

21 May 1990

N. Brunswick

Proposed Settlement Modifications N. Brunswick
Township.

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Pgs 3

PI. 12 5156

Alan Mallach, AICP
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609-448-5474

May 21, 1990

Mr. C. Roy Epps, President
Civic League of Greater New Brunswick
47-49 Throop Avenue
New Brunswick, NJ 08901

RE: Proposed Settlement Modifications
North Brunswick Township

Dear Roy:

As you requested, I have reviewed the submission dated April 20, 1990, in which North Brunswick Township proposes a variety of modifications to the 1984 Consent Order between the township and the Civic League with respect to the township's lower income housing obligations. In this letter I will try to summarize and evaluate the salient issues raised by the township.

The major change in circumstances set forth by the township as a justification for modification of the settlement is the enactment of the freshwater wetlands legislation, which has resulted in 7 acres of the Kast site, and 89 acres of the Manor (Kaplan) site being rendered unsuitable for development. In addition, based on the disparity between the fair share figures set forth in the settlement and those established by the Council on Affordable Housing, certain further modifications are suggested.

Specifically, the township proposes the following:

- [1] To reduce the number of units on the Manor tract from the currently permitted 2950 to 1975, while reducing the nonresidential development required from 3 million to 1.5 million square feet, reflecting apparent market considerations; further eliminating any on-site affordable housing requirement on this tract, while requiring an unspecified cash contribution for some percentage of a 255 unit Regional Contribution Agreement (RCA).
- [2] To eliminate the nonresidential component of the Kast tract, retaining the 380 units previously permitted as an entirely residential development, eliminating any on-site affordable housing requirement, and requiring an unspecified cash contribution for the 255 unit RCA.
- [3] In lieu of the 786 units provided for in the settlement and so far unbuilt (Kast, Manor, 100 units of senior citizen housing, and 90 mobile home units) to construct a total of 55 units, either as senior citizen housing on the township owned site, or on the site

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designated for mobile homes, adjacent to the existing Deerbrook mobile home park.

[4] As indicated above, transfer 255 units to another municipality through a Regional Contribution Agreement.

The objective changes in conditions do not appear to justify such a drastic reduction in the number of low and moderate income units that would be constructed in North Brunswick. With respect to the Manor tract, the township proposes to redistribute land uses on the site to substantially reduce the share of the total site to be used for residential purposes, as shown below:

	Consent Order	Proposed Revision	Change
Residential	220 A	143 A	- 77 A
Nonresidential	184 A	172 A	- 12 A

No reason is given for such a disproportionate reduction in the residential capacity of the site.

If, instead, one assumes that the adjustment to reflect the loss of 90 acres for wetlands be made proportionally, the loss of residential land should be no more than 48 acres. Assuming further that the same residential density as in the consent order were maintained, the total number of units would drop from 2950 to 2300.

The consent order required 520 lower income units on the Manor site, which was 17.6% of the total residential development. Given the massive nonresidential development also permitted, this was an unusually low percentage, which reflected plaintiffs' recognition of the substantial costs for infrastructure and site development. Assuming that the same percentage were maintained, the reduction in buildable acreage would justify no more than a reduction from 520 to 405 lower income units. Assuming, which is not unreasonable, that the setaside percentage be increased to 20%, the number of lower income units would be 460 (2300 x .2).

With respect to the Kast site, if the circumstances are as described, I see no reason why plaintiffs should object to removal of the requirement that 20% of the site be developed for office or other nonresidential purposes. The township makes no compelling arguments, however, that such a modification should lead to any change whatsoever in the present requirement that 20% of the 380 units permitted, or 76 units, be low and moderate income housing.

The township does not address directly in this proposal the status of the 100 units of senior citizen housing on township owned land, or the 90 lower income units in a mobile home park, both of which are required in the consent order. It appears, however, that (a) the township has made no progress toward the

*Manor
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construction of these units, notwithstanding the five and a half years that have elapsed since the court order was entered; and (b) the township is now offering to construct no more than 55 units on one or the other of those two sites, notwithstanding the language of the consent order calling for both sites to be utilized, for a total of 190 low and moderate income units.

While the township indicates that these modifications are made necessary by "new wetlands regulations and realities of the marketplace", the changes they propose go far beyond any such justifications. The conversion of the units on the Manor and Kast sites to RCAs is clearly not supported by any objective evidence, and the apparent proposal to reduce the number of units on the two other sites (senior citizens housing and mobile homes) from 190 to 55 is proffered with no justification whatsoever. These changes appear to have been prompted by a belief that, inasmuch as the COAH fair share number is so much lower than the number set forth in the consent order, it would not be "fair" to require the township to accommodate so much lower income housing.

Even this last argument, which I consider doubtful at best, is largely vitiated by the limited results achieved by the township with respect to the plan required by the 1984 consent order. After more than five years, it appears that only 200 units of low and moderate income housing have actually been produced in North Brunswick Township, on a site owned at the time of the order by an aggressive, efficient, developer. Although it would be inappropriate for me to express a judgment based on the information at hand, it would seem not unreasonable to look into the reasons for the extremely modest results of the court order.

To the extent that wetlands regulations impair the ability of certain sites to accommodate the units contemplated in the order, or other objective changes in circumstances render certain parts of the fair share plan unfeasible, I believe it would be appropriate to negotiate modifications to the order, clearly limited to those made necessary by those regulations or changes in circumstances. The township's proposal goes far beyond what can be justified on that basis.

Sincerely,


Alan Mallach

AM:ms

cc: J. Payne, Esq.
E. Neisser, Esq.
L. Nikolaidis, Esq.