUE
P.O. BOX 648
WOODBIDGE, NEW JERSEY 07095
(201) 634-6400

FAX: 201-634-0718

GORDON BERKOW
STEWART M. HUTT*
RONALD L. SHIMANOWITZ†

JANICE K. SCHERER
SUSAN BROWN PEITZ
MARK WILLIAMS
MICHAEL J. GONNELLA
BEN D. SHIRIAK
DAVID M. HUTT+
LYNNE O'CARROLL‡

Our File #

November 18, 1988

*ALSO ADMITTED DC BAR
†ALSO ADMITTED N.Y. BAR
+ALSO ADMITTED FLA. BAR
‡CERTIFIED CRIMINAL ATTORNEY

Jack G. Trubenbach, Esq.
Clerk of The Appellate Division
Superior Court of New Jersey
CN 006
Hughes Justice Complex
Trenton, NJ 08625

RE: WOODHAVEN VILLAGE, INC. vs.
TOWNSHIP OF OLD BRIDGE, et al.
Docket No. A-4335-87T3
(Urban League of Greater New Brunswick vs.
Mayor and Council of Carteret, et al.)

Dear Honorable Judges:

Please accept the following letter brief, in lieu of formal
brief, in support of motion of Woodhaven Village, Inc. for
consolidation of appeals.

PROCEDURAL AND FACTUAL STATEMENT

This case involves consolidated Complaints seeking relief from
the Township of Old Bridge et al for its failure to comply with the
Mount Laurel obligation to provide a realistic opportunity for the
Township's fair share of low and moderate income housing pursuant to
So. Burlington Cty NAACP v. Mount Laurel Twp. 92 N.J. 158 (1983).

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Jack G. Trubenbach, Esq. A PROFESSIONAL CORPORATION

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Three Complaints were filed against the Township of Old Bridge, et al. (Urban League of Greater New Brunswick et al v. Mayor and Council of the Borough of Carteret et al. C-4122-73; O & Y Old Bridge Development Corp. v. Township of Old Bridge et al, L-009837-84 P.W.; and, Woodhaven Village, Inc. v. Township of Old Bridge et al, L-036734-84 P.W.). All three matters, then pending before the Honorable Eugene D. Serpentelli, A.J.S.C., sought similar relief. That is, the land development regulations of the Township of Old Bridge should be invalidated and revised to provide a realistic opportunity for the construction of the Township's fair share of low and moderate income housing. The trial court granted partial consolidation of the Woodhaven matter and the O & Y matter with the Urban League matter (See, Order entered July 2, 1984, Pa1 and Order entered August 3, 1984 Pa4). Said consolidation by the trial court granted Woodhaven the right to participate in the ordinance revision process, the right to assert a builder's remedy pursuant to Mount Laurel II and the right to prosecute and defend appeals.

After approximately two years of litigation and settlement negotiations the case was settled by agreement of all parties. Said settlement is embodied in an Order and Judgment of Repose entered by the Hon. Eugene D. Serpentelli, A.J.S.C. on January 24, 1986 (Pa7).

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Jack G. Trubenbach, Esq. A PROFESSIONAL CORPORATION

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which order incorporated a Settlement Agreement (Pa18) among other documents. Pursuant to joint motions of defendants Township of Old Bridge and Old Bridge Township Planning Board, the aforesaid Order and Judgment of Repose was vacated by Order entered by the Hon. Eugene D. Serpentelli, A.J.S.C. on October 6, 1987 (Pa44). On or about October 15, 1987, plaintiff Woodhaven moved for reconsideration of the Order entered October 6, 1987. Said Motion for reconsideration was denied by Hon. Eugene D. Serpentelli, A.J.S.C. by Order entered April 21, 1988 (Pa46).

Woodhaven Village appeals the Order of October 6, 1987 and the Order of April 21, 1988 (A-4335-87T3). This appeal was brought within the 45 day period provided by R.2:4-1(a) which was tolled by the filing of the Motion for Reconsideration pursuant to R.2:4-3(e). O & Y also appeals the Order of October 6, 1987 (A-4572-87T3). Urban League also appeals the Order of October 6, 1987 as well as the Order denying reconsideration entered April 21, 1988 (A-4752-87T3).

Woodhaven now moves the Court for consolidation of the above referenced appeals.

LEGAL ARGUMENT

THE COURT SHOULD
CONSOLIDATE THE THREE
PENDING APPEALS

The Woodhaven appeal (A-4335-87T3), the O & Y appeal (A-4572-87T3) and the Urban League appeal (A-4752-87T3) should be

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Jack G. Trubenbach, Esq.

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consolidated. These three appeals arise from the same event. Specifically, all appellants are appealing the Order entered by the Hon. Eugene D. Serpentelli, A.J.S.C. on October 6, 1987 (Pa44) wherein the trial court vacated an Order and Judgment of Repose entered January 24, 1986 (Pa7).

Further, the trial court partially consolidated these matters (Pa1 and Pa4) for the purpose of ordinance revision and the granting of a builders remedy. These issues, consolidated below, are the issues embodied in the Order and Judgment of Repose which was vacated by the trial court and which vacation is the subject of the three pending appeals.

Also, a recommendation by this appellant (Pa48) in favor of consolidation of the subject appeals was met with agreement by the Urban League, now Civic League (Pa50), agreement by the Old Bridge Township Planning Board (Pa51) and no objection was received from the remaining parties.

In addition, since all three appellants have stated in civil appeal case information statements substantially the same proposed issues to be raised on appeal, the consolidation of the appeals will be the most efficient manner of hearing and deciding the appeals.

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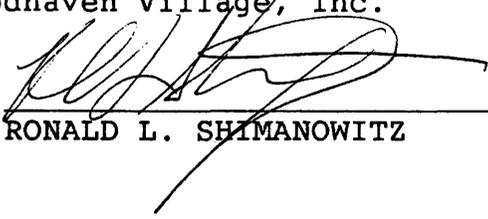
Jack G. Trubenbach, Esq.
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CONCLUSION

In light of the foregoing plaintiff-appellant Woodhaven Village, Inc. respectfully requests the Court to grant the within motion for consolidation of appeals.

Respectfully submitted,

HUTT & BERKOW, P.C.
Attorneys for Plaintiff-Appellant
Woodhaven Village, Inc.

BY: 

RONALD L. SHIMANOWITZ

W:0299A

FILED JUL 2 1984
S. SERPENTELLI, I.S.C.

HUTT, BERKOW, & JANKOWSKI
A PROFESSIONAL CORPORATION
459 AMBOY AVENUE
WOODBIDGE, NEW JERSEY 07095
(201) 634-6400
ATTORNEYS FOR PLAINTIFF

Plaintiff,) SUPERIOR COURT OF NEW JERSEY
WOODHAVEN VILLAGE, INC.) LAW DIVISION
a New Jersey Corporation) MIDDLESEX COUNTY/
) OCEAN COUNTY
) (Mount Laurel II)
)
vs.) DOCKET NO. L-036734-84 P.W.
)
Defendants,)
) CIVIL ACTION
)
THE TOWNSHIP OF OLD BRIDGE)
in the COUNTY OF MIDDLESEX, a)
municipal corporation of the)
State of New Jersey, THE) ORDER GRANTING
TOWNSHIP COUNCIL OF THE TOWNSHIP) PARTIAL CONSOLIDATION
OF OLD BRIDGE and the PLANNING)
BOARD OF THE TOWNSHIP OF)
OLD BRIDGE)
)
)
)

This matter having been opened to the Court by Stewart M. Hutt, of Hutt, Berkow, & Jankowski, A Professional Corporation, attorneys for the Plaintiff, on an application for an Order

consolidating the within action with the Urban 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;

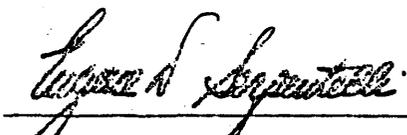
IT IS ON this 2 day of July, 1984, ORDERED that:

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 have 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. SERPENTE, 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

RECEIVED AUG 3 1984
SERPENTELLI

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 Discrimination
In Housing
733 Fifteenth Street, N.W., Suite 1026
Washington, D.C. 2005

Pa 4

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 by Plaintiff Olympia and York/Old Bridge Development Corporation be scheduled to be heard before this Court on Friday, July 6, at 10:00.



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 _____

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

HANNOCH WEISMAN, P.C
4 Becker Farm Road
Roseland, New Jersey
(201) 531-5300
Co-Counsel for Plaintiff
O&Y Old Bridge Development
Corporation

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

ORDER AND JUDGMENT OF REPOSE
(OLD BRIDGE)

This Matter having been opened to the Court by O & Y Old Bridge Development Corp. (hereinafter, "O & Y"), Thomas Jay Hall, Esquire and Dean A. Gaver, Esquire, appearing, and in the presence of plaintiff Woodhaven Village, Inc. (hereinafter, "Woodhaven"), Stewart Hutt, Esquire, appearing, and in the presence of the Urban (now Civic) League of Greater New Brunswick (hereinafter, "Urban League"), Eric Neisser and John Payne, Esquires, appearing, and in the presence of the Township of Old Bridge Municipal Utilities Authority (hereinafter, "OBMUA"), William E. Flynn, Esquire, appearing, and the Township of Old Bridge Planning Board (hereinafter, "Planning Board"), Thomas Norman, Esquire, appearing, and the Township of Old Bridge and the Township Council of Old Bridge (hereinafter, "Township"), Jerome J. Convery, Esquire, appearing; and notice of this compliance hearing having been published by the Township of Old Bridge ten days prior to January 24, 1986 in the "The News Tribune", with copies of materials containing the elements of the compliance package made available to all parties in litigation as well as to members of the public ten days prior to January 24, 1986; and the Court having reviewed the papers and memoranda submitted and good cause having been shown:

IT IS on this 24th day of January, 1986: **ORDERED,**

1. Obligation

The obligation of the Township of Old Bridge to provide affordable housing for the six years following entry of this Order and Judgment is 1,668, half of which are to be low-income and half of which are to be moderate-income.

Jan 24, 1992

2. Proposed Mechanism

These affordable housing units are intended to be provided as follows:

- A) 500 units to be provided via O & Y's project;
- B) 260 units to be provided via the Woodhaven project;
- C) 263 units to be provided in the Oakwood at Madison, Inc. and Beren Corp. (hereinafter "Oakwood") development;
- D) 174 units to be provided in the Brunetti development;
- E) 40 units to be provided in the Rondinelli development;
- F) 208 units to be provided through the rehabilitation of existing units;
- G) 150 units to be provided in the new Senior Citizens development; and
- H) 73 units to be provided through a mandatory 10% set-aside on all other residential developments within the Township.

3. Settlement Agreement

The Settlement Agreement attached hereto, together with its Appendices and Schedules, having been reviewed and recommended by the Court's special Master, Carla Lerman, P.P., is found to be acceptable as a component of Old Bridge Township's compliance package to meet the constitutional obligations under Southern Burlington County NAACP v. Township of Mount Laurel (Mount Laurel II) 92 N.J. 158 (1983). The Settlement Agreement, together with its Appendices and Schedules, is hereby incorporated by reference and deemed to be part of this Order and Judgment.

4. Concept Plans

Plates A and B, which will embody the overall development plans for both O & Y and Woodhaven require Planning Board hearings, which shall commence in February, 1986 and continue, if necessary, into March of 1986. The Planning Board shall complete the hearings and shall forward its recommendations and decisions to the Court no later than March 14, 1986; provided, however, that the Planning Board may petition the Court for additional time.

5. Court Review

Thereafter, the Court shall review the findings of the Planning Board, in accordance with the procedures set forth in the Settlement Agreement attached hereto.

6. Other Township Actions

A) REHABILITATION.

1. The Township is hereby awarded 28 low and moderate-income housing credits towards its fair share, as a result of rehabilitation action taken between July 1, 1984 and the compliance hearing.

2. The Township shall commit sufficient community development block grant (CDBG) funds to assure the rehabilitation of an additional thirty units per calendar year for six years, beginning January 1, 1986, for a total of 180 additional units by January 1, 1992.

3. In case sufficient CDBG funds are not available, the Township shall apply for all available funds from the Federal, State and County governments.

4. If sufficient external funding is not available at the end of any calendar year, the Township shall propose an alternative mechanism to provide the required number of rehabilitated units.

5. To be credited under this section, rehabilitation grants must be used towards units currently occupied by low and moderate-income households, and, in any calendar year, grants must average \$7,500 each but in no case may any grant be less than \$2,500. In addition, these grants must be used to bring the units up to fire, building and housing code standards; and grants must be secured by a lien on the property so that the Township is repaid at the time of sale, the proceeds of such repayments to be paid into the Affordable Housing Trust Fund.

B) SENIOR CITIZENS PROJECT.

As outlined in the attached Settlement Agreement, O & Y has agreed to construct and sell to the Township a 150-unit Senior Citizens project. Construction on this project shall begin as soon as possible, and in no case later than April, 1987.

C) RESIDENTIAL DEVELOPMENT SET-ASIDE OR MONETARY CONTRIBUTION.

1. The Township shall continue in force the Amendments to the Land Use Development Ordinance, adopted on December 19, 1985 as Ordinance No. 55-85, and the Affordable Housing Ordinance, adopted on December 19, 1985 as Ordinance No. 54-85, requiring that all residential developments which have not received Preliminary Site Development Plan approval as of December 19, 1985, shall provide 10% of the total number of units as lower-income housing units of which half will be low-income units and half will be moderate-income housing Units. Forthwith, but not later than March 3, 1986, the Township shall adopt and shall thereafter continue in force the amendments to the Land Use Development Ordinance and to the Affordable Housing Ordinance to be introduced on first reading no later than February 3, 1986. Copies of Ordinances No. 55-85 and 54-85 adopted on December 19, 1985 and the Amendments to those Ordinances introduced on first reading are attached hereto and made a part hereof as Appendix F.

2. Forthwith, but not later than February 3, 1986, the Township shall adopt and thereafter continue in force the Amendment to Ordinance No. 54-85 introduced on first reading on January 6, 1986, providing that in a residential development involving fewer than 100 total units, a developer may, in lieu of constructing 10 percent lower-income units, pay a minimum of \$3,000 per market unit to the Old Bridge Affordable Housing Trust Fund, this fund having been

established by Ordinance No. 54-85 on December 19, 1985. A copy of the Ordinance Amendments introduced on first reading on January 6, 1986 are attached hereto and made a part hereof as part of Appendix F. The amount of said payment may be modified by the Affordable Housing Agency periodically in light of changes in the costs of construction of lower-income housing units. The Trust Fund shall be used solely for expansion of opportunities for affordable housing, including rehabilitation of existing substandard units, conversion of currently uncontrolled units to units affordable to and legally controlled for occupancy exclusively by low and moderate-income households, and subsidization of either construction of, down-payments or mortgages for purchase of, or operating or maintenance costs or rents for, lower-income units.

D) AFFORDABLE HOUSING AGENCY.

Old Bridge Township has established an Affordable Housing Agency, and shall begin the process of adopting rules and regulations within thirty (30) days of the entry of this Order and Judgment. Final adoption of rules and regulations, including detailed plans for use of Trust Fund monies, shall take place no later than one hundred twenty (120) days following entry of this Order and Judgment. The final draft of the Rules and Regulations shall be submitted to the Master for review.

7. Judgment

Judgment is hereby entered against the Township of Old Bridge, the Township Council of the Township of Old Bridge, and the Planning Board of the Township of Old Bridge in favor of the O & Y Old Bridge Development Corp., Woodhaven Village, Inc., and the Urban League of Greater New Brunswick conditioned upon the following:

a. Carla Lerman, P.P., is retained as standing Master to assist in the resolution of disputes which may arise between the parties under the Settlement Agreement and the Schedules and Appendices attached thereto;

b. The parties to this litigation may bring a motion, under R 1:10-5 to enforce rights under the Settlement Agreement and the Schedules and Appendices attached thereto;

c. 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. If the parties have not completed the agreement by March 15, 1986, or such other deadlines established by mutual consent between the parties, any party, on Motion, may offer to the Court a mechanism whereby the developers shall be assured of obtaining an adequate supply of potable water for their entire projects.

d. The Planning Board shall report its findings to the Court on or before March 14, 1986 with respect to its acceptance of Plates A and B. If the Board has not acted by March 14, 1986, any party may move to schedule a hearing in accordance with Section V-B.3a(d) of the attached Settlement Agreement.

e. The Township shall provide to the Urban League of Greater New Brunswick, or its designee, every three months starting March 31, 1986, a report on the implementation of this Order and Judgment and the attached Settlement Agreement and Appendices during those three months containing at least the following:

- i) Details on all residential development applications received by any Township Board or Agency, including the name of the applicant,

the proposed site, number and type of units, bedroom mix, provision for the development of lower-income housing or for financial contributions to the Township of Old Bridge Affordable Housing Trust Fund; and formal actions taken by the Township, its Boards, Agencies and Officials in response thereto, including Preliminary and Final Approvals, Variances, and the number of Building Permits and Certificates of Occupancy issued for market and lower-income housing units.

ii) Copies of all housing and affirmative marketing plans.

iii) The sale price and/or the rental charges on all lower-income units which have been sold or rented. With regard to residential developments, the Township may satisfy some of these requirements by providing copies of reports provided by the developers with regard to development data.

iv) Details on all monies received and expended by the Affordable Housing Trust Fund and the purpose of each expenditure.

v) Information on the number, household size, and income category (low and moderate) of households certified as eligible for lower-income housing, and the number of contracts, leases, and closings by unit size and income category.

f. The Planning Board shall condition approval of final development applications containing residential housing upon a requirement that such developers shall pay, prior to the issuance of the first Certificate of Occupancy for any unit constructed within such approved development, a fee of \$30 for each lower-income unit approved for construction in that application, for purposes of monitoring the implementation of the lower-

income housing program. This fee shall be paid directly to the Urban League.

8. Repose

The Township of Old Bridge is hereby entitled to a judgment of compliance granting repose from any further Mount Laurel litigation for six years from the date of this Order.

9. Re-zoning

The Township may, following the receipt of the Judgment of Compliance, re-zone portions of the Township which are currently zoned Planned Development (PD) and which are not specifically mentioned in the Order or any attachment thereto, provided that the Township, after a careful review of the planning considerations involved, determines that such a re-zoning would not result in a significant diminution of the Township's ability to meet its Mount Laurel obligations.

10. Continuance of Order

The Township of Old Bridge and the Urban League hereby agree that the Court's Order of May 31, 1985, enjoining the Township from issuing Building Permits for more than 120 market units for the Oakwood and Madison project until further Court Order approving a phasing, affordability, and re-sale/re-rental restriction plan, is continued in full force and effect.

11. Appendices B, C, D & E

While the Urban League recognizes that Appendices B, C, D, and E are part of this Settlement Agreement, the Urban League hereby indicates that it has not participated in the drafting of these documents and reserves the right to make comments on the planning and engineering documents subsequent to the entry of this Order.

12. Jurisdiction

The Court shall retain jurisdiction over this case so as to assure the implementation of the proposed agreement and all other aspects of the compliance package.

signed "EUGENE D. SERPENTELLI"
Eugene D. Serpentelli, A.J.S.C.

We consent to the form, substance and entry of this Order:

signed "THOMAS JAY HALL"

Thomas Jay Hall, Esquire
Attorney for O & Y Old Bridge Development Corp.

signed "DEAN GAVER"

Dean A. Gaver, Esquire
Co-Counsel, O & Y Old Bridge Development Corp.

signed "STEWART M. HUTT"

Stewart Hutt, Esquire
Attorney for Woodhaven Village, Inc.

signed "J. J. CONVERY"

Jerome J. Convery, Esquire
Attorney for the Township of Old Bridge
and the Township Council of the
Township of Old Bridge

signed "by J. J. CONVERY TOWNSHIP ATTORNEY"

Thomas Norman, Esquire
Attorney for the Planning Board
of the Township of Old Bridge

signed "ERIC NEISSER"

Eric Neisser, Esquire
Attorney for the Urban (now Civic) League
of Greater New Brunswick

signed "WILLIAM E. FLYNN"

William E. Flynn, Esquire
Attorney for the Old Bridge
Municipal Utilities Authority

SETTLEMENT AGREEMENT

I. Parties to the Settlement

This is an Agreement which has been reviewed and accepted by this Court and may be enforced by a motion brought pursuant to Rule 1:10-5 for enforcement of litigant's rights. This Agreement is among the following parties:

1. O & Y Old Bridge Development Corp., a Delaware Corporation, qualified to do business in the State of New Jersey. As used in this Stipulation, O & Y Old Bridge Development Corp. (hereinafter "O & Y") also refers to any successors or assigns of O & Y Old Bridge Development Corp.

2. Woodhaven Village, Inc., a corporation organized to do business in the State of New Jersey. As used in this Stipulation, Woodhaven Village, Inc. (hereinafter "Woodhaven") also refers to any successors or assigns of Woodhaven Village, Inc.

3. The Urban (now Civic) League of Greater New Brunswick (hereinafter "Urban League"), a non-profit corporation organized under the laws of the State of New Jersey. As used in this Stipulation, Urban League also refers to any successors or assigns of Urban League.

4. The Township of Old Bridge in the County of Middlesex, State of New Jersey which includes, but is not limited to, the following entities and officials:

- (a) the Governing Body of the Township of Old Bridge;
- (b) the Planning Board of the Township of Old Bridge;
- (c) the Mayor; all elected and appointed officials and professional employees of the Township of Old Bridge, including but not limited to, the Construction Code Official, the Township Engineer, the Township Planning

Consultant, the Township Attorney and any other individuals providing consultative services to the Township with reference to the land development process. Hereinafter, all entities or individuals associated with the Township of Old Bridge shall be referred to as "Township".

5. The Township of Old Bridge Municipal Utilities Authority (hereinafter, "OBMUA"), a body corporate and politic organized under the laws of the State of New Jersey, and any successor agency which may be created within the Township of Old Bridge to purvey water within the corporate boundaries of the Township. Hereinafter, OBMUA shall mean and refer to any officer, employee or member of the Board of the OBMUA as well as the Authority itself.

II. Recitations

WHEREAS, O & Y owns approximately 2,640 contiguous acres of land within the Municipality of the Township of Old Bridge; and

WHEREAS, Woodhaven owns approximately 1,455 acres of land within the Municipality of the Township of Old Bridge; and

WHEREAS, Woodhaven and/or O & Y intend to construct residential housing, commercial buildings, office buildings and industrial buildings within the Township of Old Bridge in conformity with an overall plan of development; and

WHEREAS, on August 9, 1979, O & Y formally requested the Old Bridge Planning Board to amend the application procedures of the Land Development Ordinance to permit O & Y to develop its lands in conformity with an overall development plan; and

WHEREAS, O & Y filed suit on February 18, 1981, Docket No. L-32516-80 P.W. seeking relief from the Old Bridge Land Development Ordinance then prevailing; and

WHEREAS, by formal resolution of Council, enacted May 3, 1982, the Governing Body of the Township of Old Bridge directed:

- (a) that O & Y be allowed to develop its lands in accordance with an overall development plan;
- (b) that O & Y be permitted to use its lands for residential, industrial, commercial and office development;
- (c) that O & Y be accorded an overall residential density of four (4) dwelling units per acre applicable to the 2,565 acres it then owned, for a total of 10,260 units; and
- (d) that the Land Development Ordinance be amended accordingly.

WHEREAS, on April 5, 1983, the Old Bridge Township Council adopted a new Land Development Ordinance; and

WHEREAS, on December 14, 1983, 206 days after filing, the Old Bridge Township Planning Board voted to deny O & Y's development application without prejudice; and

WHEREAS, on January 8, 1984, O & Y re-instated its inactive 1981 lawsuit; and

WHEREAS, on February 14, 1984, O & Y withdrew its 1981 complaint and substituted therefor an action against the Township of Old Bridge and the other defendants, Docket No. L-009837 P.W. alleging, inter alia, that the Old Bridge Township Land Development Ordinance was not in conformance with the constitutional requirements set forth in Southern Burlington County NAACP v. Township of Mt. Laurel 92 N.J. 158 (1983), hereinafter Mount Laurel II and that the Old Bridge Township Land Development Ordinance was procedurally and substantively defective, which defects impaired the ability of the Township to provide realistic housing opportunities for lower-income households; and

WHEREAS, in the suit, O & Y sought relief from the Court to assist O & Y in realizing its development in return for offering the public interest benefit of providing substantial housing affordable to lower-income households; and

WHEREAS, Woodhaven filed suit against the Township of Old Bridge and related defendants on May 31, 1984, also alleging violations of the standards of Mount Laurel II and similarly seeking relief; and

WHEREAS, on June 18, 1984, O & Y amended its Complaint to include the Old Bridge Municipal Utilities Authority (OBMUA) and the Old Bridge Township Sewerage Authority, as co-defendants; inasmuch as these parties control utilities essential to the resolution of the litigation; and

WHEREAS, O & Y and Woodhaven have reached an agreement with the Old Bridge Township Sewerage Authority for the provision of sewerage systems to serve their developments and the Old Bridge Township Sewerage Authority has now been dismissed as a defendant in this litigation; and

WHEREAS, on July 13, 1984, this Court found Old Bridge Township's 1983 Land Development Ordinance not to be in compliance with the constitutional requirements of Mount Laurel II and Old Bridge Township was afforded reasonable time to redraft and adopt a compliant Ordinance; and

WHEREAS, the Township of Old Bridge did not enact a compliant Ordinance and on November 13, 1984, this Court appointed Carla Lerman, P.P., AICP as Special Master to review the Township's Land Development Ordinances and to assist the parties to negotiate a settlement of all issues in this case; and

WHEREAS, Ms. Lerman's assistance has been instrumental in inducing the parties to resolve the issues of this case; and

WHEREAS, the Township is willing to meet its constitutional obligation by modifying its existing Land Development Ordinance; and

WHEREAS, both O & Y and Woodhaven have committed themselves to incorporate substantial opportunities for housing for lower-income families in their developments; and

WHEREAS, the Urban League accepts the methodology proposed to provide such lower-income housing; and

WHEREAS, the Board of Commissioners of the OBMUA on May 22, 1985 unanimously passed a Resolution:

- a) recognizing that there is a pressing need to obtain additional water supplies to serve their franchise area;
- b) recognizing that the New Jersey Department of Environmental Protection (NJDEP) has curtailed additional groundwater diversion rights;
- c) recognizing that the NJDEP will substantially reduce present groundwater diversion rights effective January 1, 1987;
- d) recognizing that the OBMUA has conducted an extensive investigation of all possible water sources;
- e) recognizing that the most dependable long-term source of water in the quantity required is from the Middlesex Water Company (hereinafter, "M.W.C.") in Edison;
- f) recognizing that O & Y and Woodhaven have offered to finance a plan to construct a transmission pipeline to connect the OBMUA facilities to those of the M.W.C.; and
- g) directing the OBMUA attorney and engineer to negotiate with O & Y, Woodhaven, the M.W.C. and the Borough of Sayreville regarding an

agreement to finance and construct a water transmission main connecting the M.W.C. facilities to the OBMUA facilities; and

WHEREAS, O & Y and Woodhaven's proposal to finance construction of the water transmission facilities is conditional upon satisfactory resolution of all other matters under the jurisdiction of the Township that are necessary to proceed with their developments; and

WHEREAS, comprehensive settlement of all issues currently in litigation between the Township, O & Y, Woodhaven, and the Urban League would provide additional potable water supplies to the entire Township, thus providing enhanced opportunities for the construction of lower-income housing, additional market housing and increased non-residential development potential for the Township of Old Bridge in general; and

WHEREAS, the parties agree to the terms and conditions of the stipulation as set forth below and the Master has reviewed and recommended to the Court the acceptance of this Stipulation of Settlement which the Master has found to be in compliance with the constitutional requirements set forth in Mt. Laurel II; and

WHEREAS, the settlement of all issues in this case would be in the public interest, and such settlements are encouraged by the Court.

III. Matters Resolved by Agreement

III-A. MOUNT LAUREL COMPLIANCE

III-A.1 Establishment of an Agency

Old Bridge Township shall establish or contract with an agency ("Township Agency") to screen and place all applicants for low and moderate (hereinafter generally referred to collectively as "lower-income") housing. The Township Agency shall also be responsible for maintenance of income restrictions, re-sale controls, rental controls, and other mechanisms which may be necessary in order to

assure that these units will continue to be affordable to lower-income households over time. This Agency shall either be part of the Municipal Government of the Township of Old Bridge or directly controlled by the Township of Old Bridge; or, if a contract is entered into with another entity to carry out the responsibilities of the Township Agency, the Township of Old Bridge shall be exclusively responsible for the execution and implementation of this contract. O & Y and Woodhaven agree to provide \$5,000 each towards the funding of the first year's operation of the agency.

III-A.2 Ten Percent (10%) Set-Aside

O & Y and Woodhaven shall set aside ten (10) percent of the total number of the dwelling units within their developments as housing affordable to low and moderate-income families, regardless of whether said units are built pursuant to any Zoning Ordinance or any variance approval.

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 percent (90%) 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 percent (45%) of the adjusted median income for the Middlesex, Somerset, Hunterdon 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 percent (72%) 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 percent (50%) of the adjusted P.M.S.A. median income for the region or in the case of moderate income families, eighty percent (80%) of the adjusted 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 percent (94%) 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.

The Township's Land Development Ordinance shall be amended to provide the mechanisms to meet the Township's's affordable housing goals, as enunciated in Appendix A, by including a requirement for a ten percent (10%) set-aside for housing affordable to lower-income households. This provision shall apply to all builders of housing for re-sale or rental, regardless of size or classification and regardless of whether said units are built pursuant to any Land Development Ordinance or as a result of an approval gained by application to the Zoning Board of Adjustment.

III-A.3 Reopening Clause

Any party to this Agreement, upon good cause shown, may apply to the Court for modification of this Agreement based on a modification of law by a Court of competent jurisdiction, a subsequently enacted state statute, a subsequently adopted administrative regulation of a state agency acting under statutory authority, or based on no reasonable possibility of performance.

III-A.4 Provisions for Lower-Income Housing

- (i) Housing units shall be provided which shall be housing affordable to families of low-income equal to five percent (5%) of the total number of housing units sold or rented within the development; and
- (ii) Housing units shall be provided which shall be housing affordable to families of moderate-income equal to five percent (5%) of the total number of housing units sold or rented within the development.

III-A.5 Compliance Status Report

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.

III-A.6 Housing Plan

Developers with a lower-income housing obligation shall supply, as part of their initial application for development within any Planned Development to the Old Bridge Planning Board, a "Housing Plan". This obligation to supply a Housing Plan is deferred, as to O & Y and Woodhaven, until such time as each of these developers apply for any Preliminary Major Subdivision or Site Development Plan approval which includes lower-income housing. See the Phasing Schedule and anticipated application schedule set forth in Appendix A, Section A.8 and A.8.1. This Housing Plan shall set forth the mechanisms whereby the developer will construct lower-income housing. Such a Housing Plan shall indicate the approximate sizes, numbers, types, locations, price ranges, price controls, deed restrictions and marketing strategies for the lower-income housing, with a Phasing Schedule for the actual delivery of such units as part of the overall development in tandem with the market units. In particular, the 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.

III-A.7 Waiver of Township Fees

Old Bridge Township agrees to waive all applicable application and permit fees related to lower-income housing, as set forth in Appendix A of this Agreement. It is expressly understood that this waiver applies only to those

housing units specifically designated as "lower-income housing" as that term is defined in Appendix A of this Agreement.

III-B SUSPENDED CONTROLS AND OBLIGATIONS

III-B.1 Rent Controls

All developments providing a ten percent (10%) lower-income housing set-aside shall be exempt from all Municipal rent control regulations except such controls as provided herein that are specifically applicable to lower-income housing.

III-B.2 Suspension of Lower-Income Housing Obligation

In the event Certificates of Occupancy are issued for 2,135 lower-income housing units prior to the end of the year 1990, the Township will have the right to suspend the construction of further lower-income housing units. In this event, any party to this Agreement shall have the right to petition the Court for clarification as to those conditions under which they continue to build market housing.

IV. Land Development Standards

IV-A. ORDINANCE REVISIONS

The Township of Old Bridge agrees to amend its Land Development Ordinance to meet its constitutional obligations as directed by this Court on July 13, 1984, which amendments will be enacted by the Governing Body of the Township in accordance with a time schedule acceptable to this Court.

It is clearly understood, however, that the provisions of this Settlement Agreement and all attachments hereto, provide a mechanism under which O & Y and Woodhaven shall seek development approvals and by which development undertaken by O & Y and Woodhaven shall be controlled. No further Ordinance Amendments are necessary to permit O & Y and Woodhaven to submit

development applications for approval; and the standards set forth in this Agreement and the attachments hereto shall govern the relationships between the Township and O & Y and Woodhaven.

IV-A.1 Objectives

The Ordinance Amendments to be adopted by the Township shall have the following objectives:

- a. ensuring the construction of affordable housing, maintained as affordable over time, using procedures substantially in accord with the concepts contained in Appendix A, attached hereto;
- b. ensuring the rapid processing of development applications, using a simplified two-stage Subdivision/Site Development Plan review process, with procedures substantially in accord with the concepts contained in Appendix B, attached hereto;
- c. providing for more cost-effective development of residential land by employing regulatory standards substantially in accord with those contained in Appendix C, attached hereto;
- d. eliminating vague or unnecessary cost-generating engineering or design standards, by using more detailed measures focusing on public health and safety, substantially in accord with the comprehensive engineering standards contained in Appendices D and E, attached hereto.

However, it is specifically understood that the provision for midrise apartments applicable to O & Y shall not be available to other developers, and will not be part of any Ordinance revisions.

V. Provisions Specific to O & Y and Woodhaven

V-A. VESTING

V-A.1 O & Y Unit Count

O & Y shall be permitted to build four (4) units per gross acre (10,560 units based on their present holdings of 2,640 acres), ten percent (10%) of which, (1,056 units), shall be reserved as housing affordable to lower-income households, and the remainder of which shall be housing without price controls or rent control restrictions.

V-A.2 Woodhaven Unit Count

Woodhaven shall be permitted to build four (4) units per gross acre (5,820 units based on their present holdings of 1,455 acres), ten percent (10%) of which, (582 units), shall be reserved as housing affordable to lower-income households, and the remainder of which shall be housing without price controls or rent control restrictions.

V-B. DEVELOPMENT RIGHTS SPECIFIC TO O & Y AND WOODHAVEN

V-B.1a. O & Y Land Holdings Map

Attached hereto is Map 1 which shows O & Y's land holdings in the Township of Old Bridge that are the subject of this Settlement Agreement.

V-B.1.b. Woodhaven Land Holdings Map

Attached hereto is Map 2 which shows the land holdings of Woodhaven in the Township of Old Bridge which are the subject of this Settlement Agreement.

V-B.2 Additional Lands

O & Y or Woodhaven may acquire additional lands (outparcels) from time to time provided such lands are within the limit of the acquisition line as shown on the Land Holdings Map, designated as outparcels as part of the Concept Plan, and provided that such lands are zoned PD. Such lands shall be treated as if they

are part of the original land holdings of O & Y and/or Woodhaven and incorporated into their Land Holdings Map. Specifically, such additional lands may be developed at four (4) dwelling units per acre and the number of dwelling units attributable to the outparcels shall be added to the total number of residential dwelling units permitted within their respective developments, provided, however, that:

- (a) the number of lower-income housing units required to be built within the development shall also be increased by ten percent (10%) of the number of additional dwelling units attributable to the acquired lands; and
- (b) such lands are suitable for development at four (4) dwelling units per acre.

V-B.3 Approval Procedures

V-B.3a. Settlement Plan

O & Y and Woodhaven shall each have the right to develop their lands in accordance with the Settlement Plan, set forth on Plates A and B, applicable to their lands upon entry of this Order provided:

- a) As provided in the Court Order of which this is an attachment, the Planning Board shall have the right to hold public hearings on the O & Y and Woodhaven plans (Plates A and B) commencing in February, 1986, and, if necessary, continuing into March, 1986, provided that the Planning Board abides by the procedures set forth in this Settlement Agreement and the attachments hereto.
- b) The Planning Board shall issue its decisions on Plates A and B simultaneously and no later than March 14, 1986 (provided, however, that the Board may petition the Court for additional time), which decisions shall be reported to the Court.

c) In the event that the Planning Board approves a Plate (with any modifications acceptable to the affected developer), the Court shall enter an Order incorporating the approved Plate into the previously approved Settlement Agreement, nunc pro tunc.

d) In the event that the Planning Board does not approve a Plate (or approves a Plate with modifications unacceptable to the affected developer) the Court shall refer the matter to the Master for recommendations, and shall, thereafter, schedule a hearing to determine what modifications, if any, would be necessary in order to make the Plate acceptable to the Court.

The Master shall provide the Court with recommendations, and the Court shall base its decision on the record before the Planning Board, materials supplied to the Master, and the Master's recommendations. No testimony, other than the Master's reports, shall be taken before the Court.

Thereafter, the Court shall enter an Order incorporating the Plate, as approved by the Court, into the previously accepted Settlement Agreement, nunc pro tunc. The decision of the Court shall be final and binding on all of the parties.

V-B.3.b. Hearings and Notice

Following issuance of a Court Order incorporating the Plates into this previously approved Settlement Agreement, the developer or developers whose Plates are approved by the Court may immediately thereafter submit development applications in accordance with the procedures set forth in the attached appendices to the Township Planning Board for its review and approval each time any of the lands within the Plates are proposed for development; and in accordance with the Municipal Land Use Law, no notice, other than publication, shall be required for Minor Subdivision, Final Subdivision and Final Site Development Plan Approval.

V-B.3.c. Accelerated Review Schedule

The Township Planning Board is obligated to review and make decisions with respect to applications for Preliminary Major Subdivision and for Site Development Plans within ninety-five (95) days of application; and to review and decide on applications for Final Major Subdivision and Minor Subdivision within forty-five (45) days of application.

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 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.

V-B.3.d Master's Review

O & Y and Woodhaven shall have available to them a procedure to appeal to the Court-appointed Master which appeal procedure is more fully set forth in Appendix A, attached hereto.

V-B.4 Development Standards

V-B.4.1 General Standards

The Township, O & Y and Woodhaven agree to abide by the procedures, principles and standards set forth in Appendices A, B, C, D and E attached hereto and made part hereof. The provisions in the attached appendices shall be applicable exclusively to O & Y and Woodhaven immediately upon entry of this Order and such Land Development Ordinance Amendments purporting to affect Planned Developments as may be subsequently adopted by the Township shall not apply to O & Y and Woodhaven except insofar as such Amendments affect the general public health and safety. The Township and Urban League agree that the standards in Appendix A, unless expressly applicable exclusively to O & Y and/or Woodhaven, such as the Phasing Schedule set forth in A.8, shall apply to all other residential developers and shall be incorporated in appropriate Ordinance revisions.

V-B.4.2 Standards and Reports

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 raised 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.

V-B.5 Housing Plan

O & Y and Woodhaven shall each file a Housing Plan with the Planning Board, but their Housing Plans shall not be required until O & Y or Woodhaven applies for Planning Board approval of the first Preliminary Major Subdivision which includes lower-income housing units. This obligation to supply a Housing Plan, however, shall be deferred until after the Township Agency has been established and published rules and regulations. They shall, however, be obligated to commence construction of the required lower-income housing component in accordance with the Phasing Schedule set out in Appendix A.

V-B.6 Distribution of Lower-Income Housing

It is specifically stipulated 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 in other portions of the development, nor different from those buffers generally used to separate sections of the development with different types of housing.

Nothing herein shall require any specific building, cluster, section of 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 that the developers shall provide ten percent (10%) of the total residential units within the development as housing for lower-income households.

V-B.7 Senior Citizen Housing

O & Y shall construct a 150-unit senior citizen housing project on lands it currently owns and shall convey the project, including land and buildings, to the Township in return for the Township's assumption of a 30-year mortgage from the New Jersey Housing and Mortgage Finance Agency or equivalent entity, and conveying the proceeds of such mortgage to O & Y. Such mortgage will be supportable from rents reflecting the maximum permissible rental charges as set forth in Appendix A, with fifty percent (50%) of the project to be devoted to low-income households and fifty percent (50%) of the project devoted to moderate-income households. There shall be a \$60 per month allowance for utilities incorporated into the rent schedule. The Township shall provide 100% tax abatement for the project, shall form an entity to own and operate the project when completed, and shall exercise its best efforts to assure the availability of tax-exempt financing for the project at an interest rate of ten percent (10%) or less. The Township shall also guarantee to provide for the maintenance of the units, to the extent that such maintenance costs are not fully covered by rental charges paid by the tenants, but shall have no further financial liability with respect to this project. Construction shall start no later than April 1987.

If the funds available from the aforementioned mortgage are insufficient to meet the costs of construction of the project, O & Y agrees to forego remuneration to the extent of such shortfall. The 150 units referred to herein shall not reduce the total number of residential units permitted or reduce the total number of lower-income housing units to be provided as set forth in Sections V-A.1 (O & Y Unit Count) and V-B.2 (Additional Lands).

V-C SITE SPECIFIC PROVISIONS

V-C.1 Industrial/Commercial Development

O & Y shall construct office/retail and commercial/industrial space on the PD/SD zoned lands which are included in the Settlement Plan which lands are contained in two separate parcels as follows:

a) approximately 237 acres on the northerly side of Texas Road in the vicinity of State Highways 9 & 18;

Total Permitted Gross Floor Area of up to 5,162,000 square feet, and

b) approximately 42 acres on the southerly side of Texas Road in the vicinity of State Highways 9 & 18;

Total Permitted Gross Floor Area of up to 915,000 square feet;

provided that, in each case, the Regulatory Standards set forth in the Appendices (and specifically, Appendix C) shall govern, with no additional lower-income housing obligation attendant upon these rights inasmuch as O & Y's development as a whole will be providing substantial lower-income housing opportunities.

V-C.2 Shopping Center Site

O & Y shall construct a regional shopping center of up to 1,350,000 square feet on approximately ninety-three (93) acres of their lands designated for this purpose, located on the southerly side of the proposed Trans Old Bridge Connector Road in the vicinity of its juncture with State Highway 18, with no additional lower-income housing obligation attendant to this right, inasmuch as O & Y's development as a whole will be providing substantial lower-income housing opportunities. This right is conditioned on O & Y meeting the Regulatory Standards set forth in the Appendices (and specifically, Appendix C).

V-C.3 Optional Shopping Center Site

O & Y shall have the option of constructing the shopping center referred to in paragraph V-C.2 on the PS/SD lands referred to in subparagraph V-C.1 subject to the applicable Regulatory Standards of Appendix C. In the event of the exercise of this option, those lands reserved for a shopping center referenced in paragraph V-C.2 may be used for the construction of housing (at the option of the developer) or for commercial/industrial Uses that are permitted on Regional Commercial land in accordance with Section C-1000 of Appendix C. As provided in the development of the shopping center (see above), there would be no additional lower-income housing obligation attendant to the exercise of this right to construct the shopping center in an optional location, inasmuch as O & Y's development as a whole will be providing substantial lower-income housing opportunities.

V-C.4 Midrise Apartments

O & Y shall be permitted to construct midrise apartments not exceeding eight (8) stories in height on its lands, which apartments may be for rent or for condominium ownership subject to the following limiting conditions:

- a) No midrise structure shall contain more than 150 units;
- b) midrise apartments will be limited to those areas designated on the Settlement Plan and will not be permitted in any other location without a specific approval from the Planning Board;
- c) the total number of apartment units within all midrise apartments shall not exceed ten percent (10%) of the total number of dwelling units permitted within the development;

d) no building permit will be issued to construct a midrise apartment building until at least twenty-five percent (25%) of the residential units within the development have been built.

It is specifically understood that the inclusion of midrise apartments in this Settlement Agreement is a function of the litigation and there is no precedent in this Settlement for any other midrise structures elsewhere in the Township.

V-C.5 Woodhaven Commercial Development

Woodhaven shall construct office, retail, commercial and/or industrial space on the 73 acres designated Commercial on its Settlement Plan with no additional lower-income housing obligation attendant to the exercise of this right. This right is conditioned upon Woodhaven meeting the Regulatory Standards set forth in the Appendices (and specifically Appendix C).

V-C.6 Staging Performance: Non-Residential Development

O & Y, Woodhaven, and the Township recognize that it is desirable that the progress of the residential component of the projects be related to the non-residential component of the developments, generally as set forth in Section 9-10:2.1 of the existing Old Bridge Township Land Development Ordinance. That Section of the Ordinance is hereby modified, for the developers, however, to read as follows:

Residential housing units and acres of non-residential Uses that may be developed by O & Y and Woodhaven shall be timed at intermediate points following the Staging Performance Schedule outlined below. The Staging Performance Schedule shall be established for each development at the time of approval of the Concept Plan by the Planning Board.

The Staging Performance Schedule shall relate maximum percentage of dwelling units (expressed as the maximum number of construction permits issued) to the minimum percent of acres of non-residential Uses which must be improved with public water and sewer facilities, and minimum assessed valuation of building space under construction devoted to non-residential Uses.

*See also
Ord.*

*Some of
old Ord.*

Staging Performance Schedule

<u>Maximum Dwelling Units</u>	<u>Minimum Commercial and Office/Industrial Acreage served by Infrastructure</u>	<u>Minimum Ratables as % Total Assessed Valuation of Commercial Office/Industrial as Defined at Concept Plan stage</u>
10%	10%	0%
25%	25%	0%
50%	50%	25%
70%	70%	45%
85%	85%	65%

Affordable units approved as part of the Concept Plan pursuant to this Settlement Agreement shall not be counted, for purposes of this Section, and shall be excluded from the Staging Performance Scheduling requirement. This Staging Performance Schedule with respect to commercial and industrial facilities does not modify the lower-income housing phasing required by Appendix A, Section A.8.

V-D OFF-TRACT IMPROVEMENTS

Off-tract improvements shall be addressed in a separate agreement.

V-E WATER AND SEWER IMPROVEMENTS

V-E.1 Sanitary Sewerage System

The parties signatory hereto acknowledge that an agreement has been reached with the Old Bridge Sewerage Authority with respect to the provision of sewage service adequate to serve the complete projected requirements of both O & Y and Woodhaven. This agreement has previously been filed with the Court and is referenced herein as Addendum I.

V-E.2 Water

The parties signatory hereto acknowledge that an agreement to provide potable water supplies, not only to developments to be undertaken by O & Y and Woodhaven, but also to serve other portions of Old Bridge Township, is being negotiated between O & Y, Woodhaven and the OBMUA. To resolve their mutually shared concern regarding the shortage of dependable long-term potable water supplies, an informal Consortium has been formed consisting of the Borough

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of Sayreville, the OBMUA, and the two developers, O & Y and Woodhaven. The current proposal is to construct an eight-mile water transmission pipeline from the M.W.C. facilities in Edison, across the Raritan River, through the Borough of Sayreville, into the Township of Old Bridge and terminate at the OBMUA treatment plant on Highway 18. The Municipalities, or their Authorities, would enter into financial arrangements for capacity in the line.

The line will be capable of delivering 30 Million Gallons per Day (MGD) at the point of crossing of the Raritan River. This capacity will be allocated; 10 MGD to Sayreville, and 10 MGD to O & Y and Woodhaven, with the remaining 10 MGD covering the existing and future needs of the Township exclusive of the southwest quadrant where O & Y and Woodhaven have their developments.

While the OBMUA recognizes it is essential that it participate in this project and has passed a formal resolution acknowledging this fact, there are constraints making it difficult for the OBMUA to commit to the project without a reasonably firm cost estimate and a public hearing.

To address unresolved issues concerning funding, O & Y and Woodhaven have proposed a financial plan. Under this plan, O & Y and Woodhaven will guarantee one-half (1/2) of the OBMUA's cost of constructing the pipeline, provided future water connection fees from their developments are allowed to offset against this funding plus interest. O & Y and Woodhaven have also proposed to carry the OBMUA's share of the construction cost of the pipeline until the OBMUA can obtain the required funds from a bond issue. Although the OBMUA is not in a position to grant formal approval at this time, the proposal was very favorably received by the Board of Commissioners. Settlement of all housing, planning and development issues is a necessary pre-condition to reaching an agreement on the water issue. This Order constitutes such settlement. However, a

firm agreement as to provision of adequate supplies of potable water shall be reached by March 15, 1986; however, any party may extend the deadline by thirty (30) days, and the deadline may be further extended by mutual consent of the parties.

V-F. ADDITIONAL CONSIDERATIONS

V-F.1 Potential Conflict

It is further provided that if there is a conflict between any Ordinance now in existence or passed subsequent to the Order and Judgment of Repose, this Agreement and the attached Appendices, the Order and Judgment, this Agreement and Appendices as affecting the rights of O & Y or Woodhaven shall control.

In the event of any conflict between the parties signatory hereto, the parties agree to submit their disputes to the Court-appointed Master before seeking redress in the Court.

V-F.2 Implementation

Upon entry of the Court Order to which this is an attachment, the Township of Old Bridge agrees to begin the process of immediate implementation of this Agreement and the Appendices attached hereto.

Specifically, the Township Planning Board will schedule a public hearing on the Settlement Plan or Plans, provide the Court with its recommendations in a timely fashion and, thereafter, begin the process of review of all applications submitted by O & Y and Woodhaven.

V-F.3 Primacy of Order

All parties signatory hereto agree that the within Settlement together with all attachments hereto shall be implemented without the necessity of any revisions to the Township's Land Development Ordinances with regard to O & Y and Woodhaven. The parties agree that the procedures and standards set forth in the

Appendices attached hereto shall be the procedures and standards applicable to the O & Y and Woodhaven developments. Any comprehensive Zoning or Land Use Ordinance revisions subsequently made by the Township shall include a specific provision in it stating that the O & Y development and the Woodhaven development shall be governed solely by this Settlement Agreement, the Order pursuant to which same is approved, and the Appendices attached hereto. The Township and Urban League agree that revisions to the Ordinances are necessary to implement this Agreement as to all other residential developers.

V-F.4 Master's Fee

It is specifically agreed to between the parties that the amount of the Master's fees incurred to the date of the execution of the Order shall be divided evenly between O & Y, Woodhaven, and the Township, with each party bearing one-third (1/3) of the total cost. Thereafter, Master's fees shall be allocated between the parties as provided in other pertinent Sections or Appendices of this Agreement, except that in no instance shall the Urban League be liable for any portion of the Master's fee.

signed "J. J. Convery"

For: The Township of Old Bridge

signed "by J. J. Convery Township Attorney"

For: The Old Bridge Planning Board

signed "William E. Flynn"

For: The Old Bridge Township
Municipal Utilities Authority

signed "Thomas Jay Hall"

For: O & Y Old Bridge Development Corp.

signed "Stewart M. Hutt Atty"

For: Woodhaven Village, Inc.

signed "Eric Neisser"

For: The Urban League of Greater New Brunswick

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LIST OF APPENDICES ATTACHED HERETO:

1. Appendix A: Sets forth lower-income housing procedures
2. Appendix B: Procedural aspects of development applications
3. Appendix C: Substantive revisions in planning standards
4. Appendix D: Sets forth engineering standards for drainage
5. Appendix E: Sets forth engineering standards for roads
6. Appendix F: Old Bridge Township Ordinances 54-85, 55-85, and amendments thereto
7. Schedule I: List of O & Y land holdings as of July, 1985
8. Schedule II: List of Woodhaven land holdings as of July, 1985
9. Map 1: O & Y Land Holdings Map
10. Map 2: Woodhaven Land Holdings Map
11. Plate A: Concept Plan for O & Y Old Bridge Development Corp.
12. Plate B: Concept Plan for Woodhaven Village, Inc.

ADDENDUM REFERENCED HEREIN BUT NOT ATTACHED HERETO:

Addendum I: The Sewerage Agreement

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

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, Plaintiff,
and
WOODHAVEN VILLAGE, INC. a
New Jersey corporation
Plaintiff,

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
(Old Bridge)

Docket No. C 4122-73

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

Docket No. L009837-84 PW

and No. L036734-84 PW

Civil Action

ORDER

This matter having been opened to the Court on the Motion of the Township of Old Bridge, Jerome J. Convery, Esq. appearing; and on Motion of the Planning Board of the Township of Old Bridge, Thomas Norman, Esq. appearing, and a Cross Motion having been filed by the Urban (no. Civic) League of Greater New Brunswick, Barbara Stark, Esq. appearing, in the presence of Plaintiff, O & Y Old Bridge Development Corp., Thomas J. Hall, Esq. and Dean A. Gaver, Esq. appearing, and in the presence of Woodhaven Village Inc., Stewart Hutt, Esq. appearing, and the Court having reviewed the Motion papers, Briefs and Memoranda, Supporting Affidavits and reports submitted on behalf of all parties hereto; and the Court having heard oral argument and good cause having been shown,

IT IS ON THIS 6 day of *October*, 1987,

ORDERED:

1. That the Order and Judgment of Repose granted by this Court by Order dated January 24, 1986, is hereby vacated for the reasons stated by this Court in its oral opinion rendered September 14, 1987.
2. This matter is hereby transferred to the Council on Affordable Housing.
3. The Cross Motion filed by the Civil League of Greater New Brunswick for enforcement of the Order and Judgment of Repose, dated January 24, 1986, is hereby denied for the reasons stated by this Court in its oral opinion rendered September 14, 1987.
4. This Court does not retain jurisdiction of this matter.



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

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

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-036734-84P.W.

CIVIL ACTION

ORDER

This matter having been opened to the Court on the Motion for Reconsideration of the Plaintiff, WOODHAVEN VILLAGE, INC., a New Jersey Corporation. Stewart Hutt, Esq. appearing, and in the presence of the URBAN (now CIVIC) LEAGUE OF GREATER NEW BRUNSWICK, Barbara Stark, Esq. appearing, and in the presence of Plaintiff, O & Y OLD BRIDGE DEVELOPMENT CORPORATION, Thomas J. Hall, Esq. appearing, and in the presence of the TOWNSHIP OF OLD BRIDGE PLANNING BOARD, Thomas Norman, Esq. appearing, and in the presence of the TOWNSHIP OF OLD BRIDGE - Jerome J. Convery, Esq. appearing; and the Court having reviewed the Motion papers, Briefs and supporting documents submitted on behalf of all parties hereto; and the Court having heard oral argument and good cause having been shown,

IT IS ON THIS 21 day of April, 1988,

ORDERED that the Motion for Reconsideration of the Court decision rendered September 14, 1987, in the above referenced matter, is hereby denied.


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

LAW OFFICES

HUTT & BERKOW

A PROFESSIONAL CORPORATION

GORDON BERKOW
STEWART M. HUTT
RONALD L. SHIMANOWITZ

459 AMBOY AVENUE
P O. BOX 648
WOODBIDGE, NEW JERSEY 07095
(201) 634-6400

FAX: 201-634-0718

JANICE K. SCHERER
SUSAN BROWN PEITZ
MARK WILLIAMS
MICHAEL J. GONNELLA
BEN D. SHIRIAK
DAVID M. HUTT

Our File #

*ALSO ADMITTED DC BAR
*ALSO ADMITTED N.Y. BAR
*ALSO ADMITTED FLA. BAR

August 26, 1988

COPY

Mr. Ed Constantini
Office of the Clerk
Superior Court of New Jersey
Appellate Division
Hughes Justice Complex
CN-006
Trenton, NJ 08625

Re: Urban League of Greater New Brunswick vs. Mayor &
Council of Carteret
Woodhaven Village, Inc. vs. Township of Old Bridge
Docket No. A-4572-87T3 → O+Y, A-4335-87T3 → Woodhaven.

Dear Mr. Constantini:

I am writing on behalf of Woodhaven Village, Inc., with regard to our telephone conversation of Wednesday, August 24, 1988. You have advised that this matter will not be scheduled for settlement conference and that consideration is being given to consolidating the Woodhaven, O & Y, and Civic League appeals. Please be advised that, on behalf of Woodhaven, we recommend consolidation of these appeals. The appeals all arise from the same trial court orders. Although each appellant will have a slightly different bent on the issues, the issues, in general, will be common to all three appeals. In addition, these three cases were consolidated by the trial court.

You have further advised that once a decision is made about consolidating the appeals, a scheduling order for submission of briefs would be forthcoming.

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HUTT & BERKOW

A PROFESSIONAL CORPORATION

Mr. Ed. Constanini
August 26, 1988
Page Two

By copy of this letter, I am notifying all counsel of record of the foregoing in case counsel wish to take a position on the foregoing.

Thank you for your attention, I am,

Very truly yours,

RONALD L. SHIMANOWITZ
For the Firm

RLS/rmm
W0150A

cc: Thomas J. Hall, Esq.
Barbara Stark, Esq.
Richard F. Plechner, Esq.
Glenn J. Berman, Esq.
James M. Colaprico, Esq.
William E. Flynn, Esq.
Mr. Joel Schwartz

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Campus at Newark

*File in volume 242
"Appeal of [unclear]"
1/7/88*

School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

August 30, 1988

H.B.

SEP 01 '88

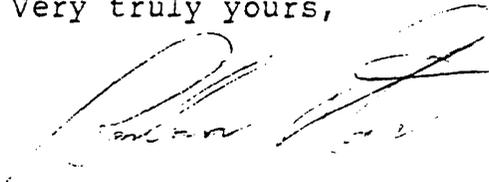
Mr. Ed Constantini
Office of the Clerk
Superior Court of New Jersey, Appellate Division
Hughes Justice Complex, CN 006
Trenton, New Jersey 08625

RE: Urban League of Greater New Brunswick v. Mayor & Council
of the Borough of Carteret, et al.
Woodhaven Village, Inc. v. Twp of Old Bridge
Docket No. A-4572-87T3

Dear Mr. Constantini:

This shall confirm our recent telephone conversation in which we advised that the Civic League plaintiffs agree that the Woodhaven, Civic League and O & Y appeals should be consolidated.

Very truly yours,



cc/Old Bridge Service List

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LAW OFFICES
KATZENBACH, Gildea & Rudner

PRINCETON PIKE-CORPORATE CENTER

997 LENOX DRIVE

LAWRENCEVILLE, NEW JERSEY 08648-2311

(609) 896-3600

TELECOPIER (609) 896-1469

SAMUEL RUDNER
VICTOR WALCOFF
RICHARD M. KOHN
PHILLIP E. GRIFFIN
ARNOLD M. MELLK
JAMES F.X. RUDY
EZRA D. ROSENBERG
FRANK P. REICHE
ELAINE C. BRITT

JAMES M. COLAPRICO
JOSELE A. ARENA
LAWRENCE C. WOHL
H. LEE SCHWARTZBERG, JR.
ALLISON E. ACCURSO
JUNE H. MILLINGTON
HELENE L. EPSTEIN
MITCHELL R. TABAS
FRANCES M. MERRITT

September 7, 1988

Mr. Edward Constantini
Office of the Clerk
Superior Court of New Jersey
Appellate Division
Hughes Justice Complex
CN-006
Trenton, NJ 08625

H.B.

SEP 12 '88

Re: Urban League of Greater New Brunswick, et al. v.
Mayor and Council of the Borough of Carteret, et al.
Woodhaven Village, Inc. v. Township of Old Bridge
Docket Nos. A-4752-87T3, A-4335-87T3 and A-4572-87T3

Dear Mr. Constantini:

We are writing in response to a copy of a letter that we received dated August 26, 1988 from Ronald Shimanowitz, attorney for Woodhaven Village, Inc., concerning consolidation of the above-referenced matters. We represent the Township of Old Bridge Planning Board.

We agree with Mr. Shimanowitz that consolidation of these appeals is appropriate in order to conserve both judicial resources and legal fees that will be expended on appeals arising from the same trial court orders.

Very truly yours,


Ezra D. Rosenberg

/mdm

cc: Service List

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