

Old Bridge 1985'

12/12/85

Consent Order Draft

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 On behalf of ACLU of New Jersey

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|-----------------------------------|---|-------------------------------|
| URBAN LEAGUE OF GREATER |] | SUPERIOR COURT OF NEW JERSEY |
| NEW BRUNSWICK, et al., |] | CHANCERY DIVISION |
| Plaintiffs, |] | MIDDLESEX COUNTY |
| v. |] | |
| THE MAYOR AND COUNCIL OF |] | Docket No. C-4122-73 |
| CARTERET, et al., |] | (Old Bridge) |
| Defendants, |] | |
| OAKWOOD AT MADISON, INC. and |] | |
| BEREN CORP., |] | |
| Additional Defendants. |] | |
| ----- |] | |
| O&Y OLD BRIDGE DEVELOPMENT CORP., |] | |
| Plaintiff, |] | LAW DIVISION-MIDDLESEX COUNTY |
| v. |] | |
| THE TOWNSHIP OF OLD BRIDGE, |] | Docket No. L-009837-84 P.W. |
| THE TOWNSHIP COUNCIL OF THE |] | |
| TOWNSHIP OF OLD BRIDGE and |] | |
| THE PLANNING BOARD OF THE |] | |
| TOWNSHIP OF OLD BRIDGE, |] | |
| Defendants. |] | |
| ----- |] | |
| WOODHAVEN VILLAGE, INC., |] | |
| Plaintiff, |] | LAW DIVISION-MIDDLESEX COUNTY |
| v. |] | |
| THE TOWNSHIP OF OLD BRIDGE, |] | Docket No. L-036734-84 P.W. |
| THE TOWNSHIP COUNCIL OF THE |] | |
| TOWNSHIP OF OLD BRIDGE and |] | |
| THE PLANNING BOARD OF THE |] | |
| TOWNSHIP OF OLD BRIDGE, |] | |
| Defendants. |] | |
| ----- |] | |

CONSENT ORDER

This matter having been opened to the Court by the Urban League plaintiffs seeking to modify and enforce this Court's Judgment of July 9, 1976, and the Court having entered a Consent Order on July 13, 1984 which established the Township of Old Bridge's fair share obligation through 1990 (after granting 279 credits) at 2135 units, half low income and half moderate income, which declared the existing land use ordinance unconstitutional for failure to provide a realistic opportunity to meet his fair share, and which directed the parties to seek agreement on compliance measures within 45 days, and,

The Court having appointed Carla Lerman as Master, by Order dated November 13, 1984, to assist the parties in reaching agreement on compliance measures, the parties having failed to reach voluntary agreement ~~on compliance measures~~ pursuant to the July 13, 1984 Order, and

The Court, by Order entered on May 31, 1985, having joined as defendants Oakwood at Madison, Inc. and Beren Corp. and having enjoined issuance of building permits ^{to} Oakwood or Beren in excess of 120 market units pending court approval of a phasing plan for lower income units in that development, and

The parties and Master having held extensive meetings, and having agreed that ⁹ given the size of the fair share and the scale of the developments proposed required that some phasing of the fair share obligation beyond the initial 6-year period was necessary, and having further agreed that the special circumstances in Old Bridge justify unusual measures to assure

compliance and that the inability to make firm and realistic estimates of market developments and government funding sources requires that compliance mechanisms be reconsidered during the phased period should present projections prove unrealistic,

IT IS HEREBY ORDERED THIS ____ DAY OF _____ 198_:

1. The fair share obligation of the Township of Old Bridge through 1990 is 2135 units, one-half low income and one-half moderate income.

2. The fair share obligation shall be phased as follows;

a. 1668 units, half low income and half moderate income , by January 1, 1992;

b. the remaining 467 units, half low income and half moderate income, by January 1, 1994.

3. The initial phase of 1668 units shall be satisfied as follows:

a. 500 units to be provided in the O & Y Old Bridge Development Corp. (O& Y) development, and 260 units to be provided in the ^g Woodhaven Village, Inc. (Woodhaven) development pursuant to ^{the} Order and Judgment entered _____, 198_, and the Settlement Agreement annexed thereto, separately agreed to by all parties and incorporated herein by reference;

b. 263 units to be provided in the Oakwood at Madison, Inc. and Beren Corp. (Oakwood) development as set forth below in Paragraph 5;

c. 180 units to be provided in the Brunetti development, as set forth below in Paragraph 6;

d. 208 units to be provided through rehabilitation of existing units, as set forth below in Paragraph 7;

e. 150 units to be provided in a new senior citizen development as set forth below in Paragraph 8; and

✓ f. 107 units to be provided through a mandatory set-aside on all other residential development within ^{the} Township, as set forth below in Paragraph 9.

4. Any additional units developed by January 1, 1992 and the first 467 low and moderate income units developed after January 1, 1992, whether as a result of the O & Y and Woodhaven projects, or otherwise, shall be credited towards the 1990 fair share set forth in Paragraph 1, before any units are credited towards the subsequent fair share.

5. Oakwood development. The previous approval by the Planning Board on August 23, 1979 of this development on Block ___, Lots ___, shall be revised to require a gross density of 5 dwelling units per acre, or 1750 total units on 350 acres, with 15 percent of those units, or 263 units, to be reserved for low and moderate income households as defined by the Settlement Agreement as to O & Y and Woodhaven. The Order of May 31, 1985 prohibiting issuance of more than 120 building permits shall remain in full force and effect until entry of an order of this Court approving a phasing plan to insure that the low and moderate income units will be constructed while the market units are being constructed. If the parties cannot agree on a revised site plan and phasing plan by March 31, 1986, the Master shall recommend a revised site plan and phasing plan for Court consideration by April 30, 1986. The ⁵ procedure ^{to be} followed thereafter is that set forth in Paragraph 10.

6. Brunetti development. The Planning Board may, subject to the land use development ordinance as amended on December 19, 1985, approve development of Block ___, Lots ___, by Brunetti (use full personal and development corporate name) at a density of 4 dwelling units per acre or 1800 units on 450 acres, on condition that 10 percent or 180 units shall be lower income units, ^{half low income and half moderate income} ~~half low income and half moderate income~~ as defined by the

Settlement Agreement as to D & Y and Woodhaven, and that the project shall be staged as follows: no more than 200 building permits for market units may be issued until certificates of occupancy for the first 22 low and moderate income units, 11 low and 11 moderate, have been issued; thereafter, no more than 200 additional building permits for market units may be issued until certificates of occupancy are issued for an additional 22 lower income units (11 low and 11 moderate), except that no more than 1500 building permits ^{total} shall be issued ^{for} market units until ~~the~~ certificates of occupancy for all 180 lower income units have been issued.

When the Maximum Number of Building Permits for Market Units is: The Minimum Number of Certificates of Occupancy for Lower Income Units Must Be:

| | |
|------|-----|
| 200 | 22 |
| 400 | 44 |
| 600 | 66 |
| 800 | 88 |
| 1000 | 110 |
| 1200 | 132 |
| 1400 | 154 |
| 1500 | 180 |
| 1620 | |

If no application for such development is received by June 30, 1986, or if such application is not granted preliminary approval by the Planning Board by December 31, 1986, the Urban League plaintiffs may, at any time after either of the applicable dates, invoke the fall-back mechanism in Paragraph 10 with regard to

the 180 lower income units to be provided by this development.

~~the Master makes a recommendation, the parties may, at a hearing to be held within 30 days after the report, examine the Master as to her recommendation but may not introduce any other testimony. The decision of the Court on this issue shall be final and binding on all parties.~~

7. Rehabilitation units. In light of the attached memorandum of November 4, 1985 from JoAnn Gelman to Jerome Convery, indicating that 28 rehabilitation grants have been made by the Township since July 1, 1984 averaging \$8,000 per unit, the Township is hereby awarded 28 credits towards its fair share. The Township shall commit sufficient Community Development Block Grant (CDBG) funds to assure rehabilitation of an additional 30 units per calendar year for six years, beginning January 1, 1986, for a total of 180 additional units by January 1, 1992. In case sufficient CDBG funds are not available, the Township shall apply for all available funds from the federal, state, and county governments. If sufficient external funding is not available, the Township shall commit its own funds, or propose an alternative mechanism to achieve the units not funded. To be credited under this provision, rehabilitation grants must be to units currently occupied by low or moderate income households, must average \$7,500 each, during any calendar year, must be used to bring the units up to existing fire, building or health code standards, and

must be secured by a lien on the property so that the Township is repaid at the time of sale.

8. Senior Citizen Project. A development of 150 units, 75 low income and 75 moderate income units, restricted to persons 62 years and older, shall be implemented by the Township, using tax exempt financing and either a redevelopment agency, housing agency, or nonprofit corporation. O & Y shall contribute sufficient land and shall construct the project at cost. O & Y shall present a cost certification to the Master. The Township shall apply to the New Jersey Housing and Mortgage Finance Agency (NJHMFA) by January 31, 1986 for funds made available under the Fair Housing Act, P.L. 1985, ch. 222. If the Township fails to apply by January 31, 1986, or fails to present to the Master a complete and realistic financing plan, including the tax-exempt financing, by June 30, 1986, if O & Y fails to deed the ^{amount of} land _{to the relevant authority} deemed necessary by the Master by January 31, 1987, or if construction has not started by March 31, 1987, the Urban League plaintiffs may, after any of the aforesaid dates, invoke the fall-back mechanism of Paragraph 10, with regard to the 150 lower income units to be provided by this development.

9. Residential Development Setaside or Monetary

Contribution. Forthwith, but no ^e later than January 31, 1986, the Township shall amend its zoning ordinance to provide that all

✓ Residential developments that have not received preliminary site plan approval as of December 2, 1985, shall be conditioned upon production of 10 percent lower income units, half low income and half moderate income, or payment of \$2,500. per market unit approved to the Old Bridge Affordable Housing Trust Fund established by such ordinance. That Fund shall be used to increase opportunities for the development of low and moderate income units, including subsidization of rents, rehabilitation of existing units, and ^{le} subsidization of construction of new units. The first \$10,000 each year from the Fund shall be paid to the Urban (now Civic) League of Greater New Brunswick for monitoring and enforcement of this Order and the Order and Settlement Agreement relating to O & Y and Woodhaven. If, in any calendar year starting with 1986, the Planning Board does not grant preliminary site plan approvals providing for 200 total units, or ^(or the monetary equivalent) 20 lower income units, the Urban League plaintiffs may invoke the provisions of Paragraph 10 with regard to that portion of the 107 lower income units to be provided by this Paragraph that have not yet been approved or provided.

10. Fall-Back Mechanism. If any of the conditions set forth in Paragraphs 5, 6, 8, and 9 ^{is} ~~is~~ ^{satisfied} ~~not~~ or not ^{satisfied} ~~not~~ by the time

^{specified} ~~is~~, the Urban League plaintiffs may, at any time thereafter ^{the relevant} ~~the~~ ^{deadline,} invoke the provisions of this Paragraph by filing a notice of its invocation with the Court and serving such notice upon all the parties. Such notice shall be accompanied by a proposed Order,

directing the Master to report to the Court within 60 days either: a) a substitute agreement of the parties to be embodied in a supplemental consent order providing a realistic alternative mechanism for provision of the lower income units at issue and the Master's opinion as to the reasonableness and realism of the agreement; or b) if the parties fail to reach agreement within 45 ~~days of the order,~~ *or the Master finds the agreement unreasonable or unrealistic,* the Master's recommendations for a realistic alternative mechanism to provide the lower income units at issue.

If the submission is filed under (a) ^g and is recommended by the Master, the Court will review the proposed supplemental consent order without a further hearing. If the submission is a Master's recommendation different from, or in the absence of, an agreement among the parties, the Court will schedule an evidentiary hearing within 30 days of receipt of the report at which the Master will be the only witness, but all parties may examine her as to her opinions and present appropriate documentary evidence not including affidavits. The Court will then make a decision as to her recommendations and issue an order, which will be final,

binding on all the parties, and not appealable in any manner *or before any forum.*

In no case shall the issues of fair share number, ~~or initial non-compliance,~~ *or overall planning* be reopened in any proceedings pursuant to this

Paragraph.

11. Affordable Housing Ordinance. To insure that the units produced pursuant to this Consent Order are affordable to and

✓ by January 31, 1986
maintained as affordable to lower income households, the Township shall adopt an affordable housing ordinance which shall, at the minimum:

✓ a. Establish an agency, or contract with a qualified existing agency, to qualify households, review developers' housing plans, ^{and} set and enforce maximum sale and resale prices and rental charges, bedroom mix and other requirements of this Order.

b. Impose legal restrictions that insure that lower income units remain affordable to lower income households for a minimum period of 30 years after initial sale or lease.

c. Assure that no more than 50 percent of lower income units shall be efficiency or one-bedroom units, that no less than 35 percent of lower income units shall be two bedroom units and that no less than 15 percent of such units shall be three bedroom or larger units, distributed evenly in each case between low and moderate income households.

✓ d. Assure that only households earning less than 50 percent of the regional median income (defined ~~to be~~ ^{as} 94 percent of the median income for the PMSA including Middlesex County), with adjustments for household size, shall be eligible for low income units and only households earnings between 50 and 80 percent of that regional median income, with adjustments for household size, shall be eligible for moderate income units.

e. Assure that the maximum sales prices and rental charges shall be affordable, on the average, to households earning 90 percent of the incomes defined in subparagraph (d) above.

f. Assure that no subdivision, section, cluster, complex or building contain more than 100 units exclusively for lower income households, that no such aggregation contain more than 160 market units exclusively, that lower income housing units are to be located so as to afford similar access to transportation, community shopping, recreation and other amenities as is provided to other residents of the same development, and that the landscaping buffers provided for lower income housing areas not be different from those generally used in other portions of the development nor different from those generally used to separate sections with different types of housing.

g. Assure that every residential developer submit as part of its affordable housing plan an affirmative marketing plan and that such market ^{ing} plans include assurances that opportunities for low and moderate income units ^{will} be advertised throughout the 11-county region including Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties and specifically including newspapers of general circulation in Elizabeth, Hackensack, Jersey City, Newark, New Brunswick, Paterson and Perth Amboy. In addition, the plan shall require that developers notify the Civic League of Greater New Brunswick, the Housing Coalition of Middlesex County, the Middlesex County Office of Community Development, the Council on Affordable Housing, the New Jersey Housing Mortgage and Finance Agency, and ^{all} fair housing centers, housing referral organizations,

and government social service department in the aforementioned 11 counties.

12. Subsequent Constitutional or Statutory Enactments. The terms of this Consent Order shall not be affected or modified by any state, county or municipally imposed moratorium on housing construction nor shall the terms, provisions, and obligations hereunder be modified, increased or decreased as a result of any subsequently enacted legislation or constitutional amendment purporting to deal with Mount Laurel considerations. However, nothing herein shall be construed to deny the Township of Old Bridge any financial benefits or the opportunity to apply for any federal, state, or county funds for lower income housing that may arise as a result of new legislation or constitutional amendment.

13. Reporting Requirements. The Township shall provide to the Urban (now Civic) League of Greater New Brunswick, or its designee, every three months starting March 31, 1986, a report on the implementation of this Order during those three months containing at least the following:

a. Details on all residential development applications received by any Township board or agency, including the name of the applicant and the principal individual if the applicant is corporate, the name of the attorney for the applicant, the proposed site, number and nature of units, bedroom size,

provisions for development of lower income units or for financial contribution to the Old Bridge Affordable Housing Trust Fund, and all action taken by the Township, its boards, agencies and officials in response thereto, including ^{Preliminary & final approvals. Review, as} the number of building permits and certificates of occupancy issued for market and lower income units.

b. Copies of all housing and affirmative marketing plans.

✓ c. The sale price and rental charges on all lower income ^{↓ all market units} units that have been sold or rented.
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14. Repose. If all requirements herein for action by March 31, 1986 are met to the satisfaction of the Court and Master after a compliance hearing at which the Urban League plaintiffs have had an opportunity to present evidence and objections, the Township of Old Bridge shall be entitled to a Judgment of Compliance granting repose from any Mount Laurel litigation for six years from July 2, 1985 to July 1, 1991.

15. Retained Jurisdiction and Enforcement Mechanism. This Court shall retain jurisdiction over this case to assure implementation of this Consent Order and all other aspects of the compliance settlement. Any party may enforce the provisions hereof by a motion for enforcement of litigant's rights under Rule 1:10-5.

EUGENE D. SERPENTELLI, A. J. S. C.

We consent to the form, substance and entry of this Order.

Jerome Convery

Attorney for Township of
Old Bridge &
Township Council of Old Bridge

Thomas Norman

Attorney for Old Bridge Planning Board

William E. Flynn

Attorney for Old Bridge Municipal
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Eric Neisser

Attorney for Urban League of
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John Payne

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Signature
all on 1 page
please

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