

UL v. Contract, Old Bridge

8/14/87

Order Amending Restraints

Pg. 20

note: may be order missing from doc # CA000175L

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file

John M. Payne
Barbara Stark

C For the Civic League plaintiffs
and on behalf of the ACLU of N J
Co S
Rutgers Law School
15 Washington Street
Newark, N.J. 07102
201-648-5687

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al

Plaintiffs,

v.

THE MAYOR AND COUNCIL OF
CARTERET, et al

Defendants

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

Docket # C-4122-73

Civil Action

ORDER AMENDING RESTRAINTS

O & Y OLD BRIDGE CORP.,

Plaintiff,

v.

THE TOWNSHIP OF OLD BRIDGE,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket # L-009837-84 P.W.

WOODHAVEN VILLAGE, INC.

Plaintiff,

v.

THE TOWNSHIP OF OLD BRIDGE,
et al,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket # L-036734-84 P.W.

OAKWOOD AT MADISON, INC.,
et als,

Plaintiffs,

v,

THE TOWNSHIP OF MADISON,
et al.

Plaintiff

v.

THE TOWNSHIP OF MADISON,
et al.

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

Docket # L-7502-70 P.W.

-----:

This matter being opened to the Court by Mezey & Mezey, attorneys for Defendants, Oakwood at Madison, Inc. and Beren Corp., Frederick C. Mezey, Esq. appearing at the case scheduling conference held in the chambers of Hon. Eugene D. Serpentelli on June 25, 1987 in the presence of Barbara Stark, Esq. and John M. Payne, Esq., Rutgers Constitutional Litigation Clinic, Attorneys for Urban League, Thomas Norman, Esq., Attorney for Old Bridge Township Planning Board and Jerome Convery, Esq., Attorney for Old Bridge Township, Brenner, Wallack & Hill, Attorneys for O & Y Old Bridge Development Corp., Thomas Hall, Esq., appearing Hutt, Berkow, Hollander & Jankowski, Attorneys for Woodhaven Village, Inc., Stewart M. Hutt, Esq., appearing, and Hannoeh, Weisman, Stern, Besser, Berkowitz & Kinney, Attorneys for O & Y Old Bridge Development Corp., Dean Gaver, Esq., appearing on motion for an Order modifying paragraph 2 of the Order of this Court dated May 31, 1985 to provide for a restraint upon the defendants Old Bridge Township, Township Council and Planning Board from issuing building

permits for more than the first 300 market units, instead of for the first 120 market units as provided in said Order of May 31, 1985;

And the Court having heard the arguments of counsel and being
 °ILt5@.9Ei!!iJPJL.fchaJtthe-relief- reqae&feed~&frettfd be grantredr~~

It is on this day of t 1987 ORDERED as follows:

1. The Order of May 31, 1985 is hereby amended as follows:

Defendants Old Bridge Township, Old Bridge Township Council and Old Bridge Planning Board, and all their agents, employees, and other persons and entities acting in concert with them are hereby enjoined, pending further Order of this Court approving a phasing, affordability and re-sale/re-rental restriction plan for Oakwood at Madison's project, from issuing building permits for construction of any units by Oakwood at Madison, Inc. or Beren Corp., pursuant to the Old Bridge Planning Board's Resolution of Final Subdivision Approval dated August 23, 1979 or the Planning Board's Resolution of Preliminary Approval of June 30, 1978, which is incorporated therein, after the issuance of building permits for the first 300 market units, provided. however, that nothing herein shall prevent the municipal defendants from reviewing and processing any requests for additional approvals in connection with this project, including requests for site plan approval for the low and moderate income units, but not including requests for building permits.

2. Oakwood at Madison, Inc. and Beren Corp. agree that should the pending settlement between them and the Urban League, a copy of which is annexed hereto as Exhibit A, not be approved by the

Court, Oakwood at Madison, Inc. and Beren Corp. will construct eighteen (18) low and moderate income units (9 low income and 9 moderate income), to be built within 12 months following completion of the three hundredth market unit. To secure this promise, Oakwood

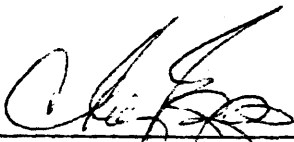
at Madison, Inc. and Beren Corp. herewith provide a surety bond to the Urban League in the amount of \$30,000, for each unit, or for a total amount of \$540,000.00.

3. If Oakwood fails to construct the 18 units as provided herein, the \$540,000.00 secured by the bond shall be forthwith turned over to the Old Bridge Affordable Housing Agency, to be used for the provision of affordable housing, subject to the approval of the Civic League.

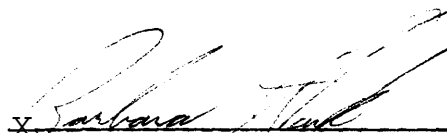
4. Except as amended herein, the Order of May 31, 1985 shall continue in full force and effect.

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

We hereby consent to the form and entry of the within Order



C. Roy Epps t-J [JJ]
President, Civ-i-CLeague of
Greater New Brunswick

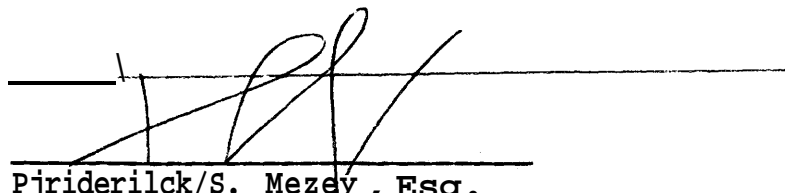


Barbara Stark^v, Esq.
Attorney for Civic League of
Greater New Brunswick

8/14/87



Michael Kaptar
Oakwood at Madison, Inc.
and Beren Corp.



Pjridelck/S. Mezey, Esq.
(-Attorney / fax Oakwood at Madison
and Beren Corp)

I hereby consent to the form
of the within Order only:



Jerome Convery, Esq.
Attorney for Township of Old Bridge

EXHIBIT A

MEZEY I MEZBY

93 Bayard Street, P.O. *x 238
New Brunswick, NJ 08903

Attorneys for Defendant
Oakwood at Madison, Inc. & Beren Corp.

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al;

Plaintiffs

v.

THE MAYOR AND COUNCIL OF
CARTERET, ET AL,

Defendants and

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

Defendants

O &
CORP., OLD BRIDGE DEVELOPMENT

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

WOODHAVEN 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 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-1

LAW DIVISION-MIDDLESEX
COUNTY

DOCKET NO. L-036734-84 P. W.

Thia.~matt<e--^^in9-'bee7i"di^he<r~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
the units to low or moderate income families;
3. In directing that the 20% low or moderate income

units be provided, the Supreme Court, in ^q * * ^ , Mt
income standards but did not set any other standards such
as ~~sing~~ 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 1750 units, 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 U^{te}zⁱs[^] & plaintiffs and old Bridge ^{^ ^} have settled with Olympia « York and Woodhaven Associates based upon a 10% low and moderate income set aside, Phasing, resale and rental and ^{^ ^ ^ ^ ^}

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-r.fMnn 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 Oa.wood at Madison Project, as directed by paragraph 3 of the May 31, 1985

cent so as to yield a lower figure, which approximates the inconq figure for the eleven county Northern New Jersey region, fon wich data is no longer conveniently available.

3. Oakwood at Madison, Inc. and Beren Corp. [Oakwood and J3ejp_ejnJ_akaXl-«upfLy-, --uporr-• f jrtmg ETTeir 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, a "housing plan" which shall set forth the mechanisms whereby Oakwood and Beren will construct the I83 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 vested for a period of nine (9) years from the date of entry of this Order. The,, final subdivision approval granted 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;

5. The Township Planning Board shall review and issue decision upon any application by Oakwood or Beren Corp. for a preliminary site plan approval or revised subdivision or site plan whether for lower income or market ~~with~~ ^{with} _____ ~~within~~ ^{within} ~~fourty~~ ^{forty} 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 or 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 Income Units	Cumulative Total of Lower Income 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
1476-156^7	--	—	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 contain 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(F) of Ordinance No. 5*1-85.

(g) Such marketing plans shall include assurances that the opportunities for low and moderate income units will be advertised throughout the eleven-IVL\~ eotmtY regrohT 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:

(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 agreement, as the case may be, for such Lower Income Unit.

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-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- stzer 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:
Action Taken

	<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 it 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 (10%) percent of the total residential units within the development as housing for lower income households.

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 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.

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%).

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 to Oakwood at 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 and Beren's pending appeal, to be held in escrow by the Civic League pending execution and approval by the court of

