CA   Piscataway   9-27-83

letter from NCDH outlining a framework for Twp to comply with ML II doctrine.

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National Committee Against Discrimination in Housing

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September 27, 1983

Phillip L. Paley
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17 Academy Street
Newark, N.J. 07102

Re: Urban League of Greater New Brunswick, et. al. v. Mayor and Council of Borough of Cartaret, et. al., No. C-4122-73

Dear Mr. Paley:

Thank you for submitting documentation concerning Piscataway Township's zoning changes and efforts toward developing low and moderate income housing in compliance with Mount Laurel I and II.

Our review of these materials indicates that the Township has made progress in removing barriers to the construction of low and moderate income housing and in allowing the development of a variety of residential uses. In particular, we note the Township's enactment of a Planned Residential Development, which permits the development of higher density residential projects and provides a density bonus for projects in which a certain percentage of the units are developed as low and moderate income housing under a federal or state housing subsidy program. Plaintiffs view these changes as reflective of a positive attitude on the part of the municipality which hopefully will facilitate settlement of this matter.

It is the plaintiffs' conclusion, however, that these measures alone do not satisfy the Township's obligation to provide a "realistic" opportunity for the construction of its fair share of low and moderate income housing. While offering a useful framework in which to address the fair share obligation, the Township's PRD Ordinance continues to include a number of

unnecessary, cost-producing requirements and restrictions that serve as a disincentive to the development of low cost housing.* In addition, given the lack of federal housing subsidies and the present high cost of mortgage financing, it is clear that the voluntary incentives offered by the Township are unlikely to result in the construction of a significant amount of lower income housing and that a mandatory set-aside provision is therefore necessary.

As the Supreme Court noted in Mount Laurel II, density bonuses and other voluntary incentives "leave a developer free to build only upper income housing" and this may prove to be "insufficient to achieve compliance with the constitutional mandate." Thus, as the Township's own Fair Share Housing Study recognizes, "mandatory set-asides are more effective and may have to be incorporated if no other method produces low income housing."

It is therefore plaintiffs' position that, to satisfy its Mount Laurel obligation, Piscataway Township must adopt the following measures or other ordinances or provisions that will accomplish the same objectives.

First, the Township must adopt an ordinance which requires that a certain percentage of units in each high-density residential development be set aside for occupancy by low and moderate income households. This percentage must be large enough to enable the Township to meet its fair share obligation, but not so large as to make development unfeasible. The Supreme Court in Mount Laurel II suggested that a 20% set-aside, divided proportionally between low and moderate income units based on need, would be appropriate. In return for this set-aside, developers should be allowed to develop at sufficiently high densities to permit the use of efficient construction techniques and economies of scale. We have determined that a minimum gross range of 8 to 16 units per acre, depending on housing type, will be necessary to meet these conditions.

Second, the Township's zoning ordinance may not contain any provision under which residential developments at

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* The Township's present and proposed RM (multi-family residential) zones appear to be largely developed and designed to reflect existing garden apartments, and therefore do not appear to contribute toward satisfaction of the Township's fair share obligation. In the event the Township decides to include the RM zone as part of its fair share remedy, plaintiffs note that the provisions governing this district also contain a number of cost-generating features.

comparable densities may be constructed without a mandatory low and moderate income set-aside. Such alternatives obviously would undermine achievement of the Township's fair share goals.

Third, the ordinance must require that lower income units be phased in along with the balance of the project. This will ensure that developers do not render the mandatory requirement ineffective by building conventional units first and then reneging on the obligation to develop lower income units.

Fourth, the mandatory requirement must apply to a sufficient amount of vacant, developable land to enable the Township to meet its fair share obligation. Based on a formula which considers factors such as total employment, amount of vacant, developable land, and net employment growth, our preliminary calculations show that Piscataway Township's fair share of the regional need for lower income housing through 1990 is approximately 2400 low income and 1260 moderate income units.*

The Township's fair share plan may be accomplished either by allowing high-density residential developments with a mandatory set-aside as a conditional use in any non-environmentally sensitive zone or by zoning specific tracts for this type of development. Assuming that a 20% set-aside for low and moderate income housing is used, the amount of land zoned for high density residential development must be sufficiently ample to accommodate five times the fair share requirement since only 20% of the units will be earmarked for low and moderate income housing. In addition, as the Supreme Court noted in Mount Laurel II, it may be necessary to "overzone" for high-density development since not all property zoned for a particular use results in development of that use and a failure to set aside enough land may cause an increase in land costs and thus an increase

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* We have reviewed the Township's Fair Share Study and have concluded that it is inadequate for Mount Laurel purposes since it uses a definition of region that is fundamentally inconsistent with Mount Laurel II and also employs a faulty methodology. For example, the Study's allocation formula fails to consider the massive job growth experienced by Piscataway during the past decade, fails to factor in vacant land availability which varies greatly from one municipality to another, fails to adjust for differences between core cities and suburban areas, and fails to take into account the recognized decline in household size. Moreover, the Study concludes that the Township's present need for lower income housing is zero without providing any consistent, empirical support for that conclusion.

in the overall cost of development.

Fifth, provisions must be enacted to ensure that units set aside for low and moderate income households will in fact be occupied by such households and that future sales or rentals will also be to low and moderate income families. In this regard, the Township might require the developer to use restrictive covenants for sales, formulate appropriate rent control provisions for rentals, and establish or contract with an independent agency to regulate future transfers.

Low and moderate income households will also have to be defined. The Supreme Court has defined "low income families" as households whose income does not exceed 50% of the median income of the area, with adjustments for family size, and "moderate income families" as households whose incomes fall between 50% and 80% of the median income of the area, again with adjustments for family size.

To determine what housing costs are affordable to low and moderate income families, we suggest adopting prevailing governmental and trade guidelines which provide that housing costs should not exceed 28% of family income for sales and 30% of family income for rentals. Housing costs are defined as principal, interest, taxes, insurance and association fees for purchases, and rent and utilities for rentals. Moreover, it must be demonstrated that the units are actually affordable, not only to persons at the top of each income range, but also to a reasonable cross-section within each category. Use of simplistic formulas to determine affordable costs, such as multiplying family income by 2.5 to yield sales prices, are clearly inappropriate for these purposes.

Sixth, the Township's zoning and subdivision ordinances should provide procedures that are both streamlined and free of any cost-producing requirements and restrictions that are not necessary to protect health and safety. While we are continuing to review the Township's ordinances regarding their compliance with Mount Laurel and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., our initial review of Piscatway's PRD Ordinance indicates that it contains a number of provisions which are inconsistent with the above objectives. These provisions include the following:

(1) The 30 acre minimum should be removed unless it can be shown that this requirement will not interfere with the development of potential sites suitable for PRD or multi-family projects. Indeed, the New Jersey Municipal Land Use Law requires only a 5 acre minimum. N.J.S.A. 40:55D-6.

(2) Environmental Impact Assessments should not be required except for tracts located in areas which have been determined to be environmentally sensitive.

Indeed, East Brunswick Township has already eliminated this cost-producing requirement for all PRDs.

(3) The Educational Impact Statement is an unnecessary expense of dubious value, and should be deleted.

(4) Both the number of parking spaces required per unit and their minimum size appear to be in excess of what is either necessary or normally required for planned residential developments.

(5) Sections VII (5) and (6) on page 16 of the Ordinance, which impose limitations on the amount of multi-family housing, require a certain percentage of single family units and townhouses, and impose architectural design standards, should be eliminated in their entirety. These cost-producing requirements reduce the builder's flexibility to seek ways to increase efficiency and reduce cost. Moreover, they are not required for the protection of health or safety.

(6) Requiring interior roads to have a paved width of 26 feet appears to be excessive, especially where one-way roads are feasible.

(7) There is no justification for requiring that each unit have two means of egress and ingress. Accordingly, this cost-producing provision should be deleted.

(8) The requirements contained in Sections VII (12) and (13) on page 17 of the Ordinance, relating to multi-family and townhouse construction, are unnecessary and should be eliminated.

(9) While screens or buffers are appropriate to separate residential areas from industrial or commercial uses, there is no justification for requiring a screen along the entire perimeter of a PRD. This requirements constitutes an unnecessary cost-producing provision and should be deleted.

(10) With respect to solid waste pick-up and disposal, PRDs should receive the same services available to other residential developments; to require otherwise would be to impose an additional cost on the developer or residents.

<u>Seventh</u>, because of current economic conditions and reductions in federal housing subsidies, a mandatory set-aside ordinance alone may not be sufficient to enable a municipality to meet its entire fair share obligation, especially its distinct obligation to address low income housing need. Therefore, Piscataway Township will also have to show, by resolution or ordinance, that it will offer the

inducements necessary to meet this obligation fully. These inducements could include making municipally owned land available for sale or long-term lease for use in development of low and moderate income housing; offering tax abatements to developers for the construction of lower income units; assuming financial responsibility for the construction of roads, sewers, and other infrastructure requirements; and committing a significant portion of the Township's Community Development Block Grant funds to aiding development of such housing through acquisition, write-downs, site improvements, or the provision of subsidies to prospective lower income homebuyers. The Township must also apply for such state and federal subsidies as may be available and encourage and assist developers to participate in available governmental programs.

Eighth, zoning for mobile homes should also be included as an affirmative device in Piscataway Township's ordinance. The ordinance may provide that such zoning will take effect only if the Township is otherwise unable to meet its fair share obligation.

Finally, plaintiffs note that their views on settlement could be significantly influenced by the disposition of any applications for residential development that are pending before the Township or may come before the Township during these proceedings. Approval of any such applications with a provision for low and moderate income housing applied to a sufficiently large tract of land will reduce the Township's remaining fair share obligation and thus facilitate settlement of this matter.

This letter is submitted for settlement purposes only and does not purport to describe the positions plaintiffs will take should Piscataway's Mount Laurel obligation have to be relitigated. We are hopeful, of course, that further litigation will not be necessary. In this regard, plaintiffs remain open to discuss with you and your clients any reasonable alternatives to what we have suggested which you believe are likely to result in the construction of low and moderate income housing.

We look forward to your reply.

Sincerely,

Bruce S. Gelber
General Counsel

cc: Hon. Eugene Serpentelli, J.S.C.
Carla Lerman
John Payne
Eric Neisser