

Monroe (1985)

9/30/85

Re: Monroe Compliance Plan

pgs = 4

no p.i.

CA000384L

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Campus at Newark

School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

September 30, 1985

Carla Lerman, P.P.
413 West Englewood Drive
Teaneck, N.J. 07666

RE: Monroe Township
Compliance Plan

Dear Ms. Lerman,

I am writing to state the position of the Urban League plaintiffs with respect to the Monroe Township compliance recommendations that you will be submitting to Judge Serpentelli pursuant to his August 30 Order.

As we understand the Court's Order, and the intention of the Supreme Court in Mount Laurel II, the failure of the defendant township to submit or pursue a suitable compliance proposal frees you to make an independent judgment as to what will best achieve compliance in Monroe. As a practical matter, however, Mount Laurel compliance will be achieved more quickly if the work already put into the Township Council's March 1985 submission and your July review of it do not have to be unnecessarily duplicated and if local wishes can be accommodated. Yet, having washed its hands of the matter, the Township is in our view no longer entitled to the deference it was when it still purported to be moving towards compliance. Therefore, matters in the March 1985 compliance proposal that the Urban League might have been able to accept, if not welcome, in the name of respecting local autonomy, ought now to be scrutinized much more carefully. It is with this perspective that we approach the task at hand and offer the following specific suggestions.

1. Mount Laurel development should be concentrated in the southwest area of the Township.

We believe that both Mount Laurel and sound planning concerns dictate that the inclusionary developments be concentrated in the southwest area of the Township, along Applegarth Road. First, there are three willing and able developers in that section -- Monroe Development, Balantrae and Lori -- and their presence makes it likelier that the long overdue development of lower income housing in Monroe will finally occur in this fair share

CA000384L

~~ROUTED TO FILE 3072~~

period.¹ Spreading the fair share among three rather than two developers, as the Township originally proposed, enhances the likelihood of its development. Second, such concentration assures a sharing of infrastructure costs that will keep down the development costs and thus make a 20 percent set-aside more realistic. Third, such concentration will minimize the isolation of lower income residents and of the associated market-rate units, thereby assuring a meaningful community and increasing the marketability of the market rate units. Thus, we strongly recommend that the Monroe Development site and appropriate proportions of the Balantrae and Lori sites be rezoned for high density development with a 20 percent set-aside for lower income housing.

2. The Balantrae property should not attempt to combine age-restricted and family units in one development.

The Urban League plaintiffs do not believe that the Balantrae development, as proposed in the Township proposal or as modified in your July report, provides a realistic opportunity for provision of low and moderate income housing. By definition, an age-restricted community cannot have unrestricted units interspersed within it. Therefore, the unrestricted units, all of which would be for Mount Laurel households, would have to be scattered in three or four isolated pockets or, as originally conceived, developed as one large project without any opportunity

1 Monroe Development, of course, has firmly established its entitlement to a builder's remedy and for that reason alone should be rezoned with an appropriate density. However, the Urban League plaintiffs would favor its rezoning in any case for the reasons stated in text.

With regard to appropriate density, we note our concern about the recommendation in your previous report that the Monroe Development site should be reduced to a density below that recommended by the Township's compliance plan. Although we agree that most sites can be developed in a range of densities that is both profitable and soundly planned, we can see no justification for protecting the Township against itself where the town has conceded that a higher density is acceptable. The higher density enhances both the attractiveness of the rezoning to the builder and the number of Mount Laurel units produced on the site, and should be recommended under the specific facts of this case.

~~2. The Lori site should, we believe be limited on its eastern flank to prevent undue intrusion into the farmland area, although we note that in its submission the Township did not give this factor any weight in recommending against the Lori site. The size of the Balantrae rezoning would depend on the amount of rezoning on the Lori site and on acceptance of our second recommendation below.~~

to mix Mount Laurel with non-Mount Laurel households.³ Moreover, if the Mount Laurel units were located adjacent to the Monroe Development property to the north, as originally proposed, the balance between Mount Laurel and non-Mount Laurel households in that area would be significantly modified, adversely affecting the marketability of the market-rate units of the Monroe Development project. Finally, we would argue against additional age-restricted development in Monroe Township on grounds of good planning and the need to develop balanced communities, for the number of age-restricted units there is already disproportionately high. Ordinarily, these policy questions are for the Township rather than the Court and Master, so long as they do not impact on Monroe's ability to satisfy its constitutional affordable housing obligation. However, we urge that age-restricted zoning with a family housing set-aside is so incompatible with the Mount Laurel goal that it should not be recommended as a vehicle for coming into compliance. Any age-restricted zoning that Monroe chooses to do, in other words, should come after the compliance plan is implemented, not as a part of that plan.

3. Financial contribution in lieu of set-aside

Careful consideration should also be given to Mr. Hutt's proposal that his development be allowed to proceed with a financial contribution to a properly constituted Mount Laurel trust fund in lieu of actual construction of lower income units. We believe that such financial contributions are beneficial because they permit the Township to limit the total amount of development necessary to achieve the fair share and, even more

³ For this and other reasons, we recommend excluding the Concordia Extension (Whittingham) from the compliance plan. The low income segment would be particularly isolated if only constituting five percent of the residents. Moreover, the development has already received approval from the Township Planning Board and Council and attempts to add a Mount Laurel requirement would doubtless generate new legal proceedings that could hold up provision of the lower income units for a substantial period. This position is not inconsistent with that taken by the Urban League plaintiffs in their motion for restraints in July, for then we were only seeking to prevent the Township from sabotaging the plan it had submitted to the Court and, pending your report and a compliance hearing, we were ~~prepared to assume, prima facie, that the Township's plan was not~~ inconsistent with the requisite realistic opportunity.

⁴ Once the PRC element is removed from the Balantrae site, we see no reason why this project should have less than a 20 percent set-aside, as the developer and the Township originally proposed. Once the project is comparable to the Monroe Development site, the set-aside must be competitive.

significantly from our perspective, they allow the compliance plan to reach the portion of the low income population earning less than 40 percent of median regional income, a group almost never accommodated in inclusionary projects.

We believe that three elements are necessary to an effective trust fund program in Monroe. First, given the Township's history of opposition to Mount Laurel development and its failure to deal forthrightly with the Court, not to mention the plaintiffs, we consider it vital that the trust fund be tightly designed and carefully controlled by the Court to insure that any funds received be used directly, immediately, efficiently, and exclusively for subsidization of lower income housing. As noted, our strong preference is that the funds be limited to subsidizing ownership or rental by those in the lowest income ranges.

Second, the amount of the contribution must be realistic. Mr. Hutt's suggestion of \$750 for each of 720 units is far too low to warrant serious consideration. Our expert estimates that ordinarily the average difference between the maximum permissible sales price and the actual per unit cost of lower income units in an inclusionary project with a 20 percent set-aside is \$15-20,000 per unit. We recognize that this estimate is premised on a more typical high density while Mr. Hutt is proposing a gross density of 1 1/2 units per acre and a net density of approximately 4 per acre. Nevertheless, we are wary about allowing builders to significantly reduce their contribution by opting for lower density projects that take up the same amount of land and are not appreciably less profitable. We believe that, should the concept be viable, as we believe it is, you should consult with Mr. Mallach and the other planners to develop an appropriate contribution for a project of this size.

Third, we believe that if the contribution idea is accepted for Mr. Hutt's site, it should also be incorporated into the new Planned Development Option in the general commercial zone, which was designed primarily for the Forsgate project. Uniformity of contribution not only prevents charges of selectivity but assures competitiveness of comparable projects.

We remain, as always, ready to consult in greater detail about these comments or to have you consult directly with Mr. Mallach. We appreciate the opportunity to provide input into your upcoming compliance plan for Monroe Township.

Sincerely yours,



John Payne, Esq.

Eric Neisser, Esq.

Attorneys for the Urban League
plaintiffs

On behalf of the ACLU of NJ

cc: Monroe Service List
Alan Mallach