

CA - Old Bridge

5/10/89

letter brief submitted in opposition to motion
of City Old Bridge Development Corp.
to re-enter matter ~~in~~ 2 months after
voluntarily dismissing its appeal

p 2

CA 002442 B

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
 Campus at Newark

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

May 10, 1989

ORIGINAL FILED

VIA LAWYERS SERVICE

MAY 11 1989

Honorable Judges of the Appellate Division
 c/o Clerk, Superior Court, Appellate Division
 Hughes Justice Complex, CN 006
 Trenton, New Jersey 08625

RE: Urban League of Greater New Brunswick, et al. v. The
 Mayor and Council of the Borough of Carteret, et al.
 (Old Bridge)
 Docket No. A-4335-87T3, A-4752-87T3

Dear Honorable Judges:

This Letter Brief is respectfully submitted in opposition to the Motion of Olympia & York Old Bridge Development Corporation ("O&Y") to re-enter this matter a full two months after voluntarily dismissing its appeal. The Civic League plaintiffs object to O&Y's belated demand to re-enter this case because the addition of another party at this point would significantly delay these proceedings. The prompt resolution of this matter is critical to the public interest plaintiffs, as shown by their request for expedited review. If O&Y is permitted to re-enter this matter, moreover, it should do so as a defendant.

O&Y, Woodhaven Village, Inc. ("Woodhaven" is the other developer plaintiff), and the Civic League each appealed the vacation of the Final Judgment of January 16, 1986 entered by the trial court. O&Y agreed to the consolidation of the three separate appeals. In fact, it gave every indication that it fully intended to prosecute this matter until its abrupt dismissal of its appeal on February 28, 1989, in accordance with an agreement clandestinely entered into with the adverse party. O&Y now insists that it be allowed to re-enter this case solely in order to complain that the Civic League's objections to O&Y's deal with Old Bridge are "too late." This demand is particularly unfair since the only delay here was that caused first by O&Y's own secrecy and later by its refusal to comply with plaintiff's informal requests. In fact, it was O&Y's refusal to cooperate, along with defendant Township, when the public interest plaintiffs first requested clarification of its plans, that led to the Civic League's pending motion for remand and stay.

Furthermore, O&Y adds nothing to the arguments already before this Court. It repeats the contentions of defendants Township

Honorable Judges of the Appellate Division
May 10, 1989
Page 2

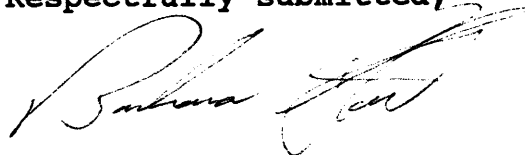
and Planning Board, for example, that the Civic League plaintiffs' application for a stay should have been filed in the trial court. O&Y is well aware that the advice of the Clerk was sought -- and followed -- with regard to the proper court in which to file that motion as set forth in the letter to case manager Edward Constantini annexed as Exhibit A.

Notwithstanding O&Y's purported desire for a "generally quick resolution" of this matter, it is clear that its "re-entry" will cause significant delay. Like its new ally, defendant Old Bridge, it has much less to lose from any such delay than the Civic League. O&Y's brief in opposition to the Civic League's motion (submitted in anticipation of having its motion granted) demonstrates how it intends to muddy this litigation. It attaches four concededly ambiguous maps as "Exhibit A," for example. These obviously require expert analysis. All these maps clearly show the need for a remand of this matter, as set forth in the Civic League's Brief. The trial court is the proper place for the introduction of such new evidence. Nor is there any need for O&Y to rejoin this litigation to participate in a remand, if ordered. Its interests will be well represented by defendant Township.

Finally, if O&Y is permitted back in this litigation, the Civic League plaintiffs respectfully submit that it should be designated a defendant because its interests are undisputedly more aligned with those of defendant Old Bridge than those of the public interest plaintiffs. Thus, O&Y should be a defendant -- if it should be a party to this appeal at all -- for three reasons; first, in order to afford the Civic League an opportunity to respond to the arguments of what is in fact an adverse party; second, for purposes of any possible attorneys' fee applications, and third, in the event of a remand, for purposes of discovery and examination of witnesses below. It is well established that the rules of court permit such reclassification under these circumstances. Bd. of Trustees Etc. v. Bd. of Freeholders of Warren Co., (Law Div. 1965), 87 N.J. Super 187 at 190.

For the foregoing reasons, the Civic League plaintiffs respectfully request that O&Y's demand to be allowed to re-enter this litigation be denied. At the very least, it is submitted that if O&Y is permitted to appear, it should do so as a defendant-respondent rather than a plaintiff-appellant.

Respectfully submitted,



cc/Old Bridge Service List