

UL v. Carteret, Old Bridge

August 3, 1987

Expert Report from community planning firm
addressed to the judge re: Oakwood

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August 3, 1987

The Honorable Eugene D. Serpentelli, J.S.C.
Superior Court of New Jersey
Ocean County Court House
100 Hooper Avenue
Toms River, New Jersey 08753

Re: Urban League/Oakwood at Madison, Inc.

My dear Judge Serpentelli:

This report is being submitted in response to the charge in your July 21, 1987 Order that I provide a proposed solution to the "controversy between Oakwood and the Urban League" not later than August 1st, 1987.¹

The earliest that an initial meeting (hereinafter referred to as "the meeting"), could be scheduled with all parties was Wednesday, July 29, 1987. In attendance, in addition to the undersigned, were Barbara Stark, Esq., attorney for the Civic (formerly Urban) League and Mr. C. Roy Epps, its president; Mr. Michael Kaplan and Fred Mezey, Esq., representing Oakwood at Madison, Inc.; and two other persons who were not called upon to participate in the meeting (an assistant to Mr. Kaplan and a Rutgers University Law School student).

The issue posed to me for resolution was the desirability of Court approval of a proposed revised settlement, hereafter referred to as the "subject settlement" (attached hereto as Appendix I). The salient provisions of this settlement are as follows:

¹ I was informed by Barbara Stark, Esq. that a slight delay in delivery of my report would not interfere with the proceedings before the Appellate Division which were originally thought to necessitate the August 1st deadline.

- (a) The number of lower income units would be reduced to 183 family units, and their provision would be phased in as follows:
- 50 moderate-income units between the 601st and 1200th market rate unit;
 - 42 moderate-income and 58 low-income units between the 1201st and 1400th market rate unit; and
 - 33 low-income units between the 1401st and 1475th market rate unit.
- (b) Oakwood at Madison (Oakwood) would agree to supply a detailed "housing plan"¹¹ upon the filing of their application for preliminary site plan approval for the final 550 multi-family units (final approval for the first 1200 units in the development was granted by the Township of Old Bridge (Old Bridge) Planning Board on August 29, 1979. The text of the settlement contains the outline of the proposed "housing plan" developed to approximately the same level of detail as that approved by the Court as part of the January 24, 1987 settlement agreement between Old Bridge and O & Y Old Bridge Development Corp. and Wood Haven Village).
- (c) Oakwood would be granted a 9-year extension of the August 23, 1989 Planning Board approval and of those provisions of the subject settlement that deal with matters within the jurisdiction of the Township.
- (d) Oakwood would also be granted the right to expeditious processing of all applications to the Planning Board, including the assurance of special meetings of that Board, if needed.
- (e) A number of Township fees would be waived.
- (f) The restraints imposed by the Court Order of May 31, 1985 limiting the issuance of building permits to Oakwood to 120 pending approval by the Court of a "housing plan" including phasing and affordability controls would be lifted.

The settlement also contains some language dealing with the integration of the proposed lower income units within the development. I believe that these provisions need to be

clarified, as explained later in this report, to avoid the possibility of misinterpretation of their intent.

My analysis of the proposed settlement follows.

!• Number of Lower Income (Mount Laurel) Units to be Provided

The January 26, 1977 Supreme Court Oakwood at Madison, Inc. v. Township of Madison decision set the developer's lower income housing (hereinafter referred to as the Mount Laurel responsibility) at 480 units, or 20% of the total of 2,400 which the Township was ordered to permit. (371A.2d at 1227) The size of the project (2,400 units) and of its Mount Laurel component (480 units) were those proposed originally by the developer.

On May 26, 1977, a settlement agreement was executed which reduced the total size of the project to 1,750 units and, correspondingly, the Mount Laurel component to 350 units (to include 175 units designed for senior citizen occupancy). I understand that this reduction of 650 units (or 27%) from that which formed the basis of the Supreme Court's grant of relief to Oakwood was based not on environmental findings that would have reduced the capacity of the site (371 A. 2d at 1223 et. seq.) but on the Township's desire to reduce the magnitude of the project and with it, of the total number of multi-family units to be built in the municipality. The reduction permitted the substitution of townhouses, patio houses and single-family houses for a good many of the multi-family units originally proposed.

Pursuant to the provision of the settlement between Old Bridge and O & Y/Wood Haven which allowed these two developments to limit their Mount Laurel component to only 10% of their total number of units, the number of units allocated to Oakwood was reduced to 263, or 15% of the total. As best I was able to determine, this percentage was used because it represents the average between the 20% originally offered to and accepted by the Supreme Court and the 10% that was then being approved for O & Y/Wood Haven.

The reduction to 263 units was not agreed to by Oakwood which, in fact, appealed that feature of the January 24, 1986 settlement. As made clear in the subject settlement, the reason for its unhappiness may well have been the fact that Oakwood feels entitled to a reduction in its proportion

of Mount Laurel housing to approximately 10%, in line with that of the other projects.

The basis for the proposed reduction from 263 to 183 units offered by Oakwood at the meeting was the economic infeasibility of providing the larger number in view of heavy up-front costs imposed upon it by the Township. Most of those costs will have to be incurred in satisfying the conditions attached by the Planning Board to its August 23, 1979 final site plan approval for the first 1,200 units in the project (see Appendix II). It is important to note, however, that those conditions had been accepted by Oakwood in connection with a project which at that time was still obligated to produce 350 Mount Laurel units. The additional costs which could legitimately be advanced as burdens that were not foreseen at the time of the 1977 agreement seem to be limited to the following:

- (a) Immediately following the granting of the approval by the Planning Board, the local water utility increased its rates "by 2000 percent." Oakwood sued and the issue was eventually settled sometime in 1983. No construction took place between 1979 and 1983.
- (b) Oakwood had secured a preliminary sewer connection approval at the end of 1981 or beginning of 1982. Its application for final approval was turned down some two years later because the Township discovered that the existing sewer pipe upon which the project relied was pitched the wrong way. This necessitated the construction of a new sewer line. The Oakwood share of the cost of this improvement was \$1.1 to \$1.2 million.
- (c) Shortly after settlement of the sewer issue, the water utility raised the issue of overall adequacy of the water supply. Strangely, it appears that this issue

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The 183-unit allocation sought actually represents 10.4% of the total of 1,750 in the project. The additional 8 units that would be allocated to Oakwood result from a proportionate distribution of the proposed 88-unit overall reduction in Oakwood's share from 263 to 175 among all the Mount Laurel projects in Old Bridge, including Oakwood, in order to enable the municipality to meet its 1,668-unit obligation. It has been represented to me that all the other developers have agreed to a similar increase in their percentages, but apparently there is nothing in writing to that effect.

had never been even mentioned during the period between the Planning Board's final approval of the site plan for 1,200 units and the settlement of the issue of water rates some four years later! After negotiations that took about another year, this issue was also settled early in 1985, just before the imposition by the Court of the 120-unit building permit restriction. The settlement was based on available capacity for 200 units in the existing system and on an extension to Old Bridge of a line which the Middlesex water utility was in process of laying only as far as East Brunswick.

It is impossible to evaluate the cost, if any, of the delays caused by the various impediments encountered by the project. It is worthy of note, however, that, since these delays occurred during a period of record inflation in housing sales prices, and consequently in land values, it may well be that the development's prospective profitability was actually improved as a result.

The impact of the cost of the sewer line (assumed to be \$1,150,000, the mid-point of the range mentioned above) on the economic feasibility of the project could be evaluated as follows:

- Oakwood agreed to 350 Mount Laurel units prior to the imposition of this cost. It is reasonable to assume, therefore, that it felt comfortable with the prospect of having to amortize their cost among the 1,400 market rate units which were made possible by the presence of the subsidized units at a rate of four market rate units to one subsidized unit.
- At the same rate, only 1,052 market rate units are needed to amortize the 263 Mount Laurel units sanctioned in the January 24, 1986 settlement.
- The reduction from 350 to 263 in the Mount Laurel component of the development would increase the total number of market rate units from 1,400 to 1,487 (1,750 minus 263).
- Dividing the \$1,150,000 cost of the extra sewer by 435—which represents the difference between the total of 1,487 market rate units and the 1,052 used to amortize the Mount Laurel component of the

project--produces an extra charge of \$2,644 per unit. This cost seems to be considerably less than the subsidy which each market rate unit would have to contribute toward the affordability of the Mount Laurel units if the respective numbers had remained 1,400 and 350.

For the reasons stated above, it appears that a reduction in the number of Mount Laurel units in the Oakwood project cannot be supported on those cost-related economic grounds that have been advanced to date. The developer has also represented, however, that a reduction to the level imposed on other projects is needed to enable Oakwood to compete on a level field with Olympia and York and Wood Haven Village. From the little that I have been able to learn to date of these other projects, they seem to be far behind Oakwood in the approval process. They will also have to contend with difficult site conditions and costly adjustments due to their need to build near, and provide crossings of wetlands, and to incur major infrastructure costs due to the wide dispersion of the buildable portions of their holdings. While it is always possible for the economics and the competitiveness of a large project to be affected by changing conditions over time, it appears that such conjectures cannot be legitimately advanced in support of immediate adjustments that run contrary to the intent of the Mount Laurel doctrine.

The Urban League seems to have agreed to the proposed reduction out of fear that its insistence on the 263 units already approved by the Court might jeopardize the achievement of any units at all. While I sympathize with pragmatism based on acceptance of the realities of each particular situation, it seems to me that its fear regarding the highly unlikely abandonment of a 1,487 market-rate unit project near the center of one of New Jersey's hottest housing markets because of the unexpected additional economic burden revealed to date may be unfounded.

2. Phasing

The 1977 Supreme Court decision failed to recognize that Mount Laurel units must be phased in along with the production of market rate units to avoid a possible developer's default. As a result, the original schedule of the project contemplated the construction of all of the 350 units at the very end of the production process. This would

have meant that 1,400 market rate units could have been built before the provision of any Mount Laurel units.

The phasing proposed in the subject settlement (page 7) would provide only 50 moderate-income units after the construction of possibly as many as approximately 750 market rate units. The 42-unit balance of moderate-income units and 58 low-income units would be provided after the construction of perhaps as many as 1,300 market rate units. The last 33 low-income units could be provided after the construction of some 1,450 market rate units.

All indications are that moderate income units can be provided by the developer at cost or at a very small subsidy.³ If my assumption is correct, the proposed phasing would permit the developer to build as many as 1,300 or so market rate units without being called upon to make a significant contribution toward the solution of the problems Mount Laurel requires him to address. The difference between the phasing offered in the subject settlement and that which it is to replace thus appears to be insufficient to justify the lifting of the current restriction.

It should also be noted that, as discussed in the next section of this report, the phasing schedule proposed as part of the subject settlement seems to be incompatible with the concept of integration of the Mount Laurel units throughout the entire development.

3. Integration of Lower Income and Market-Rate Units

The subject settlement contains the following language (on page 13):

"15. Nothing herein shall require any specific building, cluster, section or 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

³ The developer indicated during the meeting that he had in mind "up-scale" units which would require an appreciable subsidy, but nowhere in the record to date is there a formal commitment to anything other than the standard Mount Laurel product.

of this agreement are to be inclusionary, as a whole, and the developers shall provide (10%) percent of the total residential units within the development as housing for lower income households."

Appendix A contains no Section A-3.3. The section referred to appears to be Section A-3.3 of Appendix A of the January 24, 1986 Old Bridge/O & Y and Wood Haven settlement agreement. Also, it is not clear whether the term "the developments contemplated to be undertaken as a result of this agreement" refers to the entire Oakwood development or only to the 550 units still requiring Planning Board approval. If the former, then the site and subdivision plans that had previously received final approval (which is to expire on August 23, 1989) would have to be amended and submitted for re-approval. Not having yet had the opportunity of discussing this (or anything else, for that matter) with Township representatives, I have no opinion as to whether such re-approval is likely, but I thought it appropriate to note the possibility that the developer may actually be forced by the local authorities to adhere to the originally-approved distribution of Mount Laurel units.

As mentioned previously, the phasing schedule proposed as part of the subject settlement seems to be inimical to the feasibility of achieving the integration of the Mount Laurel units on a basis which would permit the Oakwood development "as a whole" to be inclusionary. Six hundred market rate units would be constructed before the commencement of construction of any Mount Laurel units. Next, 50 moderate income units might be integrated among the subsequent 600 market rate units. The chance to integrate the last 133 Mount Laurel units would be limited to the last 367-unit market-rate portion of the project. This would result in a very uneven distribution of lower income units throughout the development.

4. Recommendations

Based on the above, I recommend as follows:

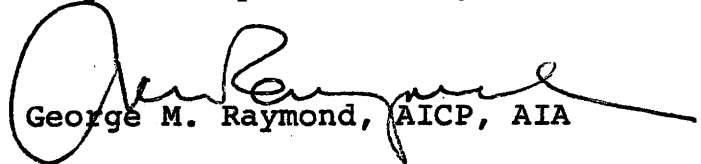
1. That the number of Mount Laurel units in the Oakwood development be maintained at 263, and that these be evenly split between low- and moderate-income units.

2. That the proposed phasing of the 263 units be modified approximately as follows and that there be an even split between low- and moderate-income units at each stage.

<u>Market Units</u> (Cumulative)	<u>Mount Laurel Units</u> (Cumulative)
370
745	70
1,000	160
1,220	215
1,412	263
1,487	-

3. That paragraph 15 of the subject settlement be modified to make clear that the Mount Laurel component of the overall project will be 15% and that all of these units are to be integrated throughout the 1,487 market rate component of the project.

Respectfully submitted,


George M. Raymond, AICP, AIA

GMR:kfv

ccz Jerome J. Convery, Esq.
William Flynn, Esq.
Frederick C. Mezey, Esq.
Thomas Norman, Esq.
Barbara Stark, Esq.

APPENDIX I

MEZEY & MEZEY

3 Bayard Street, P.O. Box 238

New Brunswick, NJ 08903

(9201) 545-6011

Attorneys for Defendant

~~AKWOOD AT MADISON, Inc. L Bcren Corp.~~

URBAN LEAGUE OF GREATER

NEW BRUNSWICK, et al,

Plaintiff

v.

THE MAYOR AND COUNCIL OF

ARTERET, et al, ,

Defendants and

~~AKWOOD AT MADISON, INC., and
EJEREN CORP.,~~

Defendants

~~CO & Y OLD BRIDGE DEVELOPMENT
CORP.,~~

Plaintiff

v.

THE TOWNSHIP OF OLD BRIDGE, THE
TOWNSHIP COUNCIL OF THE TOWNSHIP
OF OLD BRIDGE and THE PLANNING
BOARD OF THE TOWNSHIP OF OLD
BRIDGE,

Defendants

~~FOODHAVEN VILLAGE, INC.,~~

Plaintiff-

v.

THE TOWNSHIP OF OLD BRIDGE, THE
TOWNSHIP COUNCIL OF THE TOWNSHIP
OF OLD BRIDGE and THE PLANNING
BOARD OF THE TOWNSHIP OF OLD
BRIDGE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
OCEAN COUNTY
DOCKET NO. c-4122-73

CERTIFICATION OF FREDERICK
C. MEZEY AND BARBARA STARK

LAW DIVISION-MIDDLESEX COUNTY
DOCKET NO. L-009837 P.W.

LAW DIVISION-MIDDLESEX COUNTY
DOCKET NO. L-036734-84 P.W.

Frederick C. Mezey and Barbara Stark hereby certify as follows:

1. We are attorneys at law of the State of New Jersey and counsel for Oakwood at Madison, Inc. and Beren Corp. and the Urban (now Civic) League of Greater New Brunswick, respectively,


2. On May 31, 1985, this Court entered an Order joining Oakwood at Madison and Beren Corp. as parties-defendant in the instant suit ~~for the limited purpose of insuring that the long-approved Oakwood at Madison project provided an appropriate amount of low and moderate income housing and that a phasing, affordability and resale/re-rental restriction plan be developed~~

3. In accordance with paragraph 3 of said Order of May 31, 1985 and in settlement of existing litigation between Oakwood, Beren and the Urban League, we have developed and our clients have agreed upon such an affordability, phasing and transfer restriction plan.

4. We have finalized this plan in the form of a consent order for judgment, a true copy of which is annexed hereto.

5. On behalf of the Urban League, Oakwood at Madison, Inc. and Beren Corp., we respectfully request formal Court approval of said plan.

We certify that the foregoing statements by us are true. We are aware that if any of the foregoing statements made by us are wilfully false are subject to punishment.



BARBARA STARK



FREDERICK C. MEZEY

MEZEY L MEZEY
93 Bayard Street, P.O. Box 238
New Brunswick, NJ 08903
Attorneys for Defendant

~~Oakwood at Madison, Inc. & Beren Corp~~

URBAN LEAGUE OP GREATER
NEW BRUNSWICK, et al,

Plaintiffs

v.

THE MAYOR AND COUNCIL OP
CARTERET, ET AL,

Defendants and

OAKWOOD AT MADISON, INC., AND
BEREN CORP.,

Defendants

O & Y OLD BRIDGE DEVELOPMENT
CORP.,

Plaintiff

v.

THE TOWNSHIP OP OLD BRIDGE, THE
TOWNSHIP COUNCIL OP THE TOWNSHIP
OP OLD BRIDGE and THE PLANNING
BOARD OP THE TOWNSHIP OP OLD
BRIDGE,

Defendants

WOODHAVEN .VILLAGE, INC.,

Plaintiff,

v.

THE TOWNSHIP OP OLD BRIDGE, THE
TOWNSHIP COUNCIL OP THE TOWNSHIP
OP OLD BRIDGE and THE PLANNING
BOARD OP THE TOWNSHIP OP OLD
BRIDGE

Defendants

SUPERIOR COURT OP
NEW JERSEY
LAW DIVISION
OCEAN COUNTY
DOCKET NO. C-4122-73

Civil Action

CONSENT JUDGMENT

LAW DIVISION-MIDDLESEX
COUNTY
DOCKET NO. L-009837-84 P.W.

LAW DIVISION-MIDDLESEX
COUNTY
DOCKET NO. L-03673^-84 P.W.

This matter having been opened to the Court by Mezey and Mezey, Esqs., attorneys for defendants Oakwood at Madison, Inc. and Beren Corp. (Frederick C. Mezey, appearing), in the presence and with the consent of Barbara Stark, Esq., attorney for the plaintiff Urban (now Civic) League of Greater New Brunswick, Norman and Kingsbury, attorneys for defendant Planning Board for the Township of Old Bridge (Thomas Norman, Esq., appearing), Jerome J. Convery, Esq., attorney for Township of Old Bridge and the Township Council of the Township of Old Bridge, and Antonio & Flynn, Esq., attorneys for the Township of Old Bridge Municipal Utilities Authority, for an Order for Judgment and it appearing that:

1. In the case of Oakwood at Madison, Inc. v. Tp. of Madison, 72 N.J. 481-(1977), the Supreme Court awarded a builder's remedy to Oakwood at Madison, Inc. and Beren Corp. and ordered the issuance of 2400 building permits to Oakwood at Madison, Inc. and Beren Corp. "within the very early future";

2. The Supreme Court directed that Oakwood at Madison, Inc. and Beren Corp. allocate at least 20% of their units to low or moderate income families;

3. In directing that the 20% low or moderate income

units be provided, ~~the Supreme Court, in Oakwood, set income standards but did not set any other standards such as phasing requirements or resale/rental restrictions;~~

4. Following remand by the Supreme Court, a stipulation of settlement was entered into with the Township of Old Bridge wherein Oakwood at Madison, Inc. and Beren Corp. were to build I ^ B H r instead of the awarded 2400 units, ~~of which 20% or 350 units would be low or moderate units, 175 thereof to be for senior citizens.~~

The parties hereby modify that stipulation and agree that Oakwood at Madison, Inc. and Beren Corp. shall build 1750 units of which 183 shall be low and moderate income units. as specified herein;

5. As set forth in the Order of January 24, 1986, the ~~Urban League~~ plaintiffs and Old Bridge township have settled with Olympia & York and Woodhaven Associates based upon a 10% low and moderate income set aside, phasing, resale and rental and income requirements. The parties agree that the same basic standards should apply to Oakwood at Madison* Inc. and Beren Corp. as set forth herein;

6. The ~~Urban League~~ plaintiffs, the municipal defendants and defendants Oakwood at Madison, Inc. and Beren Corp. have agreed upon a phasing, affordability and resale/rental restriction plan for the Oakwood at Madison project, as directed by paragraph 3 of the May 31, 1985

Order-, and for good cause shown:

IT IS on this day of , 1986

ORDERED that Judgment shall be entered as follows:

1, The lower income housing obligation of defendants Oakwooc at Madison, Inc. and Beren Corp. shall be S f l U B B of which mi shall be affordable to persons of low income and Jgf shall be affordable to persons of moderate income; both low income and moderate income hereinafter being referred to as "lower income";

2. 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 (90) percent of the limits establish-~~
~~ed 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 (45) percent of the adjusted median income for the Middlesex, Somerset, Hunderdon Primary Metropolitan Statistical Area (P.M.S.A.) and housing for moderate income housholds shall, on the average, be affordable to persons earning seventy-two (72) percent 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 (50) percent of the adjusted P.M.S.A. median income for the region-or in the case of moderate income families, eighty (80) percent of the adjustment P.M.S.A. median income for the region.

~~"Adjusted" P.M.S.A. median income refers to the process of multi-~~
~~plying the current year P.M.S.A. income by ninety-four (94%) per-~~

went so as to yield a lower figure, which approximates the income figure for the eleven county North New Jersey region, for which data is no longer conveniently available.

3. Oakwood at Madison, Inc. and Beren Corp. [Oakwood and Beren] shall supply, upon filing their application for preliminary site plan approval for the 550 multi-family units referred to in paragraph 21 of the August 23, 1979 resolution of Old Bridge Township Planning Board, a copy of which is annexed hereto as Exhibit A, is "housing plan" which shall set forth the mechanisms whereby Oakwood and Beren will construct the 183 lower income units. Such housing plan shall indicate the approximate sizes, numbers, types, locations, price ranges, price controls, deed restrictions and marketing strategies for the lower income housing and phasing schedule for the actual delivery of such units within the Oakwood at Madison project. Said 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;

4. Oakwood and Beren Corp. shall have all the rights and privileges, specific unit counts, development rights and land development standards set forth herein f W W T W T T g n w, of nine (9) years from the date of entry of this Order. The final subdivision approval wanted to Oakwood and Beren Corp. on August 23, 1979 shall also be extended for a period of nine (9) years from the date of entry of this Order;

C' :

5. The Township Planning Board shall review and issue decision upon any application by Oakwood or Beren Corp. for an preliminary site plan approval or revised subdivision or sit plan whether for lower income or market units within ninety-five (95) days of application including applications pertaining to the commercial aspect of the development. The Planning Board shall further adhere to the review schedule detailed in paragraph 15 hereof.

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 are 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;

6. It is specifically Ordered 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 other portions of the development, nor different from those buffers generally used separate section of the development with different types of housing.

7. Oakwood and Beren Corp. shall be permitted to ~~construct a maximum of 600 market units prior to any obligation to construct lower income units.~~ Thereafter, the 183 lower income units shall be constructed according to the following schedule:

Number of Market Units	Number of Moderate Income Units	Number of Low In-come Units	Cumulative Total of Lower In-come Units	Cumulative Total of All Units
601-800	50	-	50 \	850
801-1200	-	-	50	1200
1201-1400	42	58.	150	1550
1401-1475	-	33	183	1658
1476-1567	-	-	183	1750

There shall be no prohibition placed upon the obtaining of building permits; phasing shall be controlled by the issuance of Certificates of Occupancy;

8. Notwithstanding any ordinance requirement of the Township

of Old Bridge, the applicable Township approving agency shall waive the following fees for lower income units:

- (a) Planning Board application fees;
- (b) Engineering review fees;
- (c) Building permit fees;
- (d) Certificate of Occupancy fees; and
- (e) Inspection fees for all on-tract improvements and structures;

9. The affordable housing plan referred to in paragraph (3) of this Order ~~shall control~~ the following major elements.

(a) Description of the units, by number, size and probable location;

(b) Description of the affordability control mechanism, such as deed restrictions, rental price controls, resale controls, etc.;

(c) Description of means of assuring affordability over a thirty (30) year period;

(d) Description of the duration of the affordability controls (minimum requirement for lower income housing is thirty (30) years); minimum requirement for maintenance as rental units, if contemplated, is ten (10) years, but after conversion to sale units, such units must remain price controlled for the balance of the thirty year period;

(e) Description of any proposed conversion process, if applicable, involving the rental units;

(f) Description of the proposed marketing scheme for the lower income housing units which, as a minimum, shall include the affirmative marketing requirements set forth in the procedures

for occupancy of lower income housing, established in Section V(P) of Ordinance No. 514-85.

(g) Such marketing plans shall include assurances that the opportunities for low and moderate income units will be advertised throughout the eleven (11) county region, including Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren counties, and specifically including newspapers of general circulation in Elizabeth, Jersey City, Newark, New Brunswick, Paterson and Perth Amboy.

In addition, the plan shall require that the developers notify

the Civic League of Greater New Brunswick, the Housing Coalition of Middlesex County, the Middlesex County Office of Community Development, the Council on Affordable Housing, the New Jersey Housing Mortgage and Finance Agency, and all fair housing centers and housing referral organizations in the aforementioned eleven (11) counties; and

(h) Description of a disclosure statement to be attached to all contracts for rental or sale of all housing units within the development, whether market or price controlled.

10. The Township of Old Bridge, by ordinance, shall establish an affordable housing agency, which shall review all affordable housing plans and certify them to the Planning Board. The affordable housing agency shall also establish, by rules and regulations, mechanisms whereby lower income households can be screened for income eligibility and for potential placement in available affordable housing.

11. Oakwood and Beren Corp. may apply to the Agency

for a Hardship Exemption, as follows:

I (a)- The Developers may only apply to the Agency for a Hardship Exemption after the later of (i) six (6) months after the Developer has commenced marketing the Lower Income Unit and (ii) ninety (90) days after the Developer has received the Certificate of Occupancy for such Lower Income Unit.

(b) In order for the Developer to be entitled to a Hardship Exemption from the Agency, the Developer must show the Agency that (i) the time periods set forth in subsection (a) above have lapsed, and (ii) that the Developer has been marketing such Lower Income Unit for such time period and in accordance with the affirmative marketing plan approved as part of the housing plan, and (iii) no Qualified Household is obligated under a contract, to purchase, or a lease to*rent, as the case may be, for such Lower Income Unit.

I If a Developer has complied with the requirements of (a) and (b) above, and despite best efforts, has not been able to obtain a Qualified Household, from the waiting lists maintained by the agency or by the Urban League, the Developer may offer such unsold unit to a person or household whose income is up to fifty (50%) higher than the ceiling income for the category for which the unit was intended. In the event, that an additional one hundred (120) days elapse with the units remaining unsold, despite the best efforts of the developer to sell the unit, the Developer, with the permission of the Agency, may offer the unit to any person or household

whose income is up to 100% above income ceilings.

However, all units built as affordable housing unit under this Order and receiving a Hardship Exemption, are to be sold and rented at no more than the maximum price permitted by this Order and are to be price-controlled and deed-restricted so that the sale and resale prices reflect the price category for which the unit was originally intended to be offered, and future sales of units receiving Hardship Exemptions shall be subject to the original requirements for purchaser eligibility.

12. Oakwood and Beren Corp. for each subdivision and/or site plan approval, following the initial submission of the housing plan, shall demonstrate to the Planning Board how the applicant is meeting the commitments and schedules set forth in the affordable housing plan.

Oakwood and Beren Corp. shall demonstrate that affordable housing units are being priced so that, on the average, they are affordable to households earning ninety (90%) percent of the limits established for the income groupings, such that housing for low income households shall, on the average, be affordable to persons earning forty-five (45%) percent of the Adjusted Median Income and housing for moderate income households shall, on the average, be affordable to persons earning seventy-two (72%) percent of the Adjusted Median Income.

13. Lower income housing units shall be provided in combinations of efficiency, one bedroom, two bedroom and three

bedroom or larger units. While the distribution of units should be reasonably reflective of the market units to be provided the lower income units shall include not more than 50% efficiency and one bedroom units and not less than 15* three bedroom or **larger** units. Unit sizes shall not be less than the following:

<u>Unit type</u>	<u>Minimum size</u>
efficiency units	480 s.f.
1 Bedroom	550 s.f.
2 Bedrooms	750 s.f.
3 Bedrooms	950 s.f.

14. The following schedule will apply to all development applications submitted by Oakwood or Beren Corp.

A. As to Preliminary Subdivision and Site Plan applications:

<u>Action Taken</u>	<u>Cumulative Time</u>
i. Application submitted to board	0 days
ii. Checklist review completed .	10 days
iii. Written notice of completeness	15 days
iv. Planning Board Staff reviews (applicant may submit additional material)	45 days
v. Documentation available to public	46 days
vi. Public hearing to be held	57-81 days
vii. Board action Resolution	95 days
viii. Bond estimate to Developer	110 days
ix. Action after submission of bond	125 days
x. Signing of Maps	140 days

B. As to minor subdivision and Final Major subdivision applications:

<u>Action Taken</u>	<u>Cumulative Time</u>
i. Application submitted to Board	0 days
ii. Declaration of completeness	10 days
iii. Planning board staff reviews	30 days
iv. Public Hearing held	45 days
v. Board action by resolution	45 days
vi. Documentation available to public	46 days
vii. Bond estimate to developer	60 days
viii. Action after submission of bond	75 days
ix. Signing of Maps	90 days

The applicant may grant extensions of time; but is anticipated that such extensions will not be routinely sought or granted. The Planning board will not be required to schedule more than two (2) special meetings per month for all applicants using the accelerated review and appeal procedure.

15. Nothing herein shall require any specific building, cluster, section or 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 the developers shall provide (1055) percent of the total residential units within the development as housing for lower income households.

A

16. 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.

17. 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 in the Townships 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.

18. Letters of credit shall be accepted in lieu of bonding for all public inspection costs. No cash bond or deposit shall be required. Inspection fees shall not exceed five percent (5%)J

19. ~~The restraints imposed in paragraph 2 of this court's order of May 31, 1985 against the Township of Old Bridge, the Old Bridge township Council, the Old Bridge Planning Board and their agents, employees and other action in concert with them, from issuing any more than 120 building permits for market units BEBSBBSHD Madison, Inc. and Beren Corp. are and the same hereby dismissed.~~

20. Oakwood and Beren shall provide the Civic League with a signed Stipulation of Dismissal with prejudice of Oakwood
: I
j and Beren's pending appeal, to be held in escrow by, the Civic
•J League pending execution and approval by the court of

j this Consent Judgment.

We hereby consent to the form and entry of this Judgment

MEZEY & MEZEY, ESQS.

BY _____

CorJ. " * z £ j and Beren

2 - " Sg St' ffi S & J ^

~~BARBARA~~
unnOAKA STARK. ^ESQ*.
Attorney for the Urban
(now Civic) League of
Greater New Brunswick

We hereby consent to the form and entry of this Judgment

THOMAS NORMAN, ESQ.
Attorney for Planning Board
for the Township of Old
Bridge

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

We hereby consent to the form and entry of this Judgment

BY _____

C. Roy EPPS,
Civic League of Greater
New Brunswick

We hereby consent to the form and entry of this Judgment ^

JEROME J. CONVERY, ESQ.
Attorney for the Township
of Old Bridge & The Council
of the Township of Old Bridge

We hereby consent to the form and entry of this Judgment

ANTONIO L FLYNN, ESQS.
Attorneys for the Township
of Old Bridge iMunicipal
Utilities Authority

APPENDIX A

I. Definitions

"Adjusted Median Income" shall mean and refer to the product of multiplying the published median income of the Middlesex Hunterdon-Somerset Primary Metropolitan Statistical Area as may be adjusted by an agency of the United States government from time to time, by 94%.

"Affordable Housing" shall mean and refer to the housing setaside for qualified Lower Income Households which is priced as follows:

- a. Housing for sale: The combination of costs for principal, interest, taxes, insurance and homeowners association assessments, if applicable, shall not exceed 28% of the Total Lower Income Household Income; and
- b. Housing for rent: The combination of contract rent plus an allowance for utility costs shall not exceed 30% of the Total Lower Income Household Income.

"Agency" shall mean and refer to the Township Agency referenced below.

"Approving Board" shall mean either the Planning Board or the Zoning Board of Adjustment, as appropriate.

"Building" is any continuously enclosed structure containing one or more separate dwelling units.

"Cluster" is any grouping of buildings in close physical proximity to each other, usually arranged around a common feature such as a courtyard or parking area.

"Household" shall mean and refer to all persons living as a single non-profit housekeeping unit, whether or not related by blood, marriage or other affiliation.

"Housing Plan" shall mean and refer to a proposed scheme for providing affordable housing for lower income households within the Township of Old Bridge, submitted to and certified by the Affordable Housing Agency.

"Lower Income" shall mean and refer to both low and moderate income housing

"Low Income" shall mean and refer to incomes which are 5% or less than the adjusted median income.

"Moderate Income" shall mean and refer to incomes which are between 50% and 80% of the adjusted median income.

"Order" shall mean and refer to the Order and Judgment issued by the Hon. Eugene D. Serpentelli, A.J.S.C. dated January 2, 1972 resolving the litigation between O&Y, Woodhaven, the Urban League and the Township of Old Bridge, et al, and shall also mean and refer to all appendices and memoranda attached thereto.

"Section" is any building or grouping of buildings, or a cluster or grouping of clusters set apart by natural features, landscaping or buffers from other parts of the development so as to constitute an identifiably separate portion of the development. A separately named building or grouping as defined herein is presumptively a section.

"Township Agency" shall mean and refer to any entity established by the Township of Old Bridge to administer any portion of the lower income housing program within the control of the Township of Old Bridge.

II. Dispersal

Developments governed by this Order shall physically disperse the lower income units as follows:

a. No more than 24 lower income units may be located in any single building, except for the Senior Citizen Housing complex. No building, cluster or section shall be required to contain any lower income units. In any section containing lower income housing units, no more than 1/3 of the total number of units may be lower income housing. Clusters may contain only lower income units provided that such a cluster is as much a part of a section as the clusters of market units, and that the boundaries between lower income clusters and market clusters, such as grassy areas, internal roads or sidewalks shall be no different than the boundaries between market clusters.

b. The restrictions contained in paragraph (a) above shall not apply to any building, cluster or section when necessary to finance the development of the building, cluster or section through public or tax exempt funding, but in no event shall any one building, cluster or section developed pursuant to this paragraph contain more than 150 lower income units.

III. Certification Procedures:

Developers constructing lower income housing under these provisions shall report their progress to the Township agency as follows:

a. Quarterly Report.

Each developer providing lower income housing shall provide the township agency with a report at the end of any calendar quarter (defined as the period ending March 31, June 30, September 30 and December 31 of each year). The Township Agency shall supply copies to the Urban League, the Court-appointed Master, and all interested parties. This report shall set forth

1. the total number of all Certificates of Occupancy issued for residential units within the development during that particular three-month period;
2. the total number of Certificates of Occupancy issued for low and moderate housing units within the development during that particular three-month period;
3. whether the lower income units are rental units or "for sale" units;
4. the percentage of low and the percentage of moderate income units Certificates of Occupancy issued during the three-month period expressed as a percentage of the total number of residential units Certificates of Occupancy Issued within the development during the same three-month period;
5. whether there is a surplus or deficit of low and moderate income units Certificates of Occupancy issued during the three-month period measured against the percentage low and moderate housing requirement for the development;
6. the sales prices and rents charged for lower income housing.

b. Letters of Certification

The Township agency shall, within thirty (30) days of receipt, issue a Letter of Certification, certifying that the

Status Report is incorrect and specifying the inaccuracies therein, whereupon:

1. the developer will correct and resubmit the Status Report; or
2. will formally appeal by representation before the Board of directors of the Township Agency; or
3. if the Status Report remains an issue of contention between the Township Agency, the developer, and/or the Urban League, the matter will be placed before the Court Appointed Master whose adjudication will be final and binding upon the Township Agency, the developer and/or the Urban League.

b. Certificate of Compliance

There shall be no penalty to the developer if any quarter: Status Report reveals noncompliance with the requirements to provide low and moderate income housing units provided:

1. no additional Certificates of Occupancy for market units shall be issued if there has been noncompliance with the phasing schedule set forth in Paragraph 7 of the Consent Judgment
2. that the developer show compliance on an annual basis supported by the Letters of Certification for the previous four (4) quarters, which Letters of Certification, taken together, substantiate compliance for that fiscal period and which Letters of Certification showing annual compliance shall be submitted to the Court Appointed Master, whereupon;
3. the Court appointed Master shall, within thirty (30) days, issue a "statement of Annual Compliance" certifying that the development is, as of the date of accounting, in compliance with the mandate of the court with respect to providing low and moderate income housing in accordance with Mount Laurel II.

c. Annual Report ^

No later than June 30 of each calendar year during which low^r income housing has been constructed within the Township, the Township Agency shall file a report setting forth the progress being made to supply affordable housing under these procedures. Such report shall be provided to the Mayor and Council and be

made available as a public document by filing with the Township Clerk. A copy of such report shall also be filed with the Court, the Urban League and any interested developer providing lower income housing in the Township.

IV. Appeal to the Master

If O&Y, Woodhaven, Oakwood or Beren Corp. shall have complied with all of the requirements of the processes set forth in the Order and the appendices thereto, and have not received approvals from the Planning board within ninety-five (95) or forty-five (45) days from the date on which the application was deemed complete, depending on the type of application, they may appeal to the Master, using the procedures set forth in Appendix B.

APPENDIX II

New Jersey, that:

WHEREAS, Oakwood at Madison, Inc. (hereinafter applicant) has made Application #6-7SP for Final Approval of a Major Subdivision Plan known Block 13000, 13003, 13264, 21004, on the Tax Map of the Township of Old Bridge, which is to be developed as indicated on a set of drawings and p identified as follows:

1. Traffic and circulation plans, Abington Ney Associates, Aug.16,1
2. Architectural plans, 5 sheets, November 19, 1977, with revisions through July 1979, Chester Van Oalen Associates.
3. Final Construction plans and details, 53 sheets, May 1, 1979, wi revisions through August 14, 1979, Abington Ney Associates.
4. Landscaping and woodland protection plan, 20 sheets, 1 May 1979, revisions through 14 August 1979, Abington Ney Associates.
5. Staging plan, August 13, 1979, Abington Ney Associates.
6. Final plans, Feb. 1, 1979, with revisions through 14 Aug. 1979, sheets, Abington Ney Associates.

NOW, THEREFORE, BE IT RESOLVED that the major subdivision plan referred to herein be and the same is hereby granted Final Approval in accordance with the following conditions:

1. That the procedures and requirements of the Subdivision and Site Committee of the Middlesex County Planning Board are satisfied.
2. The construction or reconstruction of streets, curbs or sidewalks shall be in accordance with the provisions of N.J.S.A. 52:32-14 et seq.
3. Approval by the DEP of stream encroachment lines. Any dwelling ur located within the stream encroachment line must be removed and redesigned the applicant with the approval of the Planning Board.
4. Final approval by the Old Bridge Township Municipal Utilities Autho for water connections and the Old Bridge Township Sewerage Authority for sewerage disposal. Approval herein shall not be interpreted as vesting any rights in the applicant with regard to service by the Old Bridge Township Municipal Utilities Authority for water or sewer.
5. The applicant shall furnish a Performance Guarantee in favor of the Township of Old Bridge, in an amount not to exceed 120% of the cost of insta ation for improvements it may deem necessary or appropriate. The Performanc Guarantee for the construction for the bridge required in provision 14 herei shall be submitted and approved prior to commencement of construction of Stage 3.

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly pitied at a meeting of the Planning Board of the Town* ship of Old Bridge

Approved: 23 1979 and in that respect a true and correct copy of its minutes.

Mary M. E. [Signature] Secretary of Planning Board

New Jersey, that:

Resolution, Page Two.

#6-78P Oakwood at Madison, Inc.

6. Applicant shall deposit a certified check or cash with the Towns Clerk in the amount of 5% of the value of the site improvements which are required to be inspected as estimated by the Township Engineer to cover t cost of all inspections required under the Land Development Ordinance.

7. The proposed open space dedication should now be accomplished by forwarding to the Administrative Officer a bargain and sale deed and thre survey maps showing the metes and bounds description of the land to be co for approval and acceptance by the Township Council in accordance with pr< visions of paragraph 5 and a Council Resolution dated May 23, 1977. Said lands shall consist of the following tracts.

Block 11315, Lot 8 - 12.17 acres.

Block 13001. Lot 21A - 2.13 acres.

Block 13003, Lot 26 - 8.55 acres.

Portion of Block 13003, Lots 23A and 24A - 34.61 acres.

Portion of Block 13003, Lots 23B and 24B - 6 acres.

Block 21004, Lot 17 - 18.65 acres.

Block 21004, Lot 18 - 5.26 acres

8. The proposed right of way dedication along Spring Valley Road sho\ now be accomplished by forwarding to the Administrative Officer a bargain < sale deed and three survey maps showing the metes and bounds description oi the land to be conveyed for approval and acceptance by the Township Council accordance with provisions of paragraph 5 and a Council Resolution dated May 23, 1977. *

9. The proposed conservation easements along Burnt Fly Brook and Deep Run should now be accomplished by forwarding to the Administration Officer the standard Township easement agreement and three survey maps showing the metes and bounds description of the land to be conveyed for approval and acceptance by the Township Council, in accordance with provisions of paragr, 5 of the Council Resolution dated May 23, 1977.

10. All construction equipment vehicles shall be restricted to Point c Woods Road from Spring Valley Road during the time of construction. If saic access shall become impossible for use by construction vehicles, the applica may apply to the Planning Board for relief from this provision for good caus

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Town* ship of Old Bridge

~~August 23~~ 1979

and in that respect a true and correct copy of its minutes.

Mary M. ~Abort
Secretary of Planning Board

New Jersey, that:

Resolution, Page Three

#6-78P Oakwood at Madison, Inc.

11. Applicant agrees to construct the so called nature or hiking trail also known as Winter Berry Trail, along Burnt Fly Brook, off tract on Towns* owned land to a point known as the nature center in the general vicinity of the intersection of Prests Mill Road and the Trans Old Bridge, also describe on a map known as Burnt Fly Bog Trail. It is agreed and understood that all of the hiking trails both on tract and off tract, shall be constructed in it entirety as heretofore described prior to the beginning of the construction of Stage 3.

12. Applicant agrees to construct all recreational facilities located within the respective section as the residential units are constructed and in any event, prior to the commencement of construction of the subsequent section.

13. At the end of Stage 2 and prior to the commencement of constructio of Stage 3, applicant agrees to construct playfields, according to standards approved by the Director of the Department of Recreation, consisting of a baseball field, softbail field, soccer field, in playable condition and/or their equal, on land being dedicated to the Township of Old Bridge, and also known as Block 21004, Lots 17 and 18, subject to the finding of the Township Environmental Commission that said land can be developed for said purpose, without doing environmental damage,.

14. Prior to the commencement of construction of Stage 2, a "complete" set of final plans satis-fying application requirements of the State DEP and DOT for the Deep Run bridge crossing and the intersection design at the Ferr: Road jughandle shall be submitted to the Township Engineering Department, Net Jersey Department of Transportation and the New Jersey Environmental Protect: for review and approval. In accordance with the provision of Paragraph 2 in the Resolution of Preliminary Approval dated June 30, 1978, applicant agrees p to extend the Trans Old Bridge roadway to Route 9, prior to the end of construction of Stage 3. _____

15. It is agreed and understood that Prests Mill Road and all of the Trans Old Bridge shall be constructed and in place and functioning, from the Route 9 jughandle to the applicant's property line in Section 6, prior to the ^ beginning of the construction of Stage 4.

16. Applicant agrees to desnag, selectively thin and generally clean up Burnt Fly Brook along its entire course through Sections 7, 13, 14, 15, 16 f*+, and 25.

(SEALj

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Town* ship of Old Bridge

August 23, 1979

and in that respect a true and correct copy of its minutes.

Mary G. Brown

Secretary of Planning Board

New Jersey, that:

Resolution, Page Four

#6-78P Oakwood ac Madison, Inc.

17. The proposed bikeway along the Trans Old Bridge shall be extended along the frontage of the proposed school site to applicant's easternmost property line.

18. It is agreed and understood the Township will accept for dedication only those collector streets, known as Nathan Drive, Oakland Road, Prests Hill Road and Point of Woods Drive and all streets in the single family meeting Township Standards, and the major arterial known as the Trans Old Bridge. All of the streets, cul-de-sacs and the so called courts serving patio homes, cluster homes and townhouses, will be owned and maintained by the respective homeowners association.

19. The Open Space Organization documents are subject to final review by the Township Planner and the Planning Board Attorney and thereafter, shall be recorded simultaneously with the recording of the subdivision plat and a copy of same returned to the Administrative Officer with the recording information thereon.

20. Upon submission by the applicant of subsections approved by this Resolution, the Chairman and Secretary of the Planning Board shall sign said subsections of the final plat for recording with the Middlesex County Clerk. This approval is divided into 28 subsections.

21. The approval herein given shall in any way grant site plan approval of any of the commercial sections 6, 7, 24, and 25 or for 550 dwelling units included in the multi family housing sites located in sections 22, 23, 26, 17 and 28.

22. The effectiveness of this final approval shall be extended for a 10 year period in order to permit the applicant to reasonably rely upon this approval in light of the size of the project which exceeds 150 acres and the number of units which exceeds the statutory requirements of N.J.S.A. 42:55D-52(b)

23. The applicant agrees to conform to all requirements contained in the memorandum of the Township Engineer dated August 23, 1979, with the exception of regulation #6, which is superseded by the terms contained in Condition #15 of this Resolution.

24. Final approval contained herein shall also conform to all of the requirements contained in the Resolution of preliminary approval granted

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Planning Board of the Township of Old Bridge

August 23, 1979

and in that respect a true and correct copy of its minutes.


Secretary of Planning Board

Resolution, Page Five.
*6-78P Oldwood at Madison, Xnc.

by this Board June 30, 1978, with the exception of any condition of pre-
which has been expressly modified by this Resolution o

Moved by Mr. Stone, seconded by Mintz, and so moved on the follow
roll call vote:

AYES: Mr. Fennessy, Mayor Fineberg, Mr. Horowitz, Mr. Stone,
Mr. Mintz, Chairman Olivera.

NAYS: Mr Donatelli, Mr. Hueston.

ABSTAIN: None.

ABSENT: Mr. Messenger.

(SEAL)

I certify the following to be a true and correct
abstract of a resolution regularly passed at a
meeting of the Planning Board of the Town-
ship of Old Bridge

~~August 22 1979~~
and in that respect a true and correct copy of
its minutes.

Mary M. Brown
Secretary of Planning Board*