

Pretial Memorandum of Plaintiff, Olympia & York/Old Bridge

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3 C.Y.
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Attorney(s) for: Plaintiff (Olympia & York/Old Bridge Development Corp.)

URBAN LEAGUE	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	OCEAN/MIDDLESEX COUNTY
	:	
Plaintiff	:	
	:	
v.	:	Docket No. C-4122-73
	:	
BOROUGH OF CARTERET et al.	:	CIVIL ACTION
	:	PRETRIAL MEMORANDUM OF
	:	PLAINTIFF,
	:	OLYMPIA & YORK/OLD BRIDGE
	:	

1. NATURE OF ACTION: Proceeding to determine validity of current zoning of Township of Old Bridge (as well as Township of North Brunswick) in light of Southern Burlington County NAACP v. Township of Mount Laurel, 92 NJ 158 (1983) and compliance of Townships with prior case law.

2. ADMISSION AND STIPULATIONS: Discovery on Plaintiff's own suit, O & Y Old Bridge v. Township of Old Bridge et al, Docket No. L-009837-84 has only begun. No request for Admissions or Stipulations have been made as yet. Discovery on Urban League suit being conducted by counsel for Urban League.

3-4. FACTUAL AND LEGAL CONTENTIONS:

1. Reference is made herein to Factual and Legal Legal Contentions of Olympia and York/Old Bridge Development Corporation in its suit. No reference is made herein to contentions of Plaintiffs in Urban League suit.

Plaintiff O & Y Old Bridge Development Corp. is a Delaware Corporation, authorized to do business in the State of New Jersey, and is the owner of approximately 2,600 contiguous acres of land, which comprise approximately 1/4 of the vacant developable land within Old Bridge Township.

2. Defendant Township Council enacted the Land Development Ordinances complained of, and the Defendant Planning Board adopted the Master Plan which allegedly contains the rational underpinnings of the current Land Development Ordinance.

3. Contentions of Plaintiff

- A. Defendant Old Bridge Township has an obligation to provide its fair share of housing for persons of low and moderate income for the following reasons:

1. Every community in the State has a responsibility to provide housing to meet its indigenous need;

2. Communities located in an area designated as a growth area in the State Development Guide Plan have a responsibility to provide for their fair share of the region's need for persons of low and moderate income; and the entire Township is designated as either a growth area or as a Coastal Zone High Growth area on the State Development Guide Plan.
 3. The Court-appointed Expert, Carla Lerman has determined that Old Bridge Township's fair share of housing for persons of low and moderate income by the 1990 is in excess of 2,780 units.
- B. Old Bridge Township, despite the presence of both its indigenous and regional need, has failed to zone for such need, and the Township's Land Development Ordinances are cost generative, contain a multitude of provisions which violate the Municipal Land Use Law, and fail to provide adequate affirmative measures to assure realistic opportunities for the construction for housing of persons of low and moderate income.
- C. Moreover, the Township of Old Bridge has failed to comply with earlier case law.
- Old Bridge Township failed to comply with the requirements of Oakwood at Madison, and, in fact, the revised Ordinances adopted by Old Bridge Township in response to Oakwood at Madison were even more exclusionary than the Ordinances which had preceded that case.
- D. Old Bridge Township is not in compliance with the Urban League case (Urban League of Greater New Brunswick v. Mayor and Council of Carteret et al. 142 N.J. Super 11 (1976) which judgment required Old Bridge Township to enact land use regulations permitting, as of right, the construction of more than 1,600 units of low and moderate income housing within the Township, and to create a mechanism to provide realistic opportunities for the construction of these housing units.
- E. In view of the failure of Old Bridge Township to meet the mandates of Mount Laurel I; Oakwood at Madison; to comply with the judgment in Urban League and the requirements of Mount Laurel II, Plaintiff O & Y/Old Bridge Development Corp. contends that the Ordinances complained of are unconstitutional; and should be declared invalid by the Court and a Master appointed.
- F. O & Y/Old Bridge Development Corp. owns substantial land within the Township of Old Bridge; is prepared to construct in excess of 10,200 units of housing, a substantial amount of which would be affordable to persons of low and moderate income, and is therefore entitled to a builder's remedy.
- G. Plaintiff has presented prima facie case that Old Bridge has not complied with Mount Laurel II (see attached Exhibits) and has moved for Summary Judgment

5. DAMAGE AND INJURY CLAIMS: Plaintiff seeks:

- A. A declaration that the Township's Land Development Ordinance is violative of the Constitutional protections of Mount Laurel II, as well as violative of the Municipal Land Use Law.
- B. The appointment of a Master to supervise the rezoning of Old Bridge Township and to facilitate the construction of housing on plaintiff's property;
- C. The awarding of a builder's remedy, as outlined in plaintiff's Complaint, to provide for Court approval of a Concept plan submitted by O & Y/Old Bridge Development Corporation; provide for modifications of local application procedures; provide for waiver of fees; provide for the payment, by the Township of Old Bridge, of infrastructure improvements to service lower income housing; ordering Old Bridge to establish and fund an agency to subsidize land, site improvement costs, construction and financing cost for lower income housing; screen applications and sponsor and maintain lower income housing; apply for all available governmental subsidies for lower income housing; and otherwise expedite process and to assist developers who construct low and moderate income housing.

In addition, the Old Bridge Township Planning Board should be restrained from approving any application for development until final judgment is entered which finds Old Bridge Township has provided for its fair share of regional housing; and ordering Old Bridge Township to pay O & Y/Old Bridge Development Corporation's counsel fees and cost of suit.

6. AMENDMENTS AND MOTIONS:

Plaintiff is seeking to join the Old Bridge Township Municipal Utilities Authority and the Old Bridge Township Sewerage Authority as parties to its action.

In addition, Plaintiff is moving for Summary Judgment on the issue of noncompliance with Mount Laurel II by the Old Bridge Township Land Development Ordinance.

7. ISSUES AND EVIDENCE PROBLEMS: Issues are outlined in the factual and legal contentions. It is not anticipated the evidence problems, other than the determination of the regional fair share for low and moderate income housing, will be an issue.

8. LEGAL ISSUES ABANDONED: None

9. EXHIBITS: No exhibits ready to mark as consented to by parties.

10. EXPERT WITNESSES: No limitation on number of expert witnesses.

11. BRIEFS: Plaintiff intends to file whatever legal memoranda are requested by the Court.

12. ORDER OF OPENING AND CLOSING: N/A

13. ANY OTHER MATTERS AGREED UPON: None

14. TRIAL COUNSEL: Brener, Wallack & Hill

15. ESTIMATED LENGTH OF TRIAL: 2-4 weeks

16. WEEKLY CALL OR TRIAL DATE: N/A

17. ATTORNEY FOR PARTIES CONFERRED ON May 30, 1984 by telephone

MATTERS THEN AGREED UPON: Provision of Discovery from Old Bridge and North Brunswick to Urban League Counsel.

18. IT IS HERBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED, except Interrogatories of both parties, Depositions, Request for Admissions and Request for Production of Documents. Plaintiff served Interrogatories on Defendants on May 21, 1984, and no Answers have yet been received to these Interrogatories.

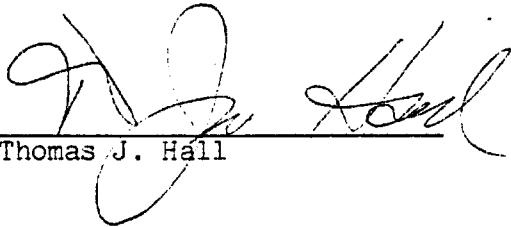
19. PARTIES WHO HAVE NOT BEEN SERVED: N/A

20. PARTIES WHO HAVE DEFAULTED: N/A

DATED:

June 18, 1984

By:


Thomas J. Hall