

U.L. v. Cartered
S. Brms.

15 October 198

Letter from Neisser to Joe re:
final comments.

Pgs 5

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PAYNE

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Campus at Newark

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

October 15, 1985

Joseph Benedict, Esq.
Benedict & Altman
247 Livingston Avenue
New Brunswick, New Jersey 08902

Dear Joe,

Many thanks for the package of materials delivered on September 26 and for Seth Barton's letter of September 30 enclosed with your note of October 4. I am sorry that I have not been able to get back to you sooner, but the press of dealing with a variety of your colleagues who incorrectly thought that the Housing Act's transfer provision applied to the Urban League case has necessarily slowed me down.

I have now reviewed all the materials and would be ready to give you final comments on everything, including the ordinance language, were it not for the fact that Alan Mallach is out of the country until the end of this week and I must consult with him on a number of outstanding, mostly minor matters. I am therefore only able to tell you now the most important thing -- that we are in complete agreement as to the sites and that your chart as to the fair share is correct except for a number of minor mathematical errors. These errors were a result of failing to use the precise acreage on two sites noted in your re-draft of the Consent Order and failing to round up to the nearest whole number any fraction of .5 unit or greater. I enclose a marked copy of your 8/12/85 Chart so you can see the corrections. These corrections lead to a grand total of 1923 fair share units of which 100 are additional subsidized units not tied to a particular site and 54 are credit for the Charleston Place development. Thus, the site specific rezoning required by the Consent Order is 1769, which is the number agreed upon in January when we compromised the loss from the MH zone revision. See Bruce Gelber's letter of January 17, page 1.

I would appreciate your sending us copies of the relevant pages or portions of pages from the tax maps for each site so that we can independently verify the acreage stated in the Consent Order and Chart.

With regard to the Consent Order, I think there are only two outstanding problems -- your new proposed conditions for development of the Town Center and the Dean/Rhode Hall Road sites. As previously indicated, we had agreed to condition the Town Center upon the completion of that portion of 522 that would link the Town Center to

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Route 1. I recognize that Seth Barton's letter says that the state expects to complete the portion from the Town Center to Kingston Lane before doing the portion from Route 1 to the Town center. Nevertheless, given the vagaries of state budgets and plans, I think it best to specify only those conditions that are relevant to the development. If it works out that they finish through to Kingston Lane before they get to Route 1, so much better for the Township. If not, we still want the development to go forward.

As to Dean/Rhode Hall Lane, we remain confused because Dean Lane already continues west of the site, according to the map you sent us, and Route 130 already meets Georges Road. I assume, therefore, that you are talking about a new road through the Weisenfeld property. We can discuss the size of road and the need for it when Alan gets back.

With regard to the suggestion in your August 14 letter about the critical area provision, we agree that the sites in the Consent Order should be exempted from that section but that some provision should be added to permit sound planning to deal with specific environmental problems within the specified sites. We are not, however, agreeable, as I told you, to a general provision that would suggest that the suitability of these sites for high-density multi-family development could be reconsidered at a later date by the Planning Board or other township officials. We thus suggest some language such as the following:

In the event that there are critical areas within the sites specified in this Order, which are agreed to be generally suitable for the development permitted by the zoning specified herein, site planning shall be performed in a manner to avoid substantial adverse impact on those areas.

With regard to your request about the possibility of regional contribution agreements, we have no objection to including such a provision, as long as it is clear that the agreements must be agreed to by the plaintiffs, as well as approved by the Council and Court in accordance with the statute, and that any such agreement(s) must first be used to satisfy the unspecified 100 units of the fair share.

As to the request of Mr. Gruber's client, let me reiterate that the zoning provided by the Order does not, of course, preclude development at a lesser density than that authorized as of right, but it most assuredly precludes development of fewer lower income units

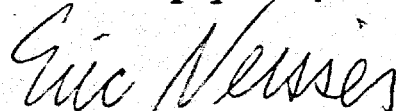
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than 20 percent of the total number of units authorized by the maximum of-right density. See, e.g., your draft of Section 2 of "Other Requirements Applicable to PRD VII" under the revision of 16-62.2, which is on the top of your unnumbered 13th page. (This reference does not mean that I accept your revised wording of that section.) As I mentioned to you and Mr. Gruber, alternatives do exist, however. A developer wishing to use a lower density might, for example, produce 20 or 25 percent of his/her actual total units and then make a monetary contribution equal to the amount necessary to subsidize the additional lower income units required on the site by the rezoning. That money could be used to subsidize existing or new construction of the units "lost" on the developed site by use of the lower density. We would be willing to discuss such an alternative on an individual site basis, or perhaps even to develop a general formula, but we will not agree to drop densities and hence the total number of lower income units from a site unless the Township offers to rezone additional sites to make up the difference.

Finally, as to the matter of the timing of submission of the zoning ordinance, we would like to include the agreed upon ordinance in the Consent Order, as originally planned. As you will recall, Barbara had suggested deleting it from the Order during the summer in the hope of getting the Consent Order signed then. Given the subsequent delays, I see no reason not to complete agreement on everything and include it as one package. We have, of course, no desire to exclude the statutorily required public hearing on the ordinance, but our experience elsewhere indicates that this should prove no obstacle to binding settlement. The Township Committee would review the Order and ordinance in closed session for discussion of litigation matters and then authorize you to sign the Consent Order. Once the Judge has signed the Order, presumably after Carla has found the Order and ordinance satisfactory, the Committee could go through the formal process of enactment, including the public meeting. Of course, the Township would not get a final judgment of compliance and repose unless it passes a compliant ordinance.

I hope the above clarifies a few of the outstanding matters. I will get you a complete set of comments on the ordinance language next week after speaking with Alan. I look forward to completing this matter and submitting it to Carla and the Judge in the very near future.

Sincerely yours,



Eric Neisser

cc/Alan Mallach
Roy Epps
encls

PROPOSED DESIGNATED SITES FOR PROVISION OF LOW-MODERATE
INCOME HOUSING

	<u>Acres/Zone</u>	<u>Total Potential Units</u>	<u>Low Income</u>	<u>Intermediate Income Units</u>	<u>Moderate Income Units</u>	<u>Total Low/Mod.</u>	<u>%Low/Mod. Income Units of Total</u>
A. TRACTS SUBJECT TO MANDATORY SET ASIDE							
St. Augustine's	35/PRD VII	245	12	13	24	49	20%
Town Center	472/PRD VII T.C.	3304	165	165	330	660	20%
Municipal Complex	92/PRD VII	644	32	32	65	129	20%
Georges Road	224/PRD VII	1568	78	79	157	314	20%
St. Cecilia's	8.5/PRD VII	<u>60</u>	<u>3</u>	<u>3</u>	<u>6</u>	<u>12</u>	20%
	Sub-Totals	5820	290	293	583	1165	
B. SUBSIDIZED HOUSING PROJECTS							
Charleston Place	5/MF	30	14	-0-	16	30	100%
Eastern Prop./Rt. 27	6/MF	40	40	-0-	-0-	40	100%
Xebec/Black Horse Lane	6/--	40	40	-0-	-0-	40	100%
Whispering Woods/ Route 522	6/--	<u>39</u>	<u>13</u>	<u>13</u>	<u>13</u>	<u>39</u>	100%
	Sub-Totals	149	107	13	29	149	
C. ADDITIONAL SUBSIDIZED UNITS							
		<u>100</u>				<u>100</u>	100%
	Sub-Totals	100				100	

8/12/85

10/15/85 - EN

	<u>Acres/Zone</u>	<u>Total Potential Units</u>	<u>Low Income</u>	<u>Intermediate Income Units</u>	<u>Moderate Income Units</u>	<u>Total Low/Mod.</u>	<u>%Low/Mod. Income Units of Total</u>
<u>D. MOBILE/MANUFACTURED HOUSING</u>							
Deans/Rhode Hall Rd./ Route 130 (Weisenfeld)	165/MH	908	75	76	76	227	25%
Deans/Rhode Hall Rd./ Route 130 (Eckert)	² 23/MH	128	10	10	11	32	25%
Culver Road	^{1.5} 142/MH	784	65	65	66	196	25%
	Sub-Totals	1820	150	152	153	455	
<u>E. CREDIT FOR PREVIOUSLY BUILT UNITS</u>							
Charleston Place		54	26	-0-	28	54	100%
	Sub-Totals	54	26	-0-	28	54	
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GRAND TOTAL		7944	573	457	793	1923	

1823

8/12/85
10/15/85 - GN