

~~U.S. District Court~~

16 December 1977

CA - Sayreville

Letter from Mallach to Roger re:  
submissions + representations  
made by Borough of Sayreville.

Pgs 6

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December 16, 1977

Roger Rosenthal, Esq.  
Staff Attorney  
National Committee against  
Discrimination in Housing  
1425 H Street, N.W.  
Washington, D.C. 20005

Dear Roger:

At your request, during the past two weeks, we have evaluated in some detail the submissions and representations made by the Borough of Sayreville in the matter of Urban League of Greater New Brunswick v. Borough of Carteret et al., as included in material submitted by Alan J. Karcher on October 7 and November 30, 1977, and in additional telephone conversations.

To begin, we recognize that a number of significant steps have been taken by the Borough of Sayreville, in terms of both changes in zoning and other affirmative actions, to make possible improved housing opportunities within the Borough. We feel that the Borough has covered a good deal of the distance called for in Judge Furman's decision, and that it should be commended. We feel, however, as discussed in detail below, that there are certain additional steps necessary before it is in the interest of plaintiffs to agree to an Order of Compliance in this matter. Below, we will first discuss all of the points raised by Mr. Karcher and Mr. Chadwick in the submission of October 7, as subsequently supplemented; then, we will discuss matters omitted, and in our judgement relevant, and our recommendations for plaintiffs' response to this submission.

(1) actions carried out in the context of the Sayreville Community Development Block Grant (CDBG) program. The Borough has carried out four actions, of which two are procedural and two substantive: (a) appointment of a CDBG administrator; (b) designation of Borough Council as an LHA; (c) application for 50 units of existing Section 8 subsidy; and (d) processed (42 to date) applications for home improvement loans for low and moderate income families.

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It should be stressed that these actions were carried out, not as a result of this litigation, but as the result of their being imposed as express conditions of continued CDBG funding by HUD (see letter from HUD Area Office Director dated July 12, 1977). Although this does not change their substance, it raises questions as to the weight that should be given these actions as good faith responses to Judge Furman's decision. In addition, it should be noted that the Section 8 units for which application was made represent 25 1 bedroom units, and 25 2 bedroom units, all in existing housing. This is a modest step.

(2) zoning ordinance amendment (Ordinance No.1213) providing for low and moderate income senior citizens housing. This is also a positive step, in that it allows senior citizen housing as a conditional use in all residential zones. There are, however, certain specific problems with this ordinance as a means to facilitate housing opportunity:

(a) it does not extend the same opportunity to non-senior citizen low and moderate income households (this point is discussed more below)

(b) in paragraph 2, it states "housing shall conform to all the requirements and guidelines established by HUD and the NJ HFA, whichever are the more stringent, with regard to cost limitations, construction, etc." This is unreasonable, and should be changed to refer to the standards of whichever agency is funding the development at issue.

(c) developments must have a minimum of 90 units and 5 acres. This is excessive.

(d) two bedroom units are not permitted. It is generally held that a moderate number of two bedroom units, in the vicinity of 10% should be included in senior citizens housing developments.

(3) tax abatement. We commend the Borough on having granted tax abatement for the development proposed by Concept Building Industries, Inc. We have not received an answer to the more significant issue; i.e., whether the Borough, as a matter of general principle, will provide tax abatement for future developments of similarly low and moderate income character.

(4) rezoning of 174.7 acres from M-2 (heavy industry) to G-1. We have some serious questions about this action, and its implications. As indicated in the map provided by Mr. Karcher in response to our request for additional material, the area in question is located in the southern corner of the Borough. According to Mr. Karcher's letter "at least half (of the site) is developable in its present condition". A review of the flood hazard areas delineation map provided by the New Jersey Department of Environmental Protection suggests that between 70%

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and 75% of the site is in the flood hazard zone.

The status of the development proposal referred to in Mr. Karcher's letter is also at issue. No submission has been made to the planning board of the Borough, and a representative of Abbington-Ney, the firm referred to in Mr. Karcher's letter, informed us that after beginning the planning and engineering work, they were instructed by the landowner to cease work as of mid-October, and have not been contacted by the owner since. We are trying to obtain additional details on this point. It should go without saying that the State is not likely to be sympathetic to the scale of the potential incursion on flood hazard land involved here.

(5) adoption of ordinance providing for mobile home parks. This appears, from a cursory review, to be a reasonable ordinance for that purpose (Ordinance No. 1227). It should be noted that mobile home parks can be established, under the zoning ordinance, only in the zone created as per our point no. 4 immediately above.

(6) granting of preliminary approval to two PUD developments. The borough has given preliminary approval to two developments in PUD zones totalling 647 residential units. In order to determine whether these units can legitimately be considered a contribution toward meeting of Sayreville's fair share, we obtained the names of the developers from Mr. Chadwick (who had no information, himself, on this point), and contacted them directly. The information is as follows:

(a) River End PUD will contain (a) 260 apartment units, containing roughly 50% 1 and 50% 2 bedroom units, renting for \$250-\$270/month for 1 BR units, and \$310-\$320/month for two bedroom units; (b) 82 townhouse units, containing roughly 50% 2 and 50% 3 bedroom units. Rents are not determined, but will be over \$400/month.

(b) Blue Springs PUD will contain a total of 305 units divided as follows: (1) 15 single family detached units, selling for \$65,000 to \$80,000; (2) 150 townhouses, divided equally between 2 and 3 bedroom units, selling for \$50,000 or more; and (3) 140 garden apartments, 75% 1 bedroom and 25% 2 bedroom, renting for an undetermined amount over \$300/month.

It is certainly questionable whether the Blue Springs PUD can be considered least cost housing by any reasonable standard, and at all relevant to fair share considerations. As far as River End is concerned, it is possibly to be considered least cost housing, at least the apartment units involved. In any event, we are dealing here with a modest contribution to the fair share goal.

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Furthermore, the developer of the Blue Springs PUD, in conversation with this office, noted that there are still certain cost-generating provisions in the PUD ordinance, notably (a) the low gross density possible of 4 DUs/acre; and (b) the elaborate timing provisions requiring that certain non-residential uses be developed prior to development of housing. Both of these increase costs, in particularly the latter, which increases carrying costs, since it extends the length of time required to develop the housing. Both of these provisions were the subject of trial testimony. In conclusion, there is serious question as to how much weight to give these PUD approvals as an element toward meeting fair share goals; they include no subsidized housing units, and only a small percentage of the units to be build can be considered by a reasonable standard 'least cost housing'.

The above mentioned points deal with the actions described in Mr. Karcher's submissions as representing compliance with the Urban League decision. We turn now to those areas, in our judgement relevant to the fair share goals of that decision, which do not appear to be reflected in the Borough's submission. It is a general assumption, reflected in the language of the Urban League decision, that the class for which fair share is intended includes in large part families and individuals needing subsidization to be housed; and that those families and individuals include non-elderly as well as elderly households. In evaluating the Sayreville submission, it is apparent that these different elements are not served equally by the Borough's actions.

Senior citizens requiring subsidization are best served, in view of the broad scope of Ordinance 1213. Here there appears to be a committment to meeting housing needs, which should be strengthened by making the modifications needed in that ordinance, and by making the good faith committment to provide tax abatement to future dvelopments similar to the one recently approved by Borough Council.

Non-elderly low and moderate income families requiring subsidization have not been subjects of any meaningful steps taken by the Borough. The 50 units of existing housing under Section 8 represent little more than a token gesture, particularly inasmuch as the clear thrust of the decision is toward housing development. Furthermore, they provide no housing at all for families of more than four members. There are no ordinance provisions which provide any encouragement or facilitation of non-elderly low and moderate income housing. In view of the information obtained and communicated above with regard to both the PUD zones and the newly created G-1 zone, it is unlikely in the extreme that any subsidized housing for non-elderly families will be built there.

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Very limited steps appear to have been taken to make possible some housing, although not accessible to the lower income households, which may be considered 'least cost' housing. As we have noted, some of the PUD units may be in this category, and, there is a possibility that some such units may be developed in the new G-1 zone. Given the problems cited above, this must be considered highly speculative at this time. It should be noted parenthetically that we understand the one potentially least cost PUD, River End, is being constructed under the B-4 PUD option, the option providing the fewest cost-increasing provisions of any available PUD option; furthermore, that this development will effectively exhaust the land availability under this option. Therefore, the potentials for additional least cost housing beyond those cited by Mr. Karcher appear to be modest, at best.

We believe that the lack of meaningful opportunities for non-senior citizen low and moderate income housing is the most serious deficiency in the Borough's submissions. This problem, and the attendant preference for senior citizen development by local governments, particularly suburban ones, has been a major concern of State and Federal housing officials in recent months. Some rectification of this problem, as it affects the Borough of Sayreville, is, in our judgement, essential to an achievement of fair share goals. We would recommend the following:

(1) amendment of Ordinance 1213 (a) to remove undesirable provisions noted previously, and more significantly (b) to provide the conditional use for all low and moderate income housing, senior citizen or otherwise, under reasonable standards adequate to ensure that proper planning criteria are followed and adverse impacts minimized (we would be happy to recommend such criteria).

(2) reasonable good faith representations by the Borough that tax abatement will be granted to developments submitted to the Borough, both senior citizens and otherwise, under the provisions of the revised ordinance.

(3) Since the majority of future development in the Borough will take place through the PUD provisions of the ordinance, (a) cost generating provisions of the sort noted above should be removed from there, and greater potential created for development of least cost housing; and (b) serious consideration should be given either to mandatory minimum percentages of subsidized units in PUDs, or alternatively, significant incentives for development of subsidized housing, such as through density bonus provisions. The same could apply to development in the new G-1

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zone.

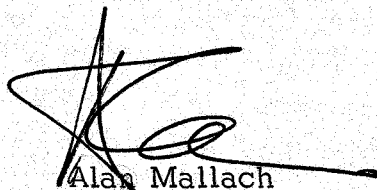
Finally, inasmuch as Judge Furman has specified a particular fair share goal for the Borough; specifically, 1,661 low and moderate income dwelling units, to the year 1985, I believe that we are entitled to some specific statement from the Borough as to how they expect this goal to be achieved in the context of their revised zoning ordinance. It should be clear that we are not asking the Borough to build these units; rather, the Borough should be in the position to provide a plausible, realistic, scenario for the development of these units with the encouragement and facilitation of the Borough.

Given the above, I do not believe that it should be too difficult for ourselves and the Borough of Sayreville to reach agreement. I do believe, however, that we should discuss these points with them informally prior to any formal courtroom proceedings.

Please let me know if you need any additional information. As I have noted, we are continuing to assemble information in certain areas, and will forward our findings to you as soon as they are available.

AM:ms

cc: M. Morheuser, Esq.



Alan Mallach