

CA

General

24-Jan-86

Stenographic Transcript of
Settlement. between

pgs 83

O&Y Development Corporation,
Woodhaven Village, and
Twp of Old Bridge

CA002539S

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : MIDDLESEX/OCEAN COUNTIES
Docket No. C-4122-73

1
2
3 URBAN LEAGUE OF GREATER)
NEW BRUNSWICK, et als.,)
4 Plaintiffs,)
5 vs.)
6 THE MAYOR AND COUNCIL OF)
THE BOROUGH OF CARTERET,)
7 et al.,)
8 Defendants.)

MOUNT LAUREL II

STENOGRAPHIC TRANSCRIPT
of
SETTLEMENT

RECEIVED

FEB 24 1986

Place:

JUDGE SERPENTELLI'S CHAMBERS

Ocean County Courthouse
Toms River, N.J.

Date:

January 24, 1986

15 BEFORE:

16 THE HONORABLE EUGENE D. SERPENTELLI, J.S.C.

17
18 TRANSCRIPT ORDERED BY: THOMAS J. HALL, Esq.
(Brener, Wallack & Hill)

19
20 APPEARANCES:

21 ERIC R. NEISSER, Esq. and
BARBARA J. STARK, Esq.
22 Attorneys for Plaintiff
Urban League of Greater
23 New Brunswick.

24 Reported by:
25 DAVID G. VORSTEG, C.S.R.

1 APPEARANCES (Continuing):

2 MESSRS. BRENER, WALLACK & HILL
3 By THOMAS J. HALL, Esq.

4 and

5 MESSRS. HANNOCH & WEISMAN
6 By DEAN A. GAVER, Esq.
7 Attorneys for Plaintiff
8 O & Y Development Corporation.

9 MESSRS. HUTT, BERKOW & JANKOWSKI
10 By STEWART M. HUTT, Esq. and
11 RONALD L. SHIMANOWITZ, Esq.
12 Attorneys for Plaintiff
13 Woodhaven Village, Inc.

14 JEROME J. CONVERY, Esq.
15 Attorney for Defendant
16 The Township of Old Bridge.
17
18
19
20
21
22
23
24
25

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Name

Page

CARLA L. LERMAN

THE COURT

6

1 (Whereupon, the telephone conference was held
2 as follows:)

3 THE COURT: Hello.

4 MR. NORMAN: Judge.

5 THE COURT: Yes.

6 MR. NORMAN: Tom Norman.

7 THE COURT: Right.

8 MR. NORMAN: Note here that Jack Sarubbi
9 called me last night.

10 THE COURT: Yes. You are being called,
11 because a hearing is today on the compliance, and
12 we simply wanted to be sure that you consent to us
13 proceeding and agree with all of that which has been
14 submitted to the Court.

15 MR. NORMAN: Yes. Is Jerry Convery there?

16 MR. CONVERY: The answer is yes. Nothing's
17 changed since last week.

18 THE COURT: All right. He's standing right
19 here.

20 But, now, you are not appearing, and we
21 wanted to be sure. You are going to have to sign
22 this thing.

23 MR. NORMAN: No. I will sign it on Monday.

24 THE COURT: On Monday.

25 MR. NORMAN: Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Okay. Any questions?

MR. NORMAN: I'm coming up Monday and will sign it. I don't have any problems.

THE COURT: Any questions from counsel?

Do you want to have Jerry sign it on your behalf?

MR. NORMAN: Sure. In fact, yes, if he signs it, then I feel more comfortable that it's okay.

THE COURT: Fine, very good.

Off the record.

(Informal discussion outside the record.)

(Whereupon, the telephone conference was concluded.)

THE COURT: Is this known as the weight of the authority? Is that what it is? Who's trying to impress whom?

We should indicate that this is the scheduled date for hearing with respect to the proposed settlement and compliance ordinance of the Old Bridge matter.

I have had filed with me an affidavit of publication of this hearing in the News Tribune, appearing on January 13, 1986. The affidavit will become part of the file.

All right, how do you wish to proceed? You

1 want to have Miss Lerman take the stand and tell
2 us she agrees, and then we can go from there?

3 All right, Ms. Lerman.

4
5 C A R L A L. L E R M A N, having been duly sworn
6 according to law, was examined and testified
7 as follows:

8 THE COURT: Off the record.

9 (Informal discussion outside the record.)

10 THE COURT: Okay. The record, I am sure,
11 is amply full of the fact that Carla Lerman is the
12 Court-appointed Master in this case and has worked
13 closely with the parties in an effort to resolve
14 the litigation.

15 BY THE COURT:

16 Q I suppose in the interest of expedition we
17 can simply ask whether Ms. Lerman has reviewed the proposed
18 order of judgment and settlement agreement and associated
19 documents and is satisfied generally with the proposed
20 settlement?

21 A Yes.

22 Q That's as brief as you can get.

23 Does the proposed settlement result in the
24 likelihood that not all housing will result in a number
25 equivalent to the fair share of the municipality?

1 A Yes. I did not mean to be facetious, really didn't.
2 I think that what this represents, really, is a great
3 deal of, you know, negotiation and discussion, compromise,
4 working through figures, and what will result, I believe,
5 is the realistic probability, if that's not a redundancy,
6 that the number of units set forth in the settlement agree-
7 ment will be built in the six-year repose period referred
8 to in the agreement. The dual number is lower than the
9 fair share number that had been agreed to, initially, the
10 fair share number relating what would have been the
11 requirement for a ten-year period. The six-year period
12 really represents what realistically might be built in
13 six years and marketed in this period of time.

14 Q That's the 1668?

15 A Right.

16 THE COURT: I'll direct this to counsel:

17 The order refers to 1,668 units. In the
18 settlement agreement, Section III-B.2 there's a
19 reference to the "suspension of lower-income
20 housing obligation," which refers to 2,135 units.
21 I want to be sure I understand what the difference
22 is.

23 MR. CONVERY: May it please the Court,
24 Jerome J. Convery on behalf of the Township of
25 Old Bridge.

1 That section was negotiated several
2 months back concerning the concept that if the
3 Township of Old Bridge reached the number of 2,135
4 lower income units prior to 1990, that there would
5 be no further obligation to have developers construct
6 Mount Laurel housing at that point. It later became
7 clear that the realistic number that could actually
8 be built by the year 1990 would be much less than
9 that, but this was an assurance to the Township
10 Council that once we reached that number of 2,135
11 units, that no one would expect the Township of
12 Old Bridge to require builders to continue to build
13 Mount Laurel housing in excess of that number in
14 spite of the fact that we would have ordinances in
15 effect that would have a set-aside.

16 So I am trying to explain to the Court that
17 this was a provision that was negotiated to satisfy
18 the Council that they would not be required to go
19 beyond that number. That paragraph is acceptable
20 to the town in the form that it's now stated, but
21 I think all the parties agree that the figure in
22 the order represents the obligation of 1,668 units
23 for the next six years following the entry of the
24 order.

25 THE COURT: Well, to the uninitiated, including

1 me in terms of your negotiation and purpose, it
2 appears to me there is an inconsistency. The two
3 seem quite inconsistent. It seems to us your fair
4 share is 1,668, and you should be entitled to cut
5 it off then in 1990.

6 MR. CONVERY: Rather than --

7 THE COURT: I'm not arguing against the idea.

8 MR. CONVERY: Rather than belaboring the
9 point, the provision is acceptable to the town. If
10 the provision is not acceptable to the Master or
11 to the Court, I would ask that that provision be
12 stricken rather than having additional negotiation.

13 THE COURT: Mr. Neisser.

14 MR. NEISSER: Eric Neisser on behalf of the
15 Urban League.

16 THE COURT: I want you to know I said it
17 right.

18 MR. NEISSER: Yes, you did, and I appreciate
19 it.

20 Mr. Convery's description is accurate. I
21 think he only failed to explain, as Your Honor
22 said, to the uninitiated where the number 2,135
23 in that paragraph you referred to came from. That
24 comes from Your Honor's order of July 13, 1984, in
25 which the fair share was set at 2,414. Then in this

1 document credits were given for some units that
2 had been developed since 1980. So the remaining
3 period, remaining fair share obligation at this
4 point was 2,135.

5 I think it would be adequate to state, unless
6 the Court wishes to go further into it, that all of
7 these points that Your Honor's raising have been
8 contested quite hotly over a period of time and that,
9 including the question of the number and phrasing of
10 the various terms of this agreement, and the town
11 has agreed to that paragraph that's there. We do
12 not view it as inconsistent. If Your Honor feels
13 appropriate, I would be glad to go into lack of
14 inconsistencies.

15 THE COURT: If the town is agreeable to be
16 bound by that, I don't have any problem. I just
17 thought maybe there was some negotiation with regard
18 to the fair share number, and we didn't pick up the
19 change here.

20 THE WITNESS: That's one way of putting it.

21 THE COURT: If the town is willing to let
22 it go beyond the fair share number to 1990, that's
23 fine with me.

24 MR. CONVERY: I may take one last shot. If
25 Mr. Neisser and the other plaintiffs will agree to

1 change the number on Page 9 from --

2 MR. HUTT: Do you want to agree to take a
3 shot at us?

4 MR. CONVERY: -- 2,135 to the number, 1,168,
5 I will agree to that change.

6 MR. NEISSER: I think he knows the answer.
7 For the record, we do not agree.

8 THE COURT: Counsel's indicated he is not
9 willing to be bound by that and the record is clear.

10 While I am on this paragraph, and I don't
11 want to interrupt the general review of this
12 document, but while I am there the second sentence
13 says, "In the event, any party shall have the right
14 to petition the Court for clarification."

15 I assume you mean any party to this agreement.
16 You are not creating the right in any party anywhere?
17 Yet it could be interpreted that way, because there
18 could be other parties who are affected by that
19 cap. The purpose of this is to allow O & Y and
20 Woodhaven to say, okay, now, what's our responsibility,
21 since we reached this number?

22 I would think you might want to say to this
23 agreement --

24 MR. CONVERY: I would agree, Your Honor, and
25 I would agree to the document being amended to read,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

"any party to this agreement."

THE COURT: Okay. Somebody better keep notes on this. I assume Mr. Hall is the drafter.

You can keep notes.

Now, let's just go back to the general question of whether Ms. Lerman has any questions concerning any aspect of the documents on which she wishes to comment further with regard to the proposed settlement.

THE WITNESS: No. I don't know whether you want me to run through where the numbers come from. I don't have any further questions. We have reviewed documents that have then very minor revisions and some major revisions going back after a number of months. So that I think what Your Honor is seeing is the final, that we have all been involved in many, many drafts earlier. There have been, as I say, some small changes and some major changes over the last six months or so.

I don't have any further questions with what's in here. I would, if I may, just say one thing, that the reference to the party having the right to petition the Court, I don't know whether to further clarify the party to this agreement involves 10 percent mandatory set-aside for all residential

1 development. So that one of the parties, I would
2 picture, that might have a question is any
3 residential developer who is faced with a 10 percent
4 set-aside, and now it's theoretically 1990. We
5 reached 2,135. How is it clarified for my
6 residential developer that he was not continued or
7 she does not have to continue to provide 10 percent
8 mandatory set-aside?

9 THE COURT: I assume the "comply" means
10 with local authorities. If they disagree with the
11 resolution, then, of course, they would have an
12 independent right to institute legal proceedings.
13 I just didn't want to leave this problem open to the
14 point where anybody could simply come in here on a
15 motion. I would hope that this case is complete and
16 finished, so I think your point is well taken. But
17 I think they should proceed through normal procedures
18 to --

19 THE WITNESS: To plan for it.

20 THE COURT: Yes, to get here.

21 MR. CONVERY: Excuse me, Your Honor.

22 THE COURT: Yes.

23 MR. CONVERY: I wanted to make the point on
24 the record. It has always been my understanding that
25 the intention of the parties regarding that paragraph

1 was that it only apply to the parties to the
2 agreement. So that was what was in my mind when
3 I negotiated that particular paragraph.

4 THE COURT: That's what I assumed.

5 MR. CONVERY: Thank you.

6 THE COURT: Okay. I think what I would like
7 to do is proceed through the documents. I'm going
8 to ask Miss Lerman to stay here. So that, there
9 might be questions in which she would like to
10 comment, she is easily available to anyone to
11 question her if you have any questions.

12 Does anyone have any questions? I assume
13 not.

14 All right, let's just take the order and
15 judgment. There is no statement of repose in this
16 judgment, unless I completely missed it.

17 MR. NEISSER: Page 8, middle of the page.

18 MR. HALL: Your Honor, Page 8, Item 8.

19 THE COURT: Okay. I wrote a note over it.
20 That's what happened. Then I would say the caption
21 should be changed to "order and judgment of repose."
22 All right? That suggests to the Clerk's Office a
23 termination of these proceedings.

24 Page 4, Paragraph 5, third line, well, I
25 guess you have to start at the first line if you read

1 it by yourself. By the time we get to the third
2 line we are reading the words, "must average, in
3 any calendar year, \$7,500." That could be
4 interpreted each year or each unit. You mean each
5 unit, I take it.

6 MR. HUTT: Each unit.

7 THE WITNESS: Each unit.

8 THE COURT: Now, it would seem to me to be
9 perfect to insert the word "unit."

10 Then it goes on to say that the "grants must
11 be used to bring the units up to fire, building and
12 housing code standards."

13 Now, I would assume that the purpose of the
14 grants are to remove the housing from the category
15 of efficient.

16 BY THE COURT:

17 Q Now, would one equate to the other? In other
18 words, would it be inappropriate here to amend this to say,
19 to ensure that the units will not be deficient as defined
20 in AMG or as defined somehow?

21 A Well, we did discuss this, and one of the questions
22 here is that in the AMG the standards that were used to
23 arrive at what the indigenous need in Old Bridge is were
24 based on three specific categories. Actually, a few of
25 those categories could be standard and the roof could be

1 falling in or there could be, you know, a whole broken
2 front porch. There could be a variety of other delapidated
3 characteristics which don't get reflected in those numbers.

4 Q The reverse side, however, you could spend
5 7500 on cosmetics and not remove deficiencies?

6 A But if you brought it up to all of the codes, you
7 would also be removing the deficiency.

8 Q That's what I am asking. You are satisfied
9 then that by code compliance we will remove all deficiencies
10 as identified under AMG?

11 A I believe so, yes.

12 Q I suppose you could spend all the money on
13 fire code compliance and then not spend it on building and
14 housing code compliance, and you wouldn't remove your
15 deficiencies?

16 A It is possible that within their rehabilitation they
17 would have an upper limit on how much, you know, the maximum
18 amount that any grant could be. There have been houses, I
19 don't know about Old Bridge, but I have seen one myself. To
20 correct all of the deficiencies, code violations, takes more
21 than what the program can afford.

22 Q I think what I am aiming at is whether it
23 wouldn't be appropriate to say that up to the \$7500 limit
24 the money must be used first to remove heating, plumbing
25 and overcrowding deficiencies and thereafter for any other

Lerman

1 purpose. Otherwise, what we are liable to do here is
2 to improve things for the purposes of getting a credit
3 to the town for their fire code and they are not going to
4 get it and end up with them in their next count, if there
5 ever is a next count.

6 A Yes, I think.

7 Q If that's to remove, don't worry about it?

8 MR. HUNT: That's their risk. They are
9 supposed to do that. What they are doing, if
10 they do that, and I understand they haven't solved
11 it, this way it's owed later. That makes the time
12 to solve it that you are concerned about, in other
13 words, giving money for solving AMC deficiencies
14 rather than just cosmetics. Because if they don't
15 solve AMC deficiencies, adjust costs, so cosmetics --
16 they are going to get it in the next count, so it's
17 a self-policing code.

18 THE COURT: It is at their risk. It's also
19 the people that are accumulating it, I'm concerned
20 about.

21 THE WITNESS: You could possibly put in a
22 restriction that the credit would only be given in
23 this case for units that had fire or housing code
24 deficiencies. In other words, cosmetic deficiencies
25 would not be considered a credit for the next count.

1 THE COURT: Well, I think maybe what I am
2 worried about is the general description of "fire,
3 building and housing code standards," which might
4 allow the use of the \$7500 for matters which would
5 not necessarily resolve the deficiencies, which we
6 say create a substandard unit. They might work on
7 other things other than plumbing and heating or
8 overcrowding. What my concern is, I just -- if it's
9 not a principal concern to the plaintiffs, Urban
10 League, and the Master, then I will drop it. But
11 I think the town should at least be on notice that
12 if you don't cure those kinds of deficiencies, then
13 you are talking about not being able to claim a
14 credit in the next count.

15 Now, I think the town could protect itself by
16 developing regulations as to the allocation of the
17 \$7500.

18 MR. NEISSER: Perhaps I can address it. I
19 think that the intent of the language that you see
20 is to address deficient units that were established
21 or identified in the AMG methodology. It's
22 admittedly a linguistic shorthand attempt to address
23 it. I cannot state here for sure that if one is
24 up to every fire, building and housing code that's
25 applicable, that necessarily we will have caught

1 every other deficiency.

2 It seems to me the basic deficiency, like
3 there is no heating, the building that is used year-
4 round, other basic deficiencies of that nature, no
5 adequate plumbing, and the problem would seem to be
6 covered by ordinary codes.

7 With regard to your concern about cosmetics,
8 we obviously share the concern. I do not perceive
9 a paint job as being something necessary to bring
10 one up to building or housing codes, and clearly the
11 town is fully aware of the reason that we oppose
12 such. In fact, the amount of the grants, which are
13 required by the clause, consist of fairly substantial
14 sums. Because we wanted it clear to the town that
15 they have to be addressing serious deficiencies. So
16 just as Ms. Lerman, I can't be absolutely sure that
17 this clause will, in fact, take care of each of the
18 deficiencies, but this is the intent to do that.

19 THE COURT: Okay. I think the town has got
20 to try to protect itself by channeling the money to
21 those things you are really talking about in
22 delapidated units.

23 All right, Page 6, is there a provision
24 elsewhere for review of the rules and regulations?
25 I'm sorry.

1 Paragraph D, the rules and regulations, which
2 are to be adopted by the Affordable Housing Agency
3 either by the Master or by the Court, that's at the
4 top of the page, it says they are going to adopt
5 regulations within 120 days. Customarily, of course,
6 they are reviewed and then thereafter approved by
7 the Court in an order.

8 MR. NEISSER: There is no explicit provision
9 that I am aware of. However, the provision right
10 below the one you are looking at, which is 7a,
11 speaks about bringing the resolution of disputes
12 that might arise between the parties before the
13 standing Master and, of course, --

14 THE COURT: I'm not talking about a dispute;
15 I'm just talking if they adopt regulations that are
16 not appropriate.

17 MR. NEISSER: That's what I am saying. If
18 they are not in conformity with the ordinance and
19 the kind of provisions required by the judgment and
20 settlement agreement, then presumably at least this
21 party would have a dispute with them as to the
22 adequacy of those regulations. Similarly, the
23 developer might have a dispute with regard to a
24 particular regulation. But to my knowledge there is
25 no express provision for coming back on a date

1 certain for review.

2 THE COURT: That's what I call a trust-me
3 argument. I do, but, by the way, trust you, --

4 MR. NEISSER: Thank you.

5 THE COURT: -- better trust you than make me
6 review them, as a matter of fact.

7 MR. CONVERY: Yes. Jerry Convery the trust-me
8 remark is a lead-in to a Stu Hutt joke.

9 THE COURT: I'm sorry I said that.

10 MR. CONVERY: Before he gets to that, I would
11 like to indicate if Your Honor feels that these
12 rules and regulations should be approved by a Master,
13 the town would have no objection to that. If you
14 feel that that is a necessary part of this order,
15 I think that's a reasonable provision. Your Honor
16 usually has the Master review the rules and regulations.
17 That's acceptable, so I would have no objection to a
18 clause being added that says, "and shall be approved
19 by the Master."

20 THE COURT: I think for the town's benefit
21 it should be there and in terms of consistency and
22 so forth with other matters. I don't mean just a
23 consistency, because of consistency's sake, but
24 rather that there be some procedure that's relatively
25 similar in all of the townships it might be useful as

1 well.

2 MR. HUTT: I was going to say, Your Honor,
3 I don't recall that the rules and regulations were
4 to be reviewed by the Court. The ordinance is here
5 and that has to be reviewed. The reason I raise
6 the question, supposing a year from now they want to
7 change the rules and regulations. Does that presume
8 they can't change it without Court approval? I've
9 never seen you get involved in the rules and
10 regulations as distinguished from the naked ordinance,
11 setting up what it has to contain. The rules and
12 regulations just flush out the guidelines in the
13 ordinance which is, of course, do you have to approve
14 and you may well approve today.

15 THE COURT: I have been involved in the
16 regulations, because they can directly impact.

17 MR. HUTT: Then I ask the question. Suppose
18 a year from now it changes.

19 THE COURT: Let's go off the record.

20 (Informal discussion outside the record.)

21 THE COURT: Back on the record.

22 Paragraph D, I think we can simply provide
23 that the rules and regulations shall be submitted
24 to the Master for her review, period.

25 Paragraph 7c, I just want to make sure what

1 the intent of that paragraph is. When you are
2 making the Court an offer you see what it says,
3 six, the line of that paragraph, it says, "may
4 offer to the Court a mechanism whereby the developer
5 shall be assured of obtaining an adequate supply of
6 potable water for their entire projects."

7 Once they make this offer what am I supposed
8 to do?

9 MR. HUTT: Make it presented to the Court.

10 THE COURT: One at a time.

11 Mr. Hall.

12 MR. HALL: Your Honor, it's Thomas Hall
13 for Olympia & York. The intent of this paragraph
14 is to put into place a procedure whereby one of the
15 several outstanding serious problems can ultimately
16 be resolved. It is anticipated there have been
17 significant discussions that have taken place back
18 and forth between the developers and Old Bridge
19 Township Municipal Utilities Authority, and it is
20 anticipated we can arrive at an agreement in a timely
21 fashion. However, if we can't, we believe it will
22 be appropriate for us to bring the matter back before
23 this Court. That's the intent to this paragraph,
24 both to put the parties and this Court on notice
25 that if we can't resolve this dispute in a timely

1 fashion, the provision of potable water is critical
2 to the establishment of this development and we
3 would have to come back before this Court for its
4 assistance.

5 THE COURT: So, in other words, it will really
6 remain, apply to the Court for relief. All right,
7 just leave it.

8 I made a whole bunch of notes here as I went
9 along. Then they were answered by things when I
10 got what I got later on, so I have to weed through
11 those. Okay.

12 Page 8, Paragraph f dealing with the \$30
13 fee, does this mean that upon the first certificate
14 of occupancy or non-Mount Laurel development that
15 the \$30 fee must be paid for all the lower income
16 units?

17 MR. NEISSER: Yes, Your Honor.

18 THE COURT: Or just each lower income unit
19 as it's certified? In other words, if there are
20 200 lower income units in the project, you are going
21 to have to pay thirty times 200?

22 MR. NEISSER: Prior to the certificates,
23 issuance of any certificates of occupancy, including
24 any units.

25 THE COURT: Market units will be first?

1 MR. NEISSER: Obviously, at that point they
2 must pay \$30 for each of the lower income units
3 approved for construction in that application. I
4 think that clause in that application is important.
5 For example, with regard to the O & Y and Woodhaven,
6 they don't have a single application on some. They
7 will have a number of applications over the years,
8 each application time, the first CO of any unit
9 in which there is an application, that approval.

10 THE COURT: So if Phase A has 60 units, it's
11 going to be 60 units times thirty paid up front when
12 the first CO for the Mount Laurel new --

13 MR. NEISSER: For the paltry sum of \$1800,
14 that's correct.

15 MR. HUTT: Your Honor, the record should
16 note it's always paltry when you are getting it;
17 it's not so paltry when you are paying it.

18 THE COURT: Paragraph 10, page 9 deals
19 with the "outrageous" order I entered with respect
20 to Oakwood at Madison. I say in quotes; somebody
21 said it was "outrageous." Is that left dangling
22 here if we have not resolved it?

23 MR. NEISSER: Yes. We have not resolved
24 it. After your order of May 31st the understanding
25 would be that Oakwood would come forward with some

1 proposal that we could negotiate. They never
2 contacted me. Finally, in December, as December
3 is nearing completion, I contacted Mr. Mezey,
4 M-e-z-e-y. He is the attorney for Oakwood. He had
5 basically not given much thought to it, if I can
6 characterize his response. We discussed some things
7 and have had a subsequent conversation, so in the
8 last few weeks I have written a letter on the matter,
9 making a suggestion there has been some progress, but
10 as of this date it is not concluded.

11 I should say that Oakwood has come into the
12 Planning Board for whatever model home building
13 permit, so it's clearly proceeding with the project.
14 Therefore, it's vital to us that this order be
15 continued and that's why it's in this paragraph.

16 THE COURT: You say they are abiding by the
17 restraining order?

18 MR. NEISSER: So far this month they haven't
19 gotten close to 120. We are sure they will abide
20 by it for the duration.

21 THE COURT: It would have been nice to wrap
22 that up too, but I understand you can't do everything.

23 What does the effect of that right to comment
24 that is retained by the Urban League under Paragraph
25 11 have upon the conclusion of this matter? I mean

1 is it just kind of a preparatory thing? You just
2 have a right to comment. Everybody says you can
3 comment, but we don't want to listen to any
4 more comment, is that it, for the record?

5 MR. NEISSER: For the record, I don't know.
6 I have to accept your characterization. In substance,
7 yes. That is to say, we have, as indicated, we have
8 not been involved in the detailed engineering,
9 planning, road and drainage standards. There have
10 been a few comments that we have transmitted to one
11 of the parties, some of the parties, from our reading
12 of them and from our involvement, that we have no
13 significant problem. We just seek the right to
14 comment if there is something of benefit in the
15 process that we can offer.

16 MR. CONVERY: May it please the Court, Jerome
17 Convery on behalf of the Township. I think it's
18 appropriate at this time to put something on the
19 record concerning the Township Council's authoriza-
20 tion for me to sign the judgment and agreement. When
21 this was presented to the Town Council some of the
22 details of the various appendices had not been
23 completed, so by resolution the Township Council
24 authorized me to sign the judgment and agreement
25 upon receipt of written communication from the Town-

1 ship Planner, Henry Bignell; the Township Engineer,
2 Harvey P. Goldie, and our consultant regarding
3 planning matters, Carl Hintz. I just wanted the
4 record to be clear that I am in receipt of various
5 memoranda from those individuals whereby Henry Bignell,
6 who is, in fact, in Court, has indicated that the
7 final version of the Appendices B and C are acceptable
8 to him as the Township Planner and are consistent
9 with sound planning and design.

10 In regard to Mr. Hintz, he has also written
11 to me, saying substantially the same thing, that he
12 approves of Appendices B and C and finds they are
13 consistent with sound planning and design.

14 In regard to Appendix D, I have a letter
15 dated January 22, 1986, from Harvey P. Goldie, the
16 Township Engineer, saying that he approves of the
17 final version of Appendix D.

18 In regard to Appendix E, I've provided the
19 Court with a copy of a memorandum to me dated
20 January 23, 1986, which in view of the time restraint
21 of appearing here today, I would like to add as an
22 addendum to Appendix E and incorporate it into the
23 compliance settlement packet. These are some last
24 minute comments on Appendix E by the Township
25 Engineer, and it's my understanding the parties are

1 agreeable this would be incorporated as an addendum
2 to Appendix E and become a part of the settlement.

3 THE COURT: Did you give that to Mr. Convery?
4 I don't think he saw it.

5 MR. HALL: I presented this to Mrs. Hegarty
6 this morning.

7 THE COURT: As part of these?

8 MR. HALL: I believe we put it in this same
9 package.

10 THE COURT: I didn't get to anything beyond
11 the order.

12 MR. CONVERY: I have an additional copy for
13 you, if necessary, Your Honor. In fact, the original
14 was given too, because we felt the original documents
15 should become part of the Court's file.

16 THE COURT: It's not in the settlement.

17 MR. HALL: It could have been put into one
18 of those books, one that Mrs. Hegarty said she had.

19 THE COURT: She said there was a book. Okay.
20 That's January 23rd from Mr. Goldie.

21 MR. CONVERY: Yes.

22 THE COURT: Yes. It's at the back of one
23 of these books.

24 MR. CONVERY: Just to reiterate, I provided
25 to the Court an original copy, because I viewed this

1 as an addendum to the settlement agreement.

2 THE COURT: I take it there is no objection
3 to annexing this to the section?

4 MR. NEISSER: No objection.

5 MR. HALL: No objection.

6 THE WITNESS: May I look at it?

7 THE COURT: Yes. Maybe you can take a peek
8 while you are going along here.

9 Let's just go over a few things in the
10 settlement agreement just as a matter of technical
11 form. The first sentence of the agreement in one
12 place and perhaps two places elsewhere in the agree-
13 ment there's a reference to "this Court." Of course,
14 this Court is not a party to the settlement agreement,
15 and it would seem to me it would be appropriate to
16 say, "the Court." Okay? I mean I'm not a signatory.

17 Paragraph 4, I have no problem with this if
18 nobody else has a problem with it. But I must tell
19 you that I have some difficulties understanding how
20 this settlement agreement can bind people who are
21 in no way connected to this litigation, that is,
22 named in this litigation.

23 MR. HUTT: Neither do I.

24 THE COURT: Now, Page 2 was left out of my
25 copy of the settlement agreement, but I did go back

1 to the previous draft. You have people in there,
2 like independent consultants, and all of them, they
3 are bound by many things, which I question that they
4 could be bound. But nonetheless --

5 MR. HALL: Your Honor, if I could merely
6 explain that, there are a series of procedural
7 standards that are attached hereto, and it's basically
8 in that vein we said, as people go through it is our
9 intent that they will be following the procedural
10 standards and actual design construction standards
11 that are attached hereto even though they may
12 traditionally have been looking at either other
13 published standards or ordinances and so forth. It
14 was our intention to have these published. These
15 standards, which are attached hereto, prevail over
16 other standards, which these other appointed officials
17 or engineering types may have ordinarily followed.

18 THE COURT: You see, they are defined as
19 being part of the Township of Old Bridge, Old Bridge
20 for the purposes of this hearing agreement, and I
21 have no problem if you want to leave it that way.

22 You see, on Page 6, the last "whereas" clause
23 there is reference to "this Court"; probably should
24 be "the Court."

25 Page 7, I marked this all up, because I was

1 reading at midnight last night. I missed the word,
2 "adjusted P.M.S.A. median"; I just read "median
3 income." As I understand this, and Ms. Lerman can
4 merely confirm this for the record if I am correct,
5 the effort here is to adjust the P.M.S.A. Primary
6 Metropolitan Statistical Area for Middlesex, Somerset
7 and Hunterton Counties in a way that its median
8 income would actually be reflective of the eleven-
9 county region established under AMG?

10 THE WITNESS: That's correct.

11 THE COURT: And the 94 percent, does that simply,
12 because you know that, I take it --

13 THE WITNESS: Yes.

14 THE COURT: Okay. What happens? Is there
15 any likelihood that 94 percent might become an un-
16 reflected figure?

17 THE WITNESS: It's possible.

18 THE COURT: I mean grossly modified or minutely.

19 THE WITNESS: It's possible after the 1992 census
20 there might be a change in that percentage.

21 THE COURT: Well, that's far enough.
22 I think if it's close enough in 1992, I am satisfied.
23 I'm satisfied unless there is something --

24 MR. NEISSER: There's been some information
25

1 provided to us by Mr. Hutt that indicates that
2 because of some statistical, because of statistical
3 methods used there may, in fact, be a more significant
4 variance between 94 percent of the P.M.S.A. that's
5 noticed here and the median income of the entire
6 eleven-county region.

7 When this was initially negotiated, as other
8 settlements were using 94 percent, as a simple
9 mathematical technique to avoid a lot of complicated
10 stuff, especially because, as you know, the census-
11 taking, you know, county stuff is sometimes hard to
12 get appropriate yearly updates, so it is of concern
13 to us that the 94 percent figure may not, in fact,
14 reflect the truly lower median income of the broad
15 eleven-county region.

16 I don't know whether that would require
17 application to the Master at an appropriate time,
18 whatever, but that was identified recently. I think
19 it came out in Mr. Caton's reports or comments on
20 a variety of other townships that were within the
21 same region.

22 THE COURT: Yes. I'm aware of some
23 difficulty there. I thought perhaps it was chosen
24 as the best we could do.

25 THE WITNESS: I think that's why it was chosen.

1 It was simply --

2 MR. NEISSER: It was simplest. It was before
3 this information had become available. It was just
4 that the local P.M.S.A. median is, in fact, the one
5 that's published, it's not actually reflected, and
6 that the median is quite a bit higher by several
7 thousand dollars. It's of obvious concern to us.
8 Because while that may be accurate for those two or
9 four counties, it's not accurate for the entire
10 eleven.

11 THE COURT: Okay. Page 8, with respect to
12 the "reopening clause," there is a phrase which
13 relates to "a subsequently adopted administrative
14 regulation of the State agency acting under statutory
15 authority."

16 I would like to understand what that means.
17 I think I understand what it means.

18 MR. HUTT: Your Honor, I was responsible for
19 that provision. Supposing, for instance, the Fair
20 Housing Council in a year or two comes to the
21 conclusion that the definition of "low and median"
22 is just too low, maybe it's got to go higher, because
23 if interest rates -- and they make a State-wide rule
24 and regulation, what they are defining as median or
25 what income levels or something else, we didn't want

1 to do it ad hoc case. We didn't want to come in
2 here, saying you should do this or you should allow
3 us to do that, any of the parties. But if there is
4 some general State guideline by either legislation
5 or rule or regulation of a State agency, how, it's
6 going to be treated as to what's the definition of
7 "lower," for instance, my definition of "lower" is
8 50 percent. Maybe a year from now it might be
9 40 or 60 or by a State-wide regulation they are
10 projecting that twenty years on this judgment.

11 We want the opportunity to come in and if
12 the case is proven the Court will have, ultimately
13 have to prove it. Any party would have to come in
14 for due cause shown. You may say it's irrelevant.
15 That's fine. You may say it's very substantial. We
16 don't want to lock in new rules, any of the parties,
17 or declare rules that we are going to have to protect
18 for twenty years, even though all kinds of conditions
19 change ten years from now. The guidelines would be
20 if it applies to the State at large, not just any
21 particular case by case basis of a particular town,
22 that was the best language we could come up with to
23 solve that problem.

24 THE COURT: Suppose the Council on Affordable
25 Housing adopts some regulations which would affect the

1 fair share number.

2 MR. HUTT: The fair share, I think, is solid
3 under this.

4 THE COURT: That's not obvious from this
5 wording.

6 MR. HUTT: To 1990, but after that --

7 THE COURT: This relates to the whole question,
8 what the status of this case is after today in terms
9 of the motion that's been filed with the transcript
10 too and we have to deal with that later on. But I
11 mean I read this and have no problem with it. I'm
12 perfectly happy to leave it, but I read this as
13 leaving some uncertainty in the process.

14 MR. HUTT: I think, really, as you expressed
15 it on the matters here, Your Honor, if the formula
16 comes down with the Township fair share, shall I
17 say, coat in hand, under some new formula that you
18 come in with, because they decide from independent
19 study for a quarter of a million dollars, let's knock
20 out the appeal in this case or are willing to solve
21 the problem for a hundred thousand, I think under that
22 clause someone would have the right to come in for
23 good cause shown, asking you to grant relief. They'd
24 have to prove it and it would be a tough time.

25 The point is it wouldn't be res judicata, say.

1 You could never come in for relief. Collaterally
2 you are estopped. You signed the settlement. A
3 settlement is a settlement and there for all; be
4 gone.

5 MR. NEISSER: Obviously, Your Honor's question
6 suggests we have a great deal of concern with this
7 clause, and it's no secret, I don't think; again a
8 point of great contest. We are, Your Honor, not
9 very happy with its resolution as part of a larger
10 compromise, and this is one on which we may
11 necessarily compromise. I certainly can state my
12 views on it, which are somewhat basically similar
13 to what Mr. Hutt just said, namely, this is not, very
14 clearly is not an automatic reopening clause, although
15 the title of it is "Reopening Clause." It does not
16 give a right to a party to do so. What it does, it
17 gives the right to apply to this Court, to the
18 Court upon good cause shown, so there has to be some
19 showing, as Mr. Hutt indicated. The Court ultimately
20 is going to be the decision-maker with regard to that
21 application.

22 Secondly, we agree with Mr. Hutt's view that
23 it is not to deal with any little, small change or
24 something that one of the towns negotiated with some-
25 body or something that they came up with, an adjudication,

1 even. We are talking about the intent, which is,
2 as Mr. Hutt said, with regard to administrative
3 regulations. If any are applicable, it would be a
4 State-wide change dealing with a basic fundamental
5 standard that might be perceived by the Court upon
6 a proper application of an appropriate party as being
7 essentially unfair and requiring major revision.
8 Clearly we are concerned with any revision, because
9 it is a negotiated settlement. I think that's really
10 all I would have to say at this point.

11 I would like to add one thing. It was
12 certainly our understanding that question you raised
13 on fair share was not going to be reopened. I can
14 say that much.

15 THE COURT: There is an omen, silence.

16 MR. HUTT: Even if it went up, Judge, --

17 MR. NEISSER: If you signed that, I would
18 sign it too.

19 THE COURT: The next paragraph, I think maybe
20 it would be useful to have the Master explain for
21 the record why these developers are only setting
22 aside 10 percent when the Supreme Court has suggested
23 that a minimum should be 20 percent. I think I know
24 the answer, and I assume the answer's satisfactory.
25 But while we make the reference to "builder's remedy"

1 in this case, one could perceive that's what's
2 arising out of it. In light of that perhaps we can
3 explain why they were not required to produce
4 20 percent lower income housing.

5 THE WITNESS: Right. Very briefly, there are
6 several reasons. The numbers of units anticipated
7 to be built by the two developers who are the
8 plaintiffs are such that they exceed any proposals
9 that have been discussed in other places throughout
10 the State. So the number of units at 20 percent
11 would actually have exceeded anything that the
12 fair share number was.

13 Secondly, the densities that were being given
14 to the developers were not the higher densities that
15 had been discussed in terms of builder's remedy;
16 traditional, you know. They are four to the acre,
17 which actually was the zoning in effect at the time
18 that the latest of these suits in this case started.

19 The third reason is that the question of
20 marketability of units, the units that are anticipated
21 to be built by these two developers are not anticipated
22 to be the very high cost luxury units that are being
23 built in some of the other towns, and the cost,
24 therefore, of providing 20 percent would have much
25 greater impact on the possibilities of a reasonable

1 profit.

2 THE COURT: Okay. I've heard those
3 explanations before, and I am satisfied with them.
4 I thought they should form part of the record.

5 Next question is on Page 10. It is really
6 not a question. I just think that the second
7 paragraph, first line, and I don't in any sense
8 mean to be critical, because these documents are
9 very well done and, I know, prepared under a great
10 deal of pressure, but I don't think that first
11 sentence is very clear. I read it three times before
12 I understood the sentence. Part of it is probably
13 because of the absence of a comma, which would clarify
14 it. If a comma goes, and here it gets a little bit
15 clearer, but it's still not terribly clear, "It is
16 clearly understood" -- I suppose "clearly" is
17 redundant and in this particular case not appropriate.
18 "It is . . . understood, however, that the provisions
19 of this settlement agreement and the attachments
20 hereto provide a mechanism under which O & Y and
21 Woodhaven shall seek development approvals and by
22 which development undertaken by O & Y and Woodhaven
23 shall be controlled."

24 I assume what you mean is that the settlement
25 agreement and attachments control the manner in which

1 recommendations. Is the Master's report in any way
2 subject to comment, cross-examination or otherwise?
3 I know there is no testimony concerning the applica-
4 tion.

5 But it says, "No testimony, other than the
6 Master's reports" -- now, if the Master's report
7 is going to be there, presumably the Master is, is
8 the Master subject to cross-examination? If so,
9 do we have another hearing within a hearing?

10 MR. HALL: Your Honor, this section addresses
11 one of the primary concerns of the plaintiffs, and
12 of the defendant as well, in that there is a need to
13 crystallize this development enterprise or the
14 development enterprises of both O & Y and Woodhaven
15 into a concept which is acceptable to the plan without
16 creating an enormous problem of having a general
17 development plan hearing process which extends for
18 months. We have attempted to crystallize the intent
19 of this document into plates, which are going to be
20 presented to the Planning Board with appropriate
21 documentation, and it was the intent of the parties
22 to have a public hearing or public hearings conducted
23 by the Planning Board, that there would be a
24 relatively limited scope of concern by the Planning
25 Board. Do these plates adequately and accurately

1 O & Y and Woodhaven will build and develop.

2 MR. HALL: That's correct, Your Honor.

3 THE COURT: I think the wording is putting
4 the whole sense of the sentence -- at the very end,
5 maybe I could add a comma at the end of the "hereto."
6 I can't imagine anyone objecting to that comma. It's
7 already a little bit clearer, if anybody else is
8 crazy enough to read these things.

9 Okay, Page 13, next to the last paragraph,
10 this is an interesting provision, because I've always
11 wanted to sit on the other side of the table at
12 Planning Board meetings. Do I become a Planning
13 Board under this provision?

14 "The Master shall provide the Court with
15 recommendations, and the Court shall base its
16 decision on the record of the Planning Board,
17 materials supplied to the Master, and the Master's
18 recommendations." That is if the Planning Board
19 disapproves the plate. What am I doing in that?
20 What is the Judge who may be sitting on these matters
21 doing in that capacity? Is he reviewing a typical
22 prerogative writ posture? Is he or is she reviewing
23 or acting as a super Planning Board? Then the other
24 question, you can respond to two of them at once, is
25 the Master is going to provide the Court with

1 reflect the documentation? Are they in accord with
2 our understanding of the procedures? In the event
3 that this process does not work the way we hope it's
4 going to work, we have provided an appeal process.
5 We understood that Your Honor's role would be or the
6 role of the Court would be to say this is part of a
7 settlement of litigation.

8 The intent of these plates is to crystallize
9 these two development schemes into a workable and
10 visual scheme. Are they part of this? Do they meet
11 the procedures and standards set forth in here? Are
12 they adequate from a planning perspective? We see
13 not where Your Honor takes the role of a super
14 Planning Board, but, as does this plan, does this
15 record do what it's supposed to do in terms of
16 putting forth in a visual and clear fashion what it
17 is that these projects are going to be?

18 THE COURT: Well, does this suggest that if
19 there is a judgment involved, and the answer to that
20 question, that I can replace the Planning Board's
21 judgment, in other words, if reasonable people would
22 differ and if the Planning Board says, no. They
23 don't do it, and I say, they are good enough, that
24 what it kind of sounds like was, that's not the
25 standard of review. Normally it's arbitrary and

1 capricious.

2 MR. HUTT: Right, Your Honor. But the
3 standard wouldn't be exactly the way you phrased it.
4 What it is, it's more akin to being the final
5 arbitrator on recommendation of the Master. The
6 object was you are not as a super Planning Board.
7 If there is going to be a bona fide dispute, let's
8 say, we hope it won't happen, let's say there is a
9 bona fide dispute between the Planning Board and
10 the developer as to whether or not under these
11 settlement agreements you should do this or you should
12 do that. Both sides would make their pitch to the
13 Master, the Master that will be involved in this
14 whole process for a long time. Maybe there are
15 certain questions, like -- another thing, your book
16 could have been twenty volumes more. Sometimes you
17 don't even think of something, but you know the
18 intent. You can still make a recommendation to the
19 Court in the nature of more like a binding arbitration.
20 The Court will then look to which side is more
21 reasonable in this respect with regard to the
22 documents based on the Master's statement and oral
23 arguments, documents like a prerogative writ. There
24 would be no testimony and this would resolve the
25 problem. We've done this, for instance, in the

1 Branchburg case and there are other cases. It's
2 just a way so that the Court -- both parties are
3 looking for, not to make a hassle -- somebody has to
4 call the shot so to speak.

5 THE COURT: I don't think that's what you
6 did in Branchburg. No. Now, in Branchburg I decided
7 that as a matter of law and based upon the facts
8 presented.

9 MR. HUTT: No. But it hasn't come to that
10 yet. We are going in for applications. If the
11 application under that judgment, Your Honor, if our
12 application is -- if they request, we don't think it's
13 right, let's say they request a new Verrazano Bridge.

14 THE COURT: I thought you were talking about
15 the room and heat problem.

16 MR. HUTT: If we solved that and we decided
17 to go for a pony and dog show, but if Branchburg,
18 for instance, supposing the Planning Board when we
19 go for our application wants a new Verrazano Bridge,
20 then under that procedure we can go to the Master
21 and say in our opinion this settlement didn't
22 contemplate that. He could say it did or didn't.
23 Then you can --

24 THE COURT: That's different. But what the
25 settlement contemplated is a different issue. This

1 to me sounds like factfinding as an arbitrator, not
2 as a Judge.

3 MR. HUTT: Yes. In a sense that's true. In
4 a sense that's true, but we are making the Court the
5 arbitrator.

6 THE COURT: And the arbitrator did not
7 arbitrate to completion; it's just who's more right.

8 MR. HUTT: And reasonableness.

9 THE COURT: Well, suppose they are both
10 reasonable. That's what I am asking.

11 MR. HUTT: What does the arbitrator do when the
12 Board is reasonable?

13 THE COURT: He splits it down the middle.

14 MR. HUTT: Then that's what you do, decide
15 your own problem, and the Master will do this too.
16 It's merely confirmation of a Master's report.

17 THE COURT: Well, I am assuming the Master
18 could straighten it out.

19 MR. HUTT: We are too.

20 THE COURT: He could have that potential,
21 that the court of last resort is the Court.

22 MR. HUTT: That's it.

23 MR. HALL: I think, Your Honor, that's what
24 we have here as a potential problem. We will work
25 it out the very best we can. The parties have agreed

1 on a procedure whereby if there is an ultimate
2 dispute, we cannot resolve it, and we have taken it
3 to the Master and the Master has done her very best,
4 it may have to come before you for --

5 MR. HUTT: For a holy blessing.

6 MR. HALL: -- you to do whatever you have
7 to do, but there has to be an end to it.

8 THE COURT: I agree with you. I should be
9 clear on this. I don't mean to beat a dead horse
10 here. No. 1, I may not be here. No. 2, the
11 agreement is really silent as to the standard of
12 review. Traditionally, I don't know that a Judge
13 has ever been used in this capacity, because the
14 standard of review here is not arbitrary and
15 capricious. It's a question of who's more reasonable.
16 I think that's what I heard.

17 MR. HUTT: That's not quite true. It could
18 be either. In other words, it might be --

19 THE COURT: Well, okay.

20 MR. HUTT: -- arbitrary, but if it isn't --

21 THE COURT: There would be no problem if it
22 was arbitrary and capricious.

23 MR. HUTT: Don't say that. Half the litigation
24 is because one party is arbitrary and capricious.

25 THE COURT: And the other half is, because the

1 other party is arbitrary and capricious.

2 MR. HUTT: Absolutely.

3 THE COURT: Mr. Convery, do you have a
4 thought on this? I mean I can just see, you know,
5 three years down the line when there is perhaps a
6 new Judge and new attorneys and the whole thing.

7 MR. HUTT: It's all going to happen in the
8 next three months.

9 THE COURT: Three months down the line, I
10 don't care. I may be telling you something. Who
11 knows? Somebody's going to come in and say, well,
12 first, it doesn't make any difference whether there
13 are new people involved.

14 You are going to say, I didn't understand it
15 that way. You would have to show what we did was
16 unreasonable.

17 MR. CONVERY: May it please the Court, Your
18 Honor, understanding that Mr. Norman isn't here,
19 and we know from the telephone call to you that was
20 on the record that he's authorized me to sign this
21 document as it is on his behalf and on behalf of the
22 Planning Board today, this particular aspect of the
23 settlement agreement on approval procedures, my
24 understanding was it was set up, because everyone
25 realizes there's sufficient time to go to the

1 Planning Board for a public hearing on a review
2 in the matter. It was clear that the Planning Board
3 wanted a public hearing, so the public would be
4 aware of what this is going to look like ultimately,
5 at least as proposed by the developers. So that
6 this procedure was agreed to by Thomas Norman on
7 behalf of the Planning Board in order that the
8 settlement agreement could come before the Court today
9 with the understanding over the next two months the
10 matter will be before the Planning Board for a public
11 hearing.

12 This section of the agreement is for the
13 limited purpose of reviewing the plates. It does
14 not intend to carry the Court into the role of an
15 arbitrator on other issues, and it's solely for that
16 limited purpose. Quietly, it was negotiated by Mr.
17 Norman along with the developers, and the way this
18 reads, now, is acceptable to him and the Planning
19 Board. For that reason I would ask the Court to
20 accept it.

21 THE COURT: Okay. Whenever in doubt I also
22 go back to the old adage that time cures all ills,
23 and this case is an example of it. Okay, it will
24 just be one more experience in this whole setting,
25 put it that way.

1 All right, Page 22, just a technical issue
2 there in the last paragraph. I suppose that this
3 document is really not an order; it's an agreement.
4 And we can change the word "order," which is in that
5 second sentence in two places, just change it to
6 "agreement."

7 Other than that, the only objection I have
8 to the document is to the use of the term "signatory
9 hereto," but that sounds like something one of my
10 old professors used to do.

11 Now, Appendix A.

12 MR. NEISSER: Before you go on on the last
13 point you made on Page 22, perhaps we could clear it
14 up. My understanding of that paragraph was that
15 "this order," meaning not that it's incorrect to say,
16 "this order," the order and judgment, which was the
17 prior document and this settlement and the appendices
18 are what governs.

19 THE COURT: Yes.

20 MR. NEISSER: That's really what it was. It
21 was a reference to the order and, of course, everything
22 attached, isn't that correct?

23 MR. HALL: That's why I raised it at this
24 time.

25 THE COURT: I could say "order and judgment and

1 this agreement."

2 MR. NEISSER: Exactly.

3 MR. CONVERY: Excuse me. Your Honor, while
4 we are on the record I would like to request that we
5 nail down the exact language that we want in this
6 paragraph under "Potential Conflicts," so we all have
7 it with us right now.

8 THE COURT: Yes. I'm hopeful you can take
9 these original documents and maybe mark them up. We
10 haven't had that many changes. We can take care of
11 it today. I think we are just changing the first "order"
12 to "order and judgment" or "judgment." I don't care.

13 MR. HALL: Your Honor, I have it on Page 22
14 of my draft, E-F. One, "It is further provided that
15 if there is a conflict between any ordinance now in
16 existence or passed subsequent to the order and
17 judgment, this agreement, and the attached appendices--"

18 MR. HUTT: You mean any conflict or a conflict?

19 MR. HALL: A conflict between any ordinance.

20 MR. GAVER: What shall control? No. It
21 doesn't work. What shall control?

22 MR. HUTT: Exactly.

23 MR. GAVER: You have to restate it down there.
24 No. Leave that.

25 MR. HALL: You are right. I see what happened.

1 MR. GAVER: They just carried it in.

2 MR. HALL: It's like these documents.

3 (Informal discussion outside the record.)

4 THE COURT: On the record.

5 MR. HALL: Mr. Gaver points out once we start
6 making that change you have to make a further change
7 in this sentence, so that there's going to be -- right
8 now it will be somewhat inelegantly stated, but
9 "It is further provided that if there is a conflict
10 between any ordinance now in existence or passed
11 subsequent to the order and judgment, this agreement
12 and the attached appendices, the order and judgment,
13 the agreement and the appendices, as affecting the
14 rights of O & Y or Woodhaven shall control."

15 THE COURT: That's another one of those
16 "shall control" problems.

17 Appendix A, just a very basic question with
18 regard to A.2, "Housing for Rent: The combination of
19 contract rent plus an allowance for utility bills
20 shall not exceed 30 percent of the Total lower
21 income household income." Why are we saying, "plus
22 an allowance"? In other words, really, aren't we
23 just saying, "not more than 30 percent of the renter's
24 income can be spent on the housing"? That's what
25 that means.

1 MR. HALL: That is what it was supposed to
2 say.

3 THE WITNESS: If I may, generally if a tenant
4 is paying for their utilities, you really cannot
5 control how much they are going to spend. What's
6 generally done is an allowance based on the actual
7 valuation of the size of the unit type of heating
8 of what would normally be the cost. It is then
9 attributed to this unit as part of the rent. So
10 that somebody who keeps their apartment at 90 degrees,
11 if they have control of the heat, versus one who
12 keeps it at 70 --

13 THE COURT: By "allowance" you mean an
14 estimate?

15 THE WITNESS: Right.

16 THE COURT: An estimate of the utilities?

17 THE WITNESS: Yes.

18 THE COURT: Reasonable estimate or an average
19 estimate, something like that?

20 THE WITNESS: Yes. And this is provided
21 generally by the utility companies, what it should
22 cost.

23 THE COURT: I just want to make it clear here
24 that we are holding it to 30 percent based upon an
25 average usage. That's the intent, and that's what

1 would guide the housing group within the Township.

2 (Informal discussion outside the record.)

3 THE WITNESS: If that's not clear, just
4 add "plus a full allowance for utility costs," so
5 there is no question it's just not any allowance.
6 It's not just a little correction. It's supposed
7 to represent the anticipated full utility cost.

8 THE COURT: Well, as long as the record is
9 clear. What the Master is saying, it's the anticipated
10 full utility cost for average usage, I think.

11 THE WITNESS: Yes. Not normal.

12 THE COURT: Not normal.

13 THE WITNESS: Right.

14 THE COURT: So that the normal average or what-
15 ever, we are not dealing with the one who couldn't,
16 the unit at 90 degrees. With regard to Appendix F, it
17 appears to me that in this, and this I read, I must
18 admit, very quickly at a very late hour, that the affirma-
19 tive marketing plan is somewhat different than that
20 used in the North Brunswick case. Am I wrong or
21 right? That seems more affirmative. I mean more
22 broad.

23 MR. NEISSER: Which seemed broader, Your
24 Honor?

25 THE COURT: The North Brunswick matter.

1 North Brunswick, I think, actually under-
2 took affirmative marketing in all eleven counties.

3 THE WITNESS: This one does also.

4 MR. NEISSER: I don't have the provision
5 in front of me.

6 THE COURT: It does. I'm sorry. I missed it.

7 THE WITNESS: Yes.

8 MR. NEISSER: What page?

9 THE COURT: I'm looking at the last page.

10 THE WITNESS: It's Paragraph F.

11 THE COURT: Paragraph F of Ordinance 54-85.

12 THE WITNESS: It does say, "housing centers,
13 housing referral organizations . . . in the eleven-
14 county."

15 MR. NEISSER: I think it's identified.

16 MR. HUTT: In North Brunswick.

17 THE WITNESS: Identified.

18 MR. NEISSER: On the bottom of the last page,
19 the next to the last page, pardon me, in Ordinance
20 54-85 reference is to the North Brunswick ordinance
21 and to the particular cities in which newspaper
22 advertisements must be placed and, as the Master
23 just said, at the top of the last page, which is the
24 last page of the ordinance, last paragraph of the
25 ordinance, it also specifically indicates notice to

1 the "eleven-county present housing need region" of
2 those various identified groups, so I believe that
3 language is the same.

4 MR. HUTT: It's the same as North Brunswick.

5 THE WITNESS: Actually, it does not include
6 the change we made in North Brunswick.

7 MR. NEISSER: Yes, it does, if you will look.

8 THE WITNESS: My copy, it doesn't. It still
9 refers to "public welfare departments."

10 MR. NEISSER: If you look at the very last
11 page in the book, it contains the ordinance and
12 amendments that have been adopted, excuse me, that
13 were introduced on first reading this past Tuesday,
14 January 21st, and the very last amendment, "and
15 change 'government social service and public welfare
16 departments' to: 'government housing or community
17 development departments.'"

18 I think we made the changes in North Brunswick
19 as well.

20 THE COURT: It's in this book I just got.

21 MR. NEISSER: Yes, at the very last page.

22 THE COURT: I didn't have that. Last night
23 I may not have read any of it.

24 MR. NEISSER: It's under that, the amendments,
25 which are the last five or six pages of the book and,

1 as I said, were introduced on first reading have
2 not yet been finally adopted. They were introduced
3 this past week in the form which appears here and
4 we hope will be adopted in a very short period of
5 time or the next meeting, whenever. Therefore, there
6 is a deadline in the order with regard to adoption.

7 THE COURT: Mr. Convery.

8 MR. CONVERY: May it please the Court, Your
9 Honor, I intend to make a statement regarding these
10 various ordinances. I think it would be appropriate,
11 now.

12 You have in Appendix F Ordinance No. 54-85
13 and Ordinance No. 55-85. They were adopted by the
14 Township Council on December the 19th, 1985, with
15 the proviso that they would become effective after
16 the settlement agreement was signed. So it's intended
17 they become effective immediately after publication,
18 and I would notify the Township Clerk after this
19 meeting, assuming Your Honor signs the judgment, to
20 proceed with publication.

21 The next ordinance in the Appendix F does not
22 have an ordinance number. This is the one that's
23 one page. It indicates an amendment to 4-8:1.1(g).
24 If you want to indicate in your booklet, you should
25 note that that is known as Ordinance No. 1-86.

1 THE COURT: I just took the book. This is
2 Appendix --

3 MR. CONVERY: All the way at the back, the
4 last appendix is Appendix F. At the beginning of
5 Appendix F we have Ordinance No. 54-85.

6 THE COURT: Yes.

7 MR. CONVERY: Therefore, we have a two-page,
8 three-page ordinance, 55-85. The very next ordinance
9 has no number. It's one page. That should be
10 numbered Ordinance No. 1-86, and I'd like to indicate
11 that the Council adopted that ordinance on January 21,
12 1986, at its last meeting.

13 Therefore, you will see another ordinance,
14 which was just referred to by Mr. Neisser and is a
15 series of what we refer to as technical amendments
16 to 55-85 and 54-85. That will be known in the Township
17 as Ordinance No. 4-86. It was introduced on
18 January 21, 1986, was given its first reading and
19 passed on first reading by a vote of six to two. It
20 will be on the next agenda of the Township Council
21 for public hearing and adoption.

22 I would just like to go back for a second,
23 Your Honor, to the settlement agreement, Page 7 of
24 the settlement agreement first, top of the page.
25 The third line was changed today. It had "O & Y and

1 Woodhaven agree to provide \$3,000 each towards the
2 funding of the first year's operation of the agency."

3 That should be changed to read, "\$5,000" by
4 agreement of the parties.

5 THE COURT: At least, okay.

6 MR. HUTT: I thought there was another typo.
7 I thought it was supposed to say, "together."

8 THE COURT: I read this change of 50,000 --
9 is that 5,000?

10 MR. CONVERY: Judge, I will take either
11 language, at least five or fifty is acceptable to
12 the Town. Perhaps the plaintiff should comment.

13 THE COURT: All right. I understand it's
14 5,000 instead of 3,000; might be good if we initial
15 these changes too. I see one initialed in the margin.

16 MR. NEISSER: I then have one comment, for
17 the record, about what Mr. Convery just said about
18 the ordinances and their adoption. There was, to my
19 knowledge, nothing in the ordinance saying that their
20 effectiveness was stayed until the agreement was
21 signed. The reason that is significant, it was
22 understood by all the parties, and I believe by the
23 Council as well, and I know by the Planning Board as
24 well in the letter from Mr. Norman, that the ordinance
25 was adopted, excuse me, the main ordinances were

1 adopted on December 19, 1985, and were, therefore,
2 to apply to applications for planning approvals
3 subsequent to that, including, for example,
4 the Brunetti application and other -- it was at
5 least the understanding of not only myself, but
6 Mr. Norman in a letter of January 13th of this year
7 to the attorney for Mr. Brunetti that their
8 application, which I believe was first up on
9 January 16th, was subject to this order.

10 MR. CONVERY: I believe Mr. Brunetti's
11 attorney has indicated that they are proceeding with
12 their application with the understanding that they
13 have a Mount Laurel II obligation, and they state
14 publicly that they will meet their obligation.

15 Mr. Hall can confirm that, because he was
16 at the meeting that when the Township Council adopted
17 the two ordinances, 54-85 and 55-85, they were
18 adopted, but in view of the fact that we were
19 negotiating the final language of the settlement
20 they instructed the Clerk at the time of the adoption
21 not to advertise the ordinance until such time as
22 the settlement agreement and judgment had been signed.
23 That was their instruction to the Clerk.

24 It doesn't affect the fact that the ordinances
25 were adopted. We fully intend to enforce those

1 ordinances. That will be done, but the understanding
2 was that this was a compliance package, that the
3 ordinances were a part of that package. If
4 negotiations fell through and we did not settle this
5 case, it was certainly not the intention of Old Bridge
6 Township to enforce ordinances setting up an
7 Affordable Housing Agency and things of that sort,
8 which had not been agreed to as part of the
9 compliance package. But I represent to the Court
10 that immediately upon the signing of the judgment
11 I would instruct the Clerk to advertise the ordinances
12 as required by law.

13 MR. HUTT: No problem.

14 THE COURT: Yes.

15 MR. HALL: Your Honor, there is one other
16 change in the text on Page 19 of the settlement
17 agreement. There's a reference to a midrise
18 structure and a limitation that no midrise structure
19 shall contain more than 160 units. There was in the
20 actual negotiating process a variety of different
21 numbers that were thrown about as we came through
22 the appendices to provide for a midrise structure of
23 no more than 150 units. We would like these docu-
24 ments to be consistent, so we are asking the parties
25 to change on Page 19 Item (a) should read, "No midrise

1 structure shall contain more than 150 units."

2 THE COURT: That's not been change on the
3 original.

4 MR. HALL: That's correct. We just finished
5 that this morning, Your Honor, and I have not gotten
6 to your change. We got mugged for the money, but
7 he got change in the numbers.

8 THE COURT: Okay.

9 MR. NEISSER: We have no objection.

10 THE COURT: I don't think I have any other
11 questions unless there is anything else outstanding.
12 We would only have to resolve the pending status
13 of the motion.

14 MR. HALL: I could make one other comment,
15 Your Honor. During the course of the negotiations
16 that we went through on this document I was frequently
17 reminded what happened in New York City during the
18 height of their fiscal crisis where unions were on
19 strike and everything was falling apart. They didn't
20 have enough money to pay for everything. I was
21 talking to an aide to the mayor, and he said, "Tom,
22 the only way this thing is going to settle, the only
23 two ways out of this, either God comes down, gets us
24 all, changes the water to wine and gives us all loaves
25 and fishes and paves the streets with gold and lets

1 us all move to Philadelphia or we reach a settlement
2 agreement. The second would take a miracle, and I
3 don't think that's going to happen."

4 We were actually able to reach an agreement
5 on all these issues. There are a couple of areas of
6 concern that Olympia has, and I just want to note them
7 for the record. You've already touched on two of
8 them. There's a problem of reaching agreement on
9 potable water, which we consider as critical. It
10 is the next item of high level negotiation which is
11 going to take place. We wish Your Honor to be aware
12 that that is an issue that has yet to be resolved.

13 Your Honor's also touched on the fact that the
14 Planning Board process is one of some concern. We've
15 provided a mechanism, which we hope we don't have to
16 use.

17 The third area that we have a concern with
18 is something where the Township at the last set of
19 negotiations insisted on the item on Page 20. Item
20 V-C.6 incorporates a staging performance schedule,
21 via the non-residential development and the residential
22 development. We have negotiated these numbers. We
23 believe they will work, but we wish to note for the
24 record that we see them as a significant problem as
25 we go down the road. It may yet again be an area that

1 this Court may have to, that a Court may have to yet
2 resolve. Our concern is that as we go forward, if
3 there is any lag in our ability to provide the
4 commercial facilities, which are required by this
5 agreement to be provided in tandem with the residential
6 development, that the development could come to a
7 screeching halt, which would obviously impact on all
8 aspects of this agreement, including our ability to
9 deliver lower income housing units.

10 We believe we've negotiated a settlement that
11 we can live with, but I do wish this Court to be
12 aware that we regard the provisions of V-C.6 as a
13 potential problem down the road.

14 THE COURT: I suppose it's fair to say all
15 of the parties to the agreement must be entering into
16 it with some concern, and I suppose that nobody could
17 be more concerned than the elected officials of the
18 Township and its attorney. I mean this is not an
19 easy thing for a town in today's setting, given the
20 existence of the alternative, past and everything else
21 that exists, for them to do. I think it's quite
22 incredible that we've come this far. I think it
23 bespeaks of a lot of hard work and diligent effort
24 on everyone's behalf. I'm sure the town may say,
25 we may have second thoughts about this too. If that's

1 what Mr. Convery was going to say, I could clearly
2 understand.

3 Okay, Mr. Convery. We may have second thoughts
4 about this too. If that's what Mr. Convery was going
5 to say, I could clearly understand. Okay.

6 Mr. Convery.

7 MR. CONVERY: I would just like to incorporate
8 your comments, Your Honor. But in response to what
9 was just said about this commercial staging, I think
10 in fairness it should be stated that the commercial
11 staging provisions in our present ordinance are
12 stricter than those that were negotiated by Olympia
13 and York and Woodhaven in this settlement agreement.
14 So we did change our standards solely in regard to
15 Olympia and York and Woodhaven in order to reach an
16 agreement. I just think in fairness that should be
17 on the record as well. Thank you.

18 THE COURT: All right. Anything further on
19 the agreement before we get into the motion?

20 MR. HUTT: I say if we do in fairness to each
21 other we are maybe talking ourselves out of a
22 settlement. I make a motion we do it.

23 MR. NEISSER: I second that motion.

24 THE COURT: Reminds me of a contempt hearing
25 I had about a week ago, and this fellow who didn't

1 pay his support, his former wife was here, the more
2 I pressed him, the more she came to his defense.
3 Before we were done I offered to marry them. I do
4 that too, you know.

5 THE WITNESS: Can I just add one thing for the
6 record?

7 THE COURT: Yes.

8 Ms. Lerman would like to say something.

9 THE WITNESS: I would just like to add, very
10 briefly, we first met in December of 1984, the first
11 time I went down to Old Bridge to meet with this whole
12 group. I think that the town was facing and is facing
13 a substantial change in the character of the town
14 regardless of the Mount Laurel component. The
15 developers are facing very substantial investments
16 and hopefully profits that will make those investments
17 worthwhile.

18 The Urban League is really facing the test of
19 everything that's been working for the last ten years
20 in these cases, and I would just like to say everybody
21 involved in this case through the ups and downs, anger,
22 some laughter occasionally, has really, I think,
23 dedicated themselves to trying to reach a settlement.
24 Everyone has given something. Everyone has given up
25 something that they thought was very important to them.

1 I think essentially there have been very straight-
2 forward answers, and on behalf of the parties I think
3 they deserve a lot of credit.

4 THE COURT: Thank you. Well, just by way of
5 wrapping it up, I will have to take care of the other
6 issue, but I might also say that if I have to single
7 out one decision that I made since I've been a
8 Mount Laurel Judge, which was clearly correct, it
9 was to select Miss Lerman as my first Court-appointed
10 Master. I think she's demonstrated that in this case
11 with an extraordinarily difficult matter, together
12 with all the other difficult matters she's been
13 handling in the Urban League.

14 I thank you for your work. I don't know that
15 you can get paid enough to do this job. All right.

16 We have no need for her additional services.

17 THE WITNESS: Just getting paid.

18 THE COURT: Just getting paid, it's a problem.
19 We will work on that later.

20 Okay, I guess we are done except to handle the
21 motion, so we can excuse the Master until this
22 afternoon at least.

23 THE WITNESS: Right.

24 THE COURT: We have the issue of the outstanding
25 motion, which is of course a motion to transfer the

1 case to the Housing Council. That is open of record
2 and will be held pending developments in this case.
3 I have an order before me proffered by the Urban
4 League to dismiss. That pending motion is moot.

5 Okay, we will go back on the record.

6 MR. NEISSER: Your Honor, yes. There is one
7 very serious and important matter remaining, which
8 is, as I already indicated, the motion that was
9 filed by the Township, October 30, 1985, to transfer
10 this case to the Affordable Housing Council under
11 Section 16 of the Fair Housing Act. We have made
12 abundantly clear both to Mr. Convery orally and in
13 two letters to him, which were provided, of course,
14 to all members of the Council, that it is a condition,
15 an absolute essential condition of the Urban League
16 agreement to this order and judgment settlement
17 agreement that the transfer motion be withdrawn or
18 denied by the Court with prejudice.

19 Mr. Convery can explain the circumstances,
20 but it is my understanding that he is not authorized
21 to consent to withdraw, and that is why the final
22 draft of the order and judgment, which you have
23 before you and just reviewed, does not include such
24 a provision. This puts my client in an extremely
25 difficult position. Maybe I was trained wrong in the

1 law, but I understand either you settle or you
2 litigate. You can't do both at the same time. So
3 that the matter requires at this point a Court order
4 which is not consented to. I have submitted, I
5 believe I gave every other party a copy, a proposed
6 order to that effect.

7 THE COURT: I should note that principle,
8 of either settling or litigating, is belied by some
9 pending appeals before the Supreme Court.

10 MR. NEISSER: My co-counsel said the same
11 thing to them.

12 THE COURT: We had settlement orders there
13 or close, anyway.

14 MR. NEISSER: We are hoping we are right on
15 both points.

16 First of all, let me say that we never filed
17 formal response papers to this motion. Indeed, it
18 should be noted Mr. Convery never filed anything,
19 but a notice of motion and no affidavits were
20 presented. We would, however, to preserve the record,
21 seek to have incorporated those opposition papers,
22 which we did file with regard to the transfer motions
23 before other towns, Cranbury, Monroe, Piscataway and
24 South Plainfield, also in the same Urban League
25 litigation.

1 More importantly, I think, are a few other
2 points here. It is clear, that intent of all the
3 parties to settle this entire litigation, actually,
4 three pieces consolidated, I would say, Olympia & York
5 and Woodhaven and the Urban League suit against Old
6 Bridge. It is, therefore, the intent to bring to a
7 close all litigation. We would ask the Court to find
8 that it be the intent. I think the voluminousness
9 of the documents as well as the responses to the
10 questions, I think, should indicate that is the
11 intent.

12 Secondly, we bring to the Court's attention
13 the fact that in Paragraph 12 of the order and
14 judgment before you, Page 9, the very last page, it
15 says, "This Court shall retain jurisdiction of this
16 case, so as to ensure the implementation of the
17 proposed agreement and all other aspects of the
18 compliance package."

19 It is my understanding that Mr. Convery has
20 the authority to and will consent to this entire
21 order and agreement, including this paragraph.
22 Thereby, the town is consenting to retention of
23 jurisdiction for purpose of basically enforcement
24 of the order.

25 Finally, Section 16 of the statute under which

1 he made the motion permits any party to the
2 litigation, and this refers to cluster zoning cases
3 filed more than sixty days before the effective date
4 of this act -- as Mr. Convery pointed out, we just
5 barely squeaked past that date, any party may file
6 a motion with the Court to seek a transfer of the
7 case to the Council with the settlement. The case
8 is concluded while implementation of the order
9 obviously remains. The litigation is concluded.
10 Therefore, there is nothing left to transfer. It
11 is our position, therefore, we request that Your
12 Honor find the intent of the parties, as I indicated,
13 the intent that can add a complete and final
14 settlement of all litigation, that the order provides
15 on consent for retention of the jurisdiction by the
16 Court for implementation and perhaps most importantly
17 from our point of view, and I believe the other
18 plaintiffs will speak to that, our consent. The
19 Urban League consent is expressly contingent upon the
20 denial of the transfer motion and in light of the
21 conclusion of the entire case, that, therefore, the
22 matter is moot and we would request Your Honor to
23 interpret an order holding it to be moot and denying
24 the motion with prejudice as moot. Thank you.

25 MR. CONVERY: Your Honor, may it please the

1 Court, Jerome Convery on behalf of the Township of
2 Old Bridge, first of all, I would like to indicate
3 for the record that at a case management conference
4 I indicated to the Court that I believe that, as the
5 Township Attorney, I had an obligation to file the
6 notice of motion to transfer on behalf of the Township
7 even though the Township represented on this date
8 that we were proceeding in good faith and in an attempt
9 to resolve the litigation and the settlement matter.
10 Obviously, that statement was true, because we are
11 here today with this settlement agreement and a form
12 of order concerning judgment.

13 The problem regarding the transfer motion
14 came to light when Mr. Neisser submitted a proposed
15 form of judgment, which included a reference to the
16 transfer motion. When I took this before the Township
17 Council by a four-four vote they simply felt that
18 they didn't want to deal with any change regarding
19 the proposed form of judgment at that time. There-
20 fore, because there was a deadlock vote I believe
21 that I was not authorized to make any change in the
22 judgment form. However, I advised the Council that
23 I was certain that the Court would have to deal with
24 the fact that a transfer motion had been filed, and
25 I advised the Council that it very well may be that

1 if the settlement documents are acceptable to the
2 Court and the judgment is signed, that the Court
3 may believe that the transfer motion filed on behalf
4 of Old Bridge Township is moot. So the Council is
5 on notice that as a matter of fact the Court may
6 consider the motion moot.

7 I'd also like to indicate that at no time has
8 the Council seriously discussed with me proceeding
9 with the transfer motion if, in fact, this case was
10 settled. It was clearly at all times discussed as
11 a legal matter that must be done in order to reserve
12 certain rights of the Township of Old Bridge in the
13 event that there was not a settlement of this case.

14 Now, concerning the language in the
15 legislation, I acknowledge that the language indicates
16 that for those cases, exclusionary zoning cases
17 instituted more than sixty days before the effective
18 date of this Act, that any party to the litigation
19 may file a motion with the Court to seek to transfer
20 the case to the Council. If, in fact, Your Honor
21 accepts the compliance package and signs the
22 judgment, I would submit to the reasoning that the
23 case is settled and is, therefore, no longer in
24 litigation.

25 In regard to the position of the Urban League

1 that the settlement documents indicate that the Court
2 will retain jurisdiction, the Council has authorized
3 me to sign this document, and I acknowledge that the
4 Township of Old Bridge accepts the concept that the
5 Court will retain jurisdiction as to enforcement of
6 the judgment and settlement agreement that is
7 incorporated. So on that basis I would submit to the
8 Court that it is for the Court to determine whether
9 or not the motion is moot.

10 I would like to be heard as to the form of
11 the order as well at the appropriate time, but I
12 would like to note one other thing. In view of the
13 fact that the attorney for Olympia and York has
14 indicated that there is some concern about whether
15 or not water would be available, some concerns about
16 the staging provisions for commercial, and if these
17 are concerns that they are stating on the record
18 today, I feel that if the Court denies the motion
19 to transfer, it should deny without prejudice. I
20 feel that it's clear that we have an agreement today.
21 But if any other party comes back to this Court and
22 seeks to indicate that there, in fact, was not an
23 agreement, there was not a meeting of the minds of
24 the parties and seeks to ask this Court to indicate
25 that there is no agreement, at that point the Township

1 of Old Bridge should have the right to come back
2 to this Court and seek to transfer. But if the
3 Court feels that this matter is moot, I would submit
4 to the Court's judgment. But I believe that the
5 Court should indicate that the motion is denied
6 without prejudice as moot.

7 As to the form of the order, Your Honor,
8 Page 2 has a lengthy introductory paragraph. I
9 submit that beginning with the words, "The Court
10 having entered pursuant to a stipulation of the
11 parties an order on July 13, 1984," through the
12 language, the lines stating, "litigation to assist
13 the parties in seeking a settlement," that that
14 provision is superfluous. It should not be in any
15 order that the Court signs.

16 But, in fact, the order should start with the
17 words, "The Township of Old Bridge, having filed on
18 October 30, 1985, a motion to transfer this case
19 to the Council on Affordable Housing," because that
20 in truth is what issue is before the Court, and the
21 preceding statement, I submit, is superfluous.

22 THE COURT: What's the problem with
23 superfluosness? Is the only problem it's accurate
24 and so forth? Is it only because it's superfluous?

25 MR. CONVERY: I believe it's an accurate

1 statement of prior events, but I don't believe that
2 it's necessary to refer to those events in order for
3 this Court to deal with the question of the transfer
4 motion.

5 Regarding the last line of the second page
6 indicating "December, 1985," and "January, 1986,"
7 as set forth in Appendix F, going over to the next
8 page, "implement the Court's July 13, 1984, order,"
9 I object to that language. I would ask that the
10 language be substituted that reads, "would constitute
11 compliance with the constitutional requirements of
12 Mount Laurel II." But I don't feel that we are
13 referring necessarily back to that July 13, 1984,
14 order, but we are referring to the fact that the
15 settlement package indicates that we are, now, in
16 compliance with the constitutional requirements. I
17 would ask that that change be made.

18 There's a request, I believe, by the
19 developers that it indicate at the end of that
20 paragraph, "That the plaintiffs," plural, "consent
21 to this settlement is expressly contingent on the
22 denial of the transfer motion." I would have no
23 objection to substituting the word "plaintiffs" for
24 "Urban League."

25 As far as the last line of the order where

1 it says, "Housing Act is hereby denied with prejudice,
2 that it's moot," I would submit it would be more
3 appropriate for the Court if it does deny this motion
4 to indicate, "Housing Act is here denied without
5 prejudice as moot." Thank you, Your Honor.

6 THE COURT: Mr. Neisser.

7 MR. NEISSER: I think just two points, I don't
8 think the reference to the order of July 13, 1984,
9 is superfluous. It is, as Mr. Convery conceded,
10 accurate in its representation. It was, after all,
11 that order that established the existing ordinances
12 are unconstitutional. I should say the ordinances
13 prior to December of '85. That established a fairer
14 fair share obligation and ordered that the parties
15 appear before you today to try and seek settlement.

16 Then there is a further order appointing
17 Ms. Lerman to help you in that process, which she
18 has done so amicably. I think, in fact, similarly,
19 it is my understanding this order and judgment
20 settlement agreement is designed to implement that
21 order, which established the constitutional
22 obligation, so I think it is both accurate and
23 relevant and essential, in fact.

24 The second point and very disturbing is the
25 suggestion by the Township Attorney that it be with-

1 out prejudice. He relied, as I understand it, upon
2 the reference by Mr. Hall to the need for agreement
3 regarding potable water and some other points that
4 are specifically stated in the general agreement
5 requiring further negotiation. A problem with regard
6 to water or problem with regard to Plate A or B does
7 not terminate this agreement. That's why Your Honor
8 went through with Mr. Hutt and Mr. Hall, if there is
9 a problem with the Planning Board's dealing with
10 Plate A or B there is a process for this.

11 THE COURT: In the interest of time what my
12 view of this would be simply this: It's with
13 prejudice with respect to the settlement agreement
14 as placed on the record. If there is a modification
15 on the settlement agreement as opposed to an
16 enforcement of the settlement agreement, then it
17 seems to me the Township clearly would have a right
18 to make an application. I mean if the terms change,
19 if the basis upon which they've settled this changed
20 significantly, then it would be unfair if there is
21 going to be such a change not to allow them to make
22 that application.

23 MR. NEISSER: With one proviso, they can't
24 come in and initiate the changes and based on their
25 suggested changes refuse to follow through and then

1 say, now, we have the right to transfer.

2 THE COURT: That's what Mr. Convery was
3 saying. He said, if you change the terms on which
4 we settle, it should work both ways. We should have
5 a right to change our terms and that's only fair.
6 But as long as no one seeks to change, he was uneasy
7 about the suggestion that the basis upon which they
8 settle might be changed and then the Council, governing
9 body could say, well, then why do we settle? Why not
10 go to the Housing Council? That's a reasonable
11 question.

12 MR. NEISSER: I think the distinction between
13 it was of implementing the agreement even if there
14 were problems with enforcement as against changing
15 or modifying the agreement. I think that would take
16 care of the concerns of the Urban League. Yes.

17 THE COURT: All right. Anyone else?

18 All right, I think that, first of all, upon
19 the execution of this order and judgment there is no
20 exclusionary zoning before me, exclusionary zoning
21 case before me to transfer and in a very real sense
22 it's moot. I couldn't send anything to the Council
23 I don't have.

24 Secondly, I think the legislation even
25 envisioned, in fact, some cases might not unitarily

1 continue before the Court and then in those cases,
2 of course, this dealt with cases that had settled
3 before the Act, that a repose was granted statutorily,
4 if you can put it that way. I don't find in the
5 legislation anything that contemplates that whole
6 host of cases, which are still continuing before the
7 Court, can't be settled. As to those cases, the
8 Council on Affordable Housing would have no involve-
9 ment. We have more cases in that posture than we do
10 have in the transfer posture.

11 Thirdly, I think it is fair to say, and Mr.
12 Convery has been very candid about it, that the town
13 does intend this to be a complete and final settle-
14 ment of all litigation which in and of itself would
15 render a transfer moot, because there would be nothing
16 to litigate before the Housing Council. For those
17 reasons I think it is appropriate to deny the motion
18 because of the remoteness rather than the merits of
19 any right to transfer and that the motion should be
20 denied with prejudice, it being understood that what
21 I've said before need not be incorporated in the
22 order, but is incorporated in the record and, that
23 is, that the Court understands the denial of the
24 motion is based on mootness and that the mootness
25 may, if I can put it that way, disappear if anyone

1 sought to change the terms of the agreement.
2 Therefore, if there is an application to suddenly
3 modify the terms of the agreement as opposed to
4 enforce it, the Township would not be precluded
5 from countering with a motion to transfer. So the
6 prejudice is for -- the denial, rather, with
7 prejudice is with respect to the present mootness
8 of the case.

9 With regard to the form of the order, I
10 take it there is no objection to the change of
11 Urban League's consent, the plaintiff's consent.
12 I think while the introductory planning is perhaps
13 superfluous in a sense that it's not needed to get
14 the result, these types of chronologies are often
15 very helpful when one tries to develop history in
16 a file and given the fact, although these orders are
17 now going to become part of the records or case, I
18 think it's kind of neat, anyhow, that this is all
19 packaged up together. I say that tongue in cheek,
20 but it is very useful when one reads an order of
21 this kind to find in one order some sort of
22 chronology that establishes why you get to this
23 point. So, therefore, that aspect of it, I think,
24 need not be changed. On the other side I do think
25 that it's appropriate to indicate that not only would

1 the ordinances implement the Court's order of
2 July 13, 1984, but they would also constitute
3 compliance with the mandate of Mount Laurel II,
4 and words to that effect can be inserted right
5 following what -- "order," and constitutes compliance
6 with Mount Laurel II. I think that would take care
7 of the order. I think we probably could write those
8 in. All right, anything further?

9 Well, let me commend counsel on an extraordinary
10 job here. I like to operate my Court on the theory
11 if you treat lawyers like professionals they act like
12 professionals and this is a good example. I'm very
13 pleased to see the result. All right, if you would
14 like to stay and mark up the order I've given,
15 settlement agreement and the order with respect to
16 the motion, during lunch hour, I will sign it and
17 we will get it done. All right, very good. Thank
18 you very much.

19 * * *

20
21
22
23
24
25

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : MIDDLESEX/OCEAN COUNTIES
Docket No. C-4122-73

URBAN LEAGUE OF GREATER)
NEW BRUNSWICK, et als.,)
Plaintiffs,)

vs.)

CERTIFICATE

THE MAYOR AND COUNCIL OF)
THE BOROUGH OF CARTERET,)
et al.,)
Defendants.)

I, DAVID G. VORSTEG, certify the foregoing
to be a true and accurate transcript of the testi-
mony and proceedings in the above-entitled cause.

David G. Vorsteg

David G. Vorsteg, C.S.R.
License No. X100368

Date Feb 29, 1986

PENGAD CO., BAYONNE, N.J. 07002 - FORM SEL 6402

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25