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Casesref 10-Apr-85

Letter brief/in opposition of Oakwood at Madison to ~~on behalf of Oakwood at Madison~~

Ttr of UL's Notice of Motion for Consolidation or Intervention + Temporary Restraints.

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April 10, 1985

OUR FILE NO.

Hon. Eugene D. Serpentelli
Ocean County Court House
Toms River, N.J. 08753

Re: Urban League of Greater New Brunswick, et al.
v. Mayor and Council of Carteret, et al.
No. C-4122-73

O & Y Old Bridge Development Corporation
v. The Township of Old Bridge, et al.
No. L-009837-84 PW

Woodhaven Village, Inc. v. The
Township of Old Bridge, et al.
No. L-036734-84 PW

Oakwood at Madison v. The
Township of Madison and the State
of New Jersey
No L-7502-70 PW

Dear Judge Serpentelli:

We are in receipt of the Urban League's Notice of Motion for Consolidation or Intervention and Temporary Restraints with regard to the above matter. We respectfully submit this letter brief in opposition on behalf of Oakwood at Madison, Inc.

We certainly agree with counsel for the Urban League that its motion is unusual. It is also defective,

however, and should, therefore, be denied. Both consolidation and intervention require the continued existence of an "action" that can be consolidated or into which one can intervene. Oakwood at Madison, however, was settled by written stipulation of the parties on May 26, 1977 which was, in turn, approved by Judge Furman in open court, on the record. Since the status of Oakwood at Madison as an open case was terminated by a judicially approved settlement, it is respectfully submitted that the Court lacks jurisdiction to entertain the instant motion.

Moreover, 1200 units in the Oakwood at Madison, Inc. project have final subdivision approval from Township Planning Board with statutory protection effective through August 23, 1989. [Neisser affidavit, Exhibit E, para. 22]. N.J.S.A. 40:55D-52(b). This grant of final approval was duly advertized as was notice of the hearings that preceeded it. Accordingly, the Urban League, which had been actively litigating against the Township since 1970, certainly was on notice that our client was intending to proceed with its project. Any objections it may have had to the design or timing of the project certainly could have and should have been raised before the Planning Board during the approval process or by suit within 45 days of the grant of final approval. Now, almost 7 years later, as an after-thought, the Urban League chooses to act. The Township, having actually approved the project, certainly stands in no better position. Under these circumstances, we respectfully submit that the doctrines of res judicata and laches are applicable and must defeat this motion.

It should be noted that Oakwood at Madison was remanded by the Supreme Court primarily to have the trial court consider the environmental impact of development on the plaintiff's site and elswhere around the Township. As a matter of fact, the Supreme Court expressly directed the trial court to determine whether the Oakwood site "is en-

vironmentally suited to the degree of density and type of development plaintiffs propose." Oakwood at Madison, Inc. v. Tp. of Madison, 72 N.J. 481, 551 (1977). The development proposed at the time of the Supreme Court's decision included 2400 units. As the result of the remand, environmental reports were prepared by both sides. Trial of the environmental issues then began before Judge Furman on or about May 23, 1977. After the testimony of plaintiff's environmental expert, Jack McCormick, the Township conceded suitability for 1750 units and the stipulation of settlement was executed and approved on May 26, 1977.

Paragraph 14 of the stipulation provides "[t]he court shall retain jurisdiction as to site plan, sewer, water, subdivision and building code approval as set forth in the decision of the Supreme Court in this matter." This language is an obvious reference to Part XII of the Oakwood at Madison opinion wherein the Supreme Court directed that our client be issued a building permit for its proposed housing project in recognition of it bearing "the stress and expense of this public interest litigation." Id. at 550. The Supreme Court ordered that our client be allowed to build "within the very early future" provided only that it "guarantees the allocation of at least 20% of the units to low or moderate income families." Id. at 551 (emphasis added).

The Supreme Court went on to provide that the approval and construction processes were to be supervised by the trial court rather than the Township. Specifically, the trial court was "to assure compliance with reasonable building code, site-plan, water, sewerage" and other health-safety requirements. Id. The Supreme Court was not directing that the trial court continually police plaintiff's guarantee to provide lower income housing. Rather, the Court was actually seeking to protect our client from further arbitrary and unreasonable action by the Township during the approval process. As the Court itself observed, "[c]onsiderations bearing upon ... justice to plaintiffs ... preclude another generalized remand for another unupervised effort by the defendant to produce a satisfactory ordinance." Id. at 552 (emphasis added). As our client has received all governmental approvals necessary to ob-

tain building permits for the first sections of its development, the trial court's role, with respect to those units, is limited to ensuring compliance with the building code provisions. Id.

Oakwood at Madison, Inc. strongly resents the implication in the moving papers that it is attempting to avoid its voluntarily assumed committment to provide 350 low and moderate income units. Oakwood at Madison, Inc. is clearly the pioneer among builders who have voluntarily assumed an obligation to meet a portion of the regional need for lower income housing.

It is true that the 350 lower income units along with the commercial site and 200 market value apartments must obtain site plan approval. These units have not yet been designed as they are located on the portion of the tract that is to be developed last. Even so, we seriously question whether any lower income units are likely to be built sooner if, as the Urban League requests, our client's project is suddenly transformed into a Mount Laurel II action and, hence, subject to further litigation including appeals and a possible legislatively imposed moritorium on builder's remedies.

We respectfully submit that the Urban League, like any other interested party, has the right to be heard during the hearings on site plan approval. The Urban League is certainly free to urge the Planning Board to condition site plan approval upon such income restrictions as it considers necessary to ensure that the lower income units remain in the hands of lower income families. The Township, if it so chooses, may urge Your Honor to credit these 350 units toward satisfaction of its fair share obligation.

Oakwood at Madison, Inc. desires only to proceed with its project, subject to the direction of the Supreme Court expressed in the Oakwood at Madison opinion. Our client has not sat idly during the last 8 years. Attached is a chro-

nology of key events which has brought the Oakwood project to the eve of actual construction. This is much more than the Urban League has been able to accomplish in 15 years of litigation, with no end in sight. In sum, we view consolidation or intervention at this stage (assuming such action jurisdictionally possible) to be a major step backward from the goal of achieving actual construction of lower income housing.

Respectfully yours,

MEZEY & MEZEY

BY _____
FREDERICK C. MEZEY

JLS:ck
cc: Jerome Convery, Esq.
Thomas Norman, Esq.
Henry Hill, Esq.
Dean Gaver, Esq.
Stewart M. Hutt, Esq.
Eric Neisser, Esq.

OAKWOOD AT MADISON - CHRONOLOGY

Jan. 1977	Decision of the Supreme Court directing issuance of 2400 building permits as soon as possible after completion of environment trial.
May 26, 1977	Stipulation of Settlement filed during environmental trial agreeing upon 1750 units including 350 low or moderate income units.
Mar. 17, 1978	Complaint filed in the Superior Court of New Jersey, in the case of Oakwood at Madison, Inc. v. Old Bridge Municipal Utilities Authority, Docket No. L 28916-77 P.W. contesting the January 28, 1977 166% increase in water connection fees from $300.00 to $800.00 per unit affecting the Oakwood at Madison project.
June 30, 1978	Preliminary subdivision and site plan approval.
Aug. 23, 1979	Final subdivision approval received for 1750 units to be constructed over a period of ten years and final site plan approval for 1200 units.
Aug. 29, 1979	Submission of application to Old Bridge Sewerage Authority.
Oct. 15, 1979	Submission of customers agreement to sewer authority offering to bear pro rata costs of study of Deep Run Interceptor.
Dec. 28, 1979	Submission of revised customers agreement reflecting meeting with sewerage authority Dec. 26, 1979.
Jan. 21, 1980	Revision of customers agreement.
Feb. 7, 1980	Judgment entered in suit against Utility Authority reducing and phasing the connection fees, copy of same annexed hereto.
Aug. 6, 1980	Agreement of Oakwood at Madison and Foxborough Estates to pay $10,00. to the sewerage authority for a feasibility study for the construction of the Deep Run Trunk Sewer to service this project.
Dec. 4, 1980	Completion of feasibility study.

Jan. 9, 1981	Agreement of Oakwood at Madison to pay $421,353.43 towards construction of the Deep Run Interceptor.
Feb. 3, 1981	Application to Municipal Utilities Authority for water service filed.
Mar. 10, 1981	Billing for payment of $200,000. towards the Deep Run Interceptor.
Feb. 7, 1983	Completion of Deep Run Interceptor assessing final costs against Oakwood at Madison and other developers
Jan. 23, 1985	Receipt of sewer approval for Oakwood at Madison 1750 units.
Mar. 1985	Receipt of indication from Old Bridge Municipal Utilities Authority of approval for water connection service.