

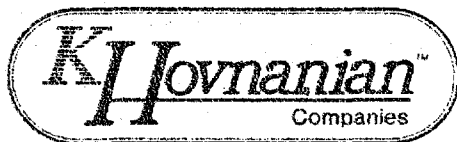
N. Bams Wick

(1985)

Acknowledgement <sup>of receipt</sup> + request for  
following additions / revisions for  
final draft of Affordable Housing  
Ordinance

3 pgs

ML 000 228 L



K. HOVNIANIAN COMPANIES OF NEW JERSEY, INC.

10 HIGHWAY 35, P.O. BOX 500, RED BANK, NEW JERSEY 07701 ☐ (201) 747-7800

November 27, 1985

Leslie S. Lefkowitz, Esq.  
Lefkowitz & Zublatt  
1500 Finnegans Lane  
P.O. Box 3049  
North Brunswick, NJ 08902

RE: Township of North Brunswick Affordable Housing Ordinance

Dear Mr. Lefkowitz:

We are in receipt of a copy of your November 21, 1985 letter to Mr. Eric Neisser which was accompanied by a copy of the June 18, 1985 draft of the proposed Township of North Brunswick Affordable Housing Ordinance. We are in general agreement with the proposed ordinance, however, we would request that the following additions and revisions be included in the final draft.

1. Section III definition of agency: The following phrase should be added "or any successor duly authorized to carry out the powers and responsibilities of the Agency. If no specific agency is formed or if no specific successor is duly established, the Agency for the purpose of implementing this plan shall be the Planning <sup>Board</sup> of Township of North Brunswick or its designee."

2. Section VII(A)(2): This section states that the sale price calculations shall be furnished by the developer prior to issuance of building permits. Section VII(A)(5) says that these sales price calculations should be provided prior to receipt of approval. Both of these sections should read that the sales price calculations shall be furnished to the township prior to issuance of building permits except for the model. The approvals will contain the condition that the units are sold and priced in accordance with the affordable housing ordinance which sets forth the criteria used to calculate the sales prices.

3. Section VIII: The 30 year duration of the plan should be measured from the date of the recorded covenant referred to in section IV(D)(4) and section V(D). The date of the "first sale" is too indefinite and amorphous precluding the determination of the date certain as to when the restrictions expire.

4. Section VIII Foreclosure: The original proposed language contained in the June 18 draft is too vague and general. The language proposed by Mr. Neisser and his November 21, 1985 letter does not completely cover the needs of the foreclosure section. Attached you will find excerpts from the affordable housing plan which was approved for use in East Brunswick,

Bernards Township, Franklin Park, Lincoln Park, Galloway, and Piscataway. We believe that these foreclosure provisions satisfy the requirements of FNMA and achieves the intent and purpose of the affordable housing ordinance. It is absolutely imperative that we structure the restrictions on these homes so that purchasers of these homes will be able to obtain the mortgage financing which they will need in order to complete the purchase. In order for lenders to be able to sell mortgages in the secondary mortgage market, the restrictions as to resale and occupancy must be liquidated upon foreclosure. We believe that the proposed provisions attached to this letter satisfy the needs of the lender yet preclude opportunity for abuse.

5. Section X Affirmative Marketing Requirements: We believe that the requirement of placing advertisements in newspapers having circulation in Jersey City, Newark, Elizabeth, and Patterson is over broad in the concept of the region and area from which purchasers of these affordable homes will come. Our experience has shown that the predominant majority of purchasers of the lower income homes comes from a radius of approximately 10 miles from the location of the project. Furthermore, the ordinance obligates the developer to serve notice upon numerous agencies and departments ending with the obligation of notifying "other" centers, organizations, services or departments located in the 11 county region. We would not object to such obligation if the Agency prepares a list of these "other" services, organizations, or departments which need to be notified.

6. Exempt Transaction: We believe that the provision attached hereto entitled exempt transactions should be included within the ordinance to permit the ordinance the flexibility of accommodating the very specific transfers of interest described in the provision.

7. Violation of Plan: The violation of plan provision also attached hereto provides the enforcement mechanism in the event that a violation of the plan is discovered. My review of the proposed ordinance fails to set forth the remedies or means of enforcement in the event that the ordinance provisions are violated.

8. Hardship Exception: The proposed language by Mr. Neisser in his November 21, 1985 letter is unsatisfactory in that it offers no relief to the developer. The ordinance sets forth a very specific affirmative marketing obligation in Section X. In most cases, the developer would be advertising these homes for at least 4 months prior to completion of the unit. The proposed language states that it is within the discretion of the agency whether to permit the sale to a purchaser whose income level is up to 50% higher than the income ceiling fixed for the income category. This anticipates another 3 months beyond the 6 month triggering date. It takes between 6 to 8 weeks for the agency to qualify an applicant. It could take 4 to 6 weeks to find somebody within the specific income range. The proposed timetable requires the developer to advertise for 9 to 11 months and to sit with an empty finished affordable home for approximately 9 months after receiving the certificate of occupancy. In addition, the proposed language does not address the needs of future owners trying to resell their homes and are unable to find qualified purchasers in accordance with the ordinance.

We do not object to the income limit of 50% higher than the income ceiling fixed for the particular income category. We would propose that the affirmative marketing obligation be specified to span a period of a

total of 30 days prior to certificate of occupancy plus 90 days following certificate of occupancy. If the developer is unable to have a qualified purchaser under contract within such 120 day period, then the agency shall issue a statement of exemption in recordable form. With respect of resales, we believe that future owners should be entitled to a statement of exemption from the agency if they have been unable to sell the home to qualified purchaser within 120 days after notifying the agency that the home is for resale.

The proposed provision requires the developer (and we would assume future homeowners) to prove that it: 1-made reasonably diligent efforts to resell the home to a qualified purchaser, 2-has suffered hardship and 3-it is not realistic to expect the sale to a qualified household within a reasonable time if sales efforts were to continue. This is virtually an insurmountable burden of proof and vests the agency with almost unfettered descretion as to whether or not it grants the statement of exemption. How is it possible for a developer to prove that it is not realistic to expect a sale to a qualified household within a reasonable time? The fact that the developer has been affirmatively marketing the unit for at least 120 days in accordance with the terms of the affordable housing ordinance would speak for itself. There is absolutely no benefit to be gained by forcing the developer to go through another 3 months of meetings in order to obtain a statement of exemption. In addition, the need for showing a hardship on a case by case basis appears time consuming, unnecessary, and unproductive. We do agree that the developer and/or future owners should have to show that they complied with the terms of the affordable housing ordinance in so far as the affirmative marketing provisions.

We believe it is essential that all parties remind themselves that the provisions we are drafting will govern the use, occupancy, and resale of these homes for potentially the next 30 years. The provisions of the ordinance and the restrictive covenant running with the land must be complete enough to anticipate as many contingencies as possible, yet be flexible enough so as to provide the framework for dealing with unanticipated circumstances and still achieve the purposes of the Mount Laurel litigation. We believe that the above described suggestions accomplish these goals. We look forward to meeting with you to discuss these provisions further. If you have any questions, please do not hesitate to contact myself.

Very truly yours,

K. HOVNIANIAN COMPANIES OF NEW JERSEY, INC.

Donald R. Daines  
Director of Approvals and Legal Counsel

DRD:dra

Enclosures

cc: Service List w/enclosures

Mr. Thomas P. Vigna

Mr. Paul Keller