CA

Old Bridge

3-8-89

Brief & Appendix for

Plaintiff-Appellant Woodhaven Village

(On Appeal for Superior Ct.)

pgs. 187

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SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-4335-87T3
A-4572-87T3
A-4752-87T3

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,
Plaintiff-Appellant

vs.

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

and

O & Y OLD BRIDGE DEVELOPMENT CORPORATION, a Delaware Corp.
Plaintiff-Appellant

and

WOODHAVEN VILLAGE, INC., a New Jersey Corporation
Plaintiff-Appellant

vs.

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 OF THE TOWNSHIP OF OLD BRIDGE, THE SEWERAGE AUTHORITY OF THE TOWNSHIP OLD BRIDGE and THE PLANNING BOARD OF THE TOWNSHIP OF OLD BRIDGE .
Defendants-Respondents

CIVIL **ACTION**

ON APPEAL FROM
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION (MOUNT LAUREL)
MIDDLESEX COUNTY (VENUE)
OCEAN COUNTY (TRIAL)

SAT BELOW:
EUGENE D. SERPENTELLI, A.J.S.C.

BRIEF AND APPENDIX FOR
PLAINTIFF-APPELLANT WOODHAVEN VILLAGE, INC.

HUTT & BERKOW, P.C.
459 Amboy Avenue
P.O. Box 648
Woodbridge, New Jersey 07095
(201) 634-6400
Attorneys for Plaintiff/Appellant
Woodhaven Village, Inc.

Stewart M. Hutt, Esq., Of Counsel & On The Brief
RONALD L. SHIMANOWITZ, Esq., On The Brief

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i
TABLE OF CITATIONS OF CASES	ii
TABLE OF CONTENTS FOR APPENDIX	v
PROCEDURAL HISTORY	1
INTRODUCTION	4
STATEMENT OF FACTS	9
LEGAL ARGUMENT	21
POINT I - THE TRIAL COURT ERRED SINCE EQUITABLE AND PUBLIC POLICY REASONS STRONGLY ARGUE AGAINST THE REOPENING OF THE SETTLEMENT JUDGMENT	21
POINT II - THE TRIAL COURT ERRED IN FAILING TO APPLY THE "REOPENING CLAUSE" TO MODIFY THE AGREEMENT AMONG THE PARTIES	25
POINT III - THE TRIAL COURT FAILED TO PROPERLY AND FAIRLY ADDRESS WHETHER WOODHAVEN'S DEVELOPMENT PLAN HAD BEEN SUBSTANTIALLY MODIFIED	29
POINT IV - THE TRIAL COURT ERRED IN REFUSING TO LEAVE THE JUDGMENT UNDISTURBED WITH REGARD TO WOODHAVEN VILLAGE, INC. EVEN IF SAME WAS VACATED AS TO O & Y	39
A. The Trial Court had the power to vacate as to O & Y and not as to Woodhaven because Woodhaven's rights under the Settlement were several	40
B. The Parties Did Not Bargain For An Integrated Development	53
POINT V - THE TRIAL COURT ERRED BECAUSE SETTING ASIDE THE SETTLEMENT DEPRIVED WOODHAVEN OF ITS BARGAIN WHILE THE TOWNSHIP MAINTAINED THE BENEFITS OF ITS BARGAIN	65
CONCLUSION	67

TABLE OF CITATIONS

CASES: PAGE

Alpaugh v. Wood, 23 N.J.L. 638, 23 A. 261 (1891).... 48,49

American Association of University Professors v. Bloomfield College, 129 N.J. Super. 249, 322 A.2d 846, 859 (Ch. Div. 1974)............................ 52

AMG Realty Co. v. Warren Twp., 207, N.J. Super 388 (Law 1984)... 22

Anderson v. Nichols, 107 A. 116 (Vt. 1919).......... 49,50,52

Becker v. Kelsey, 9 N.J. Misc. 1265, 157 A.177 (1931)... 47,48,52

Brower v. Glen Wild Lake Co., 86 N.J. Super. 341, 206 A.2d 899, 904 (App. Div. 1965).................. 53

City of Buffalo v. D.L. 7 W. R. Co., 176 N.Y. 308, 68 N.E. 587 (1903).................................. 41

Chmielewski v. Marich, 2 Ill. 2d 568, 119 N.E. 2d 247, 251 (1954)..................................... 41,45,46

Department of The Public Advocate v. The New Jersey BPU, 206 N.J. Super. 523 (App. Div. 1985).... 21

Gilbert v. Stanton Brewery, Inc., 295 N.Y. 270 272 (C.A. 1946)... 41

Hallberg v. Hallberg, 113 N.J. Super. 205, 273 A.2d 2389, 391 (App. Div. 1971)..................... 37,38

Handley v. Unarco Industries, Inc., 463 N.E. 2d 1011, 1016, 124 Ill. App. 3d 56 (1984).............. 41

Hartford Fire Ins. Co v. Riefolo Construction Co., 161 N.J. Super. 99, 390 A.2d 1210, 1218 (App. Div. 1978)...................................... 62

Hughes v. Thurman, 213 Md. 169, 131 A.2d 479 (1957). 46,47,48,52

Jannarone v. W.T. Co., 65 N.J. Super. 472, 476-77, 168 A.2d 72 (App. Div. 1961)....................... 46

CASES: PAGE

Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43, 161 A.2d 717 (1960).................................. 62

Mau v. Unarco Industries, Inc., 481 N.E. 2d 1207, 1209, 135 Ill. App. 3d 736 (1985)................... 41

McDurfee v. Buck, 174 A. 679 (Vt. 1934)............. 50,51

Miller v. Estate of Kahn, 140 N.J. Super. 177, 355 A.2d 702, 706 (App. Div. 1976).................. 38

Morsemere Federal Savings & Loan Association v. Nicolaou, 206 N.J. Super. 637, 645 (App. Div. 1986). 52

Sears, Roebuck & Co. v. Camp, 124 N.J. Eq. 403, 1 A.2d 425, 429 (E. & A. 1938)...................... 52

State of New York, Hewlett v. Van Voorhis, 187 N.Y.S. 533 (Sup. Ct. App. Div. 1921)............ 40,41

Oakwood at Madison, Inc. v. Twp of Madison, 117 N.J. Super. 11 (Law 1971)....................... 5,6,21

Sosanie v. Pernetti Holding Corp., 115 N.J. Super 409, 279 A.2d 904, 907 (Ch. Div. 1971)........ 52

So. Burlington Cty NAACP v. Mount Laurel Twp. 92 N.J. 158 (1983).................................. 1,8

Stehr v. Sawyer, 40 N.J. 352, 192 A.2d 569, 571 (1963)... 53

Stonehurst at Freehold v. The Township Committee of Freehold, 139 N.J. Super. 311, 313, 353 A.2d 560 (Law Div. 1976)................................. 46

Tancredi v. Tancredi, 101 N.J. Super. 250, 244 A.2d 139 (App. Div. 1968)....................... 38

Tessmar v. Grosner 23 N.J. 193 (1957)............... 25

Urban League of Greater New Brunswick v. Borough of Carteret, 142 N.J. Super. 11 (Ch 1976)... 1,7

STATUTES	PAGE
N.J.S.A. 40:55D-6	54
N.J.S.A. 45:22A-23	54

COURT RULES

R.2:4-1(a) 3

R.2:4-3(e) 3

R.4:50-1 13,14

OTHER AUTHORITIES:

Vacation or Setting Aside of Judgment As to One or More of Multiple Parties, 42 A.L.R. 2d 1030, 1033-34 (1955) 41,46

Restatement of Contracts (Section 128) 47

Williston on Contracts (section 325 at 942-43) 47

Corpus Juris Secundum (17A Section 352 Contracts, p. 345.) 51

TABLE OF CONTENTS FOR APPENDIX

		PAGE
1.	Order Granting Partial Consolidation (July 2, 1984)	Pa-1
2.	Order Granting Partial Consolidation (August 3, 1984)	Pa-4
3.	Order and Judgment of Repose (January 24, 1986)	Pa-7
4.	Settlement Agreement among O & Y, Woodhaven, Urban League, Township of Old Bridge and O.B.M.U.A.	Pa-18
5.	Order Vacating Order and Judgment of Repose (October 6, 1987)	Pa-44
6.	Order Denying Motion for Reconsideration (April 21, 1988)	Pa-46
7.	Notice of Appeal of Woodhaven Village, Inc. (A-4335-87T3)	Pa-48
8.	Notice of Appeal O & Y Old Bridge Development Corp. (A-4572-87T3)	Pa-57
9.	Notice of Appeal of Urban League (Civic League) (A-4752-87T3)	Pa-63
10.	Order of James M. Havey, JAD Consolidating Appeals (December 23, 1988) ..	Pa-67
11.	Letter Confirming Extension of Time to Appellant's Brief on behalf of Woodhaven Village, Inc. (February 7, 1989)	Pa-69
12.	Letter of Planning Board Attorney with regard to Wetlands and Fair Share Number (May 30, 1986)	Pa-71

PAGE

13. Letter of Stewart M. Hutt to Eugene D. Serpentelli, A.J.S.C. (November 18, 1987) .. Pa-73

14. Letter of Eugene D. Serpentelli, A.J.S.C. to Stewart M. Hutt (December 1, 1987) Pa-75

15. Order and Judgment as to Old Bridge Township (July 13, 1984) Pa-78

16. Excerpt of Transcript of Compliance Hearing (January 24, 1986) Pa-82

17. Certification of Eugene Dunlop in Support of Motion to Set Aside Judgment (July 20, 1987) Pa-86

18. Excerpt of Transcript of Compliance Hearing (January 24, 1986) Pa-95

19. Letter of Stewart M. Hutt to George Raymond (August 31, 1987) Pa-98

20. Excerpt of Agreement between Old Bridge Sewer Authority, Woodhaven Village, and O & Y (Sewer Agreement) Pa-104

PROCEDURAL HISTORY

This matter 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) (Mount Laurel II). 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, Pa 1 to 3 and Order entered August 3, 1984 Pa 4 to 6). 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 (Pa 7 to 17) which order incorporated a Settlement Agreement (Pa 18 to 43) together with appendices.[1] 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 (Pa 44 to 45). That Order of October 6, 1987 also transferred the Township's Mount Laurel issues to the Council on Affordable Housing. On or about October 15, 1987, plaintiff

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1 Said Order and Judgment, Settlement Agreement and appendices are hereinafter referred to as the Settlement Document. This bound document is approximately 200 pages and, due to its length, is not included in Appellants' appendix. Separate copies of same are provided to the Court with this Brief.

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 (Pa 46 to 47).

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). See Notice of Appeal of Woodhaven Village, Inc. (Pa 48 to 56); Notice of Appeal of O & Y (Pa 51 to 62); and, Notice of Appeal of Urban League (Pa 63 to 66). Urban League is now known as Civic League.

Woodhaven moved this Court for an Order consolidating the three above referenced appeals by Notice of Motion dated November 18, 1988. Said Motion was granted by this Court by Order of the Honorable James M. Havey entered December 23, 1988 (Pa 67 to 68).

Written request was made by Woodhaven and granted, for a thirty (30) day extension of time for the filing of Appellants' Brief from February 6, 1989 to March 8, 1989. (Pa 69 to 70).

INTRODUCTION

This brief is submitted in support of Woodhaven's appeal of the Orders of the Hon. Eugene D. Serpentelli, A.J.S.C. entered October 6, 1987 (Pa 44 to 45) and April 21, 1988 (Pa 46 to 47) which Orders reopened the settlement achieved and approved by Judge Serpentelli on January 24, 1986 (Pa 7 to 17) after a full Mount Laurel compliance hearing. The within appeals are of grave import, both to the lower income housing population which would be served by the settlement and to the interests of the two developers, Woodhaven Village, Inc. (hereinafter "Woodhaven") and O & Y Old Bridge Development Corporation (hereinafter "O&Y").

If the lower court is not reversed and the Township were to receive the relief it seeks, the Township would be relieved of any obligation to construct lower income housing during the period of repose from Mount Laurel attacks. The properties owned by Woodhaven and O&Y, which have had economic value attached to them as a result of the zoning established by the court settlement, would be vulnerable to a rezoning at very low densities.

From an historical perspective, the Township's motion creates a sense of _deja vu_. As early as 1971, during the formative stages of the emerging Mt. Laurel doctrine, Old Bridge (then known as Madison Township) strenuously urged the court to rule that considerations of flooding, drainage and a desire to protect underground water supplies provided a rationale for the Township to escape any obligation to permit lower income housing. _Oakwood at Madison, Inc. v. Tp. of Madison_, 117 N.J. Super. 11, 17 (Law Div. 1971). Similarly, municipal fiscal concerns, such as encouraging nonresidential ratables and avoiding increased municipal service costs as a result of higher density housing, were asserted as putative defenses to inclusionary zoning. 117 N.J. Super. 15, 18. Both claims were rejected by Judge Furman as insufficient grounds to skirt the Township's constitutional duty to facilitate housing for all sectors of the regional community.

The Supreme Court affirmed the findings and holdings of the trial court, specifically addressing the sharply limited availability of environmental defenses:

> "Ecological and environmental considerations were also advanced by the municipality in _Mount Laurel_ to justify large lot zoning throughout the township. We point out there that while such factors and problems were always to be given consideration in zoning (see 3 Williams, _American Land Planning Law_ 66.12, pp. 30, 34-35 1975), 'the danger and impact must be substantial and very real (the construction of every building or the improvement of every plot has some environmental impact) -- not simply a makeweight to support

exclusionary zoning measures or preclude growth***'. 67 N.J. at 187" Oakwood at Madison, 72 N.J. 481, 544-545 (1977).

Furthermore, the Supreme Court expressed its impatience with the failure of this municipality to respond both timely and adequately to the demands of the law. The Court ordered very specific direct relief to be carried out "with the reasonable dispatch appropriate to the age of this litigation":

> Consideration bearing upon the public interest, justice to plaintiffs and efficient judicial administration preclude another generalized remand for another unsupervised effort by the defendant to produce a satisfactory ordinance. The focus of the judicial effort after six years of litigation must now be transferred from theorizing over zoning to assurance to the zoning opportunity of least cost housing. 72 N.J. at 552-553.

It is indeed ironic that a full decade later, after multiple judgments invalidating the municipality's zoning, there is still no resultant low income housing. The Township continues to fence and parry and to assert the self same manner of "defenses" it unsuccessfully presented sixteen years ago. There has been no tangible result from the multiple court directives.

The strategy of the Township in bringing the Motion to Set Aside the Settlement is clear. It did not seek a modification of the settlement judgment predicated upon newly known facts. Rather the Township intended, if successful on the trial court motion to set aside the settlement, to gain a

transfer to the Council on Affordable Housing in order to claim a zero lower income housing obligation. (See Letter of Thomas Norman to Hon. Eugene D. Serpentelli, A.J.S.C. dated May 30, 1986 (Pa 71 to 72). The effect would be to render the many years of litigation, expenses, study and analysis, and repeated court orders a nullity.

The true reasons for the unwillingness and arrant failure of the Township of Old Bridge to abide by clear directives of the courts over the past decade and a half may never be clearly laid before this Court. They lie in the shifting sands of the local political will and are obscured by different rationales expoused by different planners, public officials and their attorneys over the many years. However, the result of these efforts from the Township's perspective has been success. The Township has successfully avoided the actual construction of lower income housing. If this Court does not reverse the trial court, the Township will succeed once again. The New Jersey Supreme Court has addressed this failure to build lower income housing directly. In its discussion of the case of Urban League of Greater New Brunswick v. Borough of Carteret, 142 N.J. Super. 11 (Ch. Div. 1976), as part of the overall consolidated Mount Laurel cases, our Supreme Court held: "If, after eight years, the judiciary is powerless to do anything to encourage lower income housing in this protracted litigation because of rules we have devised, then either those

rules should be changed or enforcement of the obligation abandoned." So. Burlington County N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158, 341 (1983). We believe that the reasoning of the Supreme Court is as sound today as it was in 1983.

STATEMENT OF FACTS

Woodhaven owns a 1,455 acre tract of land located in the Township of Old Bridge. O & Y owns a 2,640 acre tract of land located in the Township of Old Bridge. In or about 1984 Woodhaven and O & Y filed separate lawsuits challenging on Mount Laurel grounds the validity of the Township's land development regulations. Those suits, eventually consolidated with the Urban League matter, were settled after extensive negotiations among the parties under the supervision of the Court-appointed Master. All parties "fully settled" all issues, including those concerning affordable housing. The settlement was entered by this Court on January 24, 1986, following a full-scale compliance hearing, during which a motion by the Township to transfer its Mount Laurel issues to the Council on Affordable Housing was denied. The Township did not appeal that denial.

1. The essence of the settlement among the parties, which settlement was embodied in the Settlement Document, was follows:

a) O & Y was permitted to build up to 10,560 units on its 2,640 acre tract. Ten (10%) percent of those

units (i.e., 1,056 units) were to be set aside for low and moderate income housing. O & Y was also permitted to build certain industrial/commercial development. (See, Settlement Agreement, V-A.1 and V-C) (Pa 29 and Pa 36).

b) Woodhaven was permitted to build up to 5,820 units on its 1,455 acre tract. Ten (10%) percent of those units (i.e., 582 units) were to be set aside for low and moderate income housing. Woodhaven was also permitted to build certain industrial/commercial development. (See, Settlement Agreement, V-A.2 and V-C.5) (Pa 29 and Pa 38).

c) At the time of settlement, the existing land development ordinance permitted Woodhaven (and similarly O & Y) four units per acre density. The parties settled on the basis of four units per acre. Therefore, the developers received no density bonus even though the settlement required a ten (10%) percent Mount Laurel Set Aside.

d) The Urban League plaintiff benefited by the settlement in that the Township's Mount Laurel Fair Share number was set and the mechanism by which that fair share number was to be satisfied was established.

e) Defendants benefited by the settlement in three ways: First, the trial court granted a judgment of repose from further Mount Laurel suits against the Township. Second, the Settlement Document allowed for a reduced fair share number of 1,668 units (Pa 8) from approximately 2,400

units. Third, defendant Township satisfied its fair share number without granting density increases from its existing land development ordinance.

f) The Settlement Document contained a Woodhaven Settlement Plan (See, Settlement Document, Appendix C, Plate B and Plate B-1). The Settlement Document also contained an O & Y Settlement Plan (See, Settlement Document, Appendix C, Plate A and Plate A-1). The Settlement Document specifically contemplated Planning Board review of these Plates. In addition, the Settlement Document contemplated that Planning Board review would result in approval, denial or modification of the Plates, and, further provided for specific procedures to be followed upon any of these three contingencies. (See, Settlement Agreement V-B.3). At the time the settlement was entered all parties thought that the Plates were workable, however, workability was to be established before the Planning Board during public hearings. (Appendix A to Settlement Agreement-A.13 Concept Plan Approval Hearings).

During the March/April 1986 Planning Board hearings on solely the O & Y Plates (i.e., Plates A and A-1), the proceedings were delayed in order for O & Y to obtain from the U.S. Army Corps of Engineers a determination of the extent of wetlands on the O & Y tract. It was subsequently determined

that approximately 1,459 acres of O & Y's 2,640 acre tract were wetlands (approximately 56%). T100. [2] O & Y originally contemplated 14 acres of Wetlands. The Planning Board hearings were terminated.

During the March/April 1986 Planning Board hearings on solely the Woodhaven Plates (i.e., Plates B and B-1), the proceedings were delayed in order for Woodhaven to establish the extent of wetlands on the tract as defined by the U.S. Army Corps of Engineers. (USACOE) For the purposes of the trial court hearing on defendants' motion to vacate the settlement, the parties stipulated that 490 acres of Woodhaven's 1,455 acres were wetlands. (approximately 30%). T100. Woodhaven had originally contemplated approximately 200 acres of Wetlands. The USACOE subsequently confirmed that Woodhaven's tract contains 401 acres of wetlands. (approximately 28%). The hearings on the Woodhaven Plates were terminated.

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[2] Transcript references in this manner refer to the transcript of Defendant's Motion to vacate the Final Judgment and settlement heard before Judge Serpentelli on September 14, 1987. Transcript references to the April 13, 1988 transcript of plaintiffs' motion for reconsideration appear as (Reconsideration T19) for example.

In December 1986 defendants moved to set aside the Order and Judgment of Repose entered January 24, 1986 (i.e., Settlement Document) and to transfer the entire matter to the Council on Affordable Housing (COAH). Defendants' motion was grounded in R.4:50-1. That is, the newly discovered evidence and/or mistake of fact as to the extent of wetlands precluded defendants from obtaining certain alleged benefits such as commercial development, a golf course on the O & Y tract and a roadway system.

Prior to the hearing on the defendants' motion, the court appointed master, Carla Lerman, resigned and the court appointed George Raymond as substituted master.

On September 14, 1987 defendants' motion was heard by Judge Serpentelli. During the hearing, Judge Serpentelli questioned the master, George Raymond, as to how "the plan" had been modified. (At that time O & Y had submitted a plan revised to account for the additional wetland acreage. The Master and the Court at that time, had not seen a Woodhaven plan revised to account for the additional wetland acreage). The master stated _inter alia_, that "this plan was very different from "the plan" incorporated into the settlement." (T95-22 to T99-8). (Note: Just prior to the September 14, 1987 hearing, O & Y had submitted both to the Court and to the Master, a plan revised to account for additional wetlands acreage. During the hearing, this plan was displayed on an

easel and questions were asked and answered with specific reference to this plan. The Court, as of this hearing date, had not seen a Woodhaven plan revised to account for additional wetlands acreage.)

The trial court decision granting defendants' motion to set aside the settlement is found in an oral opinion at T99 to T129. (Order entered October 6, 1987 Pa 44 to 45). The Court's opinion relies upon mutual mistake of fact and newly discovered evidence pursuant to Rule 4:50-1(a) and (b) respectively. Judge Serpentelli ruled that the extent of the Wetlands affects a material aspect of the settlement; that is, the ability of O & Y and Woodhaven to build the planned development as depicted in the Plates or at least some reasonable facsimile thereof. (T107-19 to T108-3).

2. Further, a request for modification of the Order and Judgment of Repose on the basis of Section III-A.3 (Reopening Clause) of the Settlement Agreement (Pa 25) was denied. The Court took the following view of the reopening clause:

> The reopener provided in relevant part for modification, based on impossibility of performance. Clearly, performance is as initially contemplated, is no longer possible, yet at various -- as various parties have argued, modifications were contemplated because of the size of the project and the fact that it would take 20 years to build.

> What might happen to the market and what regulations might come into play which would affect its ability to perform, were really what was covered by the reopener agreement as has been argued by the plaintiffs here.
>
> It would be disingenuous to argue that the parties contemplate having to totally revise the plans before any approvals were received.
>
> Really, what is proposed is not a modification, but it is a brand new plan. <u>Both developers admit the plans designated as Plates A and B are no longer viable due to the magnitude of the change and in light of what the Court believes the parties reasonably intended</u>, given the circumstances at the time the reopener clause does not cover the situation. (Emphasis added)

(T126-6 to T127-2)

The foregoing analysis of the Reopening Clause requires that the reopening clause was meant to cover a situation where the change in a plan constitutes a modification as opposed to a "wholesale" brand new plan. Woodhaven was never granted an opportunity during the trial court proceedings to present a factual comparison of Woodhaven's original Plates B and B-1 with plates which had been revised to account for the increase in wetlands area. The purposes of such a factual comparison would have been to demonstrate that Woodhaven's revised plan was not a wholesale brand new plan, but rather a plan modified within the contemplation of the parties.

The Trial Court vacated the judgment as to both O & Y and Woodhaven based upon <u>an assumption as to Woodhaven</u> which Woodhaven never had the opportunity to prove true or false. The Court's assumption is as follows:

> Woodhaven did not submit for the Court's review a new proposal, but clearly even though they state they will still provide the full build-out.
>
> Due to the fact that they have at least twice the amount of wetland they believed they had, they must be proposing a significant modification of their plan.
> (T115-7 to 12).

In addition to the foregoing holdings, the trial court rejected Woodhaven's argument that Woodhaven should be severed from O & Y if the judgment were to be vacated because of the vast amount of wetlands on O & Y's property. The trial court's <u>entire</u> discussion as to severability is as follows:

> Lastly, the plaintiff Woodhaven did argue that if the settlement is vacated as to O & Y, it need not be vacated as to Woodhaven for the reasons which I have stated, perhaps, in too much length.
>
> The defendant is entitled to a vacation as to both plaintiffs. The settlement with respect to the two parties is totally inter-related and inter-dependent.
>
> The defendant was induced to settle with two parties, based upon the total package because of what each could contribute towards an integrated development.
>
> Therefore, the vacation will apply to both of the plaintiffs.
>
> All right. Counsel can submit an order.
>
> MR. NORMAN: Thank you, your Honor.
> (T128-22 to 129-12).

Since the trial court's rulings were based upon an assumption that Woodhaven could not build its development as originally proposed and since the trial court gave Woodhaven's argument for severance short shrift, Woodhaven moved for a reconsideration and rehearing. Prior to the hearing on the Motion for Reconsideration and Rehearing, attorney for Woodhaven and Judge Serpentelli exchanged correspondence (Letter from Stewart M. Hutt to Judge Serpentelli dated November 18, 1987, Pa 73 to 74 and Letter from Judge Serpentelli to Stewart M. Hutt dated December 1, 1987, Pa 75 to 77). In its letter of December 1, 1987 the Court stated:

> *** Having received your letter of November 18, I am satisfied that there is no reason for this motion to be heard. The court was entirely aware that Woodhaven was a completely independent project. Furthermore, the court assumed for the purpose of the motion, that the Woodhaven project would not be substantially reduced due to the wetlands problem which existed in Old Bridge. Notwithstanding that fact, the court expressed clearly on the record that the Woodhaven project was an integral part of the overall settlement and could not be separated from O&Y. Based on that fact, I can see no reason asserted by you for reconsideration.
>
> I await your further response. ***
> (emphasis added) (Pa 75 to 76).

The December 1, 1987 letter from Judge Serpentelli was specifically incorporated into the record herein. (Reconsideration T39-1 to 4).

Since the <u>assumptions</u> upon which the trial court based its decision had not been tested and since there were no proofs submitted as to whether the O & Y and Woodhaven plans were integrated, Woodhaven went forward with its motion for reconsideration and rehearing. The trial court denied that motion. (Order entered April 21, 1988, Pa 46 to 47).

During the colloquy at the hearing of the motion for reconsideration and rehearing the trial court made it abundantly clear that the court's order vacating the settlement was based upon an assumption that Woodhaven's project would <u>not</u> be substantially reduced by wetlands and that, even so, the settlement must be vacated as to all parties. To wit:

> MR. HUTT: And if there was any doubt about that, we would have had Mr. Raymond in Court here this morning, because, frankly, as I started to say on your letter to me of December 1st, 1987, you in effect are saying you don't care whether it was a different plan or not because you say, having received your letter of November 18th -- get my letter out for November 18th -- "I am satisfied that there is no reason for motion to be heard."
>
> The Court was entirely aware that Woodhaven was a completely independent project. Furthermore, the Court assumed for purposes of the motion that the Woodhaven project would not be substantially reduced due to the wetland problem which existed in Old Bridge.
>
> Notwithstanding that fact, the Court expressed clearly on the record that the Woodhaven project was an integral part of the overall settlement and could not be separated from O & Y.
>
> Based on that fact, I could see no reason asserted by you for reasonable condition.

So, you in your mind, because of my letter of November 18th, I think -- have you got it there? There was a copy that I sent to Raymond --

THE COURT: Yes. In other words, yes, your November 18th letter is attached to my response to you.

At the oral argument we did not have the extent or scope of possible wetland impact on Woodhaven for sure, although there were representations made, estimates, guesses, and they are referred to in the record rather clearly.

Basically, what I was saying was I didn't care.

MR. HUTT: Exactly.

THE COURT: It could be fully buildable as far as I was concerned. <u>It could be fully buildable in accordance with the plan that you gave to the Town, and nonetheless, I ruled that the judgment should be vacated</u>.

(Reconsideration T15-19 to T17-5). (emphasis added)

The trial court has made clear that it assumed that Woodhaven's Plan, revised as a result of additional wetlands, did not substantially differ from the plan proposed in the Settlement Documents (Reconsideration T23-2 to T24-2).

In summary, the trial court ruled that even if Woodhaven's Settlement Plan (Plates B and B-1) were unaffected by the additional wetland acreage, the Settlement Judgment must be set aside as to Woodhaven because the Woodhaven Plan was, in the view of trial court, integral to the O & Y Plan (Plates A and A-1) which O & Y plans were found to be no longer viable.

The trial court erred and must be reversed because Woodhaven never had an opportunity to address the issue of

whether the O & Y and Woodhaven plans were inter-dependent and/or integrated. The record below is void of any showing that the "two plans" were intended to be "one plan".

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED SINCE EQUITABLE AND PUBLIC POLICY REASONS STRONGLY ARGUE AGAINST THE REOPENING OF THE SETTLEMENT JUDGMENT

In Department of The Public Advocate v. The New Jersey BPU, 206 N.J. Super. 523 (App. Div. 1985), the Appellate Division noted that "second thoughts are entitled to no weight as against our policy to favor any settlement.... Subsequent events which should have been in the contemplation of the parties as possible contingencies when they entered into the contract will not excuse performance." Id. at 530.

If the trial court is not reversed the Township will get another bite at the apple. The Township had been sued on exclusionary zoning grounds by the Urban League (1973), by the developers of Oakwood at Madison [See Oakwood at Madison, Inc. v. Madison Tp., 117 N.J. Super. 11 (Law Div. 1971)], by O&Y in 1981 and by Woodhaven and O&Y in 1984. The Township, ostensibly in good faith, settled each of these lawsuits by agreeing to modify those portions of its land use regulations which made it impossible to construct affordable housing. The result of these 16 years of litigation, however, is that no such affordable housing has been constructed in Old Bridge. Furthermore, if the trial court's decision is not reversed,

there will continue to be no construction of affordable housing in Old Bridge.

In 1984, the Urban League moved to enforce its rights under the earlier (pre-Mount Laurel II) settlement of its 1973 case. Old Bridge had failed to rezone in accordance with that decision. Further, under the "consensus methodology" set forth in AMG Realty Co. v. Warren Tp., 207 N.J. Super. 388 (Law Div. 1984), the Urban League and the Township agreed that the Township's fair share obligation would be 2,414 affordable housing units (Court Order entered July 13, 1984). As part of its "quid pro quo" in the July 1984 settlement, the Township received some credits for units which had been developed in 1980. Thus, the July 13, 1984 Court Order contained an agreement by Old Bridge Township to provide realistic opportunities for the construction of 2,135 affordable housing units. (Pa 78 to 81)

As a result of intensive bargaining among the parties in the present suit, the Urban League agreed to a reduction to the Township's affordable housing obligation to 1,668 units. (Order and Judgment of Repose and Settlement Agreement (Pa 7 to 17)). This reduction of its obligation (to 1668) induced the Township to enter into the settlement. At the time of the compliance hearing, the Court carefully examined the number and accepted it.

Indeed, as Mr. Convery, then Township attorney,

commented at the proceedings of January 24, 1986: "I think all parties agree that the figure in the order represents the obligation of 1,668 units for the next six years following entry of the order." (pp. 7-9 of the transcript of the compliance hearing (Pa 82 to 85)).

Based upon the COAH fair share numbers for Old Bridge (approximately 417 units), the Township requested (and was successful in) reopening the case, transferring to the Council on Affordable Housing and evading its obligations -- all on the basis of second thoughts and clearly outside the settled law of the State.

It is instructive to read the certification of Eugene Dunlop, provided by the Township Attorney in support of the trial court Motion (Pa 86 to 94). At numbered paragraph 7 of Mr. Dunlop's certification, it is quite clear that one of the major reasons why the Township accepted the settlement of January 24, 1986 was that it was convinced that the settlement offered the best solution to its affordable housing obligation, and that the 1,668 number was the "best deal" it was likely to achieve. The fact that another administrative agency with a different emphasis later proposes a lower "fair share" number than that accepted by the Township in a <u>final judgment</u> is legally irrelevant.

It should also be pointed out that at the January 24, 1986 compliance hearing, the Township brought a motion to

transfer the case to COAH. That motion was denied on the grounds that the case was settled and there was nothing to transfer. The Court noted that "the town does intend this to be a complete and final settlement of all litigation..." (Transcript of Compliance Hearing of January 24, 1986, p.80 (Pa 95 to 97)), which specifically included the litigation brought by Urban League to obtain "realistic opportunities" for the construction of the agreed-upon 1,668 units of affordable housing.

The Township entered into an agreement based on the facts as they existed at the time of the agreement. Faced with the possibility of having to build over 2,000 affordable housing units, the defendants jumped at the chance to reduce this figure to 1,668 units. Now, as the result of COAH's determination of only 417 units in Old Bridge's fair share, the defendants seek to breach their agreement in order to further reduce the number of affordable housing units to be built in Old Bridge.

Therefore, the trial court erred since the vacation of the settlement is contrary to the law and policy of this State.

POINT II

THE TRIAL COURT ERRED IN FAILING TO APPLY THE "REOPENING CLAUSE" TO MODIFY THE AGREEMENT AMONG THE PARTIES

The Reopening Clause (III-A.3 of the Settlement Agreement) (Pa 25), sets forth the following:

> 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 adoped administrative regulation of a state agency acting under statutory authority, or based on no reasonable possibility of performance. (emphasis added)

The trial court analyzed the above quoted Reopening Clause and found same to be inapplicable to the issues raised by defendants motion to vacate the settlement judgment. That analysis is found at T125-18 to T127-2 as follows:

> With this in mind I return to the reopener clause and whether it covers the present situation.
>
> In the landmark case of Tessmar v. Grosner 23 N.J. 193 (1957), Chief Justice Vanderbilt said, "In the quest for the common intention of the parties to a contract, the court must consider the relations of the parties, the attendant circumstances and the objects they were trying to obtain.
>
> An agreement must be construed in the context of the circumstances under which it was entered into, and it must be accorded a rationale meaning in keeping with the express general purpose."
>
> At page 201.

> The reopener provided in relevant part for modification, based on impossibility of performance. Clearly, performance is as initially contemplated, is no longer possible, yet at various -- as various parties have argued, modifications were contemplated because of the size of the project and the fact that it would take 20 years to build.
>
> What might happen to the market and what regulations might come into play which would affect its ability to perform, were really what was covered by the reopener agreement as had been argued by the plaintiffs here.
>
> It would be disingenuous to argue that the parties contemplate having to totally revise the plans before any approvals were received.
>
> Really, what is proposed is not a modification, but it is a brand new plan. Both developers admit the plans designated as Plate A and B are no longer viable due to the magnitude of the change and in light of what the Court believes the parties reasonably intended, given the circumstances at the time the reopener clause does not cover the situation.

As the above quoted ruling reveals, the trial court interpreted the Reopening Clause to allow for modifications of the Settlement Agreement based upon impossibility of performance and that performance herein is no longer possible (T126-6 to 12). Further, the trial court found that since totally new plates were proposed, as opposed to modified plates, the reopening clause does not apply to the facts here (T126-18 to T127-2).

The trial court erred in the above analysis. The court incorrectly assumed that Woodhaven would be unable to perform

pursuant to the Settlement Document without adopting a "brand new plan". There were no proofs before the court on this issue. Woodhaven never had the opportunity to demonstrate that its plan could be modified and still be both viable and within the contemplation of the parties. Since the trial court ruled that a modification of the Plates (as opposed to an evisceration of the Plates) would invoke the terms of the Reopening Clause, the trial court should have given Woodhaven a chance to prove (and the Master a change to analyze) whether Plates B and B-1 were modified or eviscerated by the existence of additional wetlands. Therefore, this Court must reverse the trial court and, at a minimum, require a hearing on this issue.

Woodhaven's site is approximately 1,455 acres. Plates B and B-1 in the Settlement Document were designed at four (4) units per acre for a total of 5820 units taking into account approximately 200 acres of wetlands. The U.S. Army Corps of Engineers has confirmed that Woodhaven's property contains approximately 401 acres of wetlands. (T115-7 to 12, wherein the trial court recognized that Woodhaven's wetland acreage is approximately twice the amount set forth in Plates B and B-1). Woodhaven therefore has an additional 200 acres of wetlands which represents approximately 13.7% of the site. As a frame of reference, the settlement agreement and the Plates provide for variations as high as 20%. (See Plate B-1 and Appendix C of Settlement Agreement C206). The trial court, had it

properly addressed this issue, could have modified the settlement agreement slightly to allow for a modification of Plate B and B-1 which was contemplated by the parties. For example, 200 acres of additional wetlands multiplied by a density of four (4) units per acre yield 800 less units. Certainly, Woodhaven's plan is only "modified" and not devastated by a reduction in units from 5820 units to 5020 units.

The trial court did not give Woodhaven a factual hearing on the issue of modification. The trial court assumed that since O & Y was wiped out by Wetlands so must be Woodhaven. This was clearly in error.

POINT III

THE TRIAL COURT FAILED TO PROPERLY AND FAIRLY ADDRESS WHETHER WOODHAVEN'S DEVELOPMENT PLAN HAD BEEN SUBSTANTIALLY MODIFIED.

The trial court has overlooked the true nature of Woodhaven's revised plan in that the revised plan (even with additional wetlands acreage) still gives defendants all that was promised.

Generally, the trial court simply "lumped" Woodhaven's revised plan with that of O & Y, thereby assuming that, due to increased wetlands acreage, Woodhaven's development would be unable to provide the benefits promised by Woodhaven to defendants. The transcript of hearing on Motion to Vacate Judgment (September 14, 1987) is replete with examples of findings which are incorrectly presumed to apply to both Woodhaven and O & Y. For example:

1. RAYMOND TESTIMONY: During oral argument of Defendant's Motion to Vacate and Transfer, the Court questioned the Master, George Raymond (T95 to T99). At that time everyone's attention was directed at a certain map on an easel in the Courtroom. The map on the easel to which everyone's attention was directed and to which Mr. Raymond's statements were focused is entitled "Community Plan, Olympia & York Planned Development, Township of Old Bridge, Middlesex County,

N.J.", dated September 9, 1987 and prepared by Sullivan Assoc., O & Y's Planner. This plan was not received by Woodhaven until the morning of the day of oral argument (September 14, 1987). Same could not have been received by the Master any sooner (if received at all by the Master prior to oral argument). Further, the Court did not have the opportunity to review the plan to which Mr. Raymond's comments were directed (T11-4 to 14). The Court's decision hinged upon a plan that the Court, the Master and the parties either never reviewed or only had hours to review before the hearing. Throughout the Court's questioning of George Raymond and throughout Mr. Raymond's responses, there are references to "the plan" (T96-4); "this plan" (T96-6); "the plan is a sound plan" (T97-19); "When you say it is very different, in what respect do you find it different" (T97-23 to 24); and, "the plan" (T97-25). Further, there is a generalized reference to open space design (T96-25 to T98-16) and to commercial uses (T98-17 to T99-8). A REVIEW OF THIS TRANSCRIPT SECTION REVEALS THAT NO SPECIFIC FINDINGS ARE MADE WITH REGARD TO WOODHAVEN. WOODHAVEN'S PLAN IS SIMPLY LUMPED WITH THE O & Y PLAN AND ASSUMED TO BE SUBSTANTIALLY CHANGED.

Also, the trial court indicated that the Court had several months earlier requested the parties to supply Mr. Raymond with sufficient information for him to judge the scope and extent of the modifications involved (T95-9 to 15).

Woodhaven takes issue with this statement since Woodhaven was never requested to supply documentation to the Master directed at the scope and extent of modifications to the original Woodhaven plates nor was the Master charged with the duty to judge the scope and extent of the modifications. Woodhaven supplied the Master with documentation of the continued developability and viability of the Woodhaven site (even with the wetlands). See, letter from Stewart M. Hutt, Esq. to George Raymond dated August 31, 1987, (Pa 98 to 103). (Woodhaven had submitted to the Master a revised Plate B and revised Planning report; Woodhaven was prepared to submit a revised plate B-1). Woodhaven focused upon whether its land could still be developed with a "good" plan and did not address whether the new plate constitutes a substantial change from the original plate.

Moreover, all parties, including defendants, believed that the issue before the Court was whether the developers could build a "well planned" development and not whether the developers' new proposals represented substantial changes from the original plans. For example, the Township attorney in his letter reply brief dated August 11, 1987, stated that:

> The main point here is that the extent of the wetlands clearly indicate that we are dealing with environmentally sensitive land, and that it would be a manifest injustice to force the Township of Old Bridge, and its residents, to accept

> development which would negatively impact on the land in question, and constitute extremely poor planning.

Clearly, everyone was focusing on the "good planning" vs. "bad planning" issue while the Court decided the motion on the "substantial change" issue.

The trial court decided the motion to vacate on the issue of "substantial modification" of the plates. Woodhaven was not afforded an opportunity to be heard on that issue.

That is why Woodhaven requested a rehearing and reconsideration. The trial court erred in denying Woodhaven's Motion for Reconsideration and Rehearing by entering the Order of April 21, 1988 (Pa 46 to 47). If Woodhaven had been requested to supply documentation as to why Woodhaven's revised plan provides the same benefits as the original plan, Woodhaven would have had an opportunity to comply. However, under the circumstances, the Court made substantial findings and reached weighty conclusions as to Woodhaven without the benefit of the relevant facts.

2. THE COURT further stated:

> Woodhaven did not submit for the Court's review a new proposal, but clearly even though they state they will still provide the full build-out.
>
> Due to the fact that they have at least twice the amount of wetland they believe they had, they must be proposing a significant modification of their plan.
>
> This review of the various changes was undertaken to illustrate the extent of change now proposed and

> to consider the same in light of the requirements of the rule under which the defendants move, that the new evidence be such as would have changed the result.
>
> It is clear that the plans are greatly changed. Mr. Raymond indicated in our brief discussion on the record that this is a very different plan, and in the Court's judgment it appears to be of such a magnitude as would compel the Court to conclude that it could have and would have changed the result.

(T115-7 to 23). (Emphasis added)

The trial court never requested the parties to submit documentation directed at the issue of comparing original plan against revised plan for determination of substantial "modification." (as distinguished from "developability"). Therefore, the trial court overlooked material matters of fact. The transcript makes clear that, with regard to the magnitude of the changes and the benefits lost, the Court was addressing only the O & Y plan, not Woodhaven's Plan. The lower court repeatedly makes reference to "the February 1986 plans" and the "May 1987 plans" (T115-3 to 6). These are O & Y plans. There are no Woodhaven plans with these dates. The Court states that it did not have the revised Woodhaven plan for review. Clearly, if the trial court did not have the revised Woodhaven plan, it must have been referring only to the revised O & Y plan in ruling that a substantial change has occurred.

It is incorrect to assume that because Woodhaven's

wetland acres have doubled, Woodhaven would be unable to deliver the benefits for which the defendant's bargained. Further, the reference to Mr. Raymond's testimony shows that the trial court never distinguished the Woodhaven plan from the O & Y plan. Mr. Raymond was undoubtedly referring <u>only</u> to the O & Y plan when he concluded that the "plan" is substantially changed. Clearly, as will be set forth below, the plates were intended to be and are <u>independent</u>.

3. <u>THE COURT</u> stated:

> The parties contemplated that there would be a reduction, but they didn't contemplate that there would be a <u>reduction in half</u> the proposed development which would result in a wholesale modification of the plan even before, by the way the first approval was granted.

(T116-9 to 14) (emphasis added)

The foregoing quote clearly refers to the O & Y plan and not the Woodhaven plan since it was O & Y's site that was reduced in half by Wetlands acreage and not the Woodhaven site. Woodhaven's plan, revised as a result of the additional wetland acreage does not show any reduction in the proposed development and does not show wholesale modification. The revised plan is substantially similar to the original plan embodied in the Plates B and B-1. Woodhaven should have been afforded the opportunity to prove this true.

4. <u>THE COURT</u> stated:

> The magnitude of the change, and particularly at the very initial step of development in the Court's opinion results <u>in a totally new plan</u>, be it

> appropriate, be it sound planning, it is not what we have when we began and it is not in any sense truly comparable to what we have when we began.

(T124-13 to 18) (Emphasis added)

Again, the Woodhaven revised plan is not a substantial change from the original plate and Woodhaven is entitled at the very least to a hearing on whether Woodhaven's Plates have substantially changed.

5. <u>THE COURT</u> stated:

> Really, what is proposed is not a modification, but it is a brand new plan. Both developers <u>admit</u> the plans designated as Plates A and B are no longer viable due to the magnitude of the change and in light of what the Court believes the parties reasonably intended, given the circumstances at the time the reopener clause does not cover the situation.

(T126-21 to T127-2).

In fact, the Woodhaven Plates <u>are viable</u> with only slight modification (the nature of which was in the contemplation of the parties at time of settlement). Woodhaven should have been given an opportunity to prove this to the trial court.

The foregoing represent examples of how Woodhaven's revised plan <u>was assumed</u>, by the trial court, to be a substantial modification from its original plan, how that assumption was in large part due to the fact that an individual analysis of the Woodhaven plan was not made, and how the Woodhaven plan was "assumed guilty by association" with the O &

Y plan. Based upon the foregoing overlooked matters, Woodhaven respectfully requests this court to reverse the Order of October 6, 1987 (and the Reconsideration Order of April 21, 1988) with respect to Woodhaven.

As argued above, the issue with regard to vacating the Order and Judgment of Repose reduces to whether or not Woodhaven's Plates have substantially changed so as to prevent the benefits for which the defendants bargained. Woodhaven's revised Plates submitted to the court prior to the rehearing have not substantially changed from the original and the revised Plates provide the defendants with all benefits promised by Woodhaven. The problem is that Woodhaven never had the benefit of a fair hearing because the trial court wrongfully assumed Woodhaven's Plates to be substantially changed.

Moreover, the Master has neither reported upon nor testified as to the issue of whether Woodhaven's revised Plates constitute a substantial modification from the original Plates. (i.e., whether or not, a Woodhaven plan, revised as a result of wetlands acreage provides the Township with the benefits of its bargain with Woodhaven) The Court agreed, questioning whether the plaintiffs are in a position to fully inform Mr. Raymond (T95-22 to 24) and whether Mr. Raymond is in a position to definitely state how the "plan has been modified" (T96-2 to 5). Such a report or testimony by the Master as to

the Woodhaven facts with regard to this issue is a crucial matter which the trial court has overlooked. Inasmuch as the trial court has overlooked (and failed to conduct a hearing on) Woodhaven's ability to perform pusuant to the Settlement Document, Woodhaven respectfully requests this Court to reverse the trial court.

There is no factual record establishing the likelihood of nonperformance by Woodhaven. The trial court stated specifically, "I am not going to get into testimony." T97-22. But Woodhaven is entitled to a hearing on the facts. Woodhaven and Old Bridge are in direct conflict on Woodhaven's ability to perform in accordance with the Settlement Agreement. When there are "diametrically opposed contentions of fact," a hearing is appropriate. Hallberg v. Hallberg, 113 N.J. Super. 205, 273 A.2d 389, 391 (App. Div. 1971). Hallberg was a post-divorce matrimonial dispute in which the parties had vastly different versions of their financial status. The parties moved for modification of their property settlement agreement. The trial court decided their motions on the basis of depositions and affidavits. The Appellate Division reversed, stating:

> The Court should have set the matter down for a plenary hearing and taken oral testimony. * * * Whenever there is presented to the Court a motion to modify the terms of a judgment and the motion makes a prima facie showing that the moving party

> is entitled to relief and there are contested issues of facts, the motion should not be disposed of by affidavits, answers to interrogatories and depositions. There should be a plenary hearing, the trial court must find the facts both subsidiary and ultimate and 'state its conclusions of law thereon.' R. 1:7-4. 273 A.2d

To the same effect is Miller v. Estate of Kahn, 140 N.J. Super. 177, 355 A.2d 702, 706 (App. Div. 1976). In Miller, an assault case, the plaintiff successfully appealed the trial court's order denying her motion to set aside a dismissal previously entered upon a stipulation; the court, relying on Hallberg, said:

> Should contested issues of relevant fact develop, the matter should not be determined on affidavits, but a plenary hearing should be afforded. 355 A.2d at 706.

See also, Tancredi v. Tancredi, 101 N.J. Super. 250, 244 A.2d 139 (App. Div. 1968) (another post divorce matrimonial dispute) in which the Court emphasized the need for oral testimony when there is a genuine issue as to the material facts. 244 A.2d at 140-141. Hallberg, Miller, and Tancredi all support Woodhaven's position that a full hearing on the facts was necessary before the trial court could render judgment vacating the Settlement as to Woodhaven.

POINT IV

THE TRIAL COURT ERRED IN REFUSING TO LEAVE THE SETTLEMENT JUDGMENT UNDISTURBED WITH REGARD TO WOODHAVEN VILLAGE, INC. EVEN IF SAME WAS VACATED AS TO O & Y

The lower court wrongfully rejected Woodhaven's argument that the settlement could be vacated solely as to O & Y and not as to Woodhaven:

> Lastly, the plaintiff Woodhaven did argue that if the settlement is vacated as to O & Y, it need not be vacated as to Woodhaven for the reasons which I have stated, perhaps, in too much length.
>
> The defendant is entitled to a vacation as to both plaintiffs. The settlement with respect to the two parties is totally inter-related and interdependent.
>
> The defendant was induced to settle with two parties, <u>based upon the total package because of what each could contribute towards an integrated development.</u>
>
> Therefore, the vacation will apply to both of the plaintiffs.

(T128-22 to T129-10) (emphasis added).

The trial court rested the above ruling on the assumption that: (A) defendants' settlement with Woodhaven is totally "interdependent" and "interrelated" with defendant's settlement with O & Y; and, (B) that defendants were induced to settle

with the two plaintiffs based upon what each plaintiff could contribute towards an "integrated development."

A. <u>The Trial Court had the power to vacate as to O & Y and not as to Woodhaven because Woodhaven's rights under the Settlement were several.</u>

The trial court had the power to vacate the judgment with regard to O&Y and to maintain the status quo with regard to Woodhaven. The trial court erred in refusing to recognize this. There is no requirement that a vacation of a judgment as to one party necessitates similar treatment to the other parties.

Although no New Jersey case deals explicitly with the subject, there are a number of jurisdictions which permit the vacation of a judgment "as to less than all of the parties against whom it was rendered." 46 Am Jur 2d 844 and cases cited therein. In <u>State of New York, Hewlett v. Van Voorhis</u>, 187 N.Y.S. 533 (Sup. Ct. App. Div. 1921) the Court held that the dismissal of an action against one defendant did not vacate a judgment against a second defendant, saying:

> The rule [is] that where a judgment consists of distinct parts so separate and independent in form and nature as to be easily severed, and each is, in fact, a distinct adjudication, on appeal an adjudication not affected by error may be affirmed and an adjudication affected by error may be reversed . . .

quoting City of Buffalo v. D.L. 7 W. R. Co., 176 N.Y. 308, 68 N.E. 587 (1903). See also Gilbert v. Stanton Brewery, Inc., 295 N.Y. 270 272 (C.A. 1946), allowing severance where there is error of law underlying one judgment.

An Illinois court also recognized the power to set aside a judgment as to fewer than all the parties. Handley v. Unarco Industries, Inc., 463 N.E. 2d 1011, 1016, 124 Ill. App. 3d 56 (1984). Also rejecting the unitary judgment rule are Mau v. Unarco Industries, Inc., 481 N.E. 2d 1207, 1209, 135 Ill. App. 3d 736 (1985) and Chmielewski v. Marich, 2 Ill. 2d 568, 119 N.E. 2d 247, 251 (1954). Altogether, some 22 jurisdictions permit the Court the power of partial vacation. See, Annotation, Vacation or Setting Aside of Judgment As to One or More of Multiple Parties, 42 A.L.R. 2d 1030, 1033-34 (1955).

Thus, the general rule as to the effect of vacating part of a Judgment and the efficacy of the remainder of the Judgment is well set forth by the Supreme Court of Illinois in Chmielewski, supra. as follows:

> We hold, therefore, that when a judgment or decree against two or more defendants is vacated as to one of them, it need not for that reason alone be vacated as to any of the others, and should not be vacated as to any of the others unless it appears that because of an interdependence of the rights of the defendants or because of other special factors, it would be prejudicial and inequitable to leave the judgment standing against them.

From the above, it can be seen that there has to be a

factual examination to determine whether Judgment must be vacated in whole or can be vacated in part. An analysis of the facts and documents in the instant case show that there is no interdependence of the rights of the Township or prejudice to the Township if the Judgment was vacated against O&Y and not against Woodhaven, for the following reasons:

1. The fact of the matter is Woodhaven's Mount Laurel lawsuit is a separate and independent lawsuit from O&Y's lawsuit, including having separate Docket numbers, that were consolidated only for the purposes of convenience. In other words, the two developments and the two developers were not suing as a "unit", or as some type of joint venture with an overall development plan.

2. Page 2 of the Settlement Judgment (Pa 9) specifically provides separate Mount Laurel set asides for each plaintiff, to wit: 260 units for Woodhaven and 500 for O&Y.

3. There are separate and distinct land use plates for each developer, to wit: Plates A and A-1 for O&Y, and Plates B and B-1 for Woodhaven.

Moreover, page 2 of the Judgment (Pa 9) provides for separate hearings for each set of plates for each developer.

4. Page 12 of the Settlement Agreement (Pa 29) sets forth different vesting for respective lands of the two developers and refers to separate "Map 1" for O&Y and "Map 2" for Woodhaven, and allows for each of them respectively to

acquire additional lands (out parcels) from time to time, as shown on said respective maps.

5. Page 3 of the Settlement Agreement V-B.3a. (Pa 20) describes each developer's respective rights to develop their lands in accordance with their respective settlement plans (Plates A & B). It is significant that sub-paragraph b. of V-B.3a (Pa 30) states:

> The Planning Board shall issue its decisions on Plates A and B simultaneously ....

Nowhere does the Settlement say, as it could have said, that if one developer's plan were unsatisfactory, the other developer could not proceed. In fact, the contrary Is true. The Settlement Document provides explicitly for the situation at hand. For example, sub-paragraphs C & D of said Section specifically provide that the Planning Board could approve one developer's plate and at the same time reject another developer's plate, in which case, the developer whose plate was rejected could go through an "appeal" process. Moreover, V-B.3b. (Pa 31) specifically provides, inter alia:

> ...the developer or developers whose plate 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;....

Again, it is important to note that the right of a particular developer to proceed is not dependent on the right of the other developer to proceed.

6. As to commercial development, there is a specific provision as to Woodhaven, (Settlement Agreement V-C.5 (Pa 38)), which provides that it shall have the right to construct on 73 commercial acres, conditioned upon satisfying the regulatory standards set forth in the Appendices. Moreover, there are site specific provisions that relate solely to O&Y (Settlement Agreement V-C.1 to V-C.3) (Pa 36 to 37).

Thus, it can be seen that whether or not O&Y can build in accordance with the Settlement Document, either because the Settlement Judgment is vacated as to O&Y, or because of physical impossibilities, or for any other reason, there is no reason why Woodhaven shouldn't get the "benefit of its bargain" and be allowed to proceed with its development, in accordance with the terms of the Settlement Document, including, but not limited to, all the specific standards set forth therein, such as the construction of sewer and water systems, infrastructure, etc.

(The converse, of course, would be true for O&Y if for some reason Woodhaven never proceeded with the construction of its development, and O&Y was in the position to proceed with its construction).

From the other point of view, there has been no action by any of the plaintiffs, including the Urban League, to set aside the "benefits of the Township's bargain". To wit: the Township will still have a Judgment of Repose against Mount Laurel suits, even if this Court affirms the vacation of the Settlement Judgment as to O&Y, because the Township obtained this benefit in its settlement with Woodhaven.

In short, there is nothing in the Settlement Judgment or Settlement Agreement which states that if one developer does not proceed, for whatever reason, that the other developers' rights are affected. To the contrary, the Settlement Judgment and Settlement Agreement treats each developer separately, albeit, in many respects they are treated in a similar manner.

The lower Court erred in that the Settlement Judgment as to Woodhaven should not be vacated even if it is vacated as to O&Y since the two developers (i.e., Woodhaven and O&Y) struck separate bargains with defendants.

The rule of Chmielewski v. Marich, 2 Ill. 2d 568, 119 N.E. 2d 247 (1954) is followed in the great majority of jurisdictions which have considered the issue:

> We hold, therefore, that when a judgment or decree against two or more defendants is vacated as to one of them, it need not for that reason alone be vacated as to any of the others, and should not be vacated as to any of the others unless it appears

> that because of an interdependence of rights of the defendants or because of other special factors, it would be prejudicial and inequitable to leave the judgment standing against them. 119 N.E. 2d at 251. (Emphasis added.)

See also, Annotation, Vacation or Setting Aside of Judgment As to One or More of Multiple Parties, 42 A.L.R.2d 1030, 1033-34 (1955). In the instant case, there is no "interdependence of rights" of O & Y and Woodhaven. No harm accrues to O & Y if the judgment is left standing as to Woodhaven. Nor does any harm accrue to Old Bridge, which will get what it bargained for.

The judgment and stipulation may be viewed as a contract. T122-24 to T123-7, citing Stonehurst at Freehold v. The Township Committee of Freehold, 139 N.J. Super. 311, 313, 353 A.2d 560 (Law Div. 1976). See also Jannarone v. W.T. Co., 65 N.J. Super. 472, 476-77, 168 A.2d 72 (App. Div. 1961). The contract, however, is not joint, as the trial court appears to have believed, but several. It is the several nature of Woodhaven's contractual rights which justifies the vacation of the judgment only as to O & Y.

Numerous cases have defined "several". In Hughes v. Thurman, 213 Md. 169, 131 A.2d 479 (1957), the plaintiff was one of three consultants who had an oral personal services contract with the defendant. These three, Fenneman, Norris and Thurman, rendered services; only one, Thurman, sued. The Court stated:

> [t]he considerations furnished by Fennerman, Norris and Thurman were quite distinct. Primarily, Fennerman was the defendant's counsel . . . . Norris was an expert advisor . . . . and Thurman might be briefly described as a contact man seeking to develop new business. Id. at 483.

The defendants argued that their liability was to the three jointly, and not to any one plaintiff individually. The court in Hughes relied on Section 128 of the Restatement of Contracts which specifies that if the parties have not otherwise expressed an intention then the "rights are several if the interest of the obligees in the performance of the promise are distinct." 131 A.2d at 482. That court cited Williston on Contracts (section 325 at 942-43) as authority for the rule that "where the consideration furnished by obligees is several, their interests may prima facie be regarded as several and not joint, if other features of the contract do not clearly conflict with this interpretation." 131 A.2d at 483. Applying Hughes, the interests of Woodhaven and O & Y would be several because they are "distinct" and the consideration "furnished" was separate. Woodhaven undertook separate obligations which were clearly defined in the Settlement Document.

In Becker v. Kelsey, 9 N.J. Misc. 1265, 157 A. 177 (1931), the Supreme Court reviewed a motion to strike the answer in a dispute over a three-party contract for the sale of property. The property was the subject of a foreclosure action

by the Summit Building and Loan Association, a non-party to the contract, but a plaintiff along with Becker. Becker agreed to bid on the premises. Margulies agreed to accept a second mortgage. Ludwig and Kelsey agreed to buy the premises from Becker, and execute a mortgage to Summit. Ludwig and Kelsey refused to perform. Becker and Summit sued. The defendants answered that Margulies had covenanted jointly with Becker and was a necessary party to the action. The Court stated: "...[W]here a contract assigns to each of several parties his several duties and does not bind them and make them responsible individually for the whole result to be jointly accomplished, the contract in so far as such parties are concerned is several." 157 A. at 190. (Emphasis added.) As in Hughes, supra, Becker asserts that "where the consideration furnished by obligees is several and not joint, the interest of the obligees may, prima facie, be regarded as several and not joint." Id. Compare the situation in Alpaugh v. Wood, 23 N.J.L. 638, 23 A. 261 (1891) in which Alpaugh and Magowan employed Wood and Barlow "to superintend and manage the manufacturing part of the business of said pottery . . . taking entire charge of the works ..." 23 A. at 261. The plaintiffs sued for breach of contract. The defendants argued "that the obligations imposed upon them by this contract are not joint, but several only." 23 A. at 262. The Court found that the contract was joint:

> This covenant does not assign to each of the defendants his several duties, nor require from either the exercise of skill and diligence in any special department of the work, but binds both to the due management of the entire manufacturing business . . . 23 A. at 263. (Emphasis added)

In the instant case, Woodhaven and O & Y have not undertaken any joint obligation that "binds both". Their obligations are spelled out separately and at length. Their enterprises are separate and distinct and neither is responsible for the obligations of the other. This is obvious from a reading of the Settlement Judgment and Settlement Agreement.

In Anderson v. Nichols, 107 A. 116 (Vt. 1919), defendant, apparently a private individual engaged in the transmission of electricity, promised the eight plaintiffs (in one contract) to pay them for electrical hook-ups on a transmission line but refused to pay the plaintiffs their pro rata shares of the hook-up fees paid by third parties. The plaintiffs sued jointly. The defendant demurred, arguing the plaintiffs should have sued severally. The Court upheld the demurrer stating that the interests of the plaintiffs were several. The Court found that the contract did not require the defendant to pay the sum specified to the plaintiffs, but binds him "To divide it between them." (at 112 of 107 A.). The consideration "moved separately." The defendant's promise, though joint in form is several in essence. In legal

consequence, it is a group of separate promises, and gives rise to separate actions in favor of the several promises." (Emphasis added) 107 A. at 117. In the instant case, Old Bridge's promises are also joint in form, but several in essence, giving O & Y and Woodhaven separate rights, including the right to bring separate actions.

In McDurfee v. Buck, 174 A. 679 (Vt. 1934), the plaintiffs, a father and son, each owned a separate farm and agreed in what the Court determined was contractually a single undertaking to supply lumber to the defendant. The plaintiffs jointly sued. The defendant argued that the plaintiffs could not sue jointly because the subject matter of the contract was several. The Court stated:

> Ordinarily, where the interests are joint, the contract is joint; and where the interests are several, the contract is several. The interest referred to is interest in the contract. The contract is the vital thing, and it by no means follows, in a case like this, that because the interests in the lands involved are separate, a joint recovery cannot be hand. It was easily possible for the plaintiffs to 'pool their interest' -- to use the language of the trial court -- and to treat the whole lumbering enterprises. . . as of common interest . . . ." Id. at 679-680. (Emphasis added).

The Court held there was a joint interest in the contract because both the father and the son agreed between themselves to "pool their interest." The holding of McDurfee illumines

the instant case by comparison. Woodhaven and O & Y have not "pooled their interests" as was the case in McDurfee. Their undertakings are separate, and quite distinguishable as expressed in the Settlement Documents. For instance, an arbitrary denial of a subdivision plan as to one, would not have allowed the other to sue or have a cause of action because of such denial. Moreover, it was clear to all parties that if a decision was made by either developer not to build (for whatever reason) this did not foreclose the right of the other developer to build.

The general proposition has been well stated in Corpus Juris Secundum:

> When a several obligation is entered into by two or more in one instrument, it is the same as though each had executed separate instruments, although they may all be for the same subject matter: and consequently each obligation furnishes a several cause of action. Even though several obligations concern the same subject matter each obligee is liable for his several promise, and cannot be held for the others..."

17A Corpus Juris Secundum, Section 352 Contracts, p. 345.

This general proposition is applicable in the instant case. The Settlement Documents do not tie Woodhaven's performance to O & Y's. The two are separate corporate entities with no commonality of ownership or management. They own separate tracts. They brought the instant litigation separately and at different times. They entered into the Settlement separately

and had different counsel. Each has an independent right to sue for non-performance by Old Bridge. Hughes, Becker, and Anderson, supra, when applied to the facts of the instant case, clearly show that when the Settlement is viewed as a contract, the contract is several in nature.

Woodhaven requests this court to reverse the trial court's vacation of the entire judgment and give recognition to the several nature of the contract. The trial court was possessed with great flexibility in exercising its equitable powers, as Justice Heher recognized 50 years ago:

> Equitable remedies are 'distinguished for their flexibility, their unlimited variety, their adaptability to circumstances and the natural rules which govern their use. There is in fact no limit to their variety in application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties.' Pomeroy's Equity Jurisprudence, sec. 109. [5th ed. 1941] Sears Roebuck & Co. v. Camp, 124 N.J. Eq. 403, 1 A.2d 425, 429 (E. & A. 1938)

See also American Association of University Professors v. Bloomfield College, 129 N.J. Super. 249, 322 A.2d 846, 859 (Ch. Div. 1974); Morsemere Federal Savings & Loan Association v. Nicolaou, 206 N.J. Super. 637, 645 (App. Div. 1986); and Sosanie v. Pernetti Holding Corp., 115 N.J. Super 409, 279 A.2d 904, 907 (Ch. Div. 1971). The trial court failed to adapt to the specific circumstances, particularly the several nature of

Woodhaven's contractual responsibilities and rights.

Equitable remedies should minimize harm to the parties. "The relief itself must not be harsh or oppressive." Stehr v. Sawyer, 40 N.J. 352, 192 A.2d 569, 571 (1963). "Generally, courts of equity are not wont to enforce contracts where 'enforcement * * * will be attended with great hardship or manifest injustice . . . .' [Citation omitted]." Brower v. Glen Wild Lake Co., 86 N.J. Super. 341, 206 A.2d 899, 904 (App. Div. 1965). Nor should a contract be rescinded when that would cause great hardship. Woodhaven, which can substantially perform its several obligations, has relied on the Settlement, expending its funds in an effort to fulfill its obligations, and would be forced with incalcuable harms and losses, if the defendants were not held to be obligated to stick by their bargain. There is no reason that a mistake with regard to the amount of O & Y wetlands should be used as justification for depriving Woodhaven of the benefit of its bargain.

B. The Parties Did Not Bargain For An Integrated Development.

(i) The O & Y development plan and the Woodhaven development plan are not one integrated plan.

The O & Y plan and the Woodhaven plan are not an integrated plan. An integrated plan, such as a Planned Unit

Development, is defined by the Municipal Land Use Law as being "developed as a single entity according to a plan" (N.J.S.A. 40:55D-6). See, also the Planned Real Estate Development Full Disclosure Act which defines Planned Real Estate Development as being offered pursuant to a common promotional plan and providing for common elements in real property (N.J.S.A. 45:22A-23). The Woodhaven and O & Y developments are not being developed as a single entity or pursuant to a common promotion plan or have common elements. In fact, Woodhaven and O & Y are direct competitors. The two developments are not an integrated plan but are independent.

Woodhaven's development plan can be built completely independent of the O & Y development plan. The facts supporting this conclusion are as follows:

a) Sanitary Sewer - The Woodhaven site was intended to be and can be sewered whether or not O & Y builds. Provision for sewer to the Woodhaven property is governed by "Agreement between the Old Bridge Township Sewerage Authority (now known as Old Bridge Municipal Utilities Authority) and Woodhaven Village, Inc. and O & Y Old Bridge Development Corp." dated July 27, 1984.*

* The Sewer Agreement is a highly complex and technical document of approximately 150 pages and has not been included in Plaintiffs appendix due to its length.

This agreement was no secret to the defendants. The Township has had the Sewer Agreement since July 27,1984. Same is referenced in the Settlement, and members of the Township Council were also members of the O.B.M.U.A. at the time of Settlement. Sewering the Woodhaven development in the event the O & Y development did not go forward, for whatever reason, was specifically contemplated by the sewer agreement. Section 11 and Section 12 of the Sewer Agreement specifically address this issue and make clear, that one development may proceed independent of the other. Section 11 and 12 provide that if Developer A is moving forward with its development, thereby necessitating certain sewer improvements, and Developer B does not so need the sewer improvements, then Developer A can force Developer B to install the improvement. Developer B is then reimbursed for costs of installation whether or not Developer B ever uses the sewer improvement. The essence of the sewer agreement being that if one developer builds and the other does not, the building developer is not left hanging high and dry for sewer improvements. (Pa 104 to 113)

b) <u>Water</u> -- Potable water can be brought to the Woodhaven site regardless of O & Y's fate. Water distribution lines could be installed' in existing Rights-of-Way. (O & Y's property or O & Y permission is not required). The water distribution system for Woodhaven can physically be accomplished without O & Y. For example, the parties never contemplated that Woodhaven's water would be drawn from a well or tower or water system developed by O & Y. Woodhaven's water is completely independent of O & Y's water. The overall issue of potable water has not changed since settlement.

c) <u>Planning</u> -- Woodhaven's development was not designed to depend upon the proposed O & Y development for shopping centers, industrial or office space or public purpose areas or any other planning function. The Woodhaven plan and the O & Y plan are no more interrelated than any two developments which happen to be across the street for each other.

Whereas the Woodhaven plan has been characterized as interrelated and interdependent with the O & Y plan, on closer analysis one finds that the Woodhaven plan is actually a self

contained, self supporting, independent development.

(ii) Defendants did not lose any benefits as a result of modifications to Woodhaven's development plan.

All the benefits of defendants' bargain which the trial court found were lost due to increased wetland acres relate to the O & Y development and not the Woodhaven development.

The golf course which is lost was never promised by Woodhaven (T8-23 to 24). An internal traffic network which functioned independently of existing internal local roadways was promised by O & Y. Woodhaven never made such a promise since Woodhaven's site, as distinguished from O & Y's site, has no existing internal "thru-roads." The employment center, major malls to be built at the intersection of Routes 9 and 18, and mid-rise buildings were all promised by O & Y and not by Woodhaven.

While the Settlement Agreement provides site specific provisions which require specific uses at specific locations, these site specific requirements apply virtually only to O & Y (Settlement Agreement; V-C.1--Industrial/Commercial Development; V-C.2--Shopping Center Site; V-C.3-- Optional Shopping Center Site; V-C.4--Midrise Apartments). The only possible site specific provision which applies to Woodhaven appears in the Settlement Agreement at V-C.5 (Woodhaven Commercial Development). Section V-C.5 provides that Woodhaven

shall construct office retail, commercial and/or industrial space on the 73 acres designated Commercial on its Settlement Plan. Woodhaven can still provide the same number of commercial acres in substantially the same location.

Woodhaven is entitled to a hearing on the issue of whether Woodhaven can provide all benefits it promised in the settlement.

(iii) <u>The parties did not bargain for an integrated development.</u>

There is no factual support for the conclusion that the parties bargained for an integrated development. The record herein is void of any proof as to whether the Woodhaven and O & Y developments were integrated. In fact, the trial court simply <u>assumed</u> this to be so. The parties clearly did not bargain for an integrated development. There is <u>not one single reference</u> anywhere in the Settlement document by word or idea to: "interrelated", "interdependent" or "one package". Moreover, the Settlement Document does not even suggest the idea of a linkage between the two developments. On the contrary, the Settlement Document specifically contemplates one project moving forward independently of the other.

For example, suppose Woodhaven and O & Y independently received Planning Board approval on development plans designed in accordance with their respective plates. Thereafter, both builders independently commence construction. Then, perhaps

one, five or even twenty years later, for whatever reason, O & Y ceases all construction and walks away from its development. Meanwhile, Woodhaven has been and continues to develop its site. Under these circumstances should Woodhaven be enjoined from the continued development of its site? We think not. Such a result would make Woodhaven responsible for O & Y's failure to continue developing. Moreover, as the Settlement Document anticipates a 20 year buildout, such a result would force both O & Y and Woodhaven to become dependent upon their competitor. Such a result would be ridiculous and clearly the parties did not intend their respective settlements to be dependent one upon the other. The trial court's ruling that the settlements were integrated and interrelated was erroneous and must be reversed.

Further, the Settlement Agreement specifically provides that the Planning Board could approve the development plan of one developer and deny the plan of the other developer, thereby demonstrating that the parties did not bargain for an integrated development <u>but actually contemplated the possibility of one development without the other</u>. See, Settlement Agreement, Section V-B.3 Approval Procedures which provides for simultaneous action of the Planning Board which Board could approve one plan and deny the other. Importantly, the developer whose plan is approved would not be delayed by the denial of the other developer's plan. That is, the

developer whose plan is approved is entitled to proceed with obtaining all further approvals and eventually building <u>without</u> regard to the other developer's progress. (Settlement Agreement V-B.3.b) Section V-B.3 further provides that if one of the plates is disapproved, then a procedure is established for review of a <u>revised</u> plate by the master and ultimately by the Court. (Pa 31). The intention of the parties with regard to the independence of each plan could not be more clear.

Moreover, there were other components of the defendants' Mount Laurel compliance package besides set aside units from O & Y and Woodhaven. Suppose that (because of wetlands or any other reason) the Oakwood, Brunetti, Rondinelli, rehabilitation and/or Senior Citizen component (Pa 9) of the package failed completely. Would the settlement then be set aside as to Woodhaven? Is Woodhaven's settlement with defendants contingent upon <u>all</u> of the other compliance package components being successful? The answers must be no! Woodhaven contends it would not have settled if it were known that its fate hung on the fate of O & Y (or, for that matter any other component of the package). In light of the stakes involved, Woodhaven needed to know for certain that the settlement was firm. There is no way Woodhaven could have settled if Woodhaven knew the deal was contingent upon all other parties doing what they promised to do.

Defendants' may contend they would not have settled if

the settlement was not contingent on O & Y's ability to produce. The "subjective intentions" of either plaintiffs or defendants are not capable of ascertainment. The only valid test is an objective one. That is, what in fact did the settlement document provide for in this eventuality? (As pointed out above Section V-B.3 of the Settlement Agreement requires only simultaneous "action" not simultaneous approval.) The settlement document does not make Woodhaven's rights and obligations contingent upon O & Y's ability to perform or vice-versa. Since the Settlement Agreement does not provide for such a contingency, the trial court should not have written a different agreement than that reached by the parties. In effect, the trial court has rewritten the agreement struck among the parties based upon unsupported assumption that Woodhaven's plan was interrelated and integrated with O & Y's plans.

The trial court concluded that "The settlement with respect to the two parties is totally interrelated and interdependent." (T129-2 to T129-4.) This conclusion is not based on any language in the Settlement Document. The trial court has in effect rewritten the Settlement, by indicating that the performance of Woodhaven was contingent upon the ability of O & Y to perform.

It has been held that "[c]ourts cannot make contracts for the parties. They can only enforce the contracts which the parties themselves have made. Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43, 161 A.2d 717 (1960). Hartford Fire Ins. Co v. Riefolo Construction Co., 161 N.J. Super. 99, 390 A.2d 1210, 1218 (App. Div. 1978). This Court has ignored this basic principle. Moreover,

> [a]nd when the terms of a contract are clear and unambiguous, it is the function of the Court to enforce it as written and not to attempt to make a better contract for either of the parties. Id. at 43, 161 A.2d 717. The Courts cannot insert exceptions in a contract that the parties might have done but did not do, nor relieve them from hardship that they might have guarded against in their contracts. 390 A.2d 1218. (Emphasis added)

There is nothing ambiguous about the Settlement Document and same does not need rewriting. Therefore, this Court must reverse the trial court's rewriting it. If Old Bridge suffers hardship, and Woodhaven does not believe the Township will, then the Township should have bargained to avoid the hardship.

The parties did not contemplate that O & Y's development would be contingent and dependent upon Woodhaven, nor that Woodhaven's development would be dependent and contingent upon O & Y. That's why there were two separate sets of plates. (i.e., Plates A and A-1 and Plates B and B-1).

Suppose that both Woodhaven and O & Y apply for

approval. Woodhaven is approved and O & Y is denied (for whatever reason). O & Y revises its plans and resubmits. Meanwhile, Woodhaven is building vigorously and O & Y is not for lack of approval. Could Woodhaven's right to build be set aside because O & Y never satisfies the Planning Board? This would be ridiculous. No lawsuit involving multiple plaintiffs and/or multiple defendants would ever be comprehensively settled since each party is resting its fate on the fate of each of the others.

The lower court stressed that a consent judgment is a contract with the sanction of the Court. Since the consent judgment herein is in the nature of a contract (T122-24 to T123-10), there must be mutuality of contract. The trial court's ruling when read in light of the foregoing hypotheticals does not provide for mutuality of contract.

The Township would never had entered the settlement if plaintiffs had insisted that the O & Y and Woodhaven plans were totally integrated, that if one plan failed the other automatically failed, and that defendants' Judgment of Repose was conditioned upon the requirement that both O & Y and Woodhaven go forward with development in accordance with the plates. The Township viewed the Woodhaven plan and the O & Y plan not as integrated but as independent developments each contributing toward defendants' Fair Share obligation.

If defendants had truly bargained for the benefit of

having both O & Y and Woodhaven building (i.e., an "integrated plan") then defendants could have made the settlement contingent on both developers building. For example, it is not unusual for a developer to acquire by two separate contracts with two separate vendors contiguous properties which the developer intends to submit to the Planning Board for approval as one integrated development (i.e., mutual roads, sewers, open space, parking, etc.) The developer can protect himself with a clause in the acquisition contracts that if developer cannot close title on one tract he doesn't have to close on the other tract. Defendants never requested a clause making the Settlement of each developer contingent on both developers being able to perform (and plaintiff builders would never have stood for it). The Settlement Document is a comprehensive, fully negotiated document and the parties thereto did not include (nor did defendants ever request) a contract clause which would have made the performance of one plaintiff's settlement contingent on the performance of the other plaintiffs. The defendants never bargained for an integrated plan.

Woodhaven respectfully submits that the Woodhaven plan can be developed independently of the O & Y development and that the parties did not bargain for an integrated development. Accordingly, Woodhaven requests this Court to reverse the trial court's Order entered October 6, 1987 (and Order entered April 21, 1988).

POINT V

THE TRIAL COURT ERRED BECAUSE SETTING ASIDE THE SETTLEMENT DEPRIVED WOODHAVEN OF ITS BARGAIN WHILE THE TOWNSHIP MAINTAINED THE BENEFITS OF ITS BARGAIN

The Settlement herein affected the rights and obligations of Woodhaven, O & Y, the Urban League, lower income families and defendants. Further, defendant's compliance depended upon Oakwood at Madison, Brunetti, Rondinelli, rehabilitation, seniors citizen project and mandatory 10% set aside from all other developers (Pa 9). In return for this satisfactory compliance package, defendants received the following benefits: 1) protection from future Mount Laurel lawsuits, in the form of a Judgment of Repose; 2) reduction of its Affordable Housing obligation from approximately 2,414 housing units to 1,668 units; and 3) resolution of its Affordable Housing obligation without having to grant any increased density bonuses.

The Township has had the benefit of repose since the date of settlement (January 24, 1986). Therefore, the Township received the consideration or benefits for which they bargained (i.e. REPOSE). Completely vacating the judgment is unjust in that the defendants get the benefit of their bargain but Woodhaven does not (even though Woodhaven can live up to its agreement). Woodhaven is not getting the benefit of its bargain and is getting an inequitable burden. Woodhaven is now

foreclosed from continuing its builders remedy suit.

Now, assuming that O & Y's project as originally proposed, or any reasonable facsimile thereof, is clearly unbuildable, does that mean that all other rights and obligations disappear? No, the deal was that if one party did what it promised then that party is entitled to the benefit of its bargain with the defendants (just like any other contract!) Suppose Oakwood, Brunetti and/or Rondinelli or anyone else could not build at all, does everyone else get wiped out as a result? No, the trial court should have modified the judgment relative to the party who cannot perform but still preserve the other parties' bargains. This Court should uphold the entire settlement except that aspect which deals with O & Y since it is clear that O & Y cannot perform. The remainder of the case, if any, could be transferred to COAH.

Woodhaven urges this Court to direct the trial court to utilize its equitable powers and mold a creative remedy as opposed to vacating the entire settlement thereby allowing Woodhaven the benefit of its bargain since Woodhaven can perform its obligations under the Settlement Document.

CONCLUSION

In light of the foregoing, Woodhaven respectfully requests this Court to reverse the Order entered October 6, 1987 (and Order entered April 21, 1988). Woodhaven requests that the Order and Judgment of Repose not be vacated with regard to the Woodhaven settlement, that the Master be ordered to report on the Woodhaven revised plan, and/or, that this Court remand this matter for a factual hearing with regard to the issues herein presented.

HUTT & BERKOW
ATTORNEYS FOR
WOODHAVEN VILLAGE, INC.

By: ______________________
STEWART M. HUTT, ESQ.

Dated: March 8, 1989

W0472A

Order Granting Partial Consolidation (July 2, 1984)

FILED JUL 2 1984

E. SERPENTELLI, J.S.C.

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

Plaintiff, WOODHAVEN VILLAGE, INC. a New Jersey Corporation vs. Defendants, 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 LAW DIVISION MIDDLESEX COUNTY/ OCEAN COUNTY (Mount Laurel II) DOCKET NO. L-036734-84 P.W. CIVIL ACTION ORDER GRANTING PARTIAL CONSOLIDATION

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 the right to participate in any and all Motions for Partial Summary Judgment.

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

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

EUGENE D. SERPENTELLI, J.S.C.

AUG 3 1984
SERPENTELLI

BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540
(609)924-0808
ATTORNEYS 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,

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION/
MIDDLESEX COUNTY

Docket No. C-4122-73

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
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

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

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

Bruce S. Gelber, Esq.
National Com. Against Discrimination In Housing
733 Fifteenth Street, N.W., Suite 102(
Washington, D.C. 2005

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 ____________

Order and Judgment of Repose (January 24, 1986)

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,	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MIDDLESEX COUNTY/ OCEAN COUNTY (Mount Laurel II) DOCKET NO. C-4122-73
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 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 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 dimunition 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 among O & Y, Woodhaven, Urban League, Township of Old Bridge and O.B.M.U.A.

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 <u>General Standards</u>

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 <u>Standards and Reports</u>

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.

Staging Performance Schedule

Maximum Dwelling Units	Minimum Commercial and Office/Industrial Acreage served by Infrastructure	Minimum Ratables as % Total Assessed Valuation of Commercial Office/Industrial as Defined at Concept Plan stage
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 than 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

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

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

Order Vacating Order and Judgment of Repose
(October 6, 1987)

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.	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MIDDLESEX COUNTY/OCEAN COUNTY (Old Bridge)
v.	:	Docket No. C 4122-73
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,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY/OCEAN COUNTY Docket No. L009837-84 PW and No. L036734-84 PW
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.	:	<u>Civil Action</u> 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 League 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,

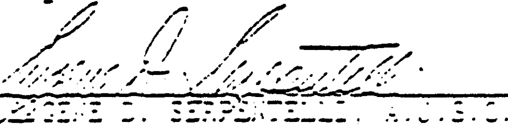
ORDERED:

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.

Order Denying Motion for Reconsideration (April 21, 1988)

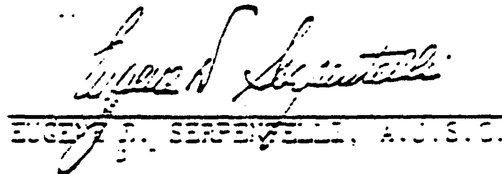
JEROME J. CONVERY, ESQ.
151 Route 516
P.O. Box 642
Old Bridge, NJ 08857
(201) 679-0010
Attorney for Def. Township of Old Bridge

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al. Plaintiffs, v. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al. Defendants,	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MIDDLESEX COUNTY/OCEAN COUNTY (Mount Laurel II) DOCKET NO. C-4122-73
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 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. SERPENTELLI, A.J.S.C.

A-4335-87T3

Notice of Appeal of Woodhaven Village, Inc. (A-4335-87T3)

NOTICE OF APPEAL

PLEASE PRINT OR TYPE

SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

TITLE OF ACTION AS CAPTIONED BELOW:

Urban League of Greater New Brunswick, et al.

v.

The Mayor & Council of the Borough of Carteret, et al.

and

O & Y Old Bridge Development Corp., a Deleware Corporation

and

Woodhaven Village, Inc., a N.J. Corp.

vs.

TOWNSHIP OF OLD BRIDGE, et al.

SEE ATTACHED CAPTIONED

ATTORNEY OF RECORD

NAME STEWART M. HUTT, ESQ. (HUTT & BERKOW, P.C.)

ADDRESS 459 Amboy Avenue, P.O. Box 648

Woodbridge, New Jersey 07095

PHONE NO. (201) 634-6400

ATTORNEY FOR Plaintiff, Woodhaven Village, Inc.

ON APPEAL FROM (Middlesex County-Venu

SUPERIOR COURT OF NEW JERSEY (Ocean County-Trial)

TRIAL COURT STATE AGENCY (Consolidated cases)

C-4122-73, L-009837-84 PW, L-036734-84 PW

TRIAL DOCKET OR INDICTMENT NUMBER

Eugene D. Serpentelli, A.J.S.C.

TRIAL COURT JUDGE

CIVIL (XX) CRIMINAL ( ) JUVENILE ( )

NOTICE IS HEREBY GIVEN THAT Plaintiff, Woodhaven Village, Inc.

APPEALS TO THE SUPERIOR COURT OF N. J., APPELLATE DIVISION, FROM THE JUDGMENT ( ) ORDER (X)

OTHER (SPECIFY) ( ) ___

ENTERED IN THIS ACTION ON October 6, 19 87 IN FAVOR OF SEE ATTACHED, Paragraph A.

IF APPEAL IS FROM LESS THAN THE WHOLE, SPECIFY WHAT PARTS OR PARAGRAPHS ARE BEING APPEALED:

Woodhaven Village, Inc. appeals paragraph 1 wherein the Court vacated an Order and Judgment of Repose dated January 24, 1986 and paragraph 2 wherein the Court transferred matter to Council on Affordable Housing. The entire order of April 21, 1988 is being appealed by this Plaintiff

ARE ALL ISSUES AS TO ALL PARTIES DISPOSED OF IN THE ACTION BEING APPEALED? YES (X) NO ( )

IF NOT, IS THERE A CERTIFICATION OF FINAL JUDGMENT ENTERED PURSUANT TO R. 4:42-2? YES ( ) NO ( )

PRIORITY UNDER R. 1:2-5 YES (X) NO ( ) APPLICABLE SECTION UNDER THE RULE R.1:2-5(1)

IN CRIMINAL, QUASI-CRIMINAL, AND JUVENILE CASES... NOT INCARCERATED ( ) INCARCERATED ( )

CONFINED AT ___

GIVE A CONCISE STATEMENT OF THE OFFENSE AND OF THE JUDGMENT, DATE ENTERED AND ANY SENTENCE OR DISPOSITION IMPOSED ___

ALL-STATE LEGAL SUPPLY CO.
One Commerce Drive, Cranford, N. J. 07016

ATTA ADDITIONAL SHEETS IF NECESSARY

1 NOTICE OF APPEAL HAS BEEN SERVED ON:

	NAME	DATE OF SERVICE	TYPE OF SERVICE
TRIAL COURT JUDGE	Eugene D. Serpentelli, A.J.S.C.	5/12/88	CM:RRR
TRIAL COURT CLERK STATE AGENCY	(Ocean County Clerk) ~~Superior Court of New Jersey~~	5/12/88	CM:RRR
ATTORNEY GENERAL OR GOVERNMENTAL OFFICE UNDER R. 2:5-1 (h)	Middlesex County Clerk	5/12/88	CM:RRR

OTHER PARTIES:

NAME AND DESIGNATION	ATTORNEY NAME, ADDRESS & TELEPHONE NO.	DATE OF SERVICE	TYPE OF SERVICE
(SERVE THIS PARTY WITH TRANSCRIPT)			
	SEE ATTACHED, Paragraph B		

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THIS NOTICE OF APPEAL ON EACH OF THE PERSONS REQUIRED AS INDICATED ABOVE.

May 16, 19 88

STEWART M. HUTT
SIGNATURE OF ATTORNEY OF RECORD

2 PRESCRIBED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON:
(ALSO INDICATE IF SOUND RECORDED)

	NAME	DATE OF SERVICE	AMOUNT OF DEPOSIT
ADMINISTRATIVE OFFICE OF THE COURTS CHIEF. COURT REPORTING SERVICES			
COURT REPORTER'S SUPERVISOR CLERK OF COUNTY OR AGENCY	SEE ATTACHED, Paragraph C.		
COURT REPORTER			

I HEREBY CERTIFY THAT I SERVED THE PRESCRIBED COURT TRANSCRIPT REQUEST FORM ON EACH OF THE ABOVE PERSONS AND PAID THE DEPOSIT AS REQUIRED BY R. 2:5-3(d).

May 16, 19 88

STEWART M. HUTT
SIGNATURE OF ATTORNEY OF RECORD

3 I HEREBY CERTIFY THAT:

( ) THERE IS NO VERBATIM RECORD.

(XX) TRANSCRIPT ~~IS~~ of September 14, 1987 proceedings leading to Order dated October 6, 1987 IS IN THE POSSESSION OF THE ATTORNEY OF RECORD.

( ) A MOTION FOR ABBREVIATION OF TRANSCRIPT HAS BEEN FILED WITH THE COURT OR AGENCY BELOW.

( ) A MOTION FOR FREE TRANSCRIPT HAS BEEN FILED WITH THE COURT BELOW.

May 16, 19 88

STEWART M. HUTT
SIGNATURE OF ATTORNEY OF RECORD

ALL STATE LEGAL SUPPLY CO.
269 Sheffield Street, Mountainside, N.J. 07092

A..ACHMENT TO NOTICE OF APPEAL

HUTT & BERKOW
A PROFESSIONAL CORPORATION
459 AMBOY AVENUE
P.O. BOX 648
WOODBRIDGE, NEW JERSEY 07095
(201) 634-6400
ATTORNEYS FOR PLAINTIFF, Woodhaven Village, Inc.

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al. Plaintiffs, v. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al., Defendants,	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MIDDLESEX COUNTY/OCEAN COUNTY (Mount Laurel II) DOCKET NO. C-4122-73
and O & Y OLD BRIDGE DEVELOPMENT CORPORATION, a Delaware Corp., and WOODHAVEN VILLAGE, INC., a New Jersey Corp. 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 AUTORITY OF THE TOWNSHIP OF OLD BRIDGE and THE PLANNING BOARD OF THE TOWNSHIP OF OLD BRIDGE, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY/OCEAN COUNTY (Mount Laurel II) DOCKET NO. L-009837-84 P.W. & DOCKET NO. L-036734-84 P.W.

ATTACHMENT TO NOTICE OF APPEAL

A. IN FAVOR OF: Defendant, Township of Old Bridge and Planning Board of Township of Old Bridge. Woodhaven Village, Inc. also appeals Order of Eugene D. Serpentelli, A.J.S.C. dated April 21, 1988, denying Motion for Reconsideration and Rehearing.

B. OTHER PARTIES:

NAME AND DESIGNATION	ATTORNEY NAME, ADDRESS AND TELEPHONE NO.	DATE OF SERVICE	TYPE OF SERVICE
Twp. of Old Bridge & Twp. Council, Defendant	Glenn J. Berman, Esq. 196 Main Street South River, NJ 08882 (201) 257-9720	5/16/88	CM:RRR
The Planning Board of Twp. of Old Bridge, Defendant	James M. Colaprico, Esq. 997 Lenox Drive Lawrenceville, NJ 08648 (609) 896-3600	5/16/88	CM:RRR
Old Bridge Municipal Utilities Authority (now includes Sewer Authority), Defendant	William E. Flynn, Esq. 18 Throckmorton Lane Old Bridge, NJ 08857 (201) 679-1221	5/16/88	CM:RRR
Urban League (now Civic League), Plaintiff	Barbara Stark, Rutgers Const. Law Clinic, 15 Washington Street Newark, NJ 07102-3192 (201) 648-5687	5/16/88	CM:RRR
O & Y Old Bridge Development Corp., Plaintiff	Thomas J. Hall, Esq. 210 Carnegie Center Princeton, NJ 08543-5226 (609) 924-0808	5/16/88	CM:RRR
O & Y Old Bridge Development Corp. Plaintiff	Dean Gaver, Esq. Hannoch Weisman 4 Becker Farm Road Roseland, NJ 07068 (201) 535-5300	5/16/88	CM:RRR
Former Twp. of Old Bridge Attorney	Jerome J. Convery, Esq. 151 Route 516, P.O. BOX 642 Old Bridge, NJ 08857 (201) 679-0010	5/16/88	CM:RRR
Former Planning Board Attorney	Thomas Norman, Esq. Norman & Kingsbury 30 Jackson Road Medford, NJ 08055 (609) 654-5220	5/16/88	CM:RRR

C. PRESCRIBED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON:

October 6, 1987 Order is based upon stenographic transcript of Motion heard and decision rendered on September 14, 1987 which transcript is in this party's possession and will be served in accordance with Court Rule. Order dated April 21, 1988 denying plaintiff's request for reconsideration and rehearing is based upon Stenographic Transcript of Motion heard and decision rendered April 13, 1988 which Transcript has been ordered by defendant O & Y Old Bridge Development Corp. and will be served in accordance with Court Rule.

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 (now 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,

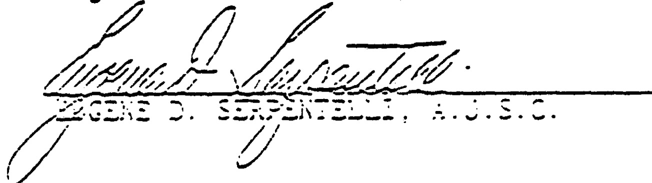
ORDERED:

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.

FILED IN CH. ... 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,	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MIDDLESEX COUNTY/OCEAN COUNTY (Mount Laurel II) DOCKET NO. C-4122-73
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 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. SERPENTELLI, A.J.S.C.

Notice of Appeal O & Y Old Bridge Development Corp.
(A-4572-87T3)

NOTICE OF APPEAL

PLEASE PRINT OR TYPE

SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

TITLE OF ACTION AS CAPTIONED BELOW:

SEE

ATTACHED

CAPTION

ATTORNEY OF RECORD

NAME Brener Wallack & Hill, AH: Thomas Jay Hall

ADDRESS 210 Carnegie Center

Princeton, New Jersey 08540

PHONE NO. (609) 924-0808

ATTORNEY FOR O & Y Old Bridge Development Corp.

ON APPEAL FROM:

Superior Court, Law Div., Middlesex/Ocean County

TRIAL COURT STATE AGENCY (Mt. Laurel II)

C-4122-73; L-009837-84PW; L-036734-84PW

TRIAL DOCKET OR INDICTMENT NUMBER

Eugene D. Serpentelli, A.J.S.C.

TRIAL COURT JUDGE

CIVIL (X) CRIMINAL ( ) JUVENILE ( )

NOTICE IS HEREBY GIVEN THAT Plaintiff, O & Y Old Bridge Development Corporation APPEALS TO THE SUPERIOR COURT OF N. J., APPELLATE DIVISION, FROM THE JUDGMENT ( ) ORDER (X)

OTHER (SPECIFY) ( )

ENTERED IN THIS ACTION ON October 6, 19 87* , IN FAVOR OF Township of Old Bridge, Township Council of the Township of Old Bridge, Municipal Utilities Authority of the Township of Old Bridge, Sewerage Authority of the Township of Old Bridge and Planning Board of the Township of Old Bridge.

*See attached Addendum.

ARE ALL ISSUES AS TO ALL PARTIES DISPOSED OF IN THE ACTION BEING APPEALED? YES (X) * NO ( )

IF NOT, IS THERE A CERTIFICATION OF FINAL JUDGMENT ENTERED PURSUANT TO R. 4:42-2? YES ( ) NO ( )

PRIORITY UNDER R. 1:2-5 YES (X) NO ( ) APPLICABLE SECTION UNDER THE RULE (1)

IN CRIMINAL, QUASI-CRIMINAL, AND JUVENILE CASES. NOT INCARCERATED ( ) INCARCERATED ( )

CONFINED AT

GIVE A CONCISE STATEMENT OF THE OFFENSE AND OF THE JUDGMENT, DATE ENTERED AND ANY SENTENCE OR DISPOSITION IMPOSED

ALL-STATE LEGAL SUPPLY CO.
One Commerce Drive, Cranford, N.J. 07016

CAPTION

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.

ATTACH ADDITIONAL SHEETS IF NECESSARY

1 NOTICE OF APPEAL HAS BEEN SERVED ON:

	NAME	DATE OF SERVICE	TYPE OF SERVICE
TRIAL COURT JUDGE	Eugene Serpentelli, A.J.S.C.	5-3-88	Reg.
TRIAL COURT CLERK STATE AGENCY	Clerk of Superior Court and	5-3-88	Cert. Mail ~~RRR~~
ATTORNEY GENERAL OR GOVERNMENTAL OFFICE UNDER R. 2:5-1 (h)	Middlesex County Clerk **	**5-3-88	Cert. Mail ~~RRR~~

OTHER PARTIES:

NAME AND DESIGNATION	ATTORNEY NAME, ADDRESS & TELEPHONE NO.	DATE OF SERVICE	TYPE OF SERVICE
Township of Old Bridge (SERVE THIS PARTY WITH TRANSCRIPT) and	Jerome J. Convery, Esq. (201) 679-0010	5-3-88	Cert. Mail ~~RRR~~
	151 Route 516		
Township Council of	P.O. Box 642		
Old Bridge - Respondents	Old Bridge, New Jersey 08857		
Planning Board of Old	Thomas Norman, Esq. (609) 654-5220	5-3-88	Cert. Mail ~~RRR~~
Bridge Township -	Norman & Kingsbury, 30 Jackson Road		
Respondent	Medford, New Jersey 08055		
Municipal Utilities	William E. Flynn, Esq. (201) 679-1221	5-3-88	Cert. Mail ~~RRR~~
Authority & Sewerage	Antonio & Flynn,		
Authority of the Township	18 Throckmorton Lane		
of Old Bridge -	Old Bridge, New Jersey 08857		
Respondents			

(Continued on attached Addendum)

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THIS NOTICE OF APPEAL ON EACH OF THE PERSONS REQUIRED AS INDICATED ABOVE.

May 3 19 88

Thomas Jay Hall
SIGNATURE OF ATTORNEY OF RECORD

2 PRESCRIBED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON:
(ALSO INDICATE IF SOUND RECORDED)

	NAME	DATE OF SERVICE	AMOUNT OF DEPOSIT
ADMINISTRATIVE OFFICE OF THE COURTS CHIEF, COURT REPORTING SERVICES	Carolyn Evans	4-21-88	
COURT REPORTER'S SUPERVISOR CLERK OF COUNTY OR AGENCY	Olga Blum	4-21-88	
COURT REPORTER	Judy Marinke	4-21-88	$150.

(Note: Request is for transcript of April 13, 1988 decision denying Motion to Reconsider.)

I HEREBY CERTIFY THAT I SERVED THE PRESCRIBED COURT TRANSCRIPT REQUEST FORM ON EACH OF THE ABOVE PERSONS AND PAID THE DEPOSIT AS REQUIRED BY R. 2:5-3(d).

May 3 19 88

Thomas Jay Hall
SIGNATURE OF ATTORNEY OF RECORD

3 I HEREBY CERTIFY THAT:

( ) THERE IS NO VERBATIM RECORD.

(XX) TRANSCRIPT of September 14, 1987 proceedings leading to Order dated October 6, 1987 IS IN THE POSSESSION OF THE ATTORNEY OF RECORD.

( ) A MOTION FOR ABBREVIATION OF TRANSCRIPT HAS BEEN FILED WITH THE COURT OR AGENCY BELOW.

( ) A MOTION FOR FREE TRANSCRIPT HAS BEEN FILED WITH THE COURT BELOW.

May 3 19 88

Thomas Jay Hall
SIGNATURE OF ATTORNEY OF RECORD

ALL-STATE LEGAL SUPPLY CO.
One Commerce Drive, Cranford, N.J. 07016

ADDENDUM

Order Appealed

Appeal is from an Order entered October 6, 1987, a copy of which is annexed hereto, as that Order was modified or supplemented in an opinion rendered by Judge Serpentelli on April 13, 1988. Appellant does not appeal the April 13, 1988 decision but will provide the transcript, which enlarges upon the opinion and Order that are the subject of this appeal.

Scope of Appeal

The action being appealed disposes of all issues in the consolidated matter. The case of Urban League of Greater New Brunswick, et al. v. Mayor and Council of the Borough of Carteret, et al., Docket No. C-4122-73 (Chancery Div., Middlesex County/Ocean County) included numerous issues involving municipalities that were not part of this consolidated case.

Parties (continued)

Name	Attorney	Date of Service	Type of Service
Civic (Urban) League of Greater New Brunswick, plaintiff	Barbara Stark, Esq. (201) 648-5687 Rutgers School of Law Constitutional Litigation Clinic 15 Washington Street Newark, New Jersey 07102-3192	5-3-88	Cert. Mail-RRR
Woodhaven Village, Inc. plaintiff	Stewart M. Hutt, Esq. Hutt Berkow 459 Amboy Avenue P. O. Box 648 Woodbridge, New Jersey 07095	5-3-88	Cert. Mail-RRR

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,	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MIDDLESEX COUNTY/OCEAN COUNTY (Old Bridge) Docket No. C 4122-73
and	:	
O & Y OLD BRIDGE DEVELOPMENT CORPORATION, A Delaware Corporation, Plaintiff, and WOODHAVEN VILLAGE, INC. a New Jersey corporation Plaintiff, v.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY/OCEAN COUNTY Docket No. L009837-84 PW and No. L036734-84 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, Defendants.	:	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 (now 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.

Notice of Appeal of Urban League (Civic League)
(A-4752-87T3)

NOTICE OF APPEAL

SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

JUN 03 '88

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,

Plaintiffs,

v.

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

Defendants,

and

O&Y OLD BRIDGE DEVELOPMENT CORP., a Delaware Corporation

and

WOODHAVEN VILLAGE, INC., a N.J. Corp.,

Plaintiffs,

v.

TOWNSHIP OF OLD BRIDGE, in the COUNTY OF MIDDLESEX, et al.,

Defendants.

John Payne, Esq.
Barbara Stark, Esq.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102
201-648-5687
Attorneys for Civic League Plaintiffs and on behalf of the ACLU of New Jersey

ON APPEAL FROM

SUPERIOR COURT OF NEW JERSEY
(Middlesex County-Venue)
(Ocean County-Trial)
C-4122-73, L-009837-84 PW,
L-036734-84 PW
(Consolidated Cases)
Eugene D. Serpentelli, A.J.S.C.
Civil No. C 4122-73

NOTICE is hereby given that the Civic League plaintiffs appeal to the Superior Court of New Jersey, Appellate Division from the Order entered in this action on October 6, 1987, in favor of defendant Township of Old Bridge and the Order dated April 21, 1988 denying reconsideration of the first Order.

Each Order is being appealed in its entirety.

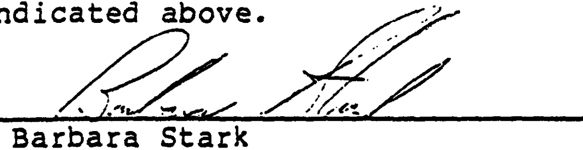
Are all issues as to all parties disposed of in the action being appealed? Yes.

Priority Under R. 1:2-5 - Yes. Applicable section under Rule R. 1:2-5(1).

Notice of Appeal has been served on:	Date of Service	Type of Service
Trial Court Judge Eugene D. Serpentelli, A.J.S.C.	6/2/88	Lawyers Service
Other Parties: See attached Service List.	6/2/88	Lawyers Service

I hereby certify that I have served a copy of this Notice of Appeal on each of the persons required as indicated above.

June 2, 1988

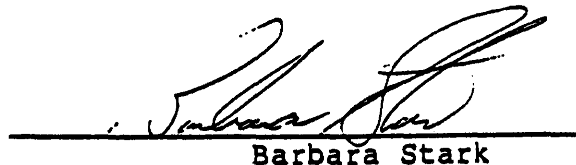


Barbara Stark

PRESCRIBED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON:

October 6, 1987 Order is based upon stenographic transcript of Motion heard and decision rendered on September 14, 1987. As set forth in the Notice of Appeal filed by plaintiff Woodhaven Village, Inc. on May 12, 1988, the transcript is in said plaintiff's possession and will be served in accordance with Court Rule. Order dated April 21, 1988 denying plaintiff's request for reconsideration and rehearing is based upon Stenographic Transcript of Motion heard and decision rendered April 13, 1988. As set forth in Woodhaven's Notice of Appeal, this Transcript has been ordered by defendant O & Y Old Bridge Development Corp. and will be served in accordance with Court Rule.

June 2, 1988



Barbara Stark

SERVICE LIST

Urban League v. Carteret, Civ C 4122-73 (Superior Court, Chancery Div., Middlesex County) (OLD BRIDGE)

Jerome J. Convery, Esq.
151 Route 516, Box 872
Old Bridge, NJ 08857

Glenn J. Berman, Esq.
196 Main Street
South River, NJ 08882

Thomas Hall, Esq.
210 Carnegie Center
Princeton, NJ 08543-5226

Stewart M. Hutt, Esq.
459 Amboy Avenue
Woodbridge, NJ 07095

Dean Gaver, Esq.
Hannoch Weisman
4 Becker Farm Road (PO Box 1040, Nwk 07101 (mailing address))
Roseland, NJ 07068

William Flynn, Esq.
Antonio & Flynn
255 Highway 516, PO Box 515
Old Bridge, NJ 08577

Frederick Mezey, Esq.
93 Bayard Street
PO Box 238
New Brunswick, NJ 08903

Ezra D. Rosenberg, Esq.
James M. Colaprico, Esq.
Princeton Pike Corporate Center
997 Lenox Drive
Lawrenceville, NJ 08648-2311

A-4335-87T3

Order of James M. Havey, JAD
Consolidating Appeals (December 23, 1988)

JAN 04 89

ORDER ON MOTION

URBAN LEAGUE OF GREATER NEW BRUNSWICK ET AL
VS
THE MAYOR AND COUNCIL OF THE BOROUGH OF
CARTERET ET AL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4335-87T3
MOTION NO. M-1728-88
BEFORE PART: A
JUDGE(S): HAVEY

REC'D
APPELLATE DIVISION
DEC 23 1988
Acting Clerk

MOTION FILED: NOVEMBER 21, 1988
ANSWER(S) FILED: BY:
BY:
BY:
BY:
SUBMITTED TO COURT: DECEMBER 21, 1988

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 23rd DAY OF December, 1988, HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
MOTION BY APPELLANT/~~RESPONDENT~~ WOODHAVEN VILLAGE TO CONSOLIDATE APPEALS A-4335-87T3;A-4572-87T3;A-4752-87T3	XX		

SUPPLEMENTAL:

FILED
APPELLATE DIVISION
DEC 23 1988
Acting Clerk

FOR THE COURT:

JAMES M. HAVEY J.A.D.

A-4572-87T3

URBAN LEAGUE OF GREATER NEW BRUNSWICK ET AL VS THE MAYOR AND COUNCIL OF THE BOROUGH OF NEW BRUNSWICK ET AL	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-4335-87T3 A-4572-87T3 A-4752-87T3 CIVIL SCHEDULING ORDER JAN 13 89

An appeal having been filed in the above-captioned matter,

IT IS HEREBY ORDERED that the time for filing and serving transcript(s), briefs and appendices shall not be later than as set forth below:

(a) Transcript(s) (including Statement of Items Comprising the Record, where applicable): Three copies of each date — Due: 2-6-89

(b) Brief and appendix of appellant: — Due: 2-6-89

(c) Brief and appendix (if any) of respondent (including, in case of cross-appeal, issues raised therein): — Due: 3-6-89

(d) Reply of appellant (including, where applicable, response to cross-appeal): — Due: 3-16-89

(e) Reply brief, if any, of respondent (only in case of cross-appeal):

FILED
APPELLATE DIVISION
JAN 11 1989
Acting Clerk

IT IS FURTHER ORDERED that an original and four (4) copies of each brief shall be filed with the Clerk and within ten (10) days thereof a proof of service shall be filed with the Clerk indicating that two (2) copies of the brief and appendix were served on each party to the appeal, and one (1) copy of the transcript was served on any one respondent for the use of all respondents; and

IT IS FURTHER ORDERED that in the event of default by appellant in filing the appellant's brief and appendix by the time directed or upon default of the appellant regarding any other provision of this order, THE APPEAL SHALL BE DISMISSED WITHOUT FURTHER NOTICE; and

IT IS FURTHER ORDERED that if any respondent fails to file a brief within the time directed by this order, such respondent shall be precluded from further participation in the appeal.

Witness, the Honorable Herman D. Michels, Presiding Judge for Administration, at Trenton, this 11th day of January, 1989

EBC

Emille R. Cox
Acting Clerk

T-15
11/88

Letter Confirming Extension of Time to Appellant's Brief on behalf of Woodhaven Village, Inc. (February 7, 1989)

LAW OFFICES

HUTT & BERKOW

A PROFESSIONAL CORPORATION

459 AMBOY AVENUE
P.O. BOX 648
WOODBRIDGE, 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
BEN D. SHIRIAK
DAVID M. HUTT+
LYNNE O'CARROLL‡

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

Our File #
4427

February 7, 1989

Mr. Edward Constantini
App. Div. Clerk
Clerk's Office
Hughes Justice Complex
CN 006
Trenton, NJ 08625

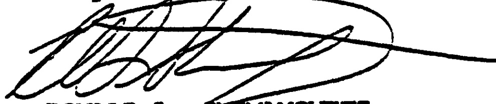
Re: Urban League of Greater New Brunswick, et al. vs.
The Mayor & Council of the Borough of Carteret, et al.
Woodhaven Village, Inc. v. Township of Old Bridge, et al.
Consolidated Appeals: A - 4335-87T3
A - 4572-87T3
A - 4752-87T3

Dear Mr. Constantini:

I am writing to confirm our recent telephone conversation during which you advised that our request for a 30 day Extension of Time to file Appellant's Brief was granted. Accordingly, Appellant's Brief shall be due Wednesday, March 8, 1989 and all dates in the Scheduling Order of January 11, 1989 will be pushed back correspondingly.

By copy of this letter I am advising all counsel of record of the above Extension of Time to file.

Very truly yours,



RONALD L. SHIMANOWITZ
For the Firm

RLS/mp

cc: see attached list

LAW OFFICES

HUTT & BERKOW

A PROFESSIONAL CORPORATION

February 7, 1989

cc: Attached list

Emille R. Cox
Acting Clerk of the Appellate Division
Superior Court of New Jersey
Hughes Justice Complex
CN 006
Trenton, NJ 08625

Joel Schwartz
Woodhaven Village Inc.
90 Woodbridge Center Drive, 6th Fl.
Woodbridge, NJ 07095

James M. Colaprico, Esq.
katzenbach, Gildea & Rudner
Princeton Pike Corporate Center
997 Lenox Drive
Lawrenceville, NJ 08648-2311

Barbara Stark, Esq.
Rutgers University, Campus at Newark
School of Law-Newark
Constitutional Litigation Clinic
S. I. Newhouse Center for Law and Justice
15 Washington St.,
Newark, NJ 07102-3192

Thomas Jay Hall, Esq.
Brener, Wallack & Hill
210 Carnegie Center
Princeton, NJ 08543-5226

William Flynn, Esq.
Antonio & Flynn
255 highway 516, PO Box 515
Old Bridge, NJ 08857

James J. Cleary, Esq.
Rt. #34 & Broad Street
Matawan Mall
Matawan, NJ 07747

Ronald Reisner, Esq.
Gagliano, Tucci, Iandanza & Reisner
1090 Broadway
West Long Branch, NJ 07764

Letter of Planning Board attorney with regard to Wetlands and Fair Share Number (May 30, 1986)

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

May 30, 1986

THOMAS NORMAN
ROBERT E. KINGSBURY

T. N. (609)654-5220
R. E. K. (609)654-1778

Honorable Eugene Serpentelli, J.S.C.
Ocean County Court House
CN 2191
Toms River, N.J. 08754

Re: O & Y vs. Township of Old Bridge, et al

Dear Judge Serpentelli:

As the Court is aware, both Olympia and York and Woodhaven Village have requested and received continuations of their applications before the Old Bridge Planning Board in order to permit both applicants to revise their respective plans in light of the existence of significant areas of wetlands.

Old Bridge Township has now been advised by the New Jersey Affordable Housing Council that the Township's projected Fair Share responsibility equals 411 dwelling units for low and moderate income housing subject to certain credits and adjustments which would reduce the fair share number to 0 at least through 1993, the term for which the fair share number has been projected by the Affordable Housing Council. Carl Hintz, the Township Planning Consultant, has been authorized by the Planning Board to verify the admittedly rough calculations although the Planning Board believes, strongly, that the final calculations, based upon the proposed regulations of the Affordable Housing Council, will produce a negative fair share responsibility for Old Bridge Township.

The settlement involving the parties hereto was based upon a fair share number of 1649 units of low and moderate income housing. The settlement was also based upon the understanding on the part of Old Bridge Township that its legal responsibilities, under the terms of Mount Laurel I and the Oakwood at Madison opinion as well as Mount Laurel II, required rezoning of vast amounts of land in Old Bridge Township for planned developments with the additional requirement

that the developers must provide low and moderate income housing. As a consequence, Old Bridge Township resolved to permit Olympia and York and Woodhaven Village to develop and construct approximately 16,000 units of residential dwellings with commercial and office development on approximately 4,000 acres in the southern portion of Old Bridge Township. It now appears that more than 1200 acres may be classified as wetlands pursuant to regulations promulgated by the U.S. Army Corps of Engineers. These lands cannot be developed. Sound planning requires that lands adjacent to large tracts of wetlands must be planned carefully and sensitively and certainly not at high development densities.

Clearly the advent of the wetlands issue has seriously affected the viability of the settlement. The proposed criteria and guildelines promulgated by the Affordable Housing Council also impact upon the viability of the settlement. Old Bridge Township will, in good faith, satisfy its Mount Laurel obligation as it has attempted to do in the past and as the record made before this Court clearly demonstrates.

It is within this context that the Township, through its Governing Body and Planning Board, will meet with the developers of the Olympia and York development and the Woodhaven development in order to identify areas of commonality as well as areas of disagreement. However, in this attempt to explore the extremely complicated issues raised as a result of the wetland issue and the proposed fair share standard, the Old Bridge Township Planning Board seeks to go on record as not waiving any rights it may have to reopen the terms of the settlement due to the wetlands issue or due to the significant change in municipal responsibility under the proposed regulations of the Affordable Housing Council.

Respectfully submitted,

Thomas Norman, Esq.

TN:mk
CC: All Parties

Letter of Stewart M. Hutt to Eugene D. Serpentelli, A.J.S.C. (November 18, 1987)

Hutt, Berkow & Jankowski
A PROFESSIONAL CORPORATION

FAX: 201-634-0718

Our File #

Gordon Berkow
Stewart M. Hutt
Joseph J. Jankowski
Janice K. Scherer
Ronald L. Shimanowitz
Susan Brown Peitz
Mark Williams
Michael J. Gonnella
Michael F. Kaelber
Ben D. Shirak

459 Amboy Avenue
P.O. Box 648
Woodbridge, New Jersey 07095
201-634-6400

November 18, 1987

Hon. Eugene D. Serpentelli, A.J.S.C.
Ocean County Court House
CN-2191
Toms River, New Jersey 08754

Re: Urban League of Greater New Brunswick et al. vs. Township of Old Bridge, et al.
Docket No. L-009837-84-PW

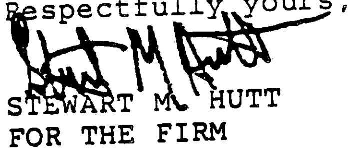
Dear Judge Serpentelli:

I am writing with regard to your letter to myself and Mr. Hall dated November 13, 1987, in which you advise that it is the Court's intention to mark the plaintiff's Motions for Reconsideration as withdrawn unless some preliminary argument is set forth by letter response. As per our recent telephone conversation, the delay in filing of our brief is due in part to the delay in receiving the transcript and as a result of my partner's recent illness and hospitalization. At this time, Woodhaven's Brief in Support of Motion for Reconsideration is ninety percent complete and Woodhaven shall file same by Wednesday, November 25, 1987. Said Brief sets forth Woodhaven's complete argument as to matters overlooked by the Court which we feel are a substantial basis for reconsideration of the Court's ruling. In short, our argument for reconsideration is that Woodhaven is a completely independent project and is entitled to the benefit of its bargain; therefore, the judgment should not be set aside as to Woodhaven. The Brief to be submitted will expound on this and related arguments.

Accordingly, we respectfully request the Court to not withdraw the subject motions and, upon receipt of plaintiff's brief, to set down a briefing schedule for defendants as well as a date for oral argument.

Thanking you for your consideration of the above, I remain,

Respectfully yours,



STEWART M. HUTT
FOR THE FIRM

SMH:al

cc: Thomas Jay Hall, Esq.
Thomas Norman, Esq.
Frederick C. Mezey, Esq.
Dean Gaver, Esq.
Barbara Stark, Esq.
Jerome J. Convery, Esq.
William Flynn, Esq.
George Raymond, Esq.
Mr. Joel Schwartz

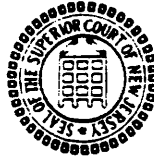
Letter of Eugene D. Serpentelli, A.J.S.C. to Stewart M. Hutt (December 1, 1987)

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI
ASSIGNMENT JUDGE

929-2176

~~349-2484~~



H.E + J

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

DEC 2 '87

December 1, 1987

Stewart M. Hutt, Esquire
Hutt, Berkow & Jankowski
459 Amboy Avenue
P. O. Box 648
Woodbridge, New Jersey 07095

Re: Urban League of Greater New Brunswick et al. v. Township of Old Bridge et al.
Docket No. L-009837-84-PW

Dear Mr. Hutt:

I wish to acknowledge your letter of November 18, 1987, with regard to the above.

As you are aware, O&Y has withdrawn its Motion for Reconsideration.

I certainly did not refuse to hear your Motion for Reconsideration, but as I indicated to you in your telephone call to me, I wanted the basis for your motion set forth in a letter.

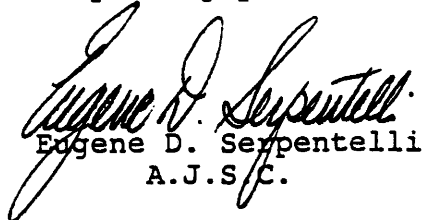
Having received your letter of November 18, I am satisfied that there is no reason for this motion to be heard. The court was entirely aware that Woodhaven was a completely independent project. Furthermore, the court assumed for the purpose of the motion, that the Woodhaven project would

(Continued) December 1, 1987
Stewart M. Hutt, Esquire,
Hutt, Berkow & Jankowski

not be substantially reduced due to the wetlands problem which existed in Old Bridge. Notwithstanding that fact, the court expressed clearly on the record that the Woodhaven project was an integral part of the overall settlement and could not be separated from O&Y. Based on that fact, I can see no reason asserted by you for reconsideration.

I await your further response.

Very truly yours,



Eugene D. Serpentelli
A.J.S.C.

EDS:toc

cc: SEE DISTRIBUTION

(Continued)
Stewart M. Hutt, Esquire,
Hutt, Berkow & Jankowski

December 1, 1987

DISTRIBUTION:

Thomas Jay Hall, Esquire,
Brener, Wallack & Hill

Thomas Norman, Esquire,
Norman & Kingsbury

Frederick C. Mezey, Esquire,
Mezey & Mezey

Dean Gaver, Esquire,
Hannoch Weisman

Barbara Stark, Esquire,
Rutgers School of Law

Jerome J. Convery, Esquire

William Flynn, Esquire

George Raymond,
Court-appointed Master

7/16/84

FILED JUL 1 ? 1984
D. SERPENTELLI, J.S.C.

JOHN M. PAYNE, ESQ.
BARBARA J. WILLIAMS, ESQ.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102
201/648-5687

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

ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION/MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

Docket No. C 4122-73

Civil Action

ORDER AND JUDGMENT AS TO OLD BRIDGE TOWNSHIP

THIS MATTER having been opened to the Court by counsel for the Urban League plaintiffs upon their motion to modify and enforce the Judgment of this Court of July 9, 1976 against the defendant Township of Old Bridge in light of the Supreme Court's decision in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983), and the Court having reviewed the Stipulation entered into by the parties and having heard counsel for both parties, as well as counsel for Olympia and York/Old Bridge Development Corporation and Woodhaven Village, Inc. (hereinafter "developer plaintiffs"),

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

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

1. For purposes of determining present housing need, the appropriate region for Old Bridge Township is the eleven county region identified in the Fair Share Report prepared by Carla L. Lerman, P.P., dated April 2, 1984. For purposes of determining prospective housing need, the appropriate region for Old Bridge Township is the five county commutershed region, comprised of Middlesex, Monmouth, Ocean, Somerset and Union Counties and based on the methodology contained in Ms. Lerman's Report of April 2, 1984.

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

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

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

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

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

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

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

EUGENE D. SERPENTELLI, J.S.C.

Excerpt of Transcript of Compliance Hearing (January 24, 1986)

1 SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : MIDDLESEX/OCEAN COUNTIES
Docket No. C-4122-73

2

3 URBAN LEAGUE OF GREATER NEW BRUNSWICK, et als.,

4 Plaintiffs,

5 vs.

6 THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET,

7 et al.,

8 Defendants.

MOUNT LAUREL II

STENOGRAPHIC TRANSCRIPT of SETTLEMENT

9

10 Place:

11 Ocean County Courthouse
Toms River, N.J.

12 Date:

13 January 24, 1986

14

15 BEFORE:

16 THE HONORABLE EUGENE D. SERPENTELLI, J.S.C.

17

18 TRANSCRIPT ORDERED BY: THOMAS J. HALL, Esq.
(Brener, Wallack & Hill)

19

20 APPEARANCES:

21 ERIC R. NEISSER, Esq. and
BARBARA J. STARK, Esq.

22 Attorneys for Plaintiff
Urban League of Greater

23 New Brunswick.

24 Reported by:

25 DAVID G. VORSTEG, C.S.R.

1 A Yes. I did not mean to be facetious, really didn't.

2 I think that what this represents, really, is a great

3 deal of, you know, negotiation and discussion, compromise,

4 working through figures, and what will result, I believe,

5 is the realistic probability, if that's not a redundancy,

6 that the number of units set forth in the settlement agree-

7 ment will be built in the six-year repose period referred

8 to in the agreement. The dual number is lower than the

9 fair share number that had been agreed to, initially, the

10 fair share number relating what would have been the

11 requirement for a ten-year period. The six-year period

12 really represents what realistically might be built in

13 six years and marketed in this period of time.

14 Q That's the 1668?

15 A Right.

16 THE COURT: I'll direct this to counsel:

17 The order refers to 1,668 units. In the

18 settlement agreement, Section III-B.2 there's a

19 reference to the "suspension of lower-income

20 housing obligation," which refers to 2,135 units.

21 I want to be sure I understand what the difference

22 is.

23 MR. CONVERY: May it please the Court,

24 Jerome J. Convery on behalf of the Township of

25 Old Bridge.

PENGAD CO., BAYONNE, N.J. 07002 · FORM SCL 0002

1 That section was negotiated several
2 months back concerning the concept that if the
3 Township of Old Bridge reached the number of 2,135
4 lower income units prior to 1990, that there would
5 be no further obligation to have developers construct
6 Mount Laurel housing at that point. It later became
7 clear that the realistic number that could actually
8 be built by the year 1990 would be much less than
9 that, but this was an assurance to the Township
10 Council that once we reached that number of 2,135
11 units, that no one would expect the Township of
12 Old Bridge to require builders to continue to build
13 Mount Laurel housing in excess of that number in
14 spite of the fact that we would have ordinances in
15 effect that would have a set-aside.
16 So I am trying to explain to the Court that
17 this was a provision that was negotiated to satisfy
18 the Council that they would not be required to go
19 beyond that number. That paragraph is acceptable
20 to the town in the form that it's now stated, but
21 I think all the parties agree that the figure in
22 the order represents the obligation of 1,668 units
23 for the next six years following the entry of the
24 order.
25 THE COURT: Well, to the uninitiated, including

1 me in terms of your negotiation and purpose, it
2 appears to me there is an inconsistency. The two
3 seem quite inconsistent. It seems to us your fair
4 share is 1,668, and you should be entitled to cut
5 it off then in 1990.
6 MR. CONVERY: Rather than --
7 THE COURT: I'm not arguing against the idea.
8 MR. CONVERY: Rather than belaboring the
9 point, the provision is acceptable to the town. If
10 the provision is not acceptable to the Master or
11 to the Court, I would ask that that provision be
12 stricken rather than having additional negotiation.
13 THE COURT: Mr. Neisser.
14 MR. NEISSER: Eric Neisser on behalf of the
15 Urban League.
16 THE COURT: I want you to know I said it
17 right.
18 MR. NEISSER: Yes, you did, and I appreciate
19 it.
20 Mr. Convery's description is accurate. I
21 think he only failed to explain, as Your Honor
22 said, to the uninitiated where the number 2,135
23 in that paragraph you referred to came from. That
24 comes from Your Honor's order of July 13, 1984, in
25 which the fair share was set at 2,414. Then in this

Certification of Eugene Dunlop in Support of Motion to Set Aside Judgment (July 20, 1987)

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

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al. Plaintiffs, vs. THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al. Defendants,	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MIDDLESEX COUNTY/ OCEAN COUNTY (Mount Laurel II) DOCKET NO. C-4122-73
and O & Y OLD BRIDGE DEVELOPMENT CORPORATION, a Delaware Corporation, and WOODHAVEN VILLAGE, INC., a New Jersey Corporation, Plaintiffs, vs. 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. L-009837-84 PW and NO. L-036734-84 PW CIVIL ACTION CERTIFICATION IN SUPPORT OF MOTION TO SET ASIDE JUDGMENT

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.

Still True

Still True

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 showplace 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 bais 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 piece meal 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 thrity (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-

never part of settle

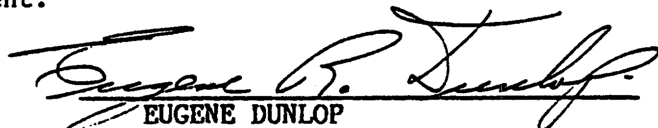
tions and promises of Lloyd Brown concerning the regional shopping center, and I believe that when he made those statements he thought that O & Y could, in fact, build these commercial properties. When he pointed out to the Township Council that O & Y's commercial development would insure that O & Y 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

Excerpt of Transcript of Compliance Hearing (January 24, 1986)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : MIDDLESEX/OCEAN COUNTIES
Docket No. C-4122-73

1
2
3 URBAN LEAGUE OF GREATER NEW BRUNSWICK, et als.,
4 Plaintiffs,
5 vs.
6 THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET,
7 et al.,
8 Defendants.

MOUNT LAUREL II

STENOGRAPHIC TRANSCRIPT of SETTLEMENT

9
10 Place:
11 Ocean County Courthouse
Toms River, N.J.
12 Date:
13 January 24, 1986
14
15 BEFORE:
16 THE HONORABLE EUGENE D. SERPENTELLI, J.S.C.
17
18 TRANSCRIPT ORDERED BY: THOMAS J. HALL, Esq.
(Brener, Wallack & Hill)
19
20 APPEARANCES:
21 ERIC R. NEISSER, Esq. and
BARBARA J. STARK, Esq.
22 Attorneys for Plaintiff
Urban League of Greater
23 New Brunswick.
24
25 Reported by:
DAVID G. VORSTEG, C.S.R.

PENGAD CO., BAYONNE, N.J. 07002 - FORM SEL 0402

1 say, now, we have the right to transfer.

2 THE COURT: That's what Mr. Convery was

3 saying. He said, if you change the terms on which

4 we settle, it should work both ways. We should have

5 a right to change our terms and that's only fair.

6 But as long as no one seeks to change, he was uneasy

7 about the suggestion that the basis upon which they

8 settle might be changed and then the Council, governing

9 body could say, well, then why do we settle? Why not

10 go to the Housing Council? That's a reasonable

11 question.

12 MR. NEISSER: I think the distinction between

13 it was of implementing the agreement even if there

14 were problems with enforcement as against changing

15 or modifying the agreement. I think that would take

16 care of the concerns of the Urban League. Yes.

17 THE COURT: All right. Anyone else?

18 All right, I think that, first of all, upon

19 the execution of this order and judgment there is no

20 exclusionary zoning before me, exclusionary zoning

21 case before me to transfer and in a very real sense

22 it's moot. I couldn't send anything to the Council

23 I don't have.

24 Secondly, I think the legislation even

25 envisioned, in fact, some cases might not unitarily

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1 continue before the Court and then in those cases,
2 of course, this dealt with cases that had settled
3 before the Act, that a repose was granted statutorily,
4 if you can put it that way. I don't find in the
5 legislation anything that contemplates that whole
6 host of cases, which are still continuing before the
7 Court, can't be settled. As to those cases, the
8 Council on Affordable Housing would have no involve-
9 ment. We have more cases in that posture than we do
10 have in the transfer posture.
11 Thirdly, I think it is fair to say, and Mr.
12 Convery has been very candid about it, that the town
13 does intend this to be a complete and final settle-
14 ment of all litigation which in and of itself would
15 render a transfer moot, because there would be nothing
16 to litigate before the Housing Council. For those
17 reasons I think it is appropriate to deny the motion
18 because of the remoteness rather than the merits of
19 any right to transfer and that the motion should be
20 denied with prejudice, it being understood that what
21 I've said before need not be incorporated in the
22 order, but is incorporated in the record and, that
23 is, that the Court understands the denial of the
24 motion is based on mootness and that the mootness
25 may, if I can put it that way, disappear if anyone

PENGAD CO., BAYONNE, N.J. 07002 · FORM SEL 8408

Letter of Stewart M. Hutt to George Raymond
(August 31, 1987)

File copy

Law Offices
Hutt, Berkow & Jankowski
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Gordon Berkow
Stewart M. Hutt
Joseph J. Jankowski
Janice K. Scherer
Ronald L. Shimanowitz
Susan Brown Peity
Mark Williams
Michael J. Gonnella
Michael F. Kaelber
Ben D. Shiviak

Park Professional Bldg.
459 Amboy Avenue
P.O. Box 648
Woodbridge, N.J. 07095

Reply to
P.O. Box 648

(201) 634-6400
Our File #

August 31, 1987

George Raymond, P.P.
Raymond, Parish, Pine & Weiner
555 White Plains Road
Tarrytown, NY 10591

Re: Woodhaven Village, Inc.
vs. Township of Old Bridge

Dear Mr. Raymond:

As you may know this office represents Woodhaven Village, Inc. with regard to the above captioned matter. The Court has requested that the parties provide you with documentation necessary for your evaluation of the Woodhaven site and its developability as a result of constraints due to wetland acres. Accordingly, we enclose the following documents for your review:

1. Copy of "Plaintiff, Woodhaven Village, Inc.'s Answering Brief to Defendants' Motion to Set Aside Final Judgment";

2. Plan entitled "Land Use and Road Alignment Plan" prepared by The Salkin Group and dated August 26, 1987;

3. Report entitled "Project Planning Report, Woodhaven Village", dated August 26, 1987 and prepared by The Salkin Group, Inc.

It is our understanding that you have been provided with a copy of the settlement documents consisting of an Order and Final Judgment of Repose entered January 24, 1986, Settlement Agreement and Appendices thereto (hereinafter referred to as the "Blue Book").

We would like to take this opportunity to give you the benefit of a summary explanation of the above enclosures. The

Hutt, Berkow & Jankowski

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George Raymond, P.P.
August 31, 1987
Page Two

enclosed Answering Brief submitted on behalf of Woodhaven Village, Inc. in Opposition to the Township's Motion to Set Aside Final Judgment is based upon a very simple premise. That is, the parties are governed by the provisions of the Blue Book and that the Township and Planning Board, which seek to set aside the Blue Book settlement, are being given everything that was promised to them by the developers. The Township will receive from the developers a "master planned" community which community is guided by an overall planning framework instead of piecemeal development (the enclosed Land Use Plan is Woodhaven's proposed master Plan for its community based upon environmental constraints known at this time).

The Blue Book contemplated a planned development on Woodhaven's 1,455 acres and that the planned development would be comprised of a maximum of 5,820 dwelling units. The maximum number of dwelling units was defined by the Blue Book as the number of acres controlled by Woodhaven (1,455) multiplied by a density of 4 dwelling units per acre. Woodhaven is still bound by this maximum. The Blue Book does not contain a net density requirement. The Blue Book does contain a maximum or gross density requirement (i.e. 4 units per acre) and, the Blue Book sets forth very detailed development standards and controls with regard to the developers' rights to develop their lands. The developers are certainly bound by the maximum density requirement and the development/design standards requirements and, of course, these constraints will control the ultimate number of units built (which number cannot exceed 5,820). Woodhaven is permitted to develop its lands to the maximum allowed, in Woodhaven's case 5,820 units, provided Woodhaven conforms to all of the design standards set forth in the Blue Book.

The Blue Book does not require the building of a specific "master planned" development. The Blue Book only requires a "master planned" development which has been approved by the Planning Board and this is what the defendants will get. The fact that the respective Land Use Plans of the developers have been modified should come as no great surprise. The Land Use Plans are planning blue prints for projects which are contemplated to have 20-year build outs. In revising the Land Use Plan, we are doing precisely what the Blue Book envisioned. The fact that the original "Master Plan" has changed somewhat to take the form of the new Salkin Land Use Plan is simply part of the master planning process.

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Also, the Blue Book, by two specific provisions, obligates the developers to develop their lands at a pace which has been limited for the benefit of the Township. First, the development of residential market units is "lock-stepped" with development of Mount Laurel units such that Mount Laurel units must be "phased in" with market units. Second, development of residential market units is "lock stepped" with commercial development such that commercial development must be "phased in" with market units. These two "lock-step" provisions operate to protect the interests of the Township and those benefitted by lower income housing. The Township is assured of a balanced and orderly development process. Those in need of Mount Laurel Housing are assured that same is provided in a timely manner.

Further, the Trans Old Bridge Connector which the Township and Planning Board claim was promised and allege they are not getting, is not promised in the Blue Book as part of the proposed developments. The true agreement provided by the Blue Book is that the ultimate "master planned" community agreed upon by the developers and Planning Board would be a well planned community with a logical road network, an appropriate open space provision for passive and active recreation and sufficient lands reserved for public purposes and commercial uses. That is the basis for the agreement embodied in the Blue Book and that is precisely what the Township is getting.

The Land Use Plan enclosed prepared by Salkin Group has been revised from the plate B attached to the Blue Book as a result of the increase in federally regulated wetlands. The Salkin plan is the result of Woodhaven having instructed its planner to disregard the original plate B and consider the current facts (including the increased number of wetlands acres). The Salkin plan does alter the original Land Use Plan slightly as a result of the increased wetland acres. In addition, since the Trans Old Bridge Connector is no longer possible due to wetland acres on the Olympia and York Site, Woodhaven has re-aligned the major arterial on its site.

Clearly, the change in the Federal Government's regulation of wetlands has increased the number of wetland acres originally thought to be on the Woodhaven site.

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The result is that Woodhaven now proposes, albeit involuntarily, more open space than the minimum required. The logical response to such a proposal would be some form of rational discourse. Disposal of the Blue Book hardly seems a considered response. The point is that the Blue Book is a comprehensive document that anticipates the cycle of proposal and revision based on new information and insight that is characteristic of any design process and indeed of any learning process. The Blue Book is both the _legal_ remedy and the _planning_ remedy. The Blue Book must not be set aside, provided the developers can prove that their lands can be developed in a manner which comports with good planning sense. Afterall, the Blue Book contemplated an approval process for the plates which clearly recognized the possibility of modifications to the plates.

With regard to the enclosed Land Use Plan, (Salkin Plan) we wish to direct your attention to certain features of same. First, your review of the Salkin Plan will reveal that our planners have done all that is in their power to minimize the impact on wetland acres. Second, the road network is logical and efficient since same is based upon and reinforces the essential character of the site. That is, the corridors of mature vegetation will be preserved thereby defining the site into neighborhood sized sub-communities which are tied together by a continuous pattern of open space. For example, roadways are organized such that major roads have maximum length along and adjacent to open space areas to reinforce the residents' experience of the open space preserves. Third, the Land Use Plan contemplates a Town Center which includes a major parcel of commercial development as well as a substantial public purpose parcel. Other smaller commercial sites and other public purpose sites are dispersed throughout the community to serve the residents' needs. The enclosed Land Use Plan is further described by the enclosed report entitled "Project Planning Report, Woodhaven Village", dated August 26, 1987 and prepared by Salkin Group, Inc.

In an effort to avoid any confusion, please note that the original plates B and B-1, attached to the Blue Book, were prepared by Wallace, Roberts and Todd in their capacity as Project Planners for Woodhaven Village, Inc. The enclosed Land Use Plan was prepared by the Salkin Group. The Salkin Group has taken on all Woodhaven project planning responsibilities due to the appointment of Wallace, Roberts and Todd as principal planners for the State Planning Commission's development and re-development plan.

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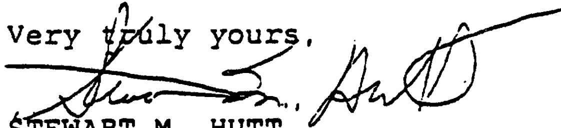
We trust the enclosures and the above explanation will be helpful to you in analyzing the facts herein. Of course, should your require any additional information please advise and we will be pleased to supply same. We look forward to working with you and to having the benefit of your assistance.

Very truly yours,



STEWART M. HUTT
FOR THE FIRM

SMH:al
Enclosures

cc: Hon. Eugene D. Serpentelli
Mr. Sam Halpern
Mr. Joel Schwartz
Mr. Larry Salkin
All Parties on Service List

SERVICE LIST - OLD BRIDGE

Thomas Norman, Esquire
Norman & Kingsbury
Jackson Commons A-2
30 Jackson Road
Medford, NJ 08055

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

Thomas J. Hall, Esq.
Brener, Wallack & Hill
210 Carnegie Center
Princeton, New Jersey 08543

Dean Gaver, Esquire
Hannoch Weisman
4 Becker Farm Road
Roseland, NJ 07068

Barbara Stark, Esquire
Rutgers School of Law
Constitutional Litigation Clinic
15 Washington Street
Newark, NJ 07102-3192

William Flynn, Esquire
Antonio & Flynn
255 Highway 516
P.O. Box 515
Old Bridge, NJ 08857

George Raymond
Court-appointed Master
Raymond, Parish, Pine & Weiner
555 White Plains Road
Tarrytown, NY 10591

Mr. Joel Schwartz (Woodhaven Village, Inc.)
900 Woodbridge Center Drive
Woodbridge, New Jersey 07095

Frederick C. Mezey, Esquire
Mezey & Mezey
93 Bayard Street
New Brunswick, NJ 08903

Excerpt of Agreement between Old Bridge Sewer Authority, Woodhaven Village, and O & Y (Sewer Agreement)

AGREEMENT

BETWEEN

THE OLD BRIDGE TOWNSHIP
SEWERAGE AUTHORITY

AND

WOODHAVEN VILLAGE, INC.

AND

O & Y OLD BRIDGE
DEVELOPMENT CORP.

BOOK NUMBER 144

(vi) upon issuance of any required County, State or Municipal Approval.

10.8 Temporary Pumping Station and Force Main

In the event that the development by "Matchaponix Hills" requires installation of sewerage facilities prior to the date when the Developers would otherwise have constructed the Matchaponix Sewage Pumping Station and Force Main, Woodhaven agrees to construct, at its expense, a temporary Matchaponix Pumping Station and Force Main of at least sufficient "Design Capacity" to sewer the "Matchaponix Hills" development. The Developers shall not utilize said temporary pumping station.

11. MATCHAPONIX PUMPING STATION OUTFALL

11.1 Interceptor A

Sewer Interceptor A, to be constructed on Olympia's lands, as shown on Plate 2, will serve as the outfall for the discharge of the force main from the Matchaponix Sewage Pumping Station and will be constructed by Olympia when it is required by Olympia with sufficient "Design Capacity" to accommodate the proposed development on those lands of Olympia that are west of Englishtown Road as well as the "Potential Development" on lands within the "Township" that are located south of Texas Road, including the development on Woodhaven's lands, without compensation from Woodhaven to Olympia in this regard.

11.2 Demand by Woodhaven to Proceed

In the event that Woodhaven requires Interceptor A to be installed ahead of Olympia's normal construction schedule, Olympia will

design and commence construction of this interceptor sewer in an expeditious manner upon receipt of a written demand from Woodhaven to Olympia given in accordance with subsection 19.1. Under such demand, Olympia's plans, specifications and selection of contractor for construction of Sewer Interceptor A shall all be subject to written approval by Woodhaven, which approval shall not be unreasonably withheld.

11.3 Woodhaven to Guarantee Cost

In the event Olympia is under demand from Woodhaven to construct Interceptor A, Woodhaven will deposit with the "Escrow Agent" concurrent with the demand, a "Bank Letter of Credit", as defined in subsection 19.5, in favor of the "Escrow Agent" in the amount of one hundred twenty-five percent (125%) of Olympia's Consulting Design Engineer's preliminary estimated "Project Cost" of constructing Sewer Interceptor A.

11.4 Woodhaven to Make Progress Payments

If Olympia proceeds under the demand of subsection 11.2, Woodhaven will pay Progress Construction Draws to Olympia for construction of the Sewer Interceptor A, which construction draws will be due and payable upon presentation of Olympia's Consulting Design Engineer's Certificate of Construction Progress Payment.

11.5 Failure to Pay

In the event any Certificate of Construction Progress Payment, referred to in subsection 11.4, remains unpaid for more than forty-five (45) days, Olympia may present such claim for payment to the "Escrow Agent" who shall draw against the "Bank Letter of Credit", referred to in subsection 11.3, pay the account and subsequently advise Woodhaven, in accordance with subsection 19.1, of the action taken in this regard.

11.6 Woodhaven to Hold Title

In the event Woodhaven pays the "Project Cost" of constructing Sewer Interceptor A, Olympia shall execute and deliver to Woodhaven, at the time of the final Progress Construction Draw, as provided in subsection 11.4, an instrument, in recordable form, which:

(a) grants to Woodhaven an easement, in perpetuity (but subject to defeasance, as set forth in paragraph (b) of this subsection) over that portion of Olympia's land upon which Sewer Interceptor A has been constructed for the purpose of vesting in Woodhaven the right to use Sewer Interceptor A to the exclusion of Olympia; and

(b) provides that upon payment to Woodhaven of the "Project Cost" of constructing Sewer Interceptor A without mark-up but including "Imputed Interest" the easement granted to Woodhaven without further action by any Party hereto, shall revert to Olympia and shall terminate and cease to be of any further force and effect.

(c) Woodhaven shall, upon receipt of the payment set forth in paragraph (b) of this subsection including any offset allowed by subsection 11.8, deliver an instrument, in recordable form, which serves to confirm that the easement granted in paragraph (a) of this subsection has been terminated and ceases to be of any further force and effect.

11.7 Olympia May Withhold Connection

Notwithstanding the provisions of subsection 11.6 in addition to any other legal remedy, Olympia shall have the right to withhold conveyance of the title to the easement for Interceptor A and to deny Woodhaven connection to Sewer Interceptor A unless and until:

(a) Woodhaven has paid Olympia the full "Project Cost" for constructing Sewer Interceptor A, in the event Olympia proceeds with the construction of Sewer Interceptor A under demand from Woodhaven, and

(b) Woodhaven has provided the entire sewerage system upstream of Interceptor A (to the extent then constructed) with sufficient "Design Capacity" to accommodate Olympia's 3,500 "Sewer Connections", as required by subsections 12.1 and 12.2, provided that the "Design Capacity" of the Matchaponix Pumping Station may be staged in accordance with subsection 10.5.

11.8 Olympia May Offset Costs

If Olympia has constructed Interceptor A under demand from Woodhaven, as provided in subsection 11.2, and Olympia has not yet reimbursed Woodhaven, as provided in paragraph (b) of subsection 11.6, Olympia shall have the option to:

(a) demand that Woodhaven proceed with construction of Interceptor X as provided in subsections 12.5 to 12.11, inclusive, and

(b) Olympia may offset its "Project Cost" (including "Imputed Interest") of constructing Interceptor X (or the uncompleted portion thereof), less forty percent (40%) of the "Project Cost" of that portion of Interceptor X which is not located on Woodhaven's lands, against Woodhaven's "Project Cost" (including "Imputed Interest") of constructing Interceptor A, and

(c) such offset shall credit to Olympia in making the payment referred to in paragraph (b) of subsection 11.6.

Upon the completion of Interceptor X to the manhole located at the southern boundary of the Texas Road right-of-way, as set forth in subsection 12.1, Olympia shall be required to reimburse Woodhaven for the "Project Cost" of Interceptor A, plus "Imputed Interest", in the event that Olympia has constructed Interceptor A under demand from Woodhaven, as provided in subsection 11.2.

11.9 Olympia to Reimburse Woodhaven

Notwithstanding any other provision contained herein, in the event Sewer Interceptor A is constructed under demand pursuant to subsection 11.2, Olympia shall reimburse Woodhaven for the "Project Cost" of Sewer Interceptor A (including "Imputed Interest") within ten (10) years from the date when construction on Sewer Interceptor A is completed, which completion shall be deemed to be the date of the final Certificate of Construction Progress Payment as issued by the Consulting

Design Engineer for construction of Interceptor A, or upon connection of the first Olympia "Sewer Connection" to Interceptor A, whichever shall come first.

11.10 Temporary Pumping Station Outfall

In the event that sewerage facilities are required for development planned by "Matchaponix Hills" prior to the date when Interceptor A is constructed and ready to accept sewage from that development, Woodhaven agrees to install, at its expense, a temporary Matchaponix Sewage Pumping Station outfall, along the path designated for Sewer Interceptor A, at least of sufficient "Design Capacity" to serve the development of "Matchaponix Hills". The Developers shall not utilize said temporary pumping station outfall.

12. CAPACITY FOR OLYMPIA

12.1 Barclay Brook Trunk Sewer

When required by Woodhaven in its normal course of construction, Woodhaven shall construct Interceptor X (A/K/A Fly Brook - Barclay Brook - Matchaponix Interceptor System) terminating at a manhole located at the southern boundary of the Texas Road right-of-way, as shown on Plate 2 attached hereto, and shall provide the said interceptor and its outfall system, with sufficient additional "Design Capacity" to accommodate not less than 3,500 "Sewer Connections" on Olympia's lands south of Hillsboro Road (A/K/A East Greystone Road) without compensation in this regard from Olympia.

12.2 Outfall Capacity

The additional "Design Capacity" to be provided in the Barclay Brook - Fly Brook - Matchaponix Interceptor System, as described in subsection 8.3, that is required to accommodate the development on Olympia's lands, described in subsection 12.1, shall be provided by Woodhaven without compensation in this regard from Olympia.

12.3 Olympia to Connect

Olympia shall be responsible to extend its Barclay Brook Trunk Sewer outfall, referred to in subsection 12.1, across the Texas Road right-of-way to Woodhaven lands to connect to a manhole with a connecting stub constructed by Woodhaven at the southerly boundary of Texas Road and Woodhaven shall allow Olympia reasonable access as may be necessary to construct such connection.

12.4 Design Subject to Approval

All plans and specifications for Interceptor X (Barclay Brook - Fly Brook - Matchaponix Interceptor system) shall be subject to approval by the Sewerage Authority, in accordance with Section 14 and also subject to review by Olympia to ascertain that the inverts are acceptable to Olympia and that the capacity, required by subsection 12.1, will be provided throughout the system and said plans and specifications shall be approved in writing by Olympia as to the said inverts and capacity as a condition precedent to commencement of construction by Woodhaven.

12.5 Demand by Olympia to Proceed

In the event that Olympia requires Interceptor X (or the remaining uncompleted portion thereof) to be installed ahead of Woodhaven's normal construction schedule, Woodhaven will proceed with

construction of this interceptor sewer in an expeditious manner upon receipt of a written demand from Olympia to Woodhaven given in accordance with subsection 19.1.

12.6 Olympia to Guarantee Cost

In the event Woodhaven is under demand from Olympia to construct Interceptor X (or such portion of the Barclay Brook - Fly Brook - Matchaponix Interceptor system as remains uncompleted at that time) Olympia will deposit with the "Escrow Agent" concurrent with the demand, a "Bank Letter of Credit", as defined in subsection 19.5, in favor of the "Escrow Agent" in the amount of one hundred twenty-five percent (125%) of the Consulting Design Engineer's preliminary estimated "Project Cost" of constructing Sewer Interceptor X or the said uncompleted portion thereof.

12.7 Olympia to Make Progress Payments

If Woodhaven proceeds under the demand of subsection 12.5, Olympia will pay Progress Construction Draws to Woodhaven for construction of the Sewer Interceptor X (or uncompleted portion thereof), which construction draws will be due and payable upon presentation of the Consulting Design Engineer's Certificate of Construction Progress Payment.

12.8 Failure to Pay

In the event any Certificate of Construction Progress Payment, referred to in subsection 12.7, remains unpaid for more than forty-five (45) days, Woodhaven may present such claim for payment to the "Escrow Agent" who shall draw against the "Bank Letter of Credit", referred to in

subsection 12.6, pay the account and subsequently advise Olympia, in accordance with subsection 19.1, of the action taken in this regard.

12.9 Olympia to Hold Title

In the event Olympia pays the "Project Cost" of constructing Sewer Interceptor X, or uncompleted portion thereof, Woodhaven shall execute and deliver to Olympia, at the time of the final Progress Construction Draw as provided in subsection 12.7, an instrument, in recordable form, which:

(a) grants to Olympia an easement, in perpetuity (but subject to defeasance, as set forth in paragraph (b) of this subsection) over that portion of Woodhaven's land upon which Sewer Interceptor X has been constructed for the purpose of vesting in Olympia the right to use Sewer Interceptor X to the exclusion of Woodhaven; and

(b) provides that upon payment to Olympia of the "Project Cost" of construction of Sewer Interceptor X (or said uncompleted portion thereof) without mark-up but including "Imputed Interest" the easement granted to Olympia shall, without further action by any Party hereto, shall revert to Woodhaven and shall terminate and cease to be of any further force and effect; and

(c) Olympia shall, upon receipt of the payment set forth in paragraph (b) of this subsection, deliver an instrument, in recordable form, which serves to confirm that the easement granted in paragraph (a) of this subsection has been terminated and ceases to be of any further force and effect.

12.10 Woodhaven May Withhold Connection

Nothwithstanding the provisions of subsections 12.1 and 12.2 in addition to any other legal remedy, Woodhaven shall have the right to withhold conveyance of the title to that portion of the easement for Interceptor X that is subject of the demand, referred to in subsection 12.5, and to deny Olympia connection to Sewer Interceptor X, as provided in subsection 12.3, unless and until:

(a) Olympia has paid Woodhaven the full "Project Cost" for Sewer Interceptor X (or said uncompleted portion thereof), in the event Woodhaven proceeds with the construction of Sewer Interceptor X under demand from Olympia.

(b) for purposes of this subsection any offsets taken by Olympia pursuant to subsection 11.8 shall be deemed to be payments to Woodhaven.

12.11 Woodhaven to Reimburse Olympia

Notwithstanding any other provision contained herein, Woodhaven shall reimburse Olympia for the "Project Cost" of constructing Sewer Interceptor X (including "Imputed Interest") in the event that Sewer Interceptor X (or uncompleted portion thereof) is constructed under demand pursuant to subsection 12.5, within ten (10) years after the construction of that portion of Sewer Interceptor X that is subject of the demand is completed, which completion date shall be deemed to be the date of the final Certificate of Construction Progress Payment as issued by the Consulting Design Engineer for construction of Interceptor X, or upon connection of the first Woodhaven "Sewer Connection" to Interceptor X, whichever shall occur first.

13. AMENDED REGULATIONS AND FEES

13.1 Present Rules and Regulations

The Sewerage Authority's current Rules and Regulations (Schedule F) require applications to be submitted and fees to be paid for sewer service as follows:

(a) submission of an application for Preliminary Approval and payment of a filing fee of ten dollars ($10.00) per unit;

(b) submission of an application for "Tentative Approval" and payment of a design review fee equal to 2% of the estimated cost of construction, as approved by the Authority's engineer;