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Letter - Brief on behalf of the  
UL in support of O.G.'s motion  
for restraints against further develop.  
approvals absent adequate  
arrangements for potable water.

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JUDGE SERPENTELLI'S CHAMBERS

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

April 12, 1985

The Honorable Eugene D. Serpentelli  
Assignment Judge, Superior Court  
Ocean County Court House  
CN 2191  
Toms River, New Jersey 08753

Dear Judge Serpentelli:

Please accept this letter-brief on behalf of the Urban League in support of O & Y's motion for restraints against further development approvals absent adequate arrangements for potable water and in reply to Oakwood at Madison's letter-brief of April 10 which opposes the Urban League's motion for temporary restraints against further approvals relative to Oakwood at Madison without adequate restrictions to insure development of the promised low and moderate income units.

The Urban League plaintiffs seek only to enforce the Mount Laurel requirement that there be a realistic opportunity for the development of housing for low and moderate income families. Old Bridge's diversion of limited water resources to commercial and exclusionary developments leaves inclusionary developers without water and thus leaves lower income families without housing.

It is asserted by developer O&Y and admitted by the Municipal Utilities Authority (MUA) that there is a shortage of water in Old Bridge. O&Y's expert, James Coe, states that the Department of Environmental Protection has proposed that the Old Bridge aquifer be included in the "Critical Water Supply Area" and in 1982, 1983, and 1984, the Old Bridge MUA exceeded its ground water diversion rights. Paras. 10, 12. In fact, in 1983, 2,000 homes were left without potable water for sanitary purposes or fire protection. Para. 13. Coe concludes that the Old Bridge MUA does not have sufficient capacity to supply the present water needs of its citizens. Para. 16.

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On April 7, 1985, five days after O&Y filed its motion for restraints, MUA member, Charles Searlaski, reported to the Home News that a purchase of 500,000 gallons of water, approved late last week, was a short-term solution to the Township's water shortage. See attached copy of article by reporter Frank Argote-Freyre. The Home News further reported that Old Bridge has been faced with a water crisis for the past several summers; indeed in the summer of 1983, Old Bridge residents were forced to ration water use. With additional diversions to commercial and exclusionary developments, and without the purchase of substantial new water supplies, it is clear that low and moderate income families will be left dry on a permanent basis and therefore without housing.

MUA has, however, only recently chosen to divert the Township's extremely limited water resources to new commercial and exclusionary housing developments. On the same day last week that the MUA contracted for a 500,000 gallon purchase from Perth Amboy, it granted water hook-up permits for almost 600 new units in the non-Mount Laurel II developments of Oakwood at Madison, Foxborough Village, and Oakwood Park. The MUA has thus proven O&Y's assertion to be true. It has diverted new but limited water resources to exclusionary developers leaving existing citizens in potential crisis and Mount Laurel II developers without water for the development of housing for low and moderate income families.

Mr. Mezey's letter-brief of April 10 in response to Urban League's motion for consolidation and temporary restraints confirms that Oakwood's project is in fact an exclusionary one and establishes the urgent need for temporary restraints. Mr. Mezey states, in confirmation of my Affidavit of April 3: "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." (emphasis added). He also confirms that "1200 units in the Oakwood at Madison, Inc. project have final subdivision approval from Township Planning Board" at p.2. Although relying upon his statement that Judge Furman approved the Stipulation of Settlement in open court (no transcript of the proceeding is provided) for the proposition that the Oakwood at Madison case was "terminated", p. 2, Mr. Mezey ignores the part of the Stipulation retaining Court jurisdiction for "subdivision...approval", Para. 12, and does not allege that the Court has approved the final subdivision approval granted in 1979 or that the Court has relinquished jurisdiction.

The MUA apparently also views the Oakwood project as exclusionary. At the end of last week, the MUA approved water

connections for section 1 of the Oakwood project. The Executive Director of the MUA is quoted in the Home News as saying "Oakwood at Madison hopes to build 1450 units." This number tracks the total number of market units -- 1400 -- authorized by the Court Stipulation and the Planning Board's final approval. Likewise the Order for Judgment in Oakwood at Madison, Inc. v. Old Bridge Municipal Utilities Authority, No. L 28916-77, submitted with Mr. Mezey's brief, shows that both Oakwood and the MUA perceive the project as not committed to production of lower income units. Paragraph 4 defines the applicable water fee structure in the conditional: "In the event that low and moderate income units shall be constructed in the development known as Oakwood at Madison...." (emphasis added).

It is apparent from Oakwood's submission and the actions of the MUA that Oakwood intends to build at least 1200 market rate units before considering building any lower income units. The Court may take judicial notice of the common sense marketplace knowledge that the latter, unprofitable construction will be much less likely to occur once the profits from the initial construction are in the bank, absent judicial intervention. It is also clear that Oakwood now has sufficient water resources and thus is on the verge of commencing construction of market units. Absent restraints, the Urban League's realistic opportunity for construction of lower income units will be irreparably damaged and the builder-plaintiffs' hard-won right to a builder's remedy will be made meaningless in the economic sense.

Finally, Urban League notes that the Township's responses to O & Y's and our motions support our position. In his affidavit in response to the O & Y motion, Mr. Convery explains that the Town is attempting to move forward towards resolution of the Township's Mount Laurel obligation. We first note that the Urban League has not agreed to the proposal annexed to Mr. Convery's affidavit and that we were not informed of the negotiations and proposal until we were provided a copy on March 30th. More important here, however, the Township's position necessarily supports the need for restraint with regard to both water allocations and Oakwood's project. The Township proposes to re-zone with a mandatory set-aside all of the Planned Unit Development (PUD) zone in the town, which encompasses over 6000 acres. Oakwood's land is within that zone. If water were allocated to non-inclusionary developments or if Oakwood were allowed to proceed with its non-inclusionary project, the Township's goal of re-zoning all of the PUD zone for compliance with this Court's Order of July 13, 1984 would necessarily be frustrated.

For the reasons stated here, the Urban League urges this Court to grant consolidation of the Oakwood at Madison case and grant appropriate restraints against both further approvals of the Oakwood project and other actions affecting the availability of potable water for Mount Laurel compliance.

Respectfully submitted,



Eric Neisser  
Co-Counsel for Urban League

cc/Messrs. Convery, Norman, Hall, Gaver,  
Hutt, Mezey, Flynn

4/7/85

# Old Bridge to purchase water

**By FRANK ARGOTE-FREYRE**  
Home News staff writer

**OLD BRIDGE** — A contract to purchase 500,000 gallons of water from Perth Amboy this year was signed by the Municipal Utilities Authority last night.

The purchase is considered a short-term solution to the township's water shortage, authority member Charles Searlaski said.

The authority also permitted three developers to hook up with its water system. It had not approved a connection since last summer because of a lack of water.

The approvals allow the connection of 589 new homes: sections 1 and 2 of the Oakwood Park development off Marlboro Road, section 3 of the Foxborough Village development off Ferry Road and section 1 of the Oakwood at Madison project off Route 9.

Oakwood at Madison hopes to build 1,450 units, according to MUA Executive Director George Stone. Foxborough Village will have 450 units when complete and Oakwood Park, 192 units, he said.

Because of booming residential development, Old Bridge has been faced with serious water crises dur-

ing the past several summers. In 1983, residents were forced to ration water. Last year, water supplies reached low levels but rationing was not needed.

Old Bridge has been negotiating to buy water from Perth Amboy for several months. The purchase from Perth Amboy is seen as a temporary remedy to the water shortage in the township.

Both Sayreville and Old Bridge are considering constructing a pipeline under the Raritan River that would connect the municipalities to two Hunterdon County reservoirs.