

C.N. League v. Corbett

5/28

(1985)

Letter discussing proposed Affordable  
Housing Ordinance draft + comments  
of Alan Mallick

4 pgs

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**K. HOVNANIAN COMPANIES OF NEW JERSEY, INC.**

10 HIGHWAY 35, P.O. BOX 500, RED BANK, NEW JERSEY 07701 ☐ (201) 747-7800

CA000264L

May 28, 1985

Leslie Lefkowitz, Esq.  
Lefkowitz and Zublett  
1500 Finnigans Lane  
Box 3049  
North Brunswick, NJ 08902

H. J.

MAY 30 '85

RE: Civic League of Greater New Brunswick  
vs. Borough of Carteret et al

Dear Les:

Pursuant to your request, we have reviewed the proposed draft of the Affordable Housing Ordinance for North Brunswick Township along with the comments of Alan Mallach set forth in his January 7 memorandum to Bruce Gelber, Esq. and the comments of Bruce Gelber set forth in his January 17 letter to you (hereafter referred to as "Urban League"). In addition to proposing some amendments to the draft ordinance, we will highlight some of the ordinance changes recommended by the Urban League with which we agree and those with which we disagree.

We agree with the Urban League that the term "household" should be substituted in lieu of the term "family" in the definitions of Section III, Section IV F and Section VI B of the draft ordinance. Specifically, household shall be defined to mean all persons living as a single non-profit housekeeping unit whether or not they are related by blood, marriage or otherwise.

Absent income limits for the eleven county present need region, we have no problem with defining regional median income as 94% of the median income for the PMSA where Middlesex County is located.

With respect to the composition of the Affordable Housing Agency, we agree that the membership guidelines may be too specific. Specifically, the membership requirement of a "landlord who owns residential investment property in the Township and is also a Township resident" (Section IV B1.a) could create a bureaucratic snarl delaying the establishment of the Agency. For example, what constitutes "residential investment property"?

Prior to the adoption of the Affordable Housing Ordinance, the role of the Township Council in the operation of the Affordable Housing Agency must be determined. We propose that Section IV D1 regarding promulgation of the rules and regulations should be re-examined in conjunction with Section IV F regarding appeals to the Township Council.

The Agency should be required to promulgate its rules and regulations within 30 days. Thereafter, said rules and regulations may be forwarded to

the Township Council for its review and recommendations within 30 days. The Township Council should not be given the open-ended right to modify the proposed rules and regulations of the Agency.

The Agency should be given a specific timetable for issuing its initial determination. With respect to the appeal mechanism set forth in Section IV F, a specific timetable should be established. Any developer or household applicant may appeal a decision of the Agency within 10 days of the Agency's determination. We think that a workable compromise would be to have the review committee be comprised of three members of the Township Council selected by the Agency to hear said appeals. This committee would have a period of 20 days from the receipt of the appeal to issue its final decision.

With respect to Section IV D4 and Section V D, we propose that the Affordable Housing Plan which shall be recorded immediately after the Master Deed is recorded, which deed shall refer to the Affordable Housing Plan, shall constitute the requisite covenants.

With respect to Section IV D6, we agree with the Urban League that this provision should be amended to permit the Agency to determine whether the cost or value of the installation of improvements or amenities within or as part of a low or moderate income unit should be included in calculating the resale price or rental charge and to establish procedures for obtaining this determination prior to making the improvements or amenities.

We propose that an additional provision be added to Section VI A. This provision should read as follows: "The maximum sales prices shall be adjusted to reflect said recalculations of the regional median income and such recalculation shall occur in June of each year."

We strongly object to the provisions of the proposed ordinance requiring the developer to provide financing for the low and moderate income units (Section VII A2 and Section XI B). These sections should be deleted in their entirety.

We propose that Section VII A2 and Section VII A3 be deleted and the provision discussed in paragraph 11 of Bruce Gelber's letter be substituted in lieu thereof. Said provision provides that the interest rate to be used for calculating the maximum sales price should be the greater of either (1) the current index of one year Treasury bills plus two points or (2) two points less than the best available fixed rate mortgage. This provision was included within the Affordable Housing Plan adopted by the Township of Piscataway.

We take issue with the amendment to Section VII A4 proposed by the Urban League (paragraphs 12 and 13 of Urban League submissions). The proposed amendment is too subjective and contains no standards for determining an "adequate range of affordability." Moreover, under the proposed amendment, the agency has been given the authority to determine the "financial feasibility" of a developer's project.

We propose that Section VII A5 be amended to delete from the first sentence thereof the phrase "in accordance with the financial terms provided by the developer." In addition, we believe that some relief

*Added,  
but Sept. instead  
of June.*

should be afforded to developers in the event that the units cannot be sold to low and moderate income buyers. It is certainly more beneficial to have all units occupied; the existence of unsold units which are not occupied for lack of low and moderate income buyers destroys the economic viability of the project. Accordingly, we propose the following:

Provided that the developer offers for sale within 90 days prior to receipt of a certificate of occupancy, if no low income buyer has signed a contract to purchase or a lease to rent a low income unit within 60 days of the developer's receipt of the certificate of occupancy, or with respect to a resale, within 90 days after the non-developer owner notifies the Agency that the low income unit is on the market available for resale, the low income unit shall be declared to be a moderate income unit for the purposes set forth in the Affordable Housing Plan and for the duration of said plan.

no

Provided that the developer offers for sale within 90 days prior to receipt of a certificate of occupancy, if no moderate income buyer has signed a contract to purchase or a lease to rent a moderate income unit within 60 days of the developer's receipt of the certificate of occupancy, or with respect to a resale, within 90 days of the date upon which the non-developer owner notifies the agency that the moderate income unit is on the market available for resale, the moderate income unit shall be declared to be a market unit and released from the restrictions and provisions of the Affordable Housing Plan. The Agency shall execute and cause to be recorded a statement of reclassification of the low and moderate income units in accordance with the above provisions.

no

We take issue with the amendment to Section VII C3 proposed by the Urban League (paragraph 13 of Mallach letter). The proposed amendment is confusing and difficult to implement.

We agree with the Urban League that the household size bedroom unit as set forth in Section VII D should be amended to three persons.

We propose that the following provision be added to Section VIII A:

Restrictions on the resale of low or moderate income sales units shall expire thirty (30) years from the date of the initial sale of the property or such other lesser time as may be adopted pursuant to subsequent state legislation.

With respect to Section VIII B, the indefinite duration of time that low or moderate income rental units shall remain subject to the requirements of this Chapter may violate the Rule Against Perpetuities.

With respect to Section IX on foreclosure, we propose that the following provision be added:

In the event of foreclosure, the low and moderate income units shall be released from the restrictions of this Chapter and an instrument in recordable form releasing said units shall be delivered to the foreclosing lender by the Agency.

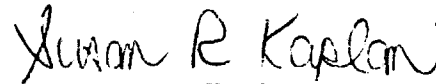
With respect to the affirmative marketing requirements set forth in Section X A, we propose that the Agency be required to prepare a list of any of the "fair housing centers, housing referral organizations and governmental social service and public welfare departments" referenced therein.

We object to the Section XII D requiring the developer to submit bi-monthly reports to the Agency. The information called for in this report is under the domain and within the control of the Agency, and therefore, should be included as part of its required report to the Township Council pursuant to Section IV D9.

We hope that these comments will assist you in revising and refining the draft ordinance and welcome the opportunity for further discussion. We trust that you will continue to invite our input into the ordinance drafting process.

Very truly yours,

K. HOVNIANIAN COMPANIES OF NEW JERSEY, INC.

  
Susan R. Kaplan  
Associate Legal Counsel

SRK/pm

cc: Douglas K. Wolfson, Esq.  
Thomas Vigna, P.P.  
Stewart M. Hutt, Esq.  
Frederick S. Kessler, Esq.  
Barbara Williams, Esq.  
Alan Mallach