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Letter Brief of Oakwood at Madison in reply to ~~the~~ TI's letters of Apr. 12, 85 concerning TI's Pending Motion for Consolidation.

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APR 1 1985

April 18, 1985

OUR FILE NO.

Hon. Eugene D. Serpentelli
Assignment Judge, Superior Court
Ocean County Court House
CN 2191
Toms River, N.J. 08753

Re: Urban League's Motion for Consolidation

Dear Judge Serpentelli:

Please accept this letter brief in reply to the Urban League's letters of April 12, 1985 in the above.

We must object to counsel's continued reference to Oakwood at Madison as an "exclusionary project." In the first place, zoning ordinances are exclusionary or nonexclusionary, not the development which proceeds under them. By labelling the Oakwood project "exclusionary," counsel seems to imply that our client is making a conscious decision to discriminate against lower income households as one might discriminate on the basis of race or religion. Secondly, Oakwood at Madison, as a project, does in fact contain a 20% set-aside for lower and moderate income families, a committment that was voluntarily assumed and represented before the New Jersey Supreme Court. Thus, it is rather unfair of counsel to repeatedly imply that Oakwood has somehow sought to and succeeded in avoiding that committment. Oakwood's committment is documented and a matter of record.

It is rather ironic that the Urban League chooses to juxtaposition our client's interests with the interests of the builder-plaintiffs in the current Mt. Laurel II

action. Counsel pleads, "[a]bsent restraints, ... the builder-plaintiffs' hard-won fight to a builder's remedy will be made meaningless in the economic sense." It is, of course, common knowledge that the Oakwood at Madison project represents the first award of a builder's remedy in this State. Some eight years of "hard-won," valid approvals since the Supreme Court decision have finally brought a development project with a 20% low-moderate income set-aside to the verge of actual construction. The Urban League cannot seem to accept this but, rather, seems content to rely upon speculation and third-party newspaper accounts about the Oakwood project in an effort topersuade this Court to do the procedurally inappropriate and grant consolidation. The net effect being only to raise serious doubts as to whether any units of any type will be built in Old Bridge Township in the foreseeable future.

We respectfully submit that the grant of a builder's remedy to Oakwood at Madison by the Supreme Court was sui generis and intended to be limited to that one case. The jurisdiction of the Superior Court regarding Oakwood at Madison ended when the matter was settled and approved. Moreover, counsel's assertion that the Superior Court must approve the final subdivision approval obtained in 1979 is unsupportable. Subdivisions are by statute approved only by Planning Boards, not by Courts. Counsel conveniently omits the most important language, that the Court's involvement is limited "as set forth in the decision of the Supreme Court in this matter." [Neisser affidavit Exhibit "A," para. 14]. Counsel grossly distorts the language of the Stipulation and ignores the apparent intent of the Supreme Court in the Oakwood decision: to prevent the Township from making the administrative approval process a series of procedural pitfalls frustrating the project. The Urban League apparently desires not only frustration but outright cessation.

Again, we respectfully submit that the Urban League's motion is jurisdictional defective and antithetical to the objective of achieving low and moderate income housing and should, therefore, be denied.

Respectfully submitted,

MEZEY & MEZEY

BY _____
FREDERICK C. MEZEY

JLS:ck
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