

U.L. v. Cateret, Piscataway 10/31/84 1984

- memorandum: re Kltov's Proposal For Development

Pgs. 5

NO P.I.L.

CA000 ~~747~~ ~~0~~ D
766

NOV 05 REC'D

National Committee Against Discrimination in Housing

733 15th Street, N.W., Washington, D.C. 20005 • (202) 783-8150

MEMORANDUM

October 31, 1984

PRESIDENT

Robert C. Weaver

CHAIRMAN

Harold C. Fleming

VICE PRESIDENTS

Sol Reskin

Ruth Robbins

Kale A. Williams

SECRETARY

Madison S. Jones

TREASURER

Samuel J. Simmons

ASSISTANT TREASURER

Martin E. Slocum

DIRECTORS

Betty Adams

Arnold Aronson

Ben Barkin

Joseph Battle

Dale F. Bertsch

Philip Brownstein

Harrington Bruce

Yvonne Ercinwald Burke

Adrian De Wind, Esq.

Charles T. Duncan

Robert Emory, Jr.

Christopher E. Eoley

Robert Raymond Elliott

Dwight M. Ellis

Margaret Fisher

Herbert Franklin

Fred Fraberg

Jose Gorzo

Marvin S. Guzman

Donald Harris

LeDonna Harris

Dorothy I. Hecht

Norman Hill

Noris Irvine

Joy Jones

Bruce Llewellyn

Leon Lynch

Myrna Loy

Cyril Magnin

Melvin Mister

William C. Oliver

Lee Porter

William F. Rafsky

Marvin Rich

Dorothy Ridings

James S. Robinson

Patricia Rouse

Dr. Juliet Saltman

Henry Schechter

Althea Simmons

William Tisdale

Gregg Watson

Barbara Wurtzel

EXECUTIVE DIRECTOR

Martin E. Slocum

GENERAL COUNSEL

Bruce S. Gelber

TO: Donald R. Daines, Associate Legal Counsel, K. Hovnanian Companies of New Jersey, Inc.
Lester Nebenzahl, P.P., AICP, Township Planner
Philip Paley, Esq., Township Attorney

FROM: Bruce S. Gelber, Esq.

RE: K. Hovnanian Companies' Proposal for Development of Affordable Housing at Society Hill at Piscataway

I am one of the attorneys representing the Urban League plaintiffs in the Urban League - Mt. Laurel II litigation against Piscataway Township.

I recently received copies of a document entitled "Conceptual Plan For Development of Affordable Condominium Homes in the Proposed Society Hill at Piscataway," dated September 13, 1984, and two memoranda from Donald Daines to Lester Nebenzahl dated September 14 and 19, 1984, respectively. I have reviewed these documents with our planning consultant and have the following comments regarding the developer's affordable housing proposal.

Basically, we believe that this is a reasonable and sound proposal that contains a number of innovative and attractive features. Nevertheless, for the reasons set forth below having to do primarily with the determination of affordable sales prices, we believe that the draft proposal is not fully consistent with Mount Laurel II and does not ensure that the proposed housing

will in fact be affordable to low and moderate income households. Unless these concerns are addressed, we will be constrained to oppose allowing the Township to "credit" these units toward its fair share obligation and may have to take other appropriate action to protect the interests of our clients.

Our concerns about the developer's affordable housing proposal fall into the following areas.

(1) Median Income:

~~The Concept Plan for Society Hill~~ employs the median income for the PMSA, rather than the median income for the Mt. Laurel housing region, in determining affordable sales prices and rental charges. (See, e.g., Sections 1.01(A)(3), 1.20 and 1.26): Carla Lerman's Fair Share Report of April 2, 1984, concludes that the median income for the 11-county region should be used in determining affordability of Mt. Laurel housing. This usage is based on the premise that when one builds housing designed to meet the needs of a larger region in a PMSA whose median income exceeds that of the larger region, use of the PMSA figures penalizes lower income households in the balance of the region by making the housing unaffordable to them. For this reason, the consensus group in the Urban League case recommended that the median income for the entire 11-county region be used for purposes of determining affordability and housing prices.

Because calculation of the regional median income may involve several steps, in a number of settlements we proposed that 94% of the median income for the Middlesex-Somerset-Hunterdon PMSA be used in determining affordable sales prices and rental charges. This figure, however, is merely a shorthand to arrive at the median income for the 11-county region. It is based on the relationship between the PMSA's median income and that of the larger region, and has nothing to do with the median income of any particular municipality. Accordingly, to equate the PMSA median income to that of the 11-county region (See Section 1.26) or to suggest that "no adjustment is necessary" because Piscataway's median income is equal to that of the PMSA is wrong as a matter of fact and misconceives the nature of the shorthand formula used for calculating regional median income.

In light of the above, we firmly believe that the Concept Plan should use either the regional median income or a shorthand formula, such as 94% of the PMSA median income, for determining affordable sales prices and rental charges. In addition, the definitions of Low and Moderate Income Family must be modified to ensure they are consistent with these changes.

(2) Family Size:

We strongly object to the Concept Plan's use of income figures for a four person household to determine the affordable sales price or rental charge for a two bedroom unit. By doing so, the range of affordability of that unit is drastically reduced, and virtually no household other than a four person household will be able to qualify for the unit. In this regard, the square footage of the unit is irrelevant to the question of whether the sales price or rental charge is affordable to low or moderate income households.

Mr. Daines' letter of September 19, 1984, is in error regarding the prevailing standard. Ms. Lerman's Expert Report in the Urban League case employs income figures for a three person household in determining affordable prices for a two bedroom unit. Although it is true that the East Brunswick settlement (which was negotiated prior to preparation of Ms. Lerman's Report) uses income figures for a 3.5 person household for this size unit, all subsequent settlements have incorporated the standard contained in the Lerman Report. The standard used in the Lincoln Park settlement, to which Mr. Daines refers, has since been modified to conform to that in the Lerman Report as well. Indeed, so far as we know, no court has approved any settlement or issued any order pursuant to Mt. Laurel II which adopts the four-person household standard proposed in the Society Hill Concept Plan.

(3) Housing Coefficients:

While we have no objection to the method used in calculating affordable sales prices, as set forth in Mr. Daines' memorandum of September 14, 1984, there does appear to be an error in the table of interest rates and cost coefficients. Specifically, the row marked 14% actually provides the coefficient for a 13% mortgage; the row marked 13% provides the coefficient for a 12% mortgage; and so forth. This error affects the calculation of affordable sales prices.

In addition, the figures for both insurance and condominium fees are significantly below typical levels. If, however, the developer is in a position to ensure that these costs will in fact apply, we would have no objection to the use of these coefficients.

Based on the calculations provided on the attached sheet and taking into account the problems noted above, we have computed the maximum affordable sales prices and rental charges for the lower income units at Society Hill to be as follows:

MAXIMUM SALES PRICES BASED ON 14% MORTGAGE INTEREST RATE:

	LOW INCOME	MODERATE INCOME
2 BEDROOM	\$22,900	\$36,500
3 BEDROOM	\$27,400	\$43,200

MAXIMUM RENTS (EXCLUDING UTILITIES)

	LOW INCOME	MODERATE INCOME
2 BEDROOM	\$251	\$444
3 BEDROOM	\$295	\$517

It is understood, however, that if mortgage interest rates decline, if a reasonable buydown is provided, or if NJMFA mortgage funds are available, it may be possible to increase these sales prices.

(4) Additional Comments:

In addition to the more fundamental problems addressed above, we have several additional comments regarding the Affordable Housing Plan for Society Hill at Piscataway.

(a) The provision that the developer have the option of further reducing the selling price, or renting the units, if the mortgage interest rate exceeds 14% is a reasonable one, and adequately balances the interests of the developer and the needs of lower income households.

(b) The general approach to resale controls and to maintenance of the affordability of lower income units appears reasonable. Two questions which arise in this regard are whether the Township of Piscataway has agreed to establish the Affordable Housing Agency described in the Concept Plan and what methods and criteria will be used in calculating the resale price for lower income units.

(c) While the definition of Qualified Purchaser (Section 1.25) provides that the Affordable Housing Agency will be responsible for qualifying prospective purchasers or renters as lower income families prior to the sale or rental of a lower income unit, the definitions of Low and Moderate Income Family (Sections 1.13 and 1.22) imply that the developer may also perform this function. To avoid confusion, you may want to clarify that qualification of prospective purchasers and renters as "lower income families" is in fact the responsibility of the Affordable Housing Agency.

(d) The proposed standard for allowing buyers to qualify on the basis of a buydown (Section 1.01(A)(1)) is excessive. In order to protect the long-term interests of the lower income homebuyers and avoid unreasonably inflating the price of the unit, the rate of increase should not exceed 0.5% per year if the interest rate for the first year of the buydown is to be used in calculating the sales price.

(e) Finally, the phasing requirement contained in Section 19 permits the developer to build 40% of the market units before building a single low or moderate income unit. Because we believe that this standard is inconsistent with the phasing requirement of Mt. Laurel II, we would recommend that, at a minimum, certificates of occupancy for no more than 20% of the market units be issued until at least some of the lower income units, say 10-20%, have been completed. In addition, the fact that the phasing requirement allows the developer to receive certificates of occupancy for all of its market units after receiving certificates of occupancy for only 70% of the lower income units clearly places the remaining 30% of the set aside units in jeopardy. Accordingly, we would recommend that certificates of occupancy be withheld on at least 10% of the market units until all of the lower income units have been completed.

I hope these comments have been helpful. I appreciate having had the opportunity to review the Concept Plan for Society Hill at Piscataway. Because of the complexity of the issues raised by this effort and its impact on the Urban League litigation, I would also appreciate being kept advised as to any changes in the Plan and any other developments relating to the project.

If you have any questions in this regard please feel free to contact me.

cc: Barbara Williams, Esq.
Angelo Balto, Esq.
Chris Nelson, Esq.
Michele Donato, Esq.
Alan Malleck
C. Roy Epps