

CA - Old Bridge

7-Apr-89

Certification of C. Roy EPPS

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SUPERIOR COURT OF NEW JERSEY  
 APPELLATE DIVISION

URBAN LEAGUE OF GREATER NEW	)	
NEW BRUNSWICK, et al.,	)	DOCKET NO. A-4335-87T3
Plaintiffs	)	A-4572-87T3
	)	A-4752-87T3
v.	)	
	)	Civil Action
THE MAYOR AND COUNCIL OF	)	(Old Bridge)
THE BOROUGH OF CARTERET	)	
(OLD BRIDGE), et al.,	)	CERTIFICATION OF
Defendants	)	C. ROY EPPS

C. Roy Epps, of full age, certifies as follows:

1. I am the President of the Civic League of Greater New Brunswick. In this capacity, I am fully familiar with the facts and circumstances of this case. This certification is respectfully submitted in support of plaintiffs' motion (1) to stay the Orders dated October 6, 1987 and April 21, 1988 insofar as they permit defendant Old Bridge Planning Board to consider applications of Olympia & York Old Bridge Development Corporation ("O & Y") and Woodhaven Village, Inc. ("Woodhaven"), pending resolution of the within appeal; (2) that the defendant Planning Board be further ordered to provide the Civic League plaintiffs with Planning Board agendas pending the resolution of the within appeal; (3) for a temporary remand to the trial court for a plenary hearing in connection with newly discovered evidence; and (4) following remand, that the appeal be expedited.

2. After two years of negotiation, on January 24, 1986, Old

Bridge and plaintiffs O & Y, Woodhaven, and the Civic League entered into an agreement incorporated in an Order and Final Judgment of Repose (the "Judgment"). The Judgment resolved all issues between the parties, providing in pertinent part for the construction of 10,560 units by O & Y and 5820 units by Woodhaven (WPa-29).<sup>1</sup> The agreed upon number of housing units represented a goal, which would be contingent upon market conditions. Ten (10) percent of the actual units constructed were to be affordable units and considered toward satisfaction of the Township's Mount Laurel obligation (WPa-24).

3. At the time of settlement, it is undisputed that all parties knew that the wetlands delineation had not been finalized. It was also known by all parties that the Council on Affordable Housing (COAH), in compliance with the Fair Housing Act, would be promulgating guidelines establishing fair share numbers of low and moderate income units for each municipality in the state.

4. In the Spring of 1986, COAH published its guidelines which established Old Bridge's fair share at 417 low and moderate income units--approximately one quarter of the commitment made by Old Bridge in the Judgment. (See COAH, 1987-1993 Low and Moderate Need Estimates by State and Region, 1986). It was subsequently confirmed that large areas of the O & Y and Woodhaven project sites are technically wetlands. The Township moved to vacate the Judgment in December 1986.

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<sup>1</sup>WPa refers to Appendix of Brief submitted by Plaintiff Woodhaven Village, Inc. (March 8, 1989).

5. Despite the developers' unequivocal willingness to proceed with scaled-back versions of their projects, and the Civic League's express agreement to accept a commensurate reduction of affordable housing, the Honorable Eugene D. Serpentelli vacated the Judgment by Order dated October 6, 1987 (WPa-44). The decision was predicated, in part, on Judge Serpentelli's finding that the developments contemplated in the Judgment were no longer possible due to the extent of the wetlands on the O & Y and Woodhaven sites. T107-23 to 108-3 (See Civic League Brief Appendix, CL-4). On April 21, 1988, the court denied Woodhaven's motion, which the Civic League had joined, for reconsideration and rehearing of the October 6, 1987 order (WPa-46).

6. Each of the plaintiffs filed for appeal (WPa-48,57,63). Woodhaven filed for consolidation of the appeals on November 21, 1988 which was granted by Order dated December 23, 1988 (WPa-67).

7. On or about January 11, 1989, I read an article in The Star-Ledger, a copy of which is attached as Exhibit A. This indicates that a substantial development project proposed by Olympia & York received conceptual approval by the Old Bridge Township Planning Board. The article also emphasized that

"O & Y must obtain preliminary and final subdivision approval before July 1, when new state regulations concerning wetlands take effect. . .Both O & Y and township officials have said the company could not get approval for its plan under the new regulations."

8. By letter dated February 6, 1989, a copy of which is

attached as Exhibit B, my attorney asked Ronald Reisner, Esq., Township Attorney of Old Bridge, to forward any development plans which have been approved and information on,

"the status of this project including:  
the types and dates of approvals granted,  
if any; the number of residential units;  
the commercial component; the rental/sales mix;  
the number of units reserved for senior citizens;  
the percentage of units which are to be marketed  
as low and moderate income units; and any other  
information pertinent to the subject matter of  
the pending appeal."

9. By letter dated February 8, 1989, a copy of which is attached as Exhibit C, Mr. Reisner suggested plaintiffs contact James M. Colaprico, Esq., Attorney for the Township's Planning Board. By letter dated February 10, 1989, a copy of which is attached as Exhibit D, my attorney wrote to Mr. Colaprico, requesting the aforementioned information.

10. By letter of Mr. Colaprico dated February 23, 1989, a copy of which is attached as Exhibit E, plaintiffs received on February 28, 1989 the Resolution of Memorialization (the "Resolution") which was adopted by the Old Bridge Township Planning Board relating to the O & Y property. With regard to the other information requested, Mr. Colaprico wrote, "[it] is a matter of public record and may be reviewed by you at the offices of the Old Bridge Township Planning Board." Alternatively, the letter suggested that copies could be obtained through the applicant's attorney, Steven Gray, Esq.

11. On February 15, 1989, Gwen Orlowski, a law student in

the Rutgers Constitutional Litigation Clinic, went to the Old Bridge Planning Board office to review the files on O & Y's pending application. As set forth in Ms. Orlowski's certification, submitted herewith, she was informed that only documents which had been specifically read into the record could be copied and only ten sheets of copy could be duplicated at and by the Planning Board office. Ms. Orlowski certifies that she read a letter from O & Y's attorney setting forth a timetable that included submission of Final Subdivision by May 21, 1989. She further states that she was not permitted to copy that letter.

12. By letter dated February 28, 1989, a copy of which is attached as Exhibit F, Thomas Hall, Esq., attorney for O & Y, informed plaintiffs that O & Y was immediately withdrawing its appeal of the vacation of the Judgment. The letter indicates that O & Y agreed to dismiss its litigation against the Township "as part of the GDP approval." The letter also clarifies that the senior citizen housing component of O & Y's new development plan is being constructed "in lieu of any affordable housing obligations."

13. By letter dated February 23, 1989, a copy of which is attached as Exhibit G, my attorney wrote to Stuart Hutt, Esq., attorney for Woodhaven, requesting information on the status of any current project planned by Woodhaven for Old Bridge. As of this date, there has been no written response.

14. It is obvious that O & Y's new development plan is

moving forward quickly. Woodhaven, too, is likely to be pursuing new development options. The public interest plaintiffs have deliberately been excluded from the process. This was precisely the concern expressed in the Civic League's Letter Brief in support of the motion for reconsideration:

"Vacation of the Judgment provides a powerful incentive for the developer plaintiffs to approach the Township and negotiate new scaled-down developments essentially comporting with the plans previously submitted. The main difference between the new plans and those set forth in the Judgment may simply be the omission of any Mount Laurel component in the former." (CL-1)

Our worst fears are being realized.

15. It is respectfully submitted, therefore, that a stay of the Orders dated October 6, 1987 and April 21, 1988, insofar as such Orders permit defendant Old Bridge Planning Board to consider applications of plaintiffs Olympia and York and Woodhaven pending the resolution of the within appeal, is absolutely essential. If these proceedings are not stayed while the new evidence is being considered, then O & Y's and Woodhaven's development rights may well vest and Old Bridge's inexcusable resistance to affordable housing will be rewarded. It is respectfully requested that defendant Planning Board also be ordered to provide the Civic League plaintiffs with Planning Board agendas pending resolution of the within appeal. This is the only way we would be able to monitor compliance with the Order.


16. Because developer plaintiffs, as well as defendant

Township, have not been responsive to the Civic League inquiries about the planned developments in Old Bridge, it is essential that this matter be remanded for a plenary hearing in order to determine the precise scope of the developments. As the Civic League's expert, Alan Mallach, indicated in his Certification, review of the Old Bridge Planning Board's Resolution of Memorialization regarding the O & Y property suggests further fact finding is necessary. Only through a plenary hearing can plaintiffs ascertain the facts regarding the new development of Olympia & York and the likely Woodhaven development crucial for a just resolution of the within appeal.

17. Finally, the new state regulations on wetlands which take effect July 1, 1989 may not only preclude O & Y's current plans, but may also pose similar obstacles to the Judgment which the Civic League plaintiffs seek to reinstate. Therefore, and more importantly, to avoid any further delay in the provision of desperately needed affordable housing, the Civic League plaintiffs respectfully urge that the within appeal be expedited following remand.

I hereby 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 may be subject to punishment.

Dated: April 7, 1989

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