

Monroe (1987)

11/11

Letter Memo in Lieu of Brief

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CA0000429D

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REPLY TO:  
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ADMITTED TO BARS OF  
NEW JERSEY &  
NEW YORK

November 11, 1987

State of New Jersey  
Council on Affordable Housing  
707 Alexander Road  
CN 813  
Trenton, N.J. 08625-0813

CA000429D

Re: Urban (Civic) League of Greater New Brunswick v.  
Borough of Carteret (Township of Monroe).

Dear Chairman Kondrup and Members of the Council:

This Letter Memorandum in Lieu of Brief is supplied in support of the Motion of the Civic League for accelerated denial of substantive certification to the Township of Monroe. [hereinafter 'Monroe'].

It has been over nine months since Monroe first submitted its plan to the Council. Other towns who submitted their plans at the same time have been granted substantive certification. But since that time virtually no progress has been made toward the realistic possibility of affordable housing in Monroe. The Township has had two opportunities to present a viable Housing Element to COAH and has failed to do so on both occasions. Its first attempt was determined to be deficient and sent back by COAH staff to Monroe for revision on March 6, 1987. Its second plan on its face presents fatal flaws that mandate an accelerated denial of substantive certification. Moreover, the conduct of the Township of Monroe exhibited prior to the transfer and subsequent thereto provides a further basis for denial of substantive certification at this juncture.

A. The Township of Monroe Housing Element is Deficient on its Face and Transfer to the Office of Administrative Law for a Hearing as a "contested case" will not Remedy the Inherent Defects in the Plan.

On November 2, 1987, Edward J. Boccher Esquire issued his report as Mediator in relation to the above referenced matter. [hereinafter "Boccher Report"] The report succinctly addresses the location of the selected sites and the problems presented thereby:

" The Borough of Jamesburg is completely surrounded by Monroe Township, in typical 'hole in donut' fashion. The housing selected by Monroe Township also encircle the Borough." [Boccher Report p. 2].

\* \* \*

"Obviously, the impact of the Township's proposed Housing Plan upon Jamesburg was of primary importance, coupled with the question of available infrastructure to service both the Township's sites and the sites proposed by the inclusionary developers". [Boccher Report p. 5]

The Boccher Report acknowledges that the foregoing problems as well as others remain "even after the Townships more detailed presentation of September 3, 1987". [Boccher Report p.7]. The following is illustrative:

- Rehabilitation Component: "...[Q]uestions remain as to whether the levels of funding will be adequate". [Boccher Report p.7] In fact, Monroe has done nothing to indicate they will be adequate. To the contrary, as indicated by the Boccher Report: ".....it should be noted that the inclusionary developers have offered to make cash contributions to facilitate such a rehabilitation program, or to actually undertake the rehabilitation on behalf of the Township. These offers have generally been rebuffed by Monroe Township." Id.
- Site 5: "Objections to the site question whether adequate sewer capacity is available as well as whether suitable access is provided." Id. at p.8
- Site 8: "Some access would be provided in Monroe Township but the principal means of access would remain through the existing development in Jamesburg. This site also lies within the Manalapan drainage basin, again raising questions of whether adequate sewer capacity exists to service this development." Id. at p. 9
- Site 6 "Objections generally reflect the criticism that inadequate sewer capacity exists and that access is inadequate or insufficient to accomodate this development. Additionally, environmental questions linger in view of the substantial wetlands." Id.

-Site 6A Serious questions regarding the installation of sewer lines remain and no firm contract has been entered into to [acquire the land].

At best, Monroe has presented a plan consisting of a rehabilitation component which lacks funding and proposed offers of means of funding have been rejected; sites which require access through another town which objects to its plan; lack of sewer capacity which cannot be adequately remedied within the effective duration of the Housing Element, but is not a problem in other areas of the Township; plans for Site 6 which contain all the foregoing deficiencies plus wetlands; and an alleged plan for Site 6A which is illusory having been based upon a sale of land that is not under contract to be sold, contains no timetable and even lacks knowledge as to where the current occupants of the property are to go if the property is to be rehabilitated.

The burden remains upon Monroe to submit a workable plan. Having submitted a plan which on its fact does not present a realistic opportunity for low and moderate income housing, the Council on Affordable Housing should take direct action and deny substantive certification on an accelerated basis. The burden should not be upon the objectors in this or any other case to endure the expense and time delays associated with a hearing, when the plan, even giving Monroe every benefit of the doubt, patently fails to meet the criteria of COAH. If the rules and regulations of COAH are to be given any credence, this deficient plan should be dealt a death blow in its incipient stages without shifting the burden to objectors to defeat it through the vehicle of a hearing.

The foregoing problems outlined in the Boccher Report are not all inclusive. On June 29, 1987, under signature of Audrey Winkler, Principal Planner, COAH Staff outlined additional concerns -- none of which Monroe addressed in mediation despite demands that they do so. Accordingly, these matters remain outstanding and represent further deficiencies in the plan which a hearing will not remedy:

-Housing Element: "Information is lacking in the following areas: average values of purchase and rental housing, number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated." Staff Report p.1

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- Site 5: "As the site poses some serious access problems, additional information and documentation is necessary in order for the Council to be in a position to assess site suitability." Id at p.3.
- Site 6: "...has limited sewer capacity and would have to construct a line to the Jamesburg Pumping Station which is currently being co-ordinated with the Municipal Utility Authority".
- Site 6A: "However, information was not submitted as to the six acres to be used." ... "Finally, the Township states it applied for and was denied Balanced Housing Funding from DCA to rehabilitate the area. Documentation regarding date of application and reasons for rejection were not included in the plan."
- Site 8: "The site contains no direct road access". However, documentation should be submitted to verify that sharing of the collector system and utilities is agreeable to the owners of Beaver Brook Manor."p.8

It is further to be noted that Monroe has failed to address in any fashion the additional matters raised by the Civic League and Jamesburg by means of its objections to the Plan. These matters are discussed in Point B infra.

It is submitted that it should be incumbent upon Monroe to provide this information to COAH and to the objectors and the validity of its plan should be assessed on the information - or the lack of it - presented by the applicant. The Objectors should not be required to dig out answers from Monroe by means of a hearing. The failure of Monroe to even attempt to address the concerns of the COAH staff or provide proper solutions to the problems raised by its choice of sites in the mediation process must serve as a basis for accelerated denial.

B. The Monroe Plan Constitutes a Continuation of "Bad Faith" on the Part of the Township, and Mandates an Accelerated Denial of Substantive Certification.

The Housing Element submitted by Monroe must be viewed in light of the historical actions of the Township in this matter. Accordingly, a short divergence to the brief of the Civic League before the Supreme Court of New Jersey in 1985 is in order to provide the requisite context:

"Monroe's compliance plan was not submitted to the Court until March 29, 1985, after seven months of meetings with the Master and Monroe's specially retained planner. Monroe's Mayor (State Senator Gerabaldi) did not act on the resolution of submission adopted 3-2 by the Council, and also refused to authorize payment to the Master, the retained planning firm, and the township's own attorney for their services in preparing the compliance plan. Judge Serpentelli accepted the compliance plan without the Mayor's signature, but ordered that the Master and the consultants be paid, an issue which Monroe then sought to take to the Appellate Division...."

While the Township's compliance plan was under consideration by the Master, the Monroe Planning Board and Township Council voted to approve the Whittingham project, without any Mt. Laurel set aside, even though the Township's Plan included 100 lower income units from this development. As a result, on July 25, 1985, the Court provided the Township with two compliance options. First, it could rescind the Whittingham approval. Second, the Court stated it would reduce the township's fair-share by 100 units (presumably, the amount that would be lost by the Whittingham development without a set-aside) if it would voluntarily comply. On August 2, 1985, the Council informed the Court in writing it had unanimously rejected both options; the Court accordingly found the Township's compliance plan void and directed the Master to draft her own plan by October 7.

Meanwhile, on August 5, 1985, the Township Council adopted a major revision to its zoning ordinance, permitting substantial residential construction without a set-aside or development fee as an option within the general commercial zone, in response to a request by the developer of the Forsgate project. Under the ordinance amendment adopted, that project could build some 700 residential units without a set aside. Although the Master was known to be considering recommending that the Forsgate project make some contribution to the lower income fair share obligation, the Monroe Planning Board granted overall development approval of that project on November 18, 1985." Civic League brief to the New Jersey Supreme Court p. 5-6. It is to be noted that the case was transferred to COAH before the Master's report could be rendered.

This past conduct of Monroe is hardly an exhibition of good faith. The Township has defied court orders to pay its own representatives; it has approved projects in violation of its constitutional mandate; and it has historically refused to act in support of its obligation to provide low and moderate income housing. Its Housing Element represents only a continuation of this bad faith conduct.

Monroe presented its first plan on January 5, 1987. It was rejected by COAH as being unacceptable on March 2, 1987.

Its second plan represents no more than another attempt by Monroe to present a plan motivated by a will not to comply with its constitutional obligation which has been consistently demonstrated throughout this litigation. As such, it is no more than an empty shell which seeks to delude others while providing nothing. The plan fails on its face by any definition of "realistic possibility".

Monroe developed and submitted a second plan which by the consensus of staff, the Mediator, Allan Mallach, and Jamesburg itself impacts severely on Jamesburg. The proximity of the sites, the infrastructure, the traffic problems, the emergency services etc. are a major burden upon Jamesburg, not Monroe. Yet it failed to even consult with Jamesburg prior to submission of such a plan.

Despite the approximately 44 acres which comprise Monroe its plan concentrates its proposed housing in one area of limited sewer capacity. Even on a best case basis, the demands of the plan exceed the existing capacity. Yet other locations are available where sufficient sewer capacity is not a problem.

The plan is premised upon a rehabilitation plan of unknown funding and upon the redevelopment of unspecified parcels, owned by individuals who have not legally committed to sell, without any enunciation the details of exactly how and in what manner this redevelopment is to occur.

Moreover, the concerns of Jamesburg and the Urban League in its objections remain unanswered by Monroe. These concerns include and are not limited to the following:

- No feasibility studies as to water service.  
[Jamesburg p. 2]
- Dependency on Jamesburg emergency services.  
[Jamesburg p.3]
- Lack of sewer capacity in the Manalapan Basin  
[Jamesburg p. 1]
- Traffic pattern problems  
[Jamesburg p.4]
- Failure of the Rehabilitation Plan to meet the

requirements of N.J.A.C. 5:92-11.5

- [Civic League p.2]
- Lack of adequate funding for Rehabilitation  
[Civic League p. 3]
- Lack of evidence rehabilitation plan will be actively promoted.  
[Civic League p. 3]

Site 5

- No access to existing streets  
[Civic League p. 5]
- No map presented showing total site area  
[Civic League p. 5]
- no indication of access to Half Acre Road provided  
[Civic League p. 5]
- no demonstration land can reasonably be used at proposed density  
[Civic League p.6]
- no indication acceptable to Jamesburg  
[Civic League p. 6]
- detailed soil/slope documentation not provided  
[Civic League p. 6]
- no site plan of entire site provided.  
[Civic League p. 6]

Site 6

- wetland and floodplain constraints and effect on development not determined  
[Civic League p. 7]
- limited access to subject site  
[Civic League p. 7]
- potential signalization of Jamesburg-Englishtown Rd.  
[Civic League p. 7]
- problems of integration with surrounding single family homes  
[Civic League p. 7]

Site 6A

- no documentation provided as to:
  - the proposed activities to be carried out
  - the source of funding for the infrastructure or for demolition of vacant buildings
- the source of supplemental rehabilitation funds remain unspecified
- the ownership patterns of land upon which the units are to be built is not delineated
- no demonstration of how the units are to be provided.  
[Civic League p.8]



Site 8

- Landlocked parcel  
[Civic League p.9]
- irregular topographical condition  
[Civic League p.9]
- no establishment by Monroe the site is physically  
suitable  
[Civic League p.9]
- no establishment by Monroe access available  
physically and legally  
[Civic League p. 9]

General Concerns

- public access only through another municipality
- impact on infrastructure of Jamesburg
- availability of capacity in Matchaponix Basin not  
being utilized
- concentration of lower income and Black community in  
only one specific area of Monroe  
[Civic League p. 11]

Proposed Ordinances

- Specific Objections to Ordinances as Drafted  
Enunciated  
[Civic League p. 12-13]

Given all of the forgoing problems inherent in the plan, it is submitted that the "plan" is a chimera, designed to delay and to deflect the possibility of low and moderate income housing in Monroe. As such, it should not be given credence and substantive certification should be denied at the earliest opportunity.

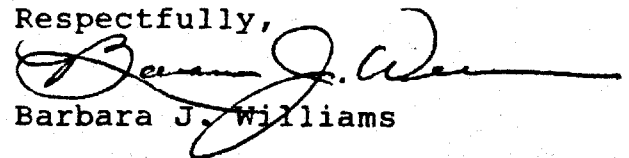
The mediation process has become a further exemplification of Monroe's recalcitrance. Despite valiant efforts on the part of the Mediator, virtually no agreement as to any issue was reached by Monroe. While the Mediator's Report deals with access and sewer issues, it is to be noted that none of the other objections of the Civic League were withdrawn or an agreement reached as to them. The requests for information set forth in the objections of the Civic League were reiterated at the meeting of September 3, 1987, but remain outstanding and unanswered.

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It is submitted that a line must be drawn. Over a decade has elapsed since the inception of this litigation. Even an expedited hearing is a delay that cannot be countenanced, given the continued pattern of conduct of Monroe which has not abated in this forum.

It is respectfully submitted that the time to draw the line is now. Monroe must be required to account for its actions. When the professed and exhibited goal is not to provide low and moderate income housing and to ensure that even its possibility is remote, it is time for the Council to act to insure that the result is reflective of the goals it seeks to promote. Only in such a manner will the possibility of low and moderate income housing in Monroe become a reality.

Respectfully,

A handwritten signature in cursive script, appearing to read "Barbara J. Williams", written in black ink.

Barbara J. Williams

BJW/Jph  
enclosures  
cc: Monroe Mailing List