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Old Bridge

Sep. 1985

Affidavit in opposition to
motion for restraining order

pgs. 9

CA002572V

Truman

Judge Skellman

REC'D. & FILED
SUPERIOR COURT
OF NEW JERSEY

APR 8 1985

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JOHN M. MAYSON
CLERK

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MIDDLESEX COUNTY CLERK
NEW BRUNSWICK, N.J.

SEP 1 1985

JOSEPH S. MICHIGLIOLI CHAMBERS

JEROME J. CONVERY, ESQ.
151 Route 516
P.O. Box 872
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(201) 679-0010
Attorney for Def. Township of Old Bridge

URBAN LEAGUE OF GREATER NEW BRUNSWICK,
et al,

Plaintiffs,

v.

THE MAYOR AND COUNCIL of the BOROUGH
OF CARTERET, et al.,

Defendants,

O & Y OLD BRIDGE DEVELOPMENT CORPORATION,
a Delaware Corporation,

Plaintiff,

v.

THE TOWNSHIP OF OLD BRIDGE in the COUNTY
OF MIDDLESEX, a Municipal Corporation of
the State of New Jersey, THE TOWNSHIP
COUNCIL OF THE TOWNSHIP OF OLD BRIDGE,
THE MUNICIPAL UTILITIES AUTHORITY OF THE
TOWNSHIP OF OLD BRIDGE, and the PLANNING
BOARD OF THE TOWNSHIP OF OLD BRIDGE,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION
: MIDDLESEX COUNTY
:
: DOCKET NO. C-4122-73
:
:
:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION
: MIDDLESEX COUNTY/OCEAN COUNTY
: (Mount Laurel II)
:
: DOCKET NO. L-009837-84 P.W.
:
: *DL* Civil Action
: AFFIDAVIT IN OPPOSITION
: TO MOTION FOR RESTRAINING ORDER
:
:
:

STATE OF NEW JERSEY)
COUNTY OF MIDDLESEX) ss.:

JEROME J. CONVERY, being duly sworn, upon his oath, according to law,
deposes and says:

1. I am the Township Attorney for the Township of Old Bridge and I

am the attorney of record for the Township of Old Bridge in the above referenced matter. I have been the attorney of record for the Township since the filing of the Answer in this matter, and am fully familiar with the facts in said case since that time.

2. This Affidavit is submitted in opposition to Plaintiff's Motion to enjoin the Township of Old Bridge from issuing any building permits for any residential, commercial or industrial developments.

3. I have reviewed the Notice of Motion, dated April 2, 1985, filed by Thomas J. Hall, Esq. on behalf of O & Y Old Bridge Development Corporation. I have reviewed the letter in lieu of formal Brief, dated April 2, 1985, filed by Mr. Hall, as well as all Exhibits attached thereto.

4. Although, as a party to many conferences in this matter, I have knowledge regarding negotiations concerning the Municipal Utilities Authority, as well as knowledge of negotiations regarding the approval process which relate primarily to the Old Bridge Township Planning Board, I make this Affidavit solely on behalf of the Defendant, TOWNSHIP OF OLD BRIDGE. I assume that an appropriate response will be filed on behalf of the Municipal Utilities Authority and the Planning Board by their own attorneys. On Page 4 of the Letter Brief, Mr. Hall states:

"Most distressingly, the approval process for commercial/industrial/non-Mount Laurel development has accelerated in recent weeks, just as the progress of finding an acceptable plan for Mount Laurel has come to a halt."

Mr. Hall also claims, in his Letter Brief on Page 5:

"Developers which the township is willing to work with are obviously not providers of lower income housing."

These statements are simply not true, and Mr. Hall is either ignorant of recent developments concerning Plaintiff, O & Y, or he is

deliberately misstating the status of this matter. In fact, since March 1, 1985, there have been numerous telephone conferences, meetings and discussions between Henry Bignell, Thomas Norman, Esq., Stuart Hutt, Esq., and Dean Gaver, Esq. concerning the "Woodhaven Proposal" in this matter. In fact, there has been agreement between the Township of Old Bridge, Woodhaven Village, and O & Y Old Bridge Development Corporation in this matter.

5. On March 4, 1985, I met with Stuart Hutt, Esq. and Henry Bignell at the Old Bridge Township Civic Center to review the "Woodhaven Village Proposal". We spent approximately two hours going over the details of the Proposal and I indicated to Mr. Hutt that I would discuss the Proposal with the Township Council. On March 14, and again on March 19, I had telephone conferences with Stuart Hutt, Esq. regarding his proposal for settlement, including detailed discussions regarding density, acreage owned by Woodhaven and O & Y, and the issue of municipal contribution. As a result of these telephone conferences, a meeting was set for March 22, 1985 between Stuart Hutt, Esq. on behalf of Woodhaven Village, Dean Gaver, Esq. on behalf of O & Y, and myself, to discuss in earnest a settlement suitable to the Township and the developers. The meeting was held in Woodbridge on March 22, 1985, and agreement in principle was reached concerning all issues discussed. The meeting concluded with the agreement that Dean Gaver, Esq. would prepare a written memorandum of the settlement proposal. This written memorandum would include the details as to acreage and number of units to be built.

6. On or about March 26, 1985, I had further telephone conferences with Dean Gaver, Esq., Thomas Norman, Esq. and, in fact, one of these telephone calls was a conference call regarding said attorneys. The purpose of this call was to inform Thomas Norman, Esq., attorney for the

Planning Board, of the agreement in principle between the Township and the Developers.

7. On or about March 26, 1985 I advised Dean Gaver, Esq. that I would appreciate having the written memorandum in my possession by Thursday evening so that I could discuss same with the Township Council in Executive Session. I, in fact, received the written memorandum at 5:30 P.M. on March 28, 1985, hand delivered by messenger, so that same could be discussed with the Township Council. On March 28, 1985, the written proposal was discussed by the Township Council in Executive Session. See written Proposal of Settlement attached hereto as Exhibit A.

8. On March 30, 1985, I attended the New Jersey State Bar Association Land Use Forum "Litigating the Mount Laurel II Case" at the Somerset Hilton, Somerset, New Jersey. At that seminar I indicated to Dean Gaver, Esq. that the settlement proposal had been discussed with the Township Council and that the written memorandum accurately reflected the proposed settlement. Furthermore, copies of the written proposal were given to Carla Lerman, John Payne, Esq., attorney for the Urban League, and the proposal was briefly discussed with the various parties in attendance. It is noteworthy that Henry Hill, Esq. and Thomas J. Hall, Esq. were in attendance at this Seminar, and I would assume that they were aware of the memorandum prepared by Dean Gaver, Esq., their co-counsel in this matter.

9. It is also noteworthy that Mayor Russell J. Azzarello attended the Seminar concerning Mt. Laurel, and was available for brief discussions with Carla Lerman, as well as the various attorneys representing parties in this matter. I believe the attendance at this Seminar

of Mayor Russell J. Azzarello strongly militates against the picture which Mr. Hall tries to paint regarding the Mayor. Certainly the Mayor is interested in seeking additional industrial and commercial ratables into the Township of Old Bridge, realizing that same will provide much needed jobs for Old Bridge Township residents. As opposed to one who would shirk his responsibility as Mayor, Mayor Azzarello attended the Mt. Laurel II Seminar as one who supported the settlement proposal arrived at between the Township and the Developers. Obviously, the Mayor and the Township are willing to work with those Developers who are prepared to provide lower income housing.

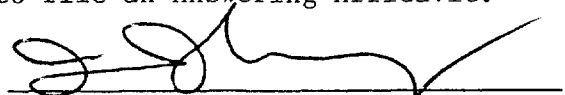
10. On the basis of the above referenced facts concerning the Township's agreement with Plaintiff, O & Y Old Bridge Development Corporation and Woodhaven Village Inc., there is no basis to the claim that the Township has halted its progress in attempting to find an acceptable Mt. Laurel plan. The above referenced facts clearly rebut any claim by Thomas J. Hall, Esq. that the Township is hostile towards lower income housing. There is no basis in fact to Mr. Hall's claim that "negotiations have now come to a standstill" (Page 9 of Letter Brief). Finally, there is no basis in fact for Mr. Hall's claim that "the Township ignores its Mount Laurel obligations" (Page 16 of Letter Brief).

11. If any representative of Plaintiff, O & Y Old Bridge Development Corporation, disputes the above referenced facts concerning settlement negotiations between O & Y, Woodhaven Village, and the Township of Old Bridge, I invite said representative to file an Answering Affidavit.

Sworn and subscribed to
before me this 4th day
of April, 1985.

Judith C. Darago

JUDITH C. DARAGO
NOTARY PUBLIC OF NEW JERSEY



JEROME J. CONVERY, ESQ.
Attorney for Defendant, TOWNSHIP
OF OLD BRIDGE

file

MEMO FROM THE DESK OF

Dean A. Gaver

3/28/85

Jerry -

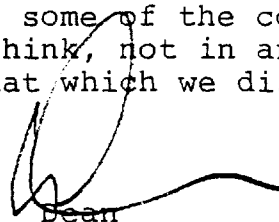
Enclosed is an original and seven copies of the outline of the items we discussed last Friday.

Please note the following:

- 1) I have not adjusted the numbers to reflect a 12.5% fair share in the manner discussed earlier this week with you and Tom. I have passed the concept on to both my client and Stu Hutt but do not have acceptance thereof.

Frankly, the initial reaction is that we are being asked to take on an additional fair share burden but getting, in effect, zero density bonus. Therefore, for the time being at least, you should present the formulation as set forth.

- 2) I have taken a few liberties of fleshing out some of the concepts, but, I think, not in any way altering that which we discussed.



Dean

Exhibit A

PROPOSED TERMS OF MOUNT LAUREL SETTLEMENT BETWEEN
TOWNSHIP OF OLD BRIDGE, OLYMPIA & YORK AND WOODHAVEN VILLAGE

1. The Township of Old Bridge will be responsible for no municipal contributions.
2. The Developers shall be responsible for a 12% mandatory set-aside (50% - low and 50% - moderate), as follows:

	<u>O & Y</u>	<u>Woodhaven</u>
Total Units	13,200	7,275
Mt. Laurel Units	1,584	873
Least Cost Units	528	291

3. The Developers shall further be responsible for an additional 4% for least-cost units (not to exceed 120% of median income)
4. The Developers are entitled to the foregoing numbers of units. The Developers may, at their option, submit a General Development Plan, which shall show the overall number of units, a generalized location of the units with density ranges, a generalized circulation plan, location and intensity of non-residential development, and the general location and amount of open space and land amounts reserved for community facilities. The Planning Board shall review

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JEROME J. CONVERY, ESQ.

the General Development Plan and conduct a public hearing thereon. Upon adoption, the General Development Plan vests the right to develop the Developer's properties in accord with the General Development Plan for a period of 20 years.

5. Provided that, in no event, shall there be more than 2,131 low-and moderate-income units to be built in the Township by 1990. If the number is reached prior to that time, the provision of Mount Laurel units shall cease until and unless a further Mount Laurel "fair share" obligation is set. In that event, however, the Developers shall maintain their vesting for the non-Mount Laurel units and shall continue to be entitled to application and building rights with respect thereto.
6. The mandatory set-aside of 12% low-and moderate shall be applied to all PUD zones in the municipality.
7. The fast-tracking and other ordinance revisions being negotiated shall be implemented.
8. Adequate provision of water supply, in quantities and quality satisfactory to the Developers, shall be accomplished. Unless an agreement is reached with the Old Bridge Township Municipal Utilities Authority, the issue

will proceed to litigation.

9. Old Bridge shall waive any and all inspection and approval fees with respect to the low-and moderate-income housing.
10. The screening and qualification of low-and moderate-income residents for the Mount Laurel housing shall be done by a public agency to be agreed upon.
11. In the event of the passage of pending legislation with respect to Mount Laurel litigation (in substantially the same form as Senate Bills 2046, 2304 and Assembly Bill 3302), the parties agree that the substantive benefits arising therefrom shall be available to them; provided, however, that any moratorium or other portion of such legislation shall not affect:
 - a. The total number of market units which the Developers signatory to this agreement may build as a consequence of paragraphs 2-4 of this agreement;
 - b. the phasing or scheduling of the market units which the Developers signatory to this agreement may build, except that the construction of residential units may be delayed until March, 1986. Such delay in the commencement of construction shall not affect the Developer's ability to construct roads, sewers, and all other necessary infrastructure to serve the

development.

12. The parties waive no rights under traditional zoning and planning law to contest or dispute zoning provisions or conditions.