Amendment to Complaint (Mt. Laurel II) & Service

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ATTORNEYS FOR Plaintiff

O & Y OLD BRIDGE DEVELOPMENT CORP., 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 and the PLANNING BOARD OF THE TOWNSHIP OF OLD BRIDGE, Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY/OCEAN COUNTY DOCKET NO. L-009837-84 Civil Action AMENDMENT TO COMPLAINT (Mt. Laurel II) Service

Plaintiff, O & Y Old Bridge Development Corp., as and for its Amendment to the Complaint hereby states:

FIFTH COUNT

1. DEVELOPMENT CORP. repeats the allegations set forth in the First through Fourth Counts and incorporates them as if set forth herein.

2. The Old Bridge Township Sewerage Authority ("SEWERAGE AUTHORITY") was created by virtue of an Ordinance duly and

finally adopted on May 17, 1954 by the Council, said Ordinance providing that the jurisdiction of the SEWERAGE AUTHORITY shall be within the territorial boundaries of the TOWNSHIP.

3. Section 15-5:1 of The 1983 LAND DEVELOPMENT ORDINANCE requires every developer to install sanitary sewerage facilities in the manner prescribed by the SEWERAGE AUTHORITY.

4. Pursuant to the 1972 Service Contract between the Madison (Old Bridge) Township Sewerage Authority and the Township of Madison (OLD BRIDGE), OLD BRIDGE TOWNSHIP is prohibited from constructing or permitting the construction of any sewage disposal plant or sewers or other facilities for the collection, treatment or disposal of sewage originating within the district (within the territorial limits of Old Bridge Township) unless the SEWERAGE AUTHORITY has given its written consent to such construction.

5. In accordance with the above-cited 1983 LAND DEVELOPMENT ORDINANCE provision, the 1972 Service Contract provision cited above, the Sewerage Authorities Law, and the Municipal Utilities Authority Law, DEVELOPMENT CORP. is required to comply with all rules and regulations of the SEWERAGE AUTHORITY in order to provide sewer service to its proposed development.

6. The rules and regulations of the SEWERAGE AUTHORITY provide for the following application and inspection fees for developments within the TOWNSHIP:

(a) A preliminary application fee of $10.00 per dwelling unit.

(b) A tentative approval fee of 1% of the applicant's engineer's estimated construction cost as approved by the SEWERAGE AUTHORITY.

(c) A final approval fee of 1-1/2% of the cost of construction for review and 6-1/2% of the cost of construction for inspection.

(d) A connection fee of $10.00 per dwelling unit, and a connection inspection fee of $20.00 per dwelling unit.

7. The rules and regulations governing application, inspection and review fees do not provide for the return of fees not used by the SEWERAGE AUTHORITY to inspect the required sewerage facilities.

8. The above-described application, inspection and review fees are illegal and cost-generative as greatly in excess of the actual cost of regulation.

9. The above-described application, inspection and review fees are illegal and cost-generative because they require DEVELOPMENT CORP. to pay an unreasonable fee which is unrelated to actual inspection costs, and because they fail to provide for the return of fees not used in the inspection or review process.

10. The rules and regulations governing applications to the SEWERAGE AUTHORITY for construction of sewerage systems require the posting of a performance bond in the amount of 100% of the total construction costs, as said construction cost is estimated by the applicant's engineer and approved by the SEWERAGE AUTHORITY.

11. The required posting of a performance bond equal to 100% of construction costs is unreasonable and cost-generative.

12. The rules and regulations of the SEWERAGE AUTHORITY require payment of an initial service charge of $850.00 per (a) dwelling unit, or (b) each 400 gallons of estimated water consumption for a commercial or industrial user. These initial service charges are payable at the time of filing for the final application, whether sewers are constructed by the SEWERAGE AUTHORITY or DEVELOPMENT CORP.

13. The initial service fees are illegal and cost-generative for at least the following reasons:

(a) They fail to give credit for sewerage facilities constructed at the expense of the developer;

(b) They exceed any reasonable contribution by DEVELOPMENT CORP. toward the funded expense of the existing sewerage system; and

(c) They require payment of connection fees far in advance of the date when actual connection to the system occurs.

WHEREFORE, DEVELOPMENT CORP. demands judgment as follows:

1. Declaring the rules and regulations of the SEWERAGE AUTHORITY invalid in their entirety.

2. Requiring the SEWERAGE AUTHORITY to adopt a schedule of reasonable rules and regulations especially with regard to required application, inspection, review and connection fees.

3. Requiring Defendants to pay DEVELOPMENT CORP.'s counsel fees and costs of suit.

4. Ordering such further relief as the Court deems just and proper.

SIXTH COUNT

1. DEVELOPMENT CORP. repeats the allegations of the First through Fifth Counts and incorporates them as if set forth at length herein.

2. In order for DEVELOPMENT CORP. to obtain a meaningful and practical builder's remedy pursuant to Mt. Laurel II, and to provide a substantial amount of housing in its development as housing which will be affordable to lower income families, defendant SEWERAGE AUTHORITY, either alone or in conjunction with any or all of the other defendants herein, can and should be required to take any and all actions, whether from a financial, engineering, construction or planning point of view, to eliminate or reduce the expenses which must be borne by DEVELOPMENT CORP. and thereby facilitate the development by plaintiff, including housing affordable to lower income families.

3. The steps which the SEWERAGE AUTHORITY, alone or in connection with other defendants, can and should take include the following:

(a) The SEWERAGE AUTHORITY should be compelled to construct, at its own expense, and at no cost to DEVELOPMENT CORP., all sewerage facilities necessary for development on plaintiff's property, up to the point of connection to each residential, industrial or commercial unit, as same may be necessary for development by plaintiff;

(b) The SEWERAGE AUTHORITY should waive all application, inspection and review fees, or alternatively, should charge and retain only such application, inspection and review fees as may be reasonably related to defendant SEWERAGE AUTHORITY's actual reasonable expenses for processing plaintiff's sewerage system;

(c) The SEWERAGE AUTHORITY should waive all connection fees, or should reduce such connection fees to the minimum level calculated to reflect a reasonable contribution toward the funded cost of the SEWERAGE AUTHORITY's existing system that would be used by plaintiff; and

(d) In the event that all or any portion of the sewerage system downstream from the point of connection to any residential, industrial or commercial unit is to be constructed by plaintiff, the SEWERAGE AUTHORITY should provide full and complete credit to plaintiff for all such facilities constructed by plaintiff.

4. The fees detailed in paragraphs 6 and 12 of the Fifth Count constitute an invalid municipal exaction in violation of the New Jersey Supreme Court's decision in Mt. Laurel II.

WHEREFORE, DEVELOPMENT CORP. demands judgment as follows:

1. Declaring the rules and regulations of the SEWERAGE AUTHORITY invalid in their entirety.

2. Determining a schedule of reasonable rules and regulations especially with regard to required application, inspection, review and connection fees, as the Court may deem proper to effectuate any Mt. Laurel II builder's remedy awarded plaintiff.

3. Requiring the SEWERAGE AUTHORITY to accept and process DEVELOPMENT CORP.'s application for sewer service diligently and without undue or unjustified delay.

4. Requiring Defendants to pay DEVELOPMENT CORP.'s counsel fees and costs of suit.

5. Ordering such further relief as the Court deems just and

SEVENTH COUNT

1. DEVELOPMENT CORP. repeats the allegations of the First through Sixth Counts and incorporates them as if set forth at length herein.

2. Section 15-4:1 of the 1983 LAND DEVELOPMENT ORDINANCE requires all water main extensions to be approved by the Old Bridge Township Utilities Authority ("UTILITIES AUTHORITY").

3. The 1983 LAND DEVELOPMENT ORDINANCE requires, among other matters, that approval letters from the UTILITIES AUTHORITY be included as a submission requirement for preliminary and final development applications on vacant lands in all zones.

4. The rules and regulations of the UTILITIES AUTHORITY require the applicant for water service to pay the following connection application and inspection fees at the time of initial application.

(a) A connection fee of $600.00 for each dwelling unit which has not more than one bedroom nor more than 850 square feet;

(b) A connection fee of $700.00 for a dwelling unit which has not more than two bedrooms nor more than one thousand square feet;

(c) A connection fee of $800.00 for a dwelling unit which has any number of bedrooms and more than one thousand square feet;

(d) Application, review and inspection fees of .08¢ per foot for a six inch water line and 12¢ per foot for lines in excess of six inches;

(e) Two percent of UTILITIES AUTHORITY's engineer's estimated cost of construction for supply, treatment, storage or pumping facilities; and

(f) Six percent of engineer's estimated costs of improvements as inspection fees.

5. The rules and regulations governing application, inspection and review fees do not provide for the return of fees not used by the UTILITIES AUTHORITY to inspect the water facilities.

6. The above-described inspection, application and review fees are illegal and cost-generative as greatly in excess of the actual cost of regulation.

7. The above-described inspection, application and review fees are illegal and cost-generative because they require DEVELOPMENT CORP. to pay an unreasonable fee which is unrelated to actual inspection costs, and because they fail to provide for the return of fees not used in the inspection or review process.

8. The above-described connection fees are illegal and cost-generative for at least the following reasons:

(a) They fail to give credit for facilities constructed at the expense of the developer;

(b) They exceed any reasonable contribution by DEVELOPMENT CORP. toward the funded expense of the existing system; and

(c) They require payment of connection fees far in advance of the date when actual connection to the system occurs.

WHEREFORE, DEVELOPMENT CORP. demands judgment as follows:

1. Declaring the UTILITIES AUTHORITY rules and regulations invalid in their entirety;

2. Requiring the UTILITIES AUTHORITY to enact reasonable regulations, especially with regard to application, inspection, review and connection fees to be charged an applicant for water service.

3. Requiring the UTILITIES AUTHORITY to accept and process DEVELOPMENT CORP.'s application for water service diligently and without undue or unjustified delay;

4. Ordering UTILITIES AUTHORITY to pay DEVELOPMENT CORP.'s counsel fees and costs of suit; and

5. Granting DEVELOPMENT CORP. such further relief as the Court deems just and proper.

EIGHTH COUNT

1. DEVELOPMENT CORP. repeats the allegations of the First through Seventh Counts and incorporates them as if set forth

herein at length.

2. Water supply in the TOWNSHIP is furnished by means of a public water system operated by the UTILITIES AUTHORITY and private wells.

3. The UTILITIES AUTHORITY water system consists of several inter-connected water systems which have previously operated as separate water companies prior to being acquired by UTILITIES AUTHORITY.

4. The UTILITIES AUTHORITY serves an estimated population of approximately sixty-thousand persons.

5. Since 1969, the diversion rights issued by the State Water Policy and Supply Council have limited the permitted ground water withdrawal by UTILITIES AUTHORITY to approximately 7.5 million gallons per day.

6. The peak water usage in the TOWNSHIP at the present time is such that the UTILITIES AUTHORITY in March 1984 voted not to act on water availability inquiries from builders with projects involving more than two units. At or about the same time, the PLANNING BOARD has considered proposing a building moratorium because of the limitations on the UTILITIES AUTHORITY water supply.

7. The UTILITIES AUTHORITY does not have enough capacity to service the planned development, including the required Mt. Laurel II housing, to be constructed by DEVELOPMENT CORP.

8. The Township of Old Bridge Master Plan (February 27, 1978) states at page 5 that:

"For planning purposes a population estimate for 1985 in the seventy thousand range is not unrealistic and in the ninety to one-hundred thousand range by the year 2000."

9. Because of the projected growth of the Municipality in general, and the specific development of DEVELOPMENT CORP., the UTILITIES AUTHORITY at present is unable to guarantee and provide DEVELOPMENT CORP. with adequate supplies of potable water so as to permit or ensure plaintiff's proposed development, and permit an effective builder's remedy for plaintiff under Mt. Laurel II.

10. In order to ensure that it would have adequate supplies of potable water for its proposed development, DEVELOPMENT CORP. contacted the Middlesex Water Company ("MIDDLESEX"), a private utility with more than adequate diversion rights to enable it to provide DEVELOPMENT CORP. with all of the potable water necessary for its contemplated development. MIDDLESEX has agreed that it will provide water facilities subject to the following terms and conditions, provided that MIDDLESEX obtain a franchise for the area encompassed by DEVELOPMENT CORP.'s development in Old Bridge:

(a) For the permanent supply of water, Middlesex would construct, at its expense, such facilities as necessary to bring water to plaintiff's project site from Middlesex' current franchise territory.

(b) Depending on the final engineering solution to convey the water, it may take between eighteen (18) months and two (2) years to construct the required transmission facilities. In the interim, Middlesex would provide temporary facilities to serve the development with potable water until permanent supply is operational.

(c) Middlesex would assume the responsibility of meeting the water requirements of plaintiff's proposed development, in accordance with all applicable State requirements with respect to water quality, pressure and volume for domestic, commercial and fire protective uses.

(d) Middlesex would agree that there would be no hook-up fees and the system for delivery of water would be completed to the boundary of plaintiff's lands without cost to plaintiff.

(e) Plaintiff would be responsible for construction of all mains within its lands at its expense.

(f) To maintain a rate base roughly comparable to the UTILITIES AUTHORITY, plaintiff would agree not to apply for the pay-back for water mains provided under the Utilities Law.

(g) Middlesex is prepared to join with plaintiff in requesting that the franchise for supply of water service for plaintiff's development be given to the Middlesex Water Company.

11. Based upon the UTILITY AUTHORITY's fees as compared with the MIDDLESEX proposal, DEVELOPMENT CORP. would save tens of millions of dollars in initial development costs if MIDDLESEX obtains this franchise.

12. DEVELOPMENT CORP. has demanded that UTILITIES AUTHORITY provide MIDDLESEX with a franchise to service plaintiff's development, or agree in the alternative to supply plaintiff with potable water on terms essentially similar to those available from MIDDLESEX as to cost and timing.

13. UTILITIES AUTHORITY has thus far refused to transfer to MIDDLESEX a franchise to service plaintiff's development or to agree to supply plaintiff with potable water on essentially similar terms.

14. In order for plaintiff to obtain a meaningful and practical builder's remedy pursuant to Mt. Laurel II under the circumstances alleged herein, the UTILITIES AUTHORITY and other defendants must cede or otherwise transfer to MIDDLESEX the franchise for potable water for the lands owned by DEVELOPMENT CORP. conditioned upon MIDDLESEX providing service pursuant to the terms and conditions set forth above.

WHEREFORE, plaintiff requests judgment as follows:

1. That the UTILITIES AUTHORITY and other defendants be ordered to cede or otherwise transfer forthwith to plaintiff and/or the Middlesex Water Company the franchise for the delivery and supply of potable water to DEVELOPMENT CORP.'s lands, at no cost to MIDDLESEX or DEVELOPMENT CORP.;

2. Ordering UTILITIES AUTHORITY to pay DEVELOPMENT CORP.'s counsel fees and costs of suit; and

3. Granting DEVELOPMENT CORP. such further relief as the Court deems just and proper.

NINTH COUNT

1. DEVELOPMENT CORP. repeats the allegations of the First through Eighth Counts and incorporates them as if set forth at length herein.

2. In order for DEVELOPMENT CORP. to obtain a meaningful and practical builder's remedy pursuant to Mt. Laurel II, and to provide a substantial amount of housing in its development as housing which will be affordable to lower income families, defendant UTILITIES AUTHORITY, either alone or in conjunction with

any or all of the other defendants herein, can and should be required to take any and all actions, whether from a financial, engineering, construction or planning point of view, to eliminate or reduce the expenses which must be borne by DEVELOPMENT CORP. and thereby facilitate the development by plaintiff, including housing affordable to lower income families.

3. The steps which the UTILITIES AUTHORITY, alone or in connection with other defendants, can and should take include the following:

(a) The UTILITIES AUTHORITY should be compelled to construct, at its own expense, and at no cost to DEVELOPMENT CORP., all potable water delivery facilities necessary for development on plaintiff's property, up to the point of connection to each residential, industrial or commercial unit, as same may be necessary for development by plaintiff;

(b) The UTILITIES AUTHORITY should waive all application, inspection and review fees, or, alternatively should charge and retain only such application, inspection and review fees as may be reasonably related to defendant UTILITY AUTHORITY'S actual reasonable expenses for processing plaintiff's water system;

(c) The UTILITIES AUTHORITY should waive all connection fees, or should reduce such connection fees to the minimum level calculated to reflect a reasonable contribution

toward the funded cost of the UTILITIES AUTHORITY's existing system that would be used by plaintiff; and

(d) In the event that all or any portion of the potable water system upstream from the point of connection to any residential, industrial or commercial unit is to be constructed by plaintiff, the UTILITIES AUTHORITY should provide full and complete credit to plaintiff for all such facilities constructed by plaintiff.

4. The fees detailed in paragraph 4 of the Seventh Count constitute an invalid municipal exaction in violation of the New Jersey Supreme Court's decision in Mt. Laurel II.

WHEREFORE, DEVELOPMENT CORP. demands judgment as follows:

1. Declaring the rules and regulations of the UTILITIES AUTHORITY invalid in their entirety.

2. Determining a schedule of reasonable rules and regulations especially with regard to required application, inspection, review and connection fees as the Court may deem proper to effectuate any Mt. Laurel II builder's remedy awarded plaintiff.

3. Requiring the UTILITIES AUTHORITY to accept and process DEVELOPMENT CORP.'s application for water service diligently and without undue or unjustified delay.

4. Requiring Defendants to pay DEVELOPMENT CORP.'s counsel fees and costs of suit.

5. Ordering such further relief as the Court deems just and proper.

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By _____
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Dated: July 23, 1984