ML-04 Old Bridge Development Corp 2/10/84
(Old Bridge)

complaint in lieu of prerogative writ

p 49

ML000939L

L-009837-84 PW

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ATTORNEYS FOR Plaintiff

Plaintiff	:	SUPERIOR COURT OF
	:	NEW JERSEY
O & Y OLD BRIDGE	:	LAW DIVISION
DEVELOPMENT CORPORATION	:	MIDDLESEX COUNTY/OCEAN COUNTY
A Delaware Corporation	:	
	:	
vs.	:	Docket No. L-009837-84
	:	
Defendant	:	CIVIL ACTION
	:	
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	:	COMPLAINT IN LIEU OF PREROGATIVE WRIT (Mt. Laurel II)

Plaintiff, O&Y OLD BRIDGE DEVELOPMENT CORP., a Delaware Corporation, qualified to do business in the State of New Jersey, by way of complaint against Defendants, says:

cc - 2-22-84

FIRST COUNT

THE DEFENDANTS

1. Defendant, THE TOWNSHIP OF OLD BRIDGE, IN THE COUNTY OF MIDDLESEX (hereinafter referred to as "OLD BRIDGE TOWNSHIP") is a municipal corporation organized and existing under the laws of the State of New Jersey. OLD BRIDGE TOWNSHIP is the same municipal corporation which was previously called THE TOWNSHIP OF MADISON and was the principal defendant in an action entitled Oakwood at Madison, Inc. v. Township of Madison et al., 72 N.J. 481 (1977), (hereinafter referred to as "Oakwood at Madison".), and was also a defendant in an action entitled Urban League of Greater New Brunswick v. Mayor and Council of Carteret, 142 N.J. Super 11(1976).

2. Defendant, THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF OLD BRIDGE (hereinafter referred to as "COUNCIL") is the duly constituted governing body of OLD BRIDGE TOWNSHIP which enacted all of the ordinances hereinbelow complained of including the LAND DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF OLD BRIDGE (hereinafter referred to as either the 1973, 1978 or 1983 LAND DEVELOPMENT ORDINANCE).

3. Defendant, the PLANNING BOARD OF THE TOWNSHIP OF OLD BRIDGE (hereinafter referred to as the "PLANNING BOARD") was created by the COUNCIL pursuant to N.J.S.A. 40:55D-23 and adopted the MASTER PLAN pursuant to N.J.S.A. 40:55D-28, which MASTER PLAN allegedly contains the rational underpinnings to the 1983 LAND DEVELOPMENT ORDINANCE as required by N.J.S.A. 40:55D-62.

THE PLAINTIFF

4. Plaintiff, O&Y OLD BRIDGE DEVELOPMENT CORP., (hereinafter referred to as "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, located in the southwest quadrant of OLD BRIDGE TOWNSHIP, consisting of many separate tax map parcels, which constitute over 10% of the total land area of OLD BRIDGE TOWNSHIP and almost one quarter of the vacant developable land within OLD BRIDGE TOWNSHIP.

THE OAKWOOD AT MADISON LITIGATION

5. OLD BRIDGE TOWNSHIP was the defendant for a period of over six and one-half years in an exclusionary zoning suit instituted in November, 1970 by Oakwood at Madison, Inc. and other plaintiffs challenging the TOWNSHIP land use scheme. This legal action was originally instituted to challenge the validity of a Zoning Ordinance adopted by the Township in September, 1970 and following the invalidation of that Ordinance by the trial court in Oakwood at Madison, Inc. v. Tp. of Madison, 117 N.J. Super 11, 21 (Law Div., 1971) and the TOWNSHIP's adoption during the pendency of an appeal on October 1, 1973 of a new LAND DEVELOPMENT ORDINANCE, this case was remanded for trial on the issue of whether the new 1973 LAND DEVELOPMENT ORDINANCE was constitutionally valid. The 1973 LAND DEVELOPMENT ORDINANCE was invalidated in 1974 by the trial court (128 N.J. Super 438 (Law Div. 1974)) and this decision was affirmed on appeal by the New Jersey Supreme Court (72 N.J. 481) in a landmark constitutional decision rendered in 1977.

6. The New Jersey Supreme Court held in Oakwood at Madison, Inc. v. Tp. of Madison that the 1973 MADISON TOWNSHIP LAND USE ORDINANCE was constitutionally invalid because it failed to render possible and feasible least cost housing consistent with minimum standards of health and safety which private industry would undertake in amounts sufficient to satisfy the deficit in the hypothesized fair share of the regional need for lower income housing.

7. The New Jersey Supreme Court in the Oakwood at Madison decision held that OLD BRIDGE TOWNSHIP was an archetypal developing municipality within the contemplation of the Mount Laurel specifications.

8. The New Jersey Supreme Court, in the Oakwood at Madison decision, ordered relief for the corporate Plaintiffs and ordered OLD BRIDGE TOWNSHIP to do as a minimum, the following in order to cure the constitutional invalidity of its LAND DEVELOPMENT ORDINANCE:

a. Allocate substantial areas for single family dwellings on very small lots;

b. Substantially enlarge areas zoned for dwellings on moderate size lots;

c. Substantially enlarge the AF district or create other enlarged multi-family zones;

d. Reduce the size of the R-P, R-80 and R-40 zones to provide substantial areas for single family dwellings on very small and moderate size lots;

e. Modify the A-F zone restrictions which discourage units with more than two bedrooms;

f. Modify the planned unit development regulations to eliminate undue cost generating restrictions in zones allocated to achievement of lower income housing.

9. Since the New Jersey Supreme Court's decision in 1977, development pressures in OLD BRIDGE TOWNSHIP have increased, as indicated by the following representative facts:

a. Road access to and from OLD BRIDGE TOWNSHIP has been improved since 1977 because of substantial improvements to Route 18 in New Brunswick and the completion of the Route 18 connection with the Garden State Parkway.

b. Middlesex County has increased its industrial diversity by very significant growth in the non-manufacturing sector of its economy.

c. Consumer affluence in Middlesex County has increased substantially over the past decade, making Middlesex County in 1978 the 8th richest county in the country in effective buying income, with projections indicating that when the data is compiled it will rank 3rd in the country for the past year (1983).

d. The developing job centers extending along the Route 287 corridor from Piscataway through the Somerset Hills have exerted extreme pressure on OLD BRIDGE TOWNSHIP for new housing development.

e. Despite the existence of a substantial quantity of undeveloped land (in 1982, 11,239 acres were vacant out of a total of 25,150 acres) with good access via major highways, the 1978 LAND DEVELOPMENT ORDINANCE reduced the number of dwelling units permitted by right.

f. Local indigenous housing need is substantial as indicated by the following facts presented in OLD BRIDGE TOWNSHIP'S 1980 Community Development Block Grant Application: 1) there was a less than 1% vacancy rate in OLD BRIDGE TOWNSHIP rental units; 2) housing costs for single family units and rental units which are well above affordable costs for lower income people; 3) there is an aging, inadequately maintained housing stock (10% of which was built prior to 1939); 4) and a combination of senior citizens living in under-occupied housing units and young, large families in over-crowded conditions exists and impedes the filtering process.

10. The TOWNSHIP of OLD BRIDGE is therefore still an archetypal developing municipality.

OLD BRIDGE TOWNSHIP'S FAILURE TO COMPLY WITH OAKWOOD AT MADISON

11. In response to the portion of the New Jersey Supreme Court decision in the Oakwood at Madison case mandating specific corporate relief, OLD BRIDGE TOWNSHIP executed a stipulated settlement with the corporate plaintiffs which was filed on May 31, 1977 with the Superior Court, Law Division under Docket No. L-7502-70 P.W., which provided that:

a. Plaintiffs could construct 1,750 dwelling units on their 390 acre parcel as a matter of right, in accordance with a "Schedule of Proposed Development" annexed to the settlement, without conforming to any provisions of the 1978 LAND DEVELOPMENT ORDINANCE.

b. OLD BRIDGE TOWNSHIP agreed to cooperate and use due diligence and best efforts to achieve prompt approval of the Oakwood at Madison project.

c. OLD BRIDGE TOWNSHIP agreed to pass a resolution of need for moderate income housing.

d. The Oakwood at Madison plaintiffs were given an extension of time to pay outstanding taxes on their property.

12. In putative response to the general welfare portion of the New Jersey Supreme Court decision in the Oakwood at Madison case mandating as a minimum, specific changes in the OLD BRIDGE LAND DEVELOPMENT ORDINANCE in order to promote the general welfare and to cure the constitutional invalidity of the 1973 LAND DEVELOPMENT ORDINANCE, OLD BRIDGE TOWNSHIP adopted the 1978 LAND DEVELOPMENT ORDINANCE.

13. The 1978 LAND DEVELOPMENT ORDINANCE was prepared and adopted by the COUNCIL after the COUNCIL had settled with the corporate plaintiffs and was never submitted to any court for review with respect to its compliance with the minimum standards set forth in the Oakwood at Madison decision or with other Court Orders which were legally binding on the COUNCIL.

14. The 1978 OLD BRIDGE LAND DEVELOPMENT ORDINANCE clearly and patently violated almost every single standard, principle and constitutional guideline required in the Oakwood at Madison decision as a minimum in the revision of the 1973 LAND DEVELOPMENT ORDINANCE to promote the general welfare and to cure the constitutional invalidity of the 1973 LAND DEVELOPMENT ORDINANCE.

15. The PLANNING BOARD's actions, in adopting the MASTER PLAN and proposing THE 1978 LAND DEVELOPMENT ORDINANCE, and the COUNCIL'S actions in adopting the 1978 LAND DEVELOPMENT ORDINANCE, (after settling with corporate plaintiffs and thus assuring itself that the remainder of the Order would not be enforced), were taken deliberately, with the knowledge that they were in violation of the Superior Court's and the Supreme Court's orders, and with knowledge that the 1978 LAND DEVELOPMENT ORDINANCE violated almost every single standard, principle and constitutional guideline set forth in the Oakwood at Madison decision to promote the general welfare.

16. The 1978 OLD BRIDGE LAND DEVELOPMENT ORDINANCE, failed to bring OLD BRIDGE TOWNSHIP into compliance with the portion of the Supreme Court mandate of Oakwood at Madison directed toward the public interest and was in fact more exclusionary by every objective criteria than the ordinance invalidated by the New Jersey Supreme Court.

17. On November 21, 1983 the PLANNING BOARD attorney advised the BOARD that the Oakwood at Madison preliminary approval had lapsed and

that development of the property would therefore be subject to the 1983 LAND DEVELOPMENT ORDINANCE.

OLD BRIDGE'S FAILURE TO COMPLY WITH THE URBAN LEAGUE CASE

18. OLD BRIDGE TOWNSHIP was determined by the Superior Court of New Jersey, Chancery Division, in a reported decision, Urban League of Greater New Brunswick v. Mayor & Council of Carteret, 142 N.J. Super 11 (1976) to:

a. be overzoned for industry beyond reasonable projections by over 3,000 acres and over 400%;

b. have failed to have met its constitutional obligation to provide by land use regulations for its fair share of the present and prospective need for low and moderate-income housing.

19. OLD BRIDGE TOWNSHIP'S specific obligations under the Urban League case are set forth in a judgment filed on July 9, 1976 with the Superior Court of New Jersey, Chancery Division, Middlesex County (Docket No. C-4127-73), attached hereto as exhibit A, which judgment required OLD BRIDGE TOWNSHIP to:

1. enact land use regulations permitting as of right the construction of 1,634 units of low and moderate income housing within the TOWNSHIP;

2. impose mandatory minimums of low and moderate income units on multi-family projects;

3. make a good faith effort to adopt a Land Use Ordinance consistent with Federal and State subsidy programs.

20. Although the Chancery Division decision in the Urban League case was reversed following an appeal by other municipalities to the Superior Court, Appellate Division, (See Urban League at 170 N.J. Super 461 (App. Div.

1979)), OLD BRIDGE TOWNSHIP never participated in the appeal and was therefor legally required to abide by the terms of the judgement entered on July 9, 1976. Moreover, despite the reversal of the matters on appeal with respect to the participating parties, Old Bridge never sought or obtained relief from the effect of the judgment and order of the trial court.

21. The 1978 LAND DEVELOPMENT ORDINANCE did not contain any provisions required by the July 9, 1976 judgment in the Urban League case.

THE MOUNT LAUREL II CONSOLIDATED CASES

22. The Urban League appeal was consolidated with five other cases by the New Jersey Supreme Court and a single decision in these cases was issued as Southern Burlington County N.A.A.C.P. v Township of Mount Laurel (hereinafter referred to as "Mt. Laurel II").

23. The New Jersey Supreme Court held in Mt. Laurel II that every municipality's land use regulations should provide a realistic opportunity for decent housing for its indigenous poor.

24. The New Jersey Supreme Court held in Mt. Laurel II that every municipality, any portion of which is designated on the State Development Guide Plan as a Growth Area, is required to provide through its land use regulations, a realistic opportunity for a fair share of the region's present and prospective lower income housing need.

25. OLD BRIDGE TOWNSHIP is subject to the Mount Laurel II mandate that it provide for its indigenous need and fair share of present and prospective low and moderate income housing need because it meets all "developing municipality" criteria and the entire TOWNSHIP is designated as either a Growth Area or Coastal Zone High Growth Area on the State Development Guide Plan.

26. OLD BRIDGE TOWNSHIP is located in a housing region which includes at least Warren, Hunterdon, Somerset and Middlesex Counties and which

region has a total present and prospective need for 334,093 new housing units by the year 2000 according to the Center for Urban Policy Research Study entitled Mount Laurel II: Challenge and Delivery of Low-Cost Housing (CUPR 1983).

OLD BRIDGE TOWNSHIP LAND USE CONTROLS AND NONCOMPLIANCE WITH MT. LAUREL II

27. On February 18, 1981, DEVELOPMENT CORP. instituted a legal proceeding (Docket # L-32516-80), against these defendants and other local governmental bodies, alleging, among other things, that the 1978 Ordinance and related governmental regulations, requirements, and procedures violated the prior court directives and failed, under then governing law, to permit the development of least cost housing in the municipality.

28. In putative response to this legal action the Old Bridge Township Council unanimously enacted a resolution on May 3, 1982, a copy of which is attached hereto as EXHIBIT B, directing that DEVELOPMENT CORP'S property be rezoned to permit the development of 10,260 housing units and various commercial uses and Old Bridge Township embarked on yet another planning and rezoning process.

29. The current OLD BRIDGE TOWNSHIP MASTER PLAN, which allegedly contains the rational underpinnings of the TOWNSHIP'S zone plan, was adopted by the PLANNING BOARD in September of 1982.

30. The MASTER PLAN recommends the residential rezoning of 7,610 acres (68% of vacant developable land) at densities between less than two units per acre to four units per acre, the rezoning of 300 acres or (3% of vacant developable land) at densities between four and six units per acre and rezoning of 79 acres (1% of vacant developable land) at densities greater than six units per acre.

31. The MASTER PLAN recommends non-residential rezoning for 3,250 acres (29% of vacant developable land), which total does not include up to

390 acres (an additional 3%) which would be used for non-residential purposes if Class I planned developments are built with bonuses or Class II planned developments are built as-of-right.

32. Land use control is exercised in OLD BRIDGE TOWNSHIP by virtue of the administration and enforcement of the 1983 LAND DEVELOPMENT ORDINANCE as adopted by the COUNCIL on March 21, 1983 and amended on May 16, 1983.

33. THE OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE contains so many internal inconsistencies, so many regulations which have been specifically invalidated by New Jersey courts, regulations which are void on their face for vagueness, and improper or unworkable procedures, that this Court must conclude that the very extent of this TOWNSHIP'S failure to follow the laws of the State of New Jersey is evidence of either contempt for, or great ignorance of, this state's legislative and judicial requirements for municipal regulation of land use. The net effect of this massive violation of the procedures and standards of the Municipal Land Use Law and published judicial decisions, is to deprive all seeking to develop in OLD BRIDGE of due process of law. Because the regulations are inconsistent, confusing and contain so many vague standards subject to arbitrary interpretation, every developer is practically forced to ascertain through negotiation what is permitted in any zone.

34. The following undue cost-generative standards bar the provision of low and moderate income housing on vacant land in all zones:

a. All standards listed in the Second and Fourth Counts as violative of the Municipal Land Use Law, since they force developers to choose between complying with an illegal requirement and litigation over the requirement;

b. All standards listed in the Third Count as impermissibly vague and indefinite since they force developers to redo designs and engineering when a standard takes on an unexpected meaning;

c. The requirement that all subdivision and site plan applications "incorporate appropriate recharge methods or devices that will maintain the rate of recharge of underground acquifers in its predevelopment condition" is cost-generative and in fact pre-empted by the state program to regulate groundwater recharge promulgated under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seg.

d. Application and inspection fees;

e. Mobile home park standards including design and density standards in conjunction with the fact that mobile home parks are not permitted in any zone in the TOWNSHIP;

f. The area, height and set-back requirements applicable in all residential zones;

g. Minimum room size requirements applicable to all residential units;

h. The requirement for submission of a highly detailed environmental impact report;

i. The requirement that development applications be submitted at least thirty days prior to the regular meeting of the Approving Board, which effectively extends the application period, without justification, for an additional month;

j. The requirement that approval letters from the municipal utility authority and sewerage authority be included as a submission requirement for preliminary and final development applications

rather than making such approvals a condition of Planning Board approval.

k. The requirement that a preliminary or final draft of homeowners association documents be included with the submission of preliminary and final applications, rather than making New Jersey Department of Community Affairs approval of such documents a condition of Planning Board approval;

l. The requirement that all conditions of final approval be complied with within 180 days or the approval is deemed to have lapsed;

m. The requirement that an original and two microfilm copies of each sheet of drawings comprising the development application be supplied to the Planning Board after an application is approved;

n. The requirement that a performance guarantee be submitted for virtually all on tract improvements, especially for landscaping and shade trees;

o. The off-tract improvement standards which require developers to pay more than their pro rata share of all off-tract improvement;

p. The requirement that a performance guarantee be submitted for off-tract improvements;

q. The prohibition of issuance of certificates of occupancy in any section until all improvements in the section are installed;

r. The creation of a WS zone (watershed) which does not coincide with the 100 year flood plain in conjunction with the prohibition against including all WS (watershed) zoned land as gross project area for density calculation purposes;

s. Excessive street standards;

t. The requirements for sidewalks along most streets;

u. The prohibition of parking spaces within five feet from side or rear property lines;

v. The excessive design criteria for parking islands;

w. The land disturbance requirements which duplicate the county soil erosion control approval process;

x. The requirement of an additional buffer within 100 feet of any stream;

y. The prohibition against installation of improvements until final approval is granted;

z. The general landscape design standards for all developments;

aa. General standards for parking lots;

bb. The requirement that the rate of recharge to underground acquifers be maintained at the pre-development rate;

cc. The requirement that a recharge capability assessment and site specific analysis be prepared for determining the rate of recharge to underground acquifers;

dd. The required submission of fees for registration and annual renewal of signs.

35. The following undue cost-generative standards bar the provision of low and moderate income housing on vacant land in the PD (planned development) zones:

a. The requirement that 20 extra copies of all general development plans submission documents be provided at the Board's request;

b. The requirement that every purchaser of land certify by a supplementary agreement that he will be bound by the requirements of the general development plan approval;

c. The requirement that Sewerage Authority and Municipal Utility Authority approvals be obtained prior to submission of a preliminary approval application, rather than as a condition of planning board approval;

d. The requirement that a detailed fiscal impact report be submitted with the General Development Plan application and an updated fiscal impact report be presented with each preliminary site plan and subdivision approval;

e. The requirement that the applicant submit 20 bound copies of all preliminary site plan and subdivision submission documents at the request of the Board;

f The requirement that any purchaser of land subject to a preliminary site plan or subdivision approval certify by a supplementary agreement that he is bound by the conditions of such approval;

g. The requirement that all conditions of preliminary site plan or subdivision approval be complied with within 180 days or the approval is deemed lapsed as a matter of law;

h. The prohibition against using all WS zoned land for gross density calculation purposes;

i. The requirement that planned developments include 23% of their gross area as open space;

j The very low gross project density of 2.2 units per acre for Class I planned developments and the very low gross project density of 3.4 dwelling units per acre for Class II planned developments;

k. The provision for density benefits or density bonuses, which do not significantly increase the density and in many cases impose

such great costs in compliance that they discourage use of such bonuses;

l. The very specific required mixed of land density categories in a planned development;

m. The prohibition of "domination" of any particular housing type in a section within any planned development;

n. The requirement that at least 10% of the gross project area in a Class II planned development be used for non-residential development;

o. The area, height and set back standards for planned developments which are arbitrarily restrictive;

p. Building spacing requirements within a planned development;

q. The requirement of separate exterior entrances for all multi-family units thereby specifically excluding conventional multiple story apartment buildings;

r. The requirement of 4 foot offsets between a specific number of units in a building;

s. The requirement for a specific amount of usable outdoor space per dwelling units;

t. The requirement for at least two major arterials to serve a Class II planned development and at least one major arterial and one minor arterial or two minor arterials for a Class I planned development,without regard to the size of the development or its location;

u. The arbitrarily restrictive and unjustified required staging of non-residential ratables with dwelling units and the authorization of the withholding of construction permits for failure to comply with said non-residential staging.

v. The minimum tract size of 25 acres for a Class I planned development and 300 acres for a Class II planned development.

36. Moreover, as a practical matter and purportedly pursuant to the Ordinance, the approving Board compels and requires developers to prepare and submit voluminous technical information and documentation at great expense to the developer and ostensibly for the purpose of reviewing an application for conceptual approval. The requirement for submission of such information and documentation is onerous and far beyond that needed for purposes of conducting such a preliminary review, is grossly and unnecessarily costly and works as a deterrent to the production of planned developments and the consequent provision of lower income housing.

37. The PLANNING BOARD'S processing and eventual denial of DEVELOPMENT CORP.'S Concept Plan application (known as a General Development Plan Application in the ORDINANCE) for a planned development of 10,260 housing units and non-residential uses demonstrates the inability and/or unwillingness of the defendants to comply with judicial mandate, to facilitate the provision of lower cost housing, and to streamline the approval process for housing development as was specifically condemned with respect to this municipality in the Oakwood at Madison decision by the Supreme Court. The following actions of the PLANNING BOARD and TOWNSHIP COUNCIL are relevant to this claim:

a. Despite the best efforts of DEVELOPMENT CORP. to assist the PLANNING BOARD and the TOWNSHIP COUNCIL in revising the LAND DEVELOPMENT ORDINANCE in a timely fashion consistent with the requirements of New Jersey law, the final revisions of the LAND DEVELOPMENT ORDINANCE which, as herein described do not comply with the requirements of the law,

were not adopted by the TOWNSHIP COUNCIL until May 16, 1983, over one year after passage of the TOWNSHIP COUNCIL Resolution;

b. After preparation of a Concept Plan submission pursuant to the LAND DEVELOPMENT ORDINANCE, DEVELOPMENT CORP. was informed that no application would be considered until 45 days after passage of the ORDINANCE and was therefore forced to delay filing of the Application until May 20, 1983;

c. Despite the submission of a Concept Plan application containing every item required by the ORDINANCE, the application was deemed incomplete by the Administrative Officer and additional information not required by the ORDINANCE was requested.

d. Despite the fact that the Concept Plan Application had been deemed complete by the Administrative Officer of the Planning Board on August 9, 1983, and that a letter had been submitted by counsel for DEVELOPMENT CORP. to counsel for the PLANNING BOARD, on September 14, 1983 advising the PLANNING BOARD that the application should be scheduled for public hearing in a timely fashion to ensure adequate review prior to the expiration of the 95 day time limit set by N.J.S.A. 40:550-61, the PLANNING BOARD did not schedule any review sessions on the Concept Plan Application until October 18, 1983.

e. In the six months following the filing of the GDP application, the Planning Board had conducted but five public hearings, had extracted two extensions of time from the DEVELOPMENT CORP., had declined to fix a concluding date for the processing and passed a resolution not to hold any further hearings until

1984, when an entirely new PLANNING BOARD would take office. At this time, in early December of 1983, the PLANNING BOARD requested an extension to some indefinite date in 1984. This extension was refused because the change in OLD BRIDGE government scheduled to go into effect on January 1, 1984 required the appointment of an entirely new PLANNING BOARD and precluded continuation of the General Development Plan application; the PLANNING BOARD denied the General Development Plan application after the extension was refused.

38. OLD BRIDGE TOWNSHIP has failed to implement any affirmative measures to afford a realistic opportunity for the construction of lower income housing, including at least the following affirmative measures:

a. Encouraging or requiring the use of available state or federal subsidies by developers;

b. Providing incentives for, or requiring private developers to set aside a portion of their development for lower income housing;

c. Providing effective zoning incentives for the production of lower income housing;

d. Zoning vacant land for mobile home development;

e. Adopting a resolution of need for lower income housing;

f. Adopting a resolution granting tax abatement for projects including governmental subsidized lower income housing;

g. Utilizing general municipal revenues and seeking available state/federal grant monies for providing infrastructure improvements for lower cost housing, and requiring a waiver of demand for contributions for sewering, water, roadways and other necessary services from developers who are willing to provide lower cost housing;

h. Establishing a housing authority to seek subsidies for and to encourage and facilitate the development of lower cost housing.

39 In fact, despite numerous local governmental responses to adverse court decisions by way of ordinance revisions, no low or moderate income housing has, to date, been built in Old Bridge.

DEVELOPMENT CORP'S QUALIFICATION FOR A BUILDER'S REMEDY

40. The New Jersey Supreme Court held in MT. LAUREL II that a successful developer-litigant is entitled to a builder's remedy for a proposed project providing a substantial amount of lower income housing unless the municipality establishes that the proposed development is contrary to sound planning principles or represents a substantial environmental hazard.

41. The allegations stated in this Count demonstrate the facial invalidity of OLD BRIDGE TOWNSHIP'S MASTER PLAN and LAND DEVELOPMENT ORDINANCE under MT. LAUREL II.

42. The COUNCIL and PLANNING BOARD have demonstrated themselves to be either unable or unwilling to promote the general welfare through the exercise of the land use powers delegated to them due to the COUNCIL'S adoption of the 1973, 1978 and 1983 LAND DEVELOPMENT ORDINANCES, all of which substantially violated the New Jersey Constitution, Municipal Land Use Law and case law and the PLANNING BOARD'S arbitrary denial of DEVELOPMENT CORP'S concept application (General Development Plan), the application of Hovnanian, Inc., and other applications.

43. The DEVELOPMENT CORP. property generally has no substantial development constraints, with the exception of approximately 7% of the land assembly which is in the floodplain, and thus meets the State Development Guide Plan growth area criterion of suitability for development and absence of environmental constraints.

44. The DEVELOPMENT CORP. property is bounded by New Jersey State Highway Routes 18 and 9 and Texas Road and has numerous local roads running through it and thus meets the State Development Guide Plan growth area criterion of availability of transportation facilities.

45. Since public sewer and water are conveniently available, the property meets the State Development Guide Plan criterion of availability of sewer and water facilities.

46. The DEVELOPMENT CORP. property is within a State Development Guide Plan designated growth area.

47. DEVELOPMENT CORP. is committed to providing a substantial amount of the housing in its development as housing which will be affordable to lower income families.

48. The development of DEVELOPMENT CORP.'s entire property as a planned development at an overall gross density at least four dwelling units per gross acre, including lower income housing, would contribute to the alleviation of the housing shortage in the OLD BRIDGE TOWNSHIP housing region and would enable persons who can not presently afford to buy or rent housing in OLD BRIDGE TOWNSHIP to live there.

49. Housing can be constructed on DEVELOPMENT CORP.'s property in an environmentally responsible manner and in price ranges affordable to all categories of people who might desire to live there, including those of lower income, if OLD BRIDGE TOWNSHIP, by its land use regulations, made such development reasonably possible.

WHEREFORE, DEVELOPMENT CORP. demands judgement as follows:

1. Declaring the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE invalid in its entirety;

2. Appointing a special master to revise the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE and to supervise the TOWNSHIP with respect to the implementation of any builder's remedy in order to insure prompt and bona-fide review by defendants of all applications by DEVELOPMENT CORP. for development approvals.;

3. Ordering the revision of the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE in order to bring it into compliance with the MOUNT LAUREL II mandate;

4. Ordering a builder's remedy for DEVELOPMENT CORP. in the form of court approval of a Concept Plan application to be submitted by DEVELOPMENT CORP. conditioned upon the provision of a substantial amount of dwelling units as housing affordable to lower income people;

5. Ordering that all development applications for development which includes a substantial amount of lower income housing be "fast tracked", that is, approved within shorter time periods than provided for in the Municipal Land Use Law and that Environmental Impact Assessments or Statements and Community Impact Statements or Fiscal Impact Reports not be required for such developments;

6. Ordering that all fees, including but not limited to application fees, inspection fees, engineering fees, building permit and certificate of occupancy fees be waived for a sufficient and appropriate amount of housing within developments which include a substantial amount of lower income housing;

7. Ordering that only performance and maintenance guarantees essential to protect public health and safety be required for on-tract or off-tract improvements associated with developments which include a substantial amount of lower income housing;

8. Ordering that mobile homes and midrise apartment units be permitted in any development which includes a substantial amount of lower income housing and that non-residential uses not subject to staging requirements be permitted, but not required, in such developments;

9. Ordering OLD BRIDGE to plan and provide for, out of municipal tax revenues, reimbursement to developers for the construction of sewer, water, roads, other utilities and open space facilities required for developments which include a substantial amount of lower income housing;

10. Ordering OLD BRIDGE to accept all open space, recreational facilities, roads and other infrastructure which may be dedicated in connection with development which includes a substantial amount of lower income housing;

11. Ordering OLD BRIDGE to establish and fund an agency to:

a. Subsidize land, site improvement, construction and financing costs for lower income housing, particularly Mt. Laurel II housing;

b. apply for all available governmental subsidies for lower income housing; and

c. screen applications for and sponsor and maintain lower income housing, particularly Mt. Laurel II housing in OLD BRIDGE TOWNSHIP.

d. otherwise expedite and assist developers involved in constructing Mt. Laurel II housing in a manner similar to the way THE OLD BRIDGE ECONOMIC DEVELOPMENT CORPORATION now assists those most favored developers who bring commercial ratables and jobs into the township. (See Exhibit C)

12. Ordering OLD BRIDGE to adopt a resolution of need and grant tax abatement where necessary;

13. Restraining Defendant TOWNSHIP PLANNING BOARD from approving any application for development of land in OLD BRIDGE TOWNSHIP until a final judgment is entered which finds that OLD BRIDGE TOWNSHIP has met its fair share of regional housing needs;

14. Ordering Defendant OLD BRIDGE TOWNSHIP to pay DEVELOPMENT CORP.'s counsel fees and costs of suit; and

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

SECOND COUNT

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

VIOLATIONS BY OLD BRIDGE TOWNSHIP OF THE MUNICIPAL LAND USE LAW

2. For at least the following reasons set forth in the remainder of this Count, the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE is invalid as contrary to the general welfare and in violation of the New Jersey Constitution and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq.

3. The provisions of the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE which violate the Municipal Land Use Law are unduly cost-generative and thus bar the provision of lower income housing because they require a developer to choose between compliance with an illegal standard or litigation over such standard.

4. The purpose section of the Land Development Ordinance which authorizes an annual limit on development permits in areas outside of growth areas is not authorized by the Municipal Land Use Law.

5. The general provision which prohibits the grant of a development approval when payment of taxes is proved violates N.J.S.A. 40:55D-39b.

6. Regulations governing trade, wholesale and retail developments over-regulate the ownership of land rather than its use in violation of N.J.S.A. 40:55D-62a.

7. The provision which authorizes the Planning Board to waive conditions for the conditional use of adult book stores and other facilities violates N.J.S.A. 40:55D-70 because it authorizes the Board to waive conditional use standards rather than to require a use variance.

8. The requirement that Sewerage Authority and Municipal Utility Authority approval be obtained prior to the submission of development applications violates N.J.S.A. 40:55D-22.

9. The requirement that all conditions of final approval be complied with within 180 days of such approval, which requirement violates the vesting provision of N.J.S.A. 40:55D-52.

10. The section which authorizes the approving board to waive conditional use standards rather than to require a use variance pursuant to N.J.S.A. 40:55D-70.

11. The requirement that Sewerage Authority and Municipal Utility Authority approval be obtained prior to the submission of development applications violates N.J.S.A. 40:55D-22.

12. The provision that permits the Planning Board to not hold a hearing on a final development application violates N.J.S.A. 40:55D-10a.

13. The provision for a procedure for dealing with major differences between final and preliminary plans violates N.J.S.A. 40:55D-50a.

14. The provision that requires performance guarantees prior to approval rather than as a condition of approval violates N.J.S.A. 40:55D-53.

15. The off-tract improvement provisions violate N.J.S.A. 40:55D-42 because they require furnishing of a performance guarantee for off-tract improvements.

16. The land disturbance permit requirements are not authorized by the Municipal Land Use Law and are duplicitive of the soil erosion and sedimentation control regulations enforced by the Freehold Conservation District.

17. Provisions authorizing the use of eight (8) undersized lots for planned development constitute spot zoning subject to ambiguous conditional use standards in violation of N.J.S.A. 40:55D-62 and N.J.S.A. 40:55D-67.

WHEREFORE, DEVELOPMENT CORP. demands judgment as follows:

1. Declaring the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE invalid in its entirety;

2. Appointing a special master to revise the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE and to supervise the TOWNSHIP with respect to the implementation of any builder's remedy in order to insure prompt and bona fide review by defendants of all applications by DEVELOPMENT CORP. for development approvals;

3. Ordering the revision of the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE in order to replace all sections which violate the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., with standards which comply with the statute;

4. Ordering a builder's remedy for DEVELOPMENT CORP. in the form of court approval of a Concept Plan application to be submitted by DEVELOPMENT CORP. conditioned upon the provision of a substantial amount of dwelling units as housing affordable to lower income people;

5. Ordering that all development applications for development which includes a substantial amount of lower income housing be "fast tracked", that is, approved within shorter time periods than provided for in the Municipal Land Use Law and that Environmental Impact Assessments or Statements and

Community Impact Statements or Fiscal Impact Reports not be required for such developments;

6. Ordering that all fees, including but not limited to application fees, inspection fees, engineering fees, building permit and certificate of occupancy fees be waived for a sufficient and appropriate amount of housing within developments which include a substantial amount of lower income housing;

7. Ordering that only performance and maintenance guarantees essential to protect public health and safety be required for on-tract or off-tract improvements associated with developments which include a substantial amount of lower income housing;

8. Ordering that mobile homes and midrise apartment units be permitted in any development which includes a substantial amount of lower income housing and that non-residential uses not subject to staging requirements be permitted, but not required, in such developments;

9. Ordering OLD BRIDGE to plan and provide for, out of municipal tax revenues, reimbursement to developers for the construction of sewer, water, roads, other utilities and open space facilities required for developments which include a substantial amount of lower income housing;

10. Ordering OLD BRIDGE to accept all open space, recreational facilities, roads and other infrastructure which may be dedicated in connection with development which includes a substantial amount of lower income housing;

11. Ordering OLD BRIDGE to establish and fund an agency to:

a. Subsidize land, site improvement, construction and financing costs for lower income housing, particularly Mt. Laurel II housing;

b. apply for all available governmental subsidies for lower income housing; and

c. screen applications for and sponsor and maintain lower income housing, particularly Mt. Laurel II housing, in OLD BRIDGE TOWNSHIP.

d. otherwise expedite and assist developers involved in constructing Mt. Laurel II housing in a manner similar to the way the OLD BRIDGE ECONOMIC DEVELOPMENT CORPORATION now assists those most favored developers who bring commercial ratables and jobs into the TOWNSHIP (See Exhibit C);

12. Ordering OLD BRIDGE to adopt a resolution of need and grant tax abatement where necessary;

13. Restraining Defendant TOWNSHIP PLANNING BOARD from approving any application for development of land in OLD BRIDGE TOWNSHIP until a final judgment is entered which finds that OLD BRIDGE TOWNSHIP has met its fair share of regional housing needs;

14. Ordering Defendant OLD BRIDGE TOWNSHIP to pay DEVELOPMENT CORP.'s counsel fees and costs of suit; and

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

THIRD COUNT

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

OLD BRIDGE TOWNSHIP ORDINANCES WHICH ARE VOID FOR VAGUENESS

2. For at least the reasons set forth in the remainder of this Count, the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE is impermissibly vague and indefinite.

3. The provisions of the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE which are impermissibly vague and indefinite are

EXHIBIT C

THE HOME NEWS THURSDAY, FEBRUARY 2, 1984

Old Bridge names contractor

OLD BRIDGE — Cardell Inc. of Woodbridge have been contracted to build the roads, sewer and water systems at the proposed Old Bridge Business Park. The Old Bridge Economic Development Corp. has accepted the company's $600,000 bid for construction of the entire infrastructure system. Although Cardell officials could not be reached for comment, Acting Township Business Administrator John Morse said construction work is expected to begin within weeks. The development agency is using grant money from the U.S. Economic Development Administration to fund the project. Cardell was accepted from among four bidders — with quotes ranging from $660,000 to more than $1 million, Morse said. The business park, located on 16 acres off Route 516, is the OBEDC's first development endeavor. The corporation has firm commitments from three companies — and tentative agreements from four others — to locate in the park, Morse said. It has also received necessary approvals from various municipal boards, including the Planning Board, Old Bridge Township Sewerage Authority and Old Bridge Municipal Utilities Authority, for the project.

unduly cost-generative and thus bar the provision of low and moderate income housing because they force developers to redo costly site designs and engineering when an ambiguous standard takes on a new meaning through planning board interpretation.

4. The following sections of the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE grant excessive and unlimited discretion to either the Township Engineer or Defendant PLANNING BOARD and fail to set forth adequate standards to guide these township officials in the exercise of discretion:

a. The authorization granted to the Planning Board to limit annual development permits in areas outside of the growth areas without any stated criteria for such limitation;

b. The Town Center design standards including the requirement that the three dimensional relations of structures and their vicinity to the roads, the nearby structures and the open space created between them be considered;

c. The provision which authorizes the Planning Board to vary front yard set backs without any stated criteria for such variance;

d. The provision which permits the Planning Board to require a more "elaborate" environmental impact statement where the proposed project will have a "significant impact" on the environment;

e. The density bonus criteria for Class I planned developments which requires that the proposed commercial or office/industrial uses are "compatible" with the surrounding land uses and are "consistent with" the goals and objectives of the master plan;

f. The requirement that housing types within a planned development be varied so that no single housing type shall

"dominate" within any mixture of housing types in any section of the development;

g. The design features standard which requires architectural design and building construction to be "consistent, complimentary and harmonious";

h. The general design standards which require a "convenient" arrangement of parking spaces, "aesthetically pleasing" design of buildings and parking areas and "aesthetically pleasing" and "harmonious" signs on the site;

i. The prohibition of removal of "unique" trees;

j. The requirement that the pre-development rate of runoff be maintained unless "otherwise determined by the township engineer";

k. The requirements for maintainance of historic sites and structures;

l. The ambiguous requirements for conditional development of the eight (8) undersized lots as planned development including the requirement that the development "substantially" improve existing traffic conditions, that there be a "harmonious use of materials", that design features be "superior to standard design practice", etc.

WHEREFORE, DEVELOPMENT CORP. demands judgment as follows:

1. Declaring the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE invalid in its entirety;

2. Appointing a special master to revise the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE and to supervise the TOWNSHIP with respect to the implementation of any builder's remedy in order

to insure prompt and bona fide review by defendants of all applications by DEVELOPMENT CORP. for development approvals;

3. Ordering the revision of the OLD BRIDGE TOWNSHIP LAND DEVELOPMENT ORDINANCE in order to replace all ambiguous standards with clear and explicit standards.

4. Ordering a builder's remedy for DEVELOPMENT CORP. in the form of court approval of a Concept Plan application to be submitted by DEVELOPMENT CORP. conditioned upon the provision of a substantial amount of dwelling units as housing affordable to lower income people;

5. Ordering that all development applications for development which includes a substantial amount of lower income housing be "fast tracked", that is, approved within shorter time periods than provided for in the Municipal Land Use Law and that Environmental Impact Assessments or Statements and Community Impact Statements or Fiscal Impact Reports not be required for such developments;

6. Ordering that all fees, including but not limited to application fees, inspection fees, engineering fees, building permit and certificate of occupancy fees be waived for a sufficient and appropriate amount of housing within developments which include a substantial amount of lower income housing;

7. Ordering that only performance and maintenance guarantees essential to protect public health and safety be required for on-tract or off-tract improvements associated with developments which include a substantial amount of lower income housing;

8. Ordering that mobile homes and midrise apartment units be permitted in any development which includes a substantial amount of lower income housing and that non-residential uses not subject to staging requirements be permitted, but not required, in such developments;

9. Ordering OLD BRIDGE to plan and provide for, out of municipal tax revenues, reimbursement to developers for the construction of sewer, water, roads, other utilities and open space facilities required for developments which include a substantial amount of lower income housing;

10. Ordering OLD BRIDGE to accept all open space, recreational facilities, roads and other infrastructure which may be dedicated in connection with development which includes a substantial amount of lower income housing;

11. Ordering OLD BRIDGE to establish and fund an agency to:

a. Subsidize land, site improvement, construction and financing costs for lower income housing;

b. apply for all available governmental subsidies for lower income housing; and

c. screen applications for and sponsor and maintain lower income housing, particularly Mt. Laurel II housing, in OLD BRIDGE TOWNSHIP.

d. otherwise expedite and assist developers involved in constructing Mt. Laurel II housing in a manner similar to the way the OLD BRIDGE ECONOMIC DEVELOPMENT CORPORATION now assists those most favored developers who bring commercial ratables and jobs into the TOWNSHIP (see Exhibit C);

12. Ordering OLD BRIDGE to adopt a resolution of need and grant tax abatement where necessary;

13. Restraining Defendant TOWNSHIP PLANNING BOARD from approving any application for development of land in OLD BRIDGE TOWNSHIP until a final judgment is entered which finds that OLD BRIDGE TOWNSHIP has met its fair share of regional housing needs;

14. Ordering Defendant OLD BRIDGE TOWNSHIP to pay DEVELOPMENT CORP.'s counsel fees and costs of suit; and

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

FOURTH COUNT

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

2. As set forth in the Second Count, the 1983 LAND DEVELOPMENT ORDINANCE contains many violations of the Municipal Land Use Law, with one of the most cost-generative and clearly violative being the provisions governing off-tract improvement payments required to be made by developers, which are contained in Section 8-2 of the 1983 LAND DEVELOPMENT ORDINANCE.

3. The 1983 LAND DEVELOPMENT ORDINANCE incorporates the methodology regarding contributions for off-tract improvements contained in a study entitled "Methodology for Off-Tract Pro-Rata Analysis for the Township of Old Bridge" prepared by Louis Berger & Associates, dated August 1980 (the "Berger Study").

4. The contributions required to be made by developers to off-tract improvements by the 1983 LAND DEVELOPMENT ORDINANCE violate the requirements of N.J.S.A. 40:55D-42 in at least the following respects:

a. Developers are required to contribute money to a fund based upon a portion of the overall expense that would be necessary for the construction of roadway and drainage improvements if all undeveloped land in a given area were to be developed, regardless of whether or not the development at issue necessitates or requires these improvements;

b. Developers are required to pay an amount in excess of their pro-rata share of the cost of roadway and drainage improvements,

even assuming said improvements are necessitated by their development, since the methodology untilized for determining the proportion of said cost to be borne by a developer excludes contributions toward said costs from owners of existing developed properties;

c. The 1983 LAND DEVELOPMENT ORDINANCE mandates contributions for off-tract improvements without regard to whether such improvements are "reasonable and necessary," "necessitated or required by construction or improvements within such development," and without a determination that the need for such improvements bears any rational nexus to the impact of the specific development on the community's infrastructure;

d. The 1983 LAND DEVELOPMENT ORDINANCE mandates contributions for off-tract improvements without regard to whether or not the development is benefited by each and every such improvement;

e. The Township has no authority to legislate by local ordinance (and thus to predetermine without a case-by-case assessment) which off-site improvements must be contributed to by every applicant for preliminary subdivision or site plan approval;

f. Although N.J.S.A. 40:55D-42 requires that the methodology used to pro-rate off-tract improvements be "fair and reasonable to determine the proportionate amount of the cost of such facilities that shall be borne by each developer or owner within a related or common area"; the 1983 LAND DEVELOPMENT ORDINANCE defines the related and common area with respect to all traffic

improvements without reference to projected impacts on a case-by-case basis thus depriving all applicants of their right to argue before any municipal agency that a specific improvement bears no relationship to a specific development;

g. Although N.J.S.A. 40:550-42 requires contributions for off-tract improvements which are "reasonable and necessary" and "necessitated or required by construction or improvements within such development," the formulas for determining pro-rata shares of off-tract improvements are improperly implemented through 1983 LAND DEVELOPMENT ORDINANCE Section 8-2 because the formulas have not been revised, in accordance with the recommendations of the Berger Study, to reflect changes since 1980 in technology, and more significantly, to reflect the zoning changes implemented by the 1983 LAND DEVELOPMENT ORDINANCE;

h. Despite the afore-mentioned requirement of N.J.S.A. 40:55D-42, the 1983 LAND DEVELOPMENT ORDINANCE formula for determining the pro-rata share of drainage improvements generated by a development requires the multiplication of the acreage of the development by the "run-off weight for land type," which product is then divided by a similar product for all land upstream of the affected culvert, and thereby provides a grossly inaccurate estimate of drainage facility impacts because the "run-off weight for land type" is based upon the 1978 rather than 1983 LAND DEVELOPMENT ORDINANCE;

i. Despite the afore-mentioned requirement of N.J.S.A. 40:55D-42, the 1983 ORDINANCE formula for determining the pro-rata

share of traffic improvements generated by a development requires the multiplication of the numbers of dwelling units per land type times the "trip factor for land type," which product is then divided by a similar product for all vacant and developable land in the proper "allocation district" and then multiplied times the "adjusted base cost" of all traffic improvements in the "allocation district,"; this formula provides a grossly inaccurate estimate of traffic facility impacts because;

1. The "trip factor for land type" is based upon the 1978 rather than the 1983 LAND DEVELOPMENT ORDINANCE;
2. There is no rational nexus between the impact area of the development and the "allocation districts" defined in the Berger Study;
3. The Township has not calculated road improvement benefits to existing developed property so as to permit assessment for benefits to such property, and there is therefore no reasonable method to determine the "adjusted base cost" of traffic improvements and to assure that future development does not pay for existing deficiencies in roads and other improvements.

5. The provisions of the 1983 LAND DEVELOPMENT ORDINANCE requiring contributions for off-tract developments are unduly cost-generative, and violate the mandate of the Mount Laurel II decision in at least the following ways:

a. The Township has elected to impose the entire cost of any future roadway and drainage improvements on developers of vacant developable land, notwithstanding the fact that pursuant to

N.J.S.A 40:56-42 and N.J.S.A 40:56-52, the Township has the power to assess all or a portion of these costs against all property owners in the municipality who are benefited by any such improvements.

b. It requires developers to contribute to prospective improvements which may, but will not necessarily be, required in the future depending upon development of other vacant parcels in a certain region, even though no improvements are in fact necessitated by the development in question.

c. It imposes on the developer a disproportionate share of the cost of building roadway and drainage improvements which benefit generally all or substantial portions of the Township, both with respect to existing development and potential new development, thereby relieving the Township and all property owners in general of the obligation to provide traditional municipal services, the cost of which should be borne by the municipality or shared by all property owners using or having access to the improvements.

6. The Berger Study is also improperly implemented through 1983 LAND DEVELOPMENT ORDINANCE Section 8-2, because the Berger Study recommendations for provisions to rebate overcharges where the actual cost of an improvement exceeds the estimated cost and for a detailed and accurate record-keeping procedure to assure the fairness of the rebate program are not incorporated into the 1983 LAND DEVELOPMENT ORDINANCE.

7. The PLANNING BOARD has failed to comply with Section 8-2 which requires annual review and approval of revisions to trip generating factors and facility improvement costs and has thus assured that applicants will be charged incorrect off-tract improvement fees.

WHEREFORE, DEVELOPMENT CORP. demands judgment as follows:

1. Declaring that the provisions of the 1983 LAND DEVELOPMENT ORDINANCE dealing with contributions for off-tract improvements are void, unconstitutional, and of no effect whatsoever;

2. Enjoining the TOWNSHIP from attempting to enforce those portions of the 1983 LAND DEVELOPMENT ORDINANCE which require contributions for off-tract improvements;

3. Declaring that the TOWNSHIP may not require a contribution from plaintiff for any off-tract improvements which are not actually and presently necessitated or required by construction or improvements within plaintiff's development;

4. Declaring that in such instances where plaintiff may be properly required to contribute to off-tract improvements, the pro-rata share of the cost of said improvements for which plaintiff may be responsible may not exceed the proportionate utilization of the improvements by plaintiff as compared with use by all other owners and occupants of both developed and undeveloped land in the municipality who use or have access to said improvements;

5. Enjoining the TOWNSHIP from purporting to assess the cost of any off-tract improvements to owners of developments in which substantial quantities of lower income housing are to be built; and

6. For such other and further relief as the Court deems just under the circumstances, including counsel fees and costs of suit.

Dated: February 10, 1984

Henry A. Hill
Brener, Wallack & Hill
2-4 Chambers Street
Princeton, New Jersey 08540

Co-Counsel: Dean A. Gaver
Hannoch, Weisman, Stern, Besser,
Berkowitz & Kinney
744 Broad Street
Newark, New Jersey 07102

CERTIFICATION IN SUPPORT OF BUILDER'S REMEDY

1. I am the Executive Vice President of O&Y Old Bridge Development Corp. and submit this certification in support of the Complaint in Lieu of Prerogative Writ to be filed by DEVELOPMENT CORP. against the Township of Old Bridge and other defendants.

2. I have read the Complaint to be filed by DEVELOPMENT CORP. and have been advised by legal counsel of the requirement pursuant to the Mount Laurel II case that a developer commit to providing a substantial amount of lower income housing in his proposed project in order to qualify for a Court ordered builder's remedy.

3. DEVELOPMENT CORP. hereby commits to providing a substantial amount of lower income housing, as said amount may be determined by the trial court, given the size of the proposed DEVELOPMENT CORP. project, the percentage of the project to be devoted to lower income housing, the proportion of OLD BRIDGE TOWNSHIP'S fair share allocation which could be provided by the project and the extent to which the remaining housing in the project can be categorized as "least-cost".

4. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Lloyd Brown
Executive Vice-President
O&Y Old Bridge
Development Corp.

Dated: Feb 10/84

EXHIBIT A

REC'D JUL 13 1976 MID-S Clerk

DOCKETED JUL 13 1976 GE-1

FILED

DAVID D. FURMAN, J.S.C.

CHERNIN & FREEMAN,
A PROFESSIONAL CORPORATION

VILLAGE PLAZA SHOPPING CENTER
1075 EASTON AVENUE
SOMERSET, NEW JERSEY 08873
(201) 828-7400

ATTORNEY FOR DEFENDANT, MAYOR AND COUNCIL OF THE BOROUGH OF SOUTH PLAINFIELD

Plaintiff

URBAN LEAGUE OF GREATER NEW BRUNSWICK, ET AL,

vs.

Defendant

THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, ET AL,

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. C 4122-73

CIVIL ACTION

JUDGMENT

Copy of this Judgment has been filed with the Court by David D. Furman, J.S.C.

THE ABOVE ENTITLED MATTER HAVING BEEN TRIED BEFORE THIS COURT COMMENCING FEBRUARY 3, 1976 AND THE COURT HAVING HEARD AND CONSIDERED THE TESTIMONY AND EVIDENCE ADDUCED DURING THE TRIAL AS RESULT OF WHICH THIS COURT HAS RENDERED ITS OPINION DATED MAY 4, 1976;

IT IS, THEREFORE, ON THIS 9 DAY OF July, 1976,

O R D E R E D AND A D J U D G E D AS FOLLOWS:

1. JUDGMENT BE AND IS HEREBY ENTERED IN FAVOR OF THE DEFENDANT, BOROUGH OF DUNELLEN, AND AGAINST THE PLAINTIFF BASED UPON THE RELIEF DEMANDED IN THE COMPLAINT.

2. THE DEFENDANTS, BOROUGH OF CARTERET, BOROUGH OF HELMETTA, BOROUGH OF HIGHLAND PARK, BOROUGH OF JAMESBURG, BOROUGH OF METUCHEN, BOROUGH OF MIDDLESEX, BOROUGH OF MILLTOWN, CITY OF SOUTH AMBOY, BOROUGH OF SOUTH RIVER, BOROUGH OF SPOTSWOOD, AND TOWNSHIP OF WOODBRIDGE, HAVING AMICABLY ADJUSTED THEIR DIFFERENCES, BE AND ARE HEREBY DISMISSED UPON THE CONDITION THAT THEY COMPLY WITH THE TERMS OF THEIR RESPECTIVE SETTLEMENTS WITH THE PLAINTIFF TO THE EXTENT applicable THAT THEY SHALL CAUSE THEIR RESPECTIVE ZONING ORDINANCES TO BE AMENDED TO CAUSE (A) DELETION OF LIMITATIONS ON THE NUMBER OF BEDROOMS OR ROOMS IN MULTI-FAMILY HOUSING; (B) DELETION OF SPECIAL EXCEPTION PROCEDURES FOR MULTI-FAMILY HOUSING AND PROVISIONS FOR IT AS AN ALLOWABLE USE; (C) REDUCTION OF EXCESSIVE PARKING SPACE REQUIREMENTS IN MULTI-FAMILY HOUSING; (D) REDUCTION OF EXCESSIVE MINIMUM FLOOR AREA REQUIREMENTS IN MULTI-FAMILY OR SINGLE FAMILY HOUSING OR BOTH; (E) REDUCTION OF EXCESSIVE MINIMUM LOT SIZES FOR MULTI-FAMILY OR SINGLE FAMILY HOUSING OR BOTH; (F) INCREASE IN MAXIMUM DENSITY OF MULTI-FAMILY HOUSING TO 15 UNITS PER ACRE; (G) INCREASE OF MAXIMUM HEIGHT OF MULTI-FAMILY HOUSING TO 2-1/2 STORIES OR HIGHER; (H) DELETION OF A MULTI-FAMILY HOUSING CEILING OF 15% OF TOTAL HOUSING UNITS WITHIN A MUNICIPALITY; (I) A REZONING FROM INDUSTRY TO MULTI-FAMILY RESIDENTIAL AND FROM SINGLE FAMILY TO MULTI-FAMILY RESIDENTIAL.

3. THE DEFENDANT, BOROUGH OF CARTERET, AS CONDITION

SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

TO BE SUBMITTED SEPARATELY

4. THE DEFENDANT, BOROUGH OF HELMETTA, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

"RE-ZONING OF A STRIP APPROXIMATELY 225 FEET BY 1800 FEET ALONG THE NORTHERLY SIDE OF MAPLE STREET FOR TOWNHOUSES."

5. THE DEFENDANT, BOROUGH OF HIGHLAND PARK, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

(A) DENSITY OF UNITS PER ACRE ARE 16 UNITS PER ACRE ON PARCELS OF LAND GREATER THAN ONE ACRE, 12 UNITS PER ACRE ON PARCELS LESS THAN ONE ACRE,

12 UNITS PER ACRE ON PARCELS LESS THAN ONE ACRE, THERE NO LONGER BEING A MINIMUM REQUIREMENT OF ACREAGE (2½) FOR MULTI-FAMILY DWELLINGS.

(B) THAT THE DISTRIBUTION OF APARTMENTS INTO A RATIO OF ONE AND THREE BEDROOM UNITS BE DELETED ENTIRELY.

(C) THAT THE PROHIBITION OF RENOVATION AND/OR CONSTRUCTION OF HOMES TO MORE THAN 3 BEDROOMS IN THE RESIDENCE ZONE BE DELETED FROM THE ZONING ORDINANCE.

6. THE DEFENDANT, BOROUGH OF JAMESBURG, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

(A) DELETION OF SPECIAL EXCEPTION PROCEDURES FOR MULTI-FAMILY HOUSING AND PROVISION FOR IT AS AN ALLOWABLE USE.

(B) REDUCTION OF EXCESSIVE PARKING SPACE REQUIREMENTS IN MULTI-FAMILY HOUSING.

(C) REDUCTION OF EXCESSIVE MINIMUM FLOOR AREA REQUIREMENTS IN MULTI-FAMILY OR SINGLE-FAMILY HOUSING OR BOTH.

7. THE DEFENDANT, BOROUGH OF METUCHEN, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

"ELIMINATION OF THE REQUIRED MINIMUM LIVING AREA OF 1,400 SQUARE FEET IN THE R-1 ZONE."

8. THE DEFENDANT, BOROUGH OF MIDDLESEX, AS CONDITION SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS

"Exhibit A"

ZONING ORDINANCE AS FOLLOWS:

(A) THE ACREAGE REQUIREMENT FOR MULTIPLE-FAMILY DWELLINGS BE REDUCED FROM 4 ACRES TO 2 ACRES.

(B) THE BEDROOM LIMITATIONS CONTAINED IN THE GARDEN APARTMENT ORDINANCE AND THE HIGH-RISE ORDINANCE BE DELETED.

(C) PROVISION SHOULD BE MADE FOR SOME ADDITIONAL LAND IN THE BOROUGH TO BE ZONED FOR MULTIPLE-FAMILY DWELLINGS.

(D) THE PLANNING BOARD RATHER THAN THE ZONING BOARD OR MAYOR AND COUNCIL SHALL BE DESIGNATED AS THE REVIEWING AGENCY IN THE ORDINANCE TO ASCERTAIN WHETHER AN APPLICANT WISHING TO BUILD GARDEN APARTMENTS AND/OR HIGH-RISE APARTMENTS HAS COMPLIED WITH THE TERMS AND CONDITIONS OF THE ZONING ORDINANCE.

9. THE DEFENDANT, BOROUGH OF MILLTOWN, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

(A) AMEND CHAPTER 20-4.4 TO REDUCE MINIMUM FLOOR AREA OF DWELLING TO 950 SQ. FT.

(B) AMEND CHAPTER 20-4.4 TO REDUCE MINIMUM LOT FRONTAGE TO 80 FT.

(C) AMEND CHAPTER 20-7.1 A(2) AND 7.1 B(1) TO PERMIT MULTI-FAMILY DWELLINGS WITHOUT "SPECIAL PERMIT".

(D) AMEND CHAPTER 20-9.4 C(7) TO REDUCE GARDEN APARTMENT AVERAGE MINIMUM FLOOR AREA PER DWELLING UNIT FOR ENTIRE DEVELOPMENT TO 650 SQ. FT. AND ABSOLUTE MINIMUM FLOOR AREA PER DWELLING UNIT TO 500 SQ. FT.

(E) AMEND CHAPTER 20-9.4 C(8) TO INCREASE MAXIMUM NUMBER OF GARDEN APARTMENT DWELLING UNITS PER ACRE TO 15.

10. THE DEFENDANT, CITY OF SOUTH AMBOY, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

MULTI-FAMILY

(A) REMOVE BEDROOM RESTRICTIONS IN THEIR ENTIRETY.

(B) PROVIDE THAT APPLICATIONS FOR MULTI-FAMILY DWELLINGS BE MADE TO THE PLANNING BOARD INSTEAD OF THE ZONING BOARD OF ADJUSTMENT.

(C) OPEN SPACE WILL BE 10% OF THE ENTIRE PLOT, PLUS A PLAYGROUND FOR CHILDREN TO BE DETERMINED BY THE MARKETPLACE.

(D) REMOVE THE TWO STORY LIMIT.

(E) THE MINIMUM FLOOR AREA IN THREE OR FOUR BEDROOM APARTMENTS WILL BE IN ACCORDANCE WITH FHA REQUIREMENTS.

GARDEN APARTMENTS

(A) ZONING ORDINANCE TO BE CHANGED TO PROVIDE FOR 16 UNITS PER ACRE.

(B) ELIMINATE TWO-STORY HEIGHT REQUIREMENT.

(C) OPEN AREAS SAME AS MULTI-FAMILY.

IN ADDITION TO THE ABOVE, SOUTH AMBOY HAS AGREED TO REZONE 55 ACRES OF INDUSTRIAL LAND FOR MULTI-FAMILY USE.

11. THE DEFENDANT, BOROUGH OF SOUTH RIVER, AS CONDI TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ZONING ORDINANCE AS FOLLOWS:

(A) MULTI-FAMILY RESIDENTIAL USE IS PERMITTED AS [illegible] BY SPECIAL EXCEPTION.

(B) THE MINIMUM SIZE LOT FOR DEVELOPMENT OF MULTI-FAMILY RESIDENTIAL USE SHALL BE NOT LESS THAN TWO (2) ACRES.

(C) ROOM RESTRICTIONS IN ANY MULTI-FAMILY UNIT SHALL BE ELIMINATED ENTIRELY.

(D) THERE SHALL BE ELIMINATED ANY PERCENTAGE OR OTHER TYPE OF CEILING ON THE NUMBER OF MULTI-FAMILY UNITS PERMITTED IN DEFENDANT BOROUGH.

(E) MAXIMUM HEIGHT FOR MULTI-FAMILY UNITS SHALL BE NO MORE THAN THREE (3) STORIES.

(F) THIRTY-FIVE (35) ACRES OF EXISTING RESIDENTIALLY ZONED LAND WITHIN DEFENDANT BOROUGH SHALL BE ZONED FOR 7500 SQUARE FOOT LOTS WITH MINIMUM HABITABLE FLOOR AREA EXCLUSIVE OF BASEMENT AREA, OF NOT LESS THAN 900 SQUARE FEET.

12. THE DEFENDANT, BOROUGH OF SPOTSWOOD, AS CONDITION TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND ITS ZONING ORDINANCE AS FOLLOWS:

(A) DELETION OF LIMITATIONS ON THE NUMBER OF BEDROOMS OR ROOMS IN MULTI-FAMILY HOUSING.

(B) REDUCTION OF EXCESSIVE MINIMUM FLOOR AREA REQUIREMENTS IN MULTI-FAMILY OR SINGLE-FAMILY HOUSING, OR BOTH.

(C) REDUCTION OF EXCESSIVE MINIMUM LOT SIZES FOR SINGLE-FAMILY HOUSING.

(D) REZONING FROM INDUSTRY TO MULTI-FAMILY RESIDENTIAL OR SINGLE-FAMILY HOUSING ON REDUCED LOT SIZES.

13. THE DEFENDANT, TOWNSHIP OF WOODBRIDGE, AS CONDITI TO SETTLEMENT AND DISMISSAL HAS AGREED TO APPROPRIATELY AMEND IT

ZONING ORDINANCE AS FOLLOWS:

ARTICLE VI - SCHEDULE OF AREA, YARD, AND BUILDING REQUIREMENTS ZONING ORDINANCE OF THE TOWNSHIP OF WOODBRIDGE, NEW JERSEY.

SECTION 1. ARTICLE VI, SCHEDULE OF AREA, YARD, AND BUILDING REQUIREMENTS ZONING ORDINANCE OF THE TOWNSHIP OF WOODBRIDGE, NEW JERSEY. THIS ARTICLE SHALL BE AMENDED BY DELETING ALL REFERENCE TO FOOTNOTE NO. (1) IN THE COLUMN TITLED MINIMUM GROSS FLOOR AREA/FAMILY (IN SQUARE FEET) FOR THE R-5 RESIDENCE ZONE.

SECTION 2. FOOTNOTE NO. (1) SHALL BE AMENDED TO READ AS FOLLOWS: FOR GARDEN APARTMENTS, THE MINIMUM HABITABLE FLOOR AREA IS 650 SQUARE FEET.

ARTICLE XII - R-6A RESIDENCE ZONE, SECTION 1. PERMITTED USES

SECTION 1. ARTICLE XII, SECTION 1. PERMITTED USES IS AMENDED BY ADDING PARAGRAPH C. AS FOLLOWS:

C. GARDEN APARTMENT DEVELOPMENTS

ARTICLE XII - SECTION 3. OTHER USES PERMITTED UPON APPLICATION TO THE ZONING BOARD FOR A SPECIAL PERMIT

SECTION 1. ARTICLE XII, SECTION 3.A. AND B. ARE AMENDED TO READ AS FOLLOWS:

A. SAME AS SPECIFIED IN THE R-5 RESIDENCE ZONE, EXCEPT THAT PUBLIC AND QUASI-PUBLIC SWIM CLUBS ARE PROHIBITED.

B. BOARDING AND ROOMING HOUSES, BUT NOT MOTELS, HOTELS OR TOURIST HOMES AND CABINS, SUBJECT TO THE STANDARDS AND CONDITIONS SET FORTH IN ARTICLE XX, SECTION 2. OF THIS ORDINANCE.

ARTICLE XII - SECTION 4. AREA, YARD, AND BUILDING REQUIREMENTS

SECTION 1. ARTICLE XII, SECTION 4. PARAGRAPH B. IS ADDED TO READ AS FOLLOWS:

B. FOR GARDEN APARTMENT DEVELOPMENTS AS PERMITTED IN

THIS ARTICLE:

MINIMUM LOT SIZE - 2 ACRES
MINIMUM LOT WIDTH - 200 FEET
MINIMUM LOT DEPTH - 300 FEET
MINIMUM YARD REQUIREMENTS - 25 FEET ON ALL SIDES
MINIMUM FLOOR AREA PER DWELLING UNIT - 650 SQUARE FEET
MINIMUM OFF-STREET PARKING SPACES PER DWELLING UNIT 1-1/2
MAXIMUM BUILDING COVERAGE - 20 PER CENT
MAXIMUM BUILDING HEIGHT -35 FEET
MAXIMUM NUMBER OF DWELLING UNITS PER ACRE - 18

THE AREAS SHALL BE ATTRACTIVELY LANDSCAPED AND SEEDED.

ADEQUATE RECREATION AREAAND FACILITIES TO SERVE THE NEED OF THE ANTICIPATED POPULATION SHALL BE PROVIDED AND SHALL CONSIST OF AT LEAST THE FOLLOWING: A FENCED OFF PLAY-LOT INCLUDING PLAY EQUIPMENT SUCH AS SWINGS, SEESAWS, ETC., SHALL BE PROVIDED. THERE SHALL BE FIFTEEN (15) SQUARE FEET OF PLAY-LOT FOR EVERY DWELLING UNIT WITH A MINIMUM SIZE AREA OF ONE THOUSAND (1,000) SQUARE FEET.

THE PROVISIONS OFTHIS PARAGRAPH SHALL NOT APPLY TO GARDEN APARTMENTS PREVIOUSLY CONSTRUCTED OR TO APPLICATIONS FINALLY APPROVED AS OF THE DATE OF THE ADOPTION OF THIS AMENDMENT.

ARTICLE XIV - B-1 NEIGHBORHOOD BUSINESS ZONE, SECTION 1 PERMITTED USES

SECTION 1. ARTICLE XIV B-1 NEIGHBORHOOD BUSINESS ZONE, SECTION 1. PERMITTED USES IS AMENDED BY ADDING PARAGRAPH C. TO READ AS FOLLOWS:

C. GARDEN APARTMENT DEVELOPMENTS.

ARTICLE XIV - SECTION 4.C. OTHER USES PERMITTED UPON APPLICATION TO THE ZONING BOARD FOR A SPECIAL PERMIT

SECTION 1. ARTICLE XIV, SECTION 4.C. OTHER USES PERMITTED UPON APPLICATION TO THE ZONING BOARD FOR A SPECIAL PERMIT IS DELETED IN ITS ENTIRETY.

ARTICLE XIV - SECTION 5., AREA, YARD, AND BUILDING REQUIREMENTS

SECTION 1. ARTICLE XIV, SECTION 5., AREA, YARD AND BUILDING REQUIREMENTS IS AMENDED BY ADDING PARAGRAPH C. AS FOLLOWS:

C. AS TO GARDEN APARTMENT DEVELOPMENT, AS SPECIFIED IN ARTICLE XII, SECTION 4.B., OF THIS ORDINANCE.

ARTICLE XV - B-2 CENTRAL BUSINESS ZONE, SECTION 1., PERMITTED USES

SECTION 1. ARTICLE XV, B-2 CENTRAL BUSINESS ZONE, SECTION 1. PERMITTED USES IS AMENDED BY ADDING PARAGRAPH I. TO READ AS FOLLOWS:

I. GARDEN APARTMENT DEVELOPMENTS.

ARTICLE XV - B-2 CENTRAL BUSINESS ZONE, SECTION 3. D. OTHER USES PERMITTED UPON APPLICATION TO THE ZONING BOARD FOR A SPECIAL PERMIT.

SECTION 1. ARTICLE XV, B-2 CENTRAL BUSINESS ZONE, SECTION 3. D. OTHER USES PERMITTED UPON APPLICATION TO THE ZONING BOARD FOR A SPECIAL PERMIT IS DELETED IN ITS ENTIRETY.

ARTICLE XV - B-2 CENTRAL BUSINESS ZONE, SECTION 4., ARE YARD, AND BUILDING REQUIREMENTS.

SECTION 1. ARTICLE XV, B-2 CENTRAL BUSINESS ZONE. SECTION 4., AREA, YARD, AND BUILDING REQUIREMENTS IS AMENDED BY ADDING PARAGRAPH C. TO READ AS FOLLOWS:

C. AS TO GARDEN APARTMENT DEVELOPMENTS, AS SPECIFIED ARTICLE XII, SECTION 4.B., OF THIS ORDINANCE.

ARTICLE XVI - B-3 HIGHWAY BUSINESS ZONE, SECTION 1.C. PERMITTED USES.

SECTION 1. ARTICLE XVI, B-3 HIGHWAY BUSINESS ZONE, SECTION 1. C. PERMITTED USES IS AMENDED BY ADDING SUBSECTION (8) TO READ AS FOLLOWS:

(8) GARDEN APARTMENT DEVELOPMENTS.

ARTICLE XVI - B-3 HIGHWAY BUSINESS ZONE, SECTION 4., AREA, YARD, AND BUILDING REQUIREMENTS.

SECTION 1. ARTICLE XVI, B-3 HIGHWAY BUSINESS ZONE, SECTION 4., AREA, YARD, AND BUILDING REQUIREMENTS IS AMENDED BY

ADDING PARAGRAPH C. TO READ AS FOLLOWS:

C. AS TO GARDEN APARTMENT DEVELOPMENTS, AS SPECIFIED IN ARTICLE XII, SECTION 4.B., OF THIS ORDINANCE.

ARTICLE XVII - M-1 LIGHT INDUSTRY ZONE, SECTION 5.E. (3) OTHER PROVISIONS AND REQUIREMENTS.

SECTION 1. ARTICLE XVII, M-1 LIGHT INDUSTRY ZONE, SECTION 5. E. (3) OTHER PROVISIONS AND REQUIREMENTS IS AMENDED TO READ AS FOLLOWS:

(3) RESIDENTIAL DWELLINGS EXCEPT GARDEN APARTMENTS AS PROVIDED FOR IN THIS ORDINANCE.

ARTICLE XX - SECTION 2. E. SPECIAL EXCEPTIONS (GARDEN APARTMENT DEVELOPMENTS)

SECTION 1. ARTICLE XX, SECTION 2. E. SPECIAL EXCEPTIONS (GARDEN APARTMENT DEVELOPMENTS) IS DELETED IN ITS ENTIRETY AND AMENDED TO READ AS FOLLOWS:

E. GARDEN APARTMENT DEVELOPMENTS MAY BE PERMITTED IN THE M-1 LIGHT INDUSTRY ZONE PROVIDED THAT THE FOLLOWING DESIGN STANDARDS AND APPLICATION PROCEDURE ARE COMPLIED WITH:

(1) DESIGN STANDARDS:

MINIMUM LOT SIZE - 2 ACRES
MINIMUM LOT WIDTH - 200 FEET
MINIMUM LOT DEPTH - 300 FEET
MINIMUM YARD REQUIREMENTS - 25 FEET ON ALL SIDES
MINIMUM FLOOR AREA PER DWELLING UNIT - 650 SQUARE FEET
MINIMUM OFF-STREET PARKING SPACES PER DWELLING UNIT 1-1/2
MAXIMUM BUILDING COVERAGE - 20 PER CENT
MAXIMUM BUILDING HEIGHT -35 FEET
MAXIMUM NUMBER OF DWELLING UNITS PER ACRE - 18

THE AREA SHALL BE ATTRACTIVELY LANDSCAPED AND SEEDED.

ADEQUATE RECREATION AREA AND FACILITIES TO SERVE THE NEEDS OF THE ANTICIPATED POPULATION SHALL BE PROVIDED AND SHALL CONSIST OF AT LEAST THE FOLLOWING: A FENCED OFF PLAY-LOT INCLUDING PLAY EQUIPMENT SUCH AS SWINGS,

SEESAWS, ETC., SHALL BE PROVIDED. THERE SHALL BE FIFTEEN (15) SQUARE FEET OF PLAY-LOT FOR EVERY DWELLING UNIT WITH A MINIMUM SIZE AREA OF ONE THOUSAND (1,000) SQUARE FEET.

THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO GARDEN APARTMENTS PREVIOUSLY CONSTRUCTED OR TO APPLICATIONS FINALLY APPROVED AS OF THE DATE OF THE ADOPTION OF THIS AMENDMENT.

(2) APPLICATION PROCEDURES:

(A) APPLICANT SHALL CONFORM TO THE REQUIREMENTS OF ARTICLE V, GENERAL REGULATIONS, SECTION 23. OF THIS ORDINANCE.

(B) APPLICATION FOR A PERMIT TOGETHER WITH THREE (3) COPIES OF THE APPROPRIATE PLANS, SPECIFICATIONS AND SIX (6) PLOT PLANS SHALL BE MADE TO THE BUILDING INSPECTOR, WHO SHALL GATHER ALL INFORMATION ON THE ABOVE REQUIREMENTS AND REFER THE MATTER TO THE ZONING BOARD.

(C) THE ZONING BOARD SHALL REFER THE MATTER TO THE PLANNING BOARD FOR REPORT THEREON AS TO IT EFFECT ON THE COMPREHENSIVE PLANNING OF THE TOWNSHIP. NO ACTION SHALL BE TAKEN UNTIL SUCH REPORT SHALL HAVE BEEN RECEIVED FROM THE PLANNING BOARD, WHICH BOARD SHALL MAKE ITS REPORT THEREON WITHIN FORTY-FIVE (45) DAYS. AFTER RECEIPT OF SUCH REPORT, TH ZONING BOARD SHALL HEAR THE APPLICATION IN THE SAME MANNER AND UNDER THE SAME PROCEDURE AS IT IS EMPOWERED BY LAW AND ORDINANCE TO HEAR CASES AND MAKE EXCEPTIONS TO THE PROVISIONS OF THE ZONING ORDINANCE.

(D) THE ZONING BOARD SHALL THEREAFTER REFER THE APPLICATION WITH ITS RECOMMENDATION AND THE RECOMMENDATION OF THE PLANNING BOARD TO THE MUNICIPAL COUNCIL. THE MUNICIPAL COUNCIL SHALL EITHER DENY OR GRANT THE APPLICATION, AND SHALL GIVE THE REASONS THEREFORE. IN APPROVING ANY SU APPLICATION, THE MUNICIPAL COUNCIL MAY IMPOSE AN CONDITIONS THAT IT DEEMS NECESSARY TO ACCOMPLISH THE REASONABLE APPLICATION OF THE ABOVE STANDARD AND TO ENSURE CARRYING OUT OF THE GENERAL PURPOS OF THE ZONING ORDINANCE.

(E) IF THE APPLICATION IS GRANTED, THE BUILDING INSPECTOR SHALL ISSUE A BUILDING PERMIT, BUT ONLY UPON THE CONDITIONS, IF ANY, IMPOSED BY THE MUNICIPAL COUNCIL.

14. UPON FULL AND COMPLETE COMPLIANCE WITH THE TERMS OF THE SETTLEMENT BY THE DEFENDANTS, BOROUGH OF CARTERET, BOROUGH OF HELMETTA, BOROUGH OF HIGHLAND PARK, BOROUGH OF JAMESBURG, BOROUGH OF METUCHEN, BOROUGH OF MIDDLESEX, BOROUGH OF MILLTOWN, CITY OF SOUTH AMBOY, BOROUGH OF SOUTH RIVER, BOROUGH OF SPOTSWOOD AND TOWNSHIP OF WOODBRIDGE, THE COMPLAINT IN THE ABOVE MATTER SHALL BE DISMISSED.

15. THE DEFENDANTS, TOWNSHIP OF MADISON (OLD BRIDGE), TOWNSHIP OF MONROE, AND TOWNSHIP OF SOUTH BRUNSWICK BE AND ARE HEREBY ORDERED AND DIRECTED TO ENACT OR ADOPT NEW ZONING ORDINANCES TO ACCOMMODATE THEIR RESPECTIVE FAIR SHARE ALLOCATION OF LOW AND MODERATE INCOME HOUSING AS SPECIFICALLY OUTLINED IN THE COURT'S WRITTEN OPINION DATED MAY 4, 1976 AT PAGE 32 THEREOF PLUS AN ADDITIONAL FAIR SHARE ALLOCATION OF 1,333 UNITS FOR EACH SUCH MUNICIPALITY.

THE DEFENDANTS, TOWNSHIP OF CRANBURY, TOWNSHIP OF EAST BRUNSWICK, TOWNSHIP OF EDISON, TOWNSHIP OF NORTH BRUNSWICK TOWNSHIP OF PISCATAWAY, TOWNSHIP OF PLAINSBORO, BOROUGH OF SAYREVILLE AND THE BOROUGH OF SOUTH PLAINFIELD, SHALL, ALTERNATELY, ENACT OR ADOPT NEW ZONING ORDINANCES TO ACCOMMODATE THEIR RESPECTIVE FAIR SHARE ALLOCATION OF LOW AND MODERATE INCOME HOUSING AS SPECIFICALLY OUTLINED IN THE COURT'S WRITTEN OPINIC

"Exhibit A"

dated May 4, 1976 at page 32 thereof, plus an additional fair share allocation of 1,333 units for each such municipality; or, shall rezone all of their remaining vacant land suitable for housing in order to permit or allow low and moderate income housing on a ratio of 15% low and 19% moderate income housing units as specifically outlined in this Court's written opinion at pages 33 and 34.

16. All of the various defendants shall cause the enactment or adoption of their respective zoning ordinance amendments to be completed within ninety (90) days of the entry of this Judgment.

17. This Court retains jurisdiction over the pending litigation for the purpose of supervising the full compliance with the terms and conditions of this Judgment.

18. Applications for special relief from the terms and conditions of this Judgment may be entertained by this Court.

19. It is the Judgment of this Court that the plaintiffs have an interest in this litigation which entitles them to standing to represent a class of low and moderate income people.

20. All allegations as to alleged violations of the Federal Civil Rights Act, in such case made and provided, be and are hereby dismissed.

21. Each of the defendants, Township of Cranbury, Township of East Brunswick, Township of Edison, Township of Madison (Old Bridge), Township of Monroe, Township of North

Brunswick, Township of Piscataway, Township of Plainsboro, Borough of Sayreville, Township of South Brunswick and the Borough of South Plainfield, are hereby ordered and directed to make good faith efforts by way of participation in existing or proposed Federal and State subsidy programs for new housing and rehabilitation of existing substandard housing. In implementing this judgment the 11 municipalities charged with fair share allocations must do more than rezone not to exclude the possibility of low and moderate income housing in the allocated amounts. Approvals of multi-family projects, including Planned Unit Developments, should impose mandatory minimums of low and moderate income units. Density incentives may be set. Mobile homes offer a realistic alternative within the reach of moderate and even low income households. Whether single-family housing is attainable for moderate income households may hinge upon land and construction costs. The 11 municipalities should pursue and cooperate in available Federal and State subsidy programs for new housing and rehabilitation of substandard housing, although it is beyond the issues in this litigation to order the expenditure of municipal funds or the allowance of tax abatements.

22. The Third Party Defendants, City of New Brunswick and City of Perth Amboy, be and are hereby dismissed and judgment entered accordingly.

23. With regard to the 11 municipalities referred to in

"Exhibit H

Paragraph 2 above, separate orders of dismissal shall be submitted to the Court under Rule 4:42-1(b) upon enactment of ordinances in full compliance with this judgment.

24. Plaintiff's application for counsel fees is denied; however plaintiffs may apply for costs by separate motions.

It is further ORDERED that a copy of this judgment be forwarded to the respective attorneys within seven (7) days of the date hereof.

David D. Furman, J.S.C.

DAVID D. FURMAN J.S.C.

I hereby consent to the form of the within judgment.

DANIEL A. SEARING, Esq.
Attorney for Plaintiff

I Hereby certify that the foregoing is a true copy of the original on file in my office.

Clerk

Exhibit B

Be it Resolved, by the Township Council of the Township of Old Bridge, County of Middlesex, New Jersey, that:

WHEREAS, the Old Bridge Township Council and Planning Board (hereinafter known as the Council and Planning Board) have been engaged in settlement negotiations with O & Y Old Bridge Development Corp. (hereinafter known as Olympia and York) in order to attempt to settle the litigation presently pending between them; and

WHEREAS, Olympia & York is the owner of 2,565 acres in Old Bridge Township and seeks in that litigation a rezoning of their property in order to permit the construction of over twenty thousand dwelling units; and

WHEREAS, the Council and Planning Board have met repeatedly with Olympia & York and have negotiated with them a number of concessions including the reduction of the residential densities requested from 8 units per acre (20,520 dwelling units) down to 4 units per acre (10,260 dwelling units); and

WHEREAS, the Township Council is of the opinion that Olympia & York's presence as a major developer within the Township will serve to attract major corporate and commercial uses and other tax ratables to Old Bridge Township and that the development which they propose, as modified by the Council and Planning Board in these negotiations, would be an asset to the Township.

NOW, THEREFORE, BE IT RESOLVED as follows:

The Township Council and the Planning Board hereby agree in principle to a settlement of the pending litigation based on appropriate Master Plan and Land Development Ordinance amendments and authorize and direct the planning staff and the attorneys for Planning Board and Council to promptly prepare the following amendments to the Master Plan and Land Development Ordinance for the review and action of the Council and Planning Board and introduction before the Planning Board by August 1, 1982.

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Township Council of the Township of Old Bridge

May 3, 1982

and in that respect a true and correct copy of its minutes.

Mary M. Brown

Clerk of the Township of Old Bridge

Be it Resolved, by the Township Council of the Township of Old Bridge, County of Middlesex, New Jersey, that:

1. A rezoning of the 2,565 acres presently owned by Olympia & York to permit its development as a Planned Unit Development of 10,260 units at a permitted maximum gross density of 4 dwelling units per acre plus office, industrial and retail commercial uses consisting of no less than 10% of the total development acreage, provided that all other conditions of the Land Development Ordinance as amended are met.

2. Provisions assuring that all Planned Unit Developments contribute to the Township's employment base and time the construction of residential and non-residential uses to assure "positive fiscal and non-fiscal impacts" on a stage-by-stage basis. Non-fiscal impact includes but is not limited to considerations of a health, safety and welfare nature such as schools, first aid and fire stations, and other similar type community facilities.

Such provisions shall include:

a. Standardized methodology which shall be utilized by the Township in analyzing and defining "fiscal and non-fiscal impacts".

b. Standards which require that residential construction in each stage be related to some percentage of the total non-residential uses required; such standards shall provide for cessation of residential construction if said percentage of non-residential uses allocated to a given stage are not completed at the completion of residential construction for such stage.

c. Provisions assuring a positive fiscal and non-fiscal impact for each stage to be measured and met prior to the completion of all residential construction in that stage and in any event prior to approval and issuance of residential building permits for the next stage. It remains the prerogative and responsibility of the Planning Board to determine the amount of development permitted for each stage.

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Township Council of the Township of Old Bridge

May 3,1982

and in that respect a true and correct copy of its minutes.

Mary M. Brown
Clerk of the Township of Old Bridge

Exhibit B"

Be it Resolved, by the Township Council of the Township of Old Bridge, County of Middlesex, New Jersey, that:

3. A General Development Plan approval process for Planned Developments which:

   a. Fixes the broad outlines of the proposed development.
   b. Provides vesting for a period greater than 3 years in accordance with the standards set forth in the Municipal Land Use Law (N.J.S.A. - 40:55D-49); and
   c. Requires the payment of appropriate review fees.

4. Amendment of yard, density and design standards affecting Planned Developments in order to permit flexible density ranges within the development.

5. Standards requiring Planned Developments to provide at least 20% of the total area of the Planned Development as open space.

6. The issues in this matter which will also be addressed by Council and Planning Board are to include, but not necessarily limited to the following:

   a. Bulk regulations including area, height and setback requirements.

   b. Provisions for affordable housing for Township residents such as senior citizens and young families.

   c. Location, size and number of Public Community Service Use sites to be dedicated to the Township of Old Bridge.

   d. Vehicular circulation elements particularly as it relates to off-tract impacts.

   e. Environmental considerations, particularly as they relate to storm water management, water supply, and acquifer recharge.

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Township Council of the Township of Old Bridge

May 3, 1982

and in that respect a true and correct copy of its minutes.

Mary M. Brown

Clerk of the Township of Old Bridge

Be it Resolved, by the Township Council of the Township of Old Bridge, County of Middlesex, New Jersey, that:

f. Infrastructure elements, particularly as they relate to sanitary sewerage and water.

g. Filing fees related to the submission of a General Development Plan application for approval.

It is understood and agreed that any applicant under the General Development Plan Ordinance must also receive Preliminary and Final Subdivision and/or Site Plan Approval, whichever the case may be, according to the New Jersey Municipal Land Use Law.

Moved by Mayor Bush, seconded by Councilwoman Smith and so ordered on the following roll call vote:

AYES: Mayor Bush, Councilmen Azzarello, Fineberg, Miller, Smith.

NAYS: None.

ABSENT: Councilmen Blackwell and O'Connell.

(SEAL)

I certify the following to be a true and correct abstract of a resolution regularly passed at a meeting of the Township Council of the Township of Old Bridge

May 3, 1982

and in that respect a true and correct copy of its minutes.

Mary M. Dunn

Clerk of the Township of Old Bridge