

~~CA~~ - Old Bridge

5/1/89

CA

letter in lieu of a formal brief in support
of G+Y Old Bridge's motion to re-enter
the ~~old~~ matter as a party, for purpose of
opposing the Civic League's motion, for a
stay and remand for plenary hearing

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May 1, 1989

FILE NO.

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

Re: Urban League of Greater New Brunswick, et al.,
v. The Mayor & Council of the Borough of Carteret, et al.
 Docket No. A-4335-87T3, A-4752-87T3

Dear Mr. Constantini:

Please accept this letter brief in lieu of a formal brief in support of the O & Y Old Bridge Development Corporation (hereinafter referred to as "O & Y") motion to re-enter the above captioned matter as a party, for the purpose of opposing the Civic League's motion, for a stay and remand for plenary hearing and to set a hearing date for the resolution of this motion. O & Y does not seek to continue in the appeal of the trial court's decision and this motion is for the limited purposes set forth above, except that if this court does remand this matter to the trial court, O & Y requests that it be permitted to remain in the case.

This case was originally brought on appeal by O & Y, Woodhaven Village, Inc. and the Urban League of Greater New Brunswick from a decision by the Honorable Eugene D. Serpentelli, A.J.S.C. vacating an Order and Judgment of Repose entered on January 24, 1986, and transferring the entire case to the Council on Affordable Housing ("COAH").

After months of settlement negotiations with the the Township of Old Bridge, O & Y withdrew as a plaintiff-appellant in the above captioned matter on February 28, 1989. O & Y's withdrawal was in response to its understanding that it had successfully negotiated a settlement with the Township which thereby negated the need for the appeal. Such a withdrawal is consistent with Rule 1:6-7 and with New Jersey case law which holds that when parties have settled a controversy pending appeal, they are obliged to give prompt notice thereof to the Appellate Court so that the matter may be dismissed without unnecessary expenditure of judicial or administrative time and effort.

Citizens State Bank of New Jersey v. Schneider, 198 N.J. Super. 518 (App. Div. 1984).

It is evident that the effect of the Civic League's motion, if granted would substantially affect the property rights of O & Y. Furthermore, if O & Y is prevented from re-entering the case, its interests will be inadequately represented with respect to issues raised by the Civic League's motion, which directly effects O & Y's ability to use its property.

O & Y's re-entry into the case will not moreover, result in significantly prejudicing the rights of either the Civic League, Woodhaven or the Township of Old Bridge, and would serve to prevent a substantial injustice to O & Y. There are no residential applications by O & Y currently pending before the Planning Board, and as such there are no imminent proceedings before the Planning Board which relate to low and moderate income units. In addition, O & Y's re-entry into the case will not result in any significant delay in the proceedings. O & Y seeks a generally quick resolution of the issues on appeal so that there will be no delay in its development application.

While there is no specific court rule governing the re-entry of a party in an appeal after withdrawal, Rule 1:1-2 provides that:

The rules in Part I through Part VII, inclusive, shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice. In the absence of rule, the court may proceed in any manner compliable with these purposes.

For the reasons set forth herein, it is respectfully submitted that O & Y is a necessary party to the case, and the court is empowered under Rule 1:1-2 to permit O & Y to re-enter the case. It is respectfully requested that the court grant O & Y's motion to re-enter the case for the limited purpose of opposing the Civic League's motion, and it is further respectfully requested that in the event that this Court remands this matter to the trial court, that O & Y be permitted to remain in the case.

Respectfully yours,

BRENER WALLACK & HILL


Thomas Jay Hall

TJH:jmo
cc: Service List