

~~Sett~~ - Morris County Fair Housing Council
ML v. Boonton

31-Aug - 1984

- Order Setting Hearing Date and Approving Form of Notice For ~~consideration~~
Consideration of Settlement as to Lincoln Park Borough
- Order Approving Negotiated Settlement as to Lincoln Park Borough
- Settlement agreement

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JUDGE STEPHEN SKILLMAN

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX/MORRIS
COUNTIES
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING
COUNCIL, et al..)
)
) Plaintiffs,)
)
) vs.)
)
) BOONTON TOWNSHIP, et al.,)
)
) Defendants.)

RM

Civil Action
(Mt. Laurel Action)

ORDER SETTING HEARING DATE
AND APPROVING FORM OF NOTICE
FOR CONSIDERATION OF SETTLE-
MENT AS TO LINCOLN PARK BOROUGH

This matter having been opened to the Court on ²Aug 15/T 3L, 1984, on the application of Lincoln Park Borough and Morris County Fair Housing Council, et al, for an order setting a hearing date for approving a negotiated settlement for purposes of entering a judgment of compliance in favor of Lincoln Park Borough and approving a means of notice of the settlement to other interested parties and the Court having considered the application and supporting papers;

IT IS on this 3. />t" daY of /L**/" 1984, ORDERED that:

1. The agreement among the parties is found to be sufficiently within the possible range of approval to justify further rproceedings.

2. A hearing shall be held at 9:00 a.m. on October PCV II, 1984, for purposes of considering approval of the settlement negotiated among the parties as to Lincoln Park Borough and entry of a judgment of compliance in favor of Lincoln Park Borough.

3. All papers in support of entry of judgment of compliance on the basis of this agreement shall be filed on or before September 'H/5, 1984, and served on all parties to the above entitled suit.

4. All objections to entry of a judgment of compliance on the basis of this agreement shall be filed on or before October 4, 1984, and served on counsel for Lincoln Park Borough, and Morris County Fair Housing Council, et al.

5. Reply briefs and supporting papers may be filed by proponents of entry of judgment or objections on or before October 9, 1984.

6. The parties shall give notice of the agreement to interested persons and entities by:

(a) Publishing a copy of the annexed notice in The Star Ledger, The Morristown Daily Record, and Suburban Trends on or before September 13, 1984.

(b) Mailing copies of the annexed notice on or before SSp+VM><2* I/, 1984, to the following persons or organizations:

- (1) All parties to the action entitled Morris' County Fair Housing Council, et al. v. Boonton Township, et al.
- (2) Morris County Planning Board.
- (3) New Jersey Department of Community Affairs.
- (4) Legal Aid Society of Morris County.
- (5) Urban League of Morris County.
- (6) Property owners whose land would be rezoned under the settlement.

7. ^{(7) Any other property owners who have expressed an interest in constructing low income housing} Copies of the settlement and any supporting papers shall be made available for public inspection and copying during ordinary business hours at the offices of the Lincoln Park Borough Clerk and the offices of counsel for Lincoln Park Borough, and Morris County Fair Housing Council, et al., from September 17, 1984, until final action by this Court.

Dated:


STEPHEN SKELLMAN, J.S.C.

FILED

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STEPHEN SALUMMI 1SJL

JOSEPH H. RODRIGUEZ, PUBLIC ADVOCATE
DEPARTMENT OF THE PUBLIC ADVOCATE
BY: STEPHEN EISDORFER
ASSISTANT DEPUTY PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY
HUGHES JUSTICE COMPLEX
CN-850
TRENTON, NEW JERSEY 08625
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX/MORRIS COUNTIES
DOCKET NO, L-6001-78 P,W.

MORRIS COUNTY FAIR HOUSING
COUNCIL, et al.

Plaintiffs,

vs,

BOONTON TOWNSHIP, et al.,

Defendants,

:
:
:
:
:
:
:
:

Civil Action

(Mt. Laurel Action)

ORDER APPROVING NEGOTIATED SETTLE--
MENT AS TO LINCOLN PARK BOROUGH

This matter having been heard on October 11, 1984, in the presence of counsel for plaintiffs, defendant Lincoln Park Borough, objector K. Hovnanian, Inc., and amicus curiae Wildlife Preserves, Inc., on the joint application of plaintiffs and defendant Lincoln Park Borough for approval of a negotiated settlement and entry of a judgment of compliance in favor of Lincoln Park Borough; and the Court having considered the papers, testimony and arguments of counsel for the parties and the papers and arguments of counsel for K. Hovnanian, Inc. and Wildlife Preserves, Inc., and it appearing to the Court that, subject to certain conditions, the negotiated settlement should be approved and judgment of compliance should be permitted to enter;

It is on this day of October, 1984, ORDERED:

1, Subject to the following conditions, the settlement agreement annexed as Attachment A is fair, adequate, and reasonable:

a) That the agreement provide for annual reporting by defendant to the Court and the plaintiffs;

b) That the schedule for phasing construction of lower income units and market-rate units set forth on page 34 of the ordinance be revised to assure equal numbers of low and moderate units be developed in each phase and that construction of market rate units clearly be made contingent upon maintaining an appropriate schedule for development of low and moderate incomer

c) That the ordinance provide that half of all two and three bedroom lower income units be low income units;

d) The formula for resale prices set forth at pages 37 and 39 of the ordinance be conformed to the formula set forth at page 40;

e) That the schedule of household sizes and bedroom sizes set forth at page jM' of the ordinance be amended as follows:

1 bedroom - ~~Am^es~~* 2 persons
2 bedroom - 3 persons
3 bedroom --~~danw~~-5 persons;

f) That the term "flat" be defined in the ordinance;

g) That the ordinance incorporate the provision of section 14 of the agreement*

ⁱⁱ^A h) The term "Federal Home Loan Bank Board" be substituted for ¹g^b*è«ffi& Mortgage Bank" on page]#*' of the ordinance;

i) That the phrase "not more than" be deleted from

Section 28-50B of page 23 of the ordinance.

2, Upon submission of an executed supplemental agreement in which the defendant (in accordance with applicable law) undertakes to comply with these conditions, a final judgment of compliance may enter.

3. Counsel for plaintiffs and Lincoln Park Borough shall confer with counsel for K, Hovnanian forthwith on proposed revisions of Section 28'-55C(f) of the ordinance concerning phasing. If the parties cannot revise language acceptable to K, Hovnanian, Inc., K. Hovnanian, Inc. may submit a written objection to this Court setting forth proposed alternative language on or before October 18, 1984.


STEPHEN SKILLMONT, J. S. C.

Dated: 10/31/84

THIS AGREEMENT, made this 17th day of y f ^ ^ f , 1984, by and

between:

THE BOROUGH OF LINCOLN PARK,
A Municipal Corporation of the State of New Jersey,

-and-

The Morris County Branch of the National Association for
the Advancement of Colored People;

The Morris County Fair Housing Council; and

Joseph H. Rodriguez, Public Advocate of the State of
New Jersey;

hereinafter collectively designated as "Plaintiffs."

WHEREAS, the Plaintiffs on October 13, 1978, instituted a certain
action in the Superior Court, Law Division, Morris County, bearing
docekt number L-6001-78 P.W., against the Borough and other parties:
and

WHEREAS, the parties hereto are desirous of entering into an
agreement of settlement to resolve their differences in the aforesaid
litigation;

NOW, THEREFORE in consideration of the mutual covenants, promises,
terms and conditions hereinafter provided, it is agreed by and between
the Borough and the Plaintiffs as follows:

1. This agreement is reached after due deliberation by all parties
and upon the considered judgment of all parties that it is in the best
interest of the public good and welfare to settle the aforesaid litiga-
tion upon the terms and conditions contained herein so as to fully meet
the fair share obligation of the Borough.

2. In accordance with the law, the Borough agrees to amend the
zoning ordinance of the Borough to establish affordable townhouse, gardei
apartment and adult community housing zones as set forth in Exhibit "A"

attached hereto and made part hereof. The coverage of these zones, is limited to lands designated in Exhibit A.

3. The parties have agreed that 212 units represents the Borough's fair share through the • year 1990.

4. On or before March 1, 1990 the Borough shall, through its normal planning process, assess its fair share of housing needs to determine whether an opportunity for additional low and moderate income units is necessary and, if so, to create such additional opportunity.

5. In the event that additional publicly subsidized housing affordable to low or moderate income households is constructed in the Borough on or before March 1, 1990, the Borough shall receive credit for each unit towards satisfaction of its fair share obligation.

6. In addition to the provisions in Exhibit A, the municipality shall take all reasonable steps to foster development of the units affordable to low and moderate households called for by paragraphs 2, and 3 including but not limited to:

- a) adoption of such resolutions of need, execution of payment in-lieu-of-taxes resolutions, or public housing cooperation agreements as may be necessary to facilitate a developer in obtaining public subsidies for the construction of housing affordable to low and moderate income households;
- b) Use its best efforts to expedite disposition of complete applications and municipal approvals by a developer in the affordable housing zones?
- c) cooperation with ^a developer in the affordable housing

- d) cooperation with the needs of a developer and the requirements of state and federal agencies concerning the administration of resale price controls.
- e) waiver of the following fees for the low and moderate income units in the affordable housing developments:
 - (1) Subdivision and site plan application fees on a pro-rata basis based on the percentage of low and moderate income housing the development.
 - (2) Building permit fees, except state fees.
 - (3) Certificate of occupancy fees.
 - (4) Engineering fees in excess of 2% of improvement costs, on a pro-rata basis based on the percentage of low and moderate income housing in the development.

7. The Borough shall provide written notice to plaintiffs of any applications for preliminary or final approval by developers in the affordable housing zones, and of any preliminary or final approvals or denials, whether conditional or unconditional.

8. Upon enactment of the amendments described in paragraph 2, the parties shall enter a stipulation of dismissal of this complaint with prejudice incorporating this agreement.

9. This settlement is conditioned upon entry of a final judgment of compliance by the courts pursuant to Southern Burlington County N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158 at 291. Plaintiffs agree to support defendants application for a final judgment of compliance.

10. Upon the construction and occupancy of sufficient units

- 4 -

affordable to low and moderate income households under the ordinance set forth as Appendix A to satisfy the municipality's fair share under paragraphs 3, 5 and 6 of this agreement and upon written notice to plaintiff, the municipality may repeal or amend the ordinance set forth in Appendix A.

11. In the event that more than 50% of the land by area in any of the zones established under this agreement ceases to be available for development pursuant to the provisions adopted under section 2 of this agreement because of development for - other purposes, condemnation, state or federal prohibitions or restrictions upon development or any other reason, the municipality upon written notice to and with the approval of plaintiffs, shall rezone sufficient other developable land pursuant to this provision to make it realistically likely that a sufficient number of units affordable to low and moderate income households will be constructed to satisfy the municipality^f's fair share.

12. With the written consent of plaintiffs, the municipality may substitute any area of equivalent size and suitability for any of the areas rezoned pursuant to paragraph 2.

13. The municipality shall receive credit against its housing obligation for up to 34 units of housing currently occupied by low or moderate income households that have been rehabilitated with public funds since April 1, 1980, upon presentation of documentation acceptable to plaintiffs.

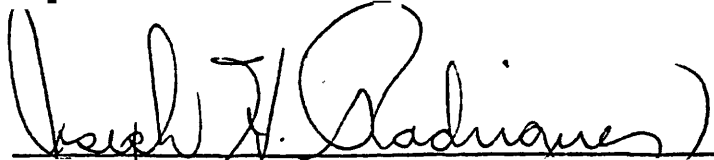
14. The municipality shall not zone, rezone, grant variances, or grant any preliminary or final site plan approval for town-

houses or garden apartments, at gross densities higher than 4 units/acre unless:

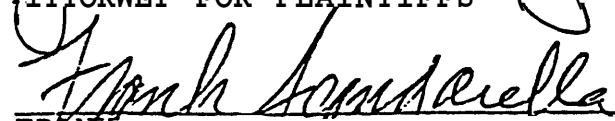
- a) the development is subject to a mandatory set aside for units affordable to low and moderate income households identical to that contained in Exhibit A, or
- b) the municipality has met its fair share obligation.

15. The parties agree that nothing in this agreement shall constitute any admission on the part of the Borough of Lincoln Park or determination by the parties as to the region within which the Borough of Lincoln Park is situate, for purposes of fair share low/moderate income housing allocation.

16. Upon enactment into law, the low and moderate income housing amendments as set forth in Exhibit A shall not be repealed, amended, or modified without the express consent of the plaintiffs, through their counsel, the Department of the Public Advocate, except as provided in paragraph 10 above. In the event of any breach of any provision of this agreement the plaintiffs may seek relief by way of any remedy provided by law. The owners or assignees of the lands which are rezoned by this amendment are also recognized as third party beneficiaries with authority to enforce the terms of this settlement agreement.



JOSEPH H. / RODRIGUEZ, PUBL/FC ADVOCATE
ATTORNEY FOR PLAINTIFFS



FRANK SCANGHELLE, ATTORNEY FOR BOROUGH
OF LINCOLN PARK

FILED

11/10/84

STEPHEN SKILUL^, J.S.a

MORRIS COUNTY FAIR HOUSING
COUNCIL, et al.f

Plaintiffs,

vs.

BOONTON TOWNSHIP, et al.,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: MORRIS COUNTY
: DOCKET NO. L 6001-78PW
:
: Civil Action

STATEMENT OF WILDLIFE PRESERVES, INC., AMICUS CURIAE
WITH RESPECT TO REZONING OF TRACT NO. 17, TOMS POINT,
GREAT PIECE MEADOWS, LINCOLN PARK, NEW JERSEY

Of Counsel:
Alfred L. Ferguson, Esq.
Gary T. Hall, Esq.

McCarter & English
550 Broad Street
Newark, New Jersey 07102
(201)622-4444
Attorneys for Wildlife
Preserves, Inc., Amicus
Curiae

STATEMENT OF WILDLIFE PRESERVES, INC.,
AMICUS CURIAE WITH RESPECT TO REZONING
OF TRACT NO. 17, TOMS POINT, GREAT
PIECE MEADOWS, LINCOLN PARK, NEW JERSEY

Wildlife Preserves, Inc., is a non-profit corporation, whose purpose is to encourage the preservation and maintenance of environmentally and ecologically sensitive and significant areas in the State of New Jersey and elsewhere.

Wildlife Preserves, Inc., is a major landowner of sensitive environmental areas. It owns approximately 50 acres of land in the Great Piece Meadows immediately adjacent to Tract No. 17, commonly known as Toms Point, which is an upland area of the Great Piece Meadows in the Passaic Valley. Wildlife Preserves also owns in excess of 400 acres of nonadjacent but nearby land in the Great Piece Meadows. Wildlife Preserves also owns significant amounts of acreage in the Troy Meadows, once again an area of significant environmental and ecological land in the Passaic Valley.

Wildlife Preserves has long fought for the preservation of the Great Piece Meadows, both the wetlands areas and the upland areas. The purpose of this submission to the Court is to bring to its attention our belief that Tract No. 17, the Toms Point area, should not be rezoned for intense residential development.

The Borough of Lincoln Park has proposed rezoning portions of its land for high density housing in order to provide the units of affordable housing required by the Office of

the Public Advocate. Considering the location and characteristics of the lands proposed for rezoning, we believe that the values of the natural resources in Lincoln Park should be considered since they, like the need for low-cost housing, are very important to the protection of the public interest. Some of these environmental values appear to have been overlooked.

Included in the land proposed to be rezoned are inland wetland and wetland fringe areas of type which are in very short supply in the State of New Jersey. Involved are portions of Great Piece Meadows, which have been the subject of considerable concern in connection with the U.S. Army Engineer's flood control plan studies for the Passaic Valley. These are partially described in Appendix D of the most recent flood control report.

Piece Meadows is the largest single block of undeveloped wetland in the Passaic Valley. It is used at times by a number of animals listed on the State and Federal endangered and threatened species lists. It has long been considered of national significance. At the end of the 1930^fs, it and nearby Troy Meadows were selected as the site for one of the first two national wildlife refuges in the greater New York region (New York, Connecticut and New Jersey). The other site selected was Brigantine in southern New Jersey. The project was sidetracked by World War II and further delayed after the war by political opposition. In the early 1960's the Toms Point area was selected by the Natural Areas Council of the State of New Jersey (then a part of what was known as the Department of Conservation and Economic Development) as one of the two most

important areas for acquisition as a natural area in the State. In the early 1960's Great Piece Meadows was approved for acquisition as a Green Acres Project by the State of New Jersey, and purchases of land started. The acquisition program has been delayed in its implementation by various problems of some local municipalities. However, Great Piece Meadows still remains of national significance for its biological value and of great regional importance as a natural flood storage area.

Particularly important is the proposal to rezone some 34 acres of land just south of Pine Brook Road, a short distance from the Passaic River in the southwest corner of Lincoln Park.. This lies along the eastern edge of what is known as "Toms Point," a peninsula of upland which runs well out into Piece Meadows. Development of this land would destroy some wetland. More importantly, development would remove the last appreciable portion of undeveloped upland in all of Great Piece Meadows, which is not cut off from the meadows by roads or other barriers and which is available to many species of wildlife which live in the meadows and require the use of uplands. The proposed development of this portion of property would result in a significant reduction in the biological value of Great Piece Meadows.

On the State list of endangered species is the blue-spotted Salamander. The Toms Point section of Great Piece Meadows is probably the area of greatest concentration of this species in northern New Jersey, and possibly in the entire State. This area may also be an important area for other rare species. More study is needed to determine the significance of this area

to the blue-spotted salamander and other wildlife. Unfortunately, the remaining portions of Toms Point outside of the area of the proposed rezoning are already developed for townhouses and a golf course. This section of the proposed rezoning also includes the edge of the best remaining example of an ox bow pond found in the State.

The planning report of Jane Lyle Diepeveen, dated September 20, 1984, characterizes Tract No. 17 as follows:

Tract No. 17 (T/S Townhouse Set-aside Site No. ii). Tom's Point, Pine Brook Road, near western boundary; 34.1 acres, farmland, one owner, R-20 Residence Zone (about 4 acres in CR Commercial Recreation Zone).

Soils - about 70% wet soils, about 2 acres of wetland.

Limitations - About 50% is in edge of flood plain, 1 to 4 feet of fill required to raise above flood level; half of wet soil has moderate limitations for buildings with no basements because of shallow depths to water table; remainder of wet soils has severe limitations due to water table to or near surface.

Traffic - access if from Pine Brook Road which has been recently improved to increase capacity. Developer would be required to contribute to any further improvements necessary.

Surrounding land use - Great Piece Meadows to east and south, town house development under construction to west, scattered residence to north.

Developer interest - developer of adjacent townhouses, K. Hovnanian, Inc. is expected to submit plans for about 280 townhouse units with 56 set-aside units on September 21, 1984.

The site lies south of Hook Mountain in the western portion of the Borough. Its development would implement the Council's desire to spread the set-aside housing throughout the community. This tract is shown in the Conservation Area in the SDGP. Most of it should be excluded from the conservation Area since it is not in the wetlands, but lies on a promontory (Tom's Point) above the Great Piece Meadows.

Zoning adopted - T/H Townhouse Set-aside Zone; because of development constraints on wetlands and flood plain portion, site would provide for 280 to 300 town house units, 56 to 60 lower-income units.

We submit that Ms. Diepeveen's description of the site reinforces our concern that the site is too environmentally significant and fragile for intense residential development, and that the benefit to be gained from the development of this area will be far outweighed by the detriment which will be caused by the destruction of this environmentally and ecologically significant area.

A number of other sites appear to be available for townhouse development.- We strongly recommend that a study of the natural resources of these areas and of the alternate sites be made before the rezoning is completed.

Respectfully submitted,

WILDLIFE PRESERVES, INC.

By: Robert L. Perkins

Robert L. Perkins

Dated: October 10, 1984

SCANGARELLA FIEFEENEY, ESQ.
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P.O. Box 216
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(201) 839-5100

Attorneys for Defendant
Borough of Lincoln Park

MORRIS COUNTY FAIR HOUSING	:	SUPERIOR COURT OF
COUNCIL, ET AL.,	:	NEW JERSEY
	:	
Plaintiffs	:	LAW DIVISION:
	:	MORRIS COUNTY
	:	
vs.	:	
	:	Docket No. L-6001-78P.W,
BOONTON TOWNSHIP, ET AL.,	:	
	:	CIVIL ACTION
Defendants.	:	
	:	

BRIEF OF DEFENDANT BOROUGH OF LINCOLN PARK IN
SUPPORT OF APPLICATION FOR JUDGMENT OF COMPLIANCE

Frank Scangarella, Esq.
on the brief

STATEMENT OF FACTS

This brief is submitted in support of the joint application of Lincoln Park Borough and the Public Advocate and Plaintiffs, for the entry of a judgment declaring Lincoln Park Borough in compliance with its obligations to provide realistic opportunities for housing affordable to low and moderate income households under Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township.

The Settlement Agreement should be considered by the Court in the light of certain geographic and environmental constraints effecting development in this community. Sixty-six (66%) percent of the Borough lies within the flood plain and approximately one-half (1/2) of the flood plain lies within the designated Growth Area. (PANJ-3)*. Further over 40% of the Borough is designated as protected wet lands and 17% of the Borough lies within the flood way where virtually no development is permitted. (PANJ-4). The Planning Expert cites the Thonet report addended as an exhibit concluding that "81% of all vacant land in Lincoln Park is 'substantially undevelopable due to State and Federal regulations'". (PANJ-5). The lands rezoned pursuant to the Settlement Agreement and the underlying site selection process by necessity dealt with lands having some physical limitations. However, those

*Planning Expert's Report in Support of a Judgment of Compliance for Lincoln Park, NJ September 20, 1984 prepared by Planning Associates of North Jersey shall be cited: "(PANJ-)".

sites least environmentally limited were designated for affordable housing. (PANJ-7). It should also be noted that the Public Advocate's Planning Expert examined the sites rezoned and found them to be acceptable. (PANJ-9)

The Court should also be aware of the fact that substantial overzoning has been built into the Settlement Agreement and implemented into the zoning ordinance amendments. Paragraph 2 of the Notice of Settlement, in particular, and the Planning Expert's Report, in general, provide the extent of the overzoning. It was the Governing Body's view that by providing substantial overzoning a developer would have the ability to construct an "economically-sound project" in those portions of the tract with the "least physical constraints". (PANJ-8).

The Settlement Agreement should also be viewed in light of the existing housing stock in the community, and the substantial set-aside housing for which development applications have been submitted either formally or are anticipated to be submitted in the near future. Of 3,150 dwelling units in the Borough, single family homes represent 66% of the total. However, there are otherwise a broad range of housing types and values. (PANJ-2). Twenty-six and one-half (26.5%) percent of all housing is rental. Sixteen (16%) percent of all housing units are represented by a 440-unit garden apartment and small apartment buildings, (Ibid.). Additionally, a "345-unit moderate-price townhouse development is

now under construction and 200 units have been granted certificate of occupancy. Another 125-unit moderate-priced townhouse development is also under construction" (Ibid.)• The 345-unit development approval predated the Settlement Agreement by several years and the 125-unit approval predated the Settlement Agreement by several months•

The Planning Expert further states in her report that:

"developers are ready to submit, or have submitted, proposals for 630 townhouse units and 44 adult community housing units with at least 133 lower-income units. Another developer is expected to submit a proposal for 100-garden apartment units and at least 200 townhouse units with 60 lower-income units in the near future." (PANJ-20).

It should be clear to the Court that given the physical limitations that affect all vacant lands in the Borough, Lincoln Park has, through the process of substantial rezoning, afforded every realistic opportunity for the construction of the number of low-moderate income housing units agreed upon in the settlement. Intense developer interest and the number of applications filed or soon to be filed evidence the probability that this community's settled upon fair share obligation will indeed soon be constructed.

THE AGREEMENT

An agreement of settlement has been entered into with the Public Advocate, (See Certification of Borough Counsel and addenda) which provides as follows:

1. Lincoln Park Borough has an obligation between now and 1990 to create realistic opportunities for safe, decent housing affordable to low and moderate income households for 212 household units, consisting of 178 set aside units and 34 rehabilitated units.

2. The Borough has rezoned 3 tracts for townhouse set-aside development; 3 tracts for garden apartment set-aside development; and one area of the Borough for Adult Community Housing.

3. The Borough has enacted considerable overzoning (with suspension limitations) in order to achieve the construction of 178 new set-aside units. Detailed in Paragraph 2 of the Notice of Proposed Settlement.

4. The 178 set-aside units will be comprised of the following: 120 townhouse units; 20 garden apartment rental units; 38 adult community housing units. The Settlement Agreement and Lincoln Park's implementing zoning ordinances further provide that upon the construction and occupancy of the required number of low and moderate income household units so as to satisfy the Borough's fair share obligations, pursuant to the terms of the Settlement Agreement, and upon written notice to the plaintiffs in the action, the Borough may repeal or amend its implementing zoning ordinances

5. All townhouse and garden apartment development at gross densities higher than 4 units per acre whether or not situate within the set-aside zone shall provide for mandatory set-asides for units affordable to low and moderate income households.

6. The Borough has also adopted a detailed Affordability Control Ordinance which will subject set-aside units to resale price controls to insure that such units will remain affordable for a period of thirty years.

7. Additionally, in all of the above zones, the Borough has modified its design standards and waived certain fees to further facilitate construction of affordable housing. These provisions will remain in effect until 212 units of housing affordable to low and moderate income families are constructed and rehabilitated on these or other sites in the Borough.

POINT I

THE SETTLEMENT IS FAIR AND REASONABLE AND MEETS THE CRITERIA OF MT. LAUREL II AND THE COURT'S OPINION IN THE MORRIS TOWNSHIP CASE, AND SHOULD BE APPROVED

The Borough submits that the settlement meets the criteria established in the Morris Township opinion decided on May 25, 1984, and that a judgment of compliance should be entered. The considerations favoring settlement of Mt. Laurel II litigation have previously been described in detail in the brief submitted by the Public Advocate and recognized by the court in the Morris Township case, namely:

"Municipalities are understandably hesitant to rezone or to take other affirmative steps to comply with Mount Laurel II if their zoning will remain vulnerable to attacks....Municipalities also seek the opportunity to implement compliance with Mount Laurel II...including the addition of necessary water and sewer service, police and fire protection, schools, parks, and streets...without fear that those plans will have to be changed as a result of new litigations."

The Court has addressed the basic criteria to be applied to settlements to determine whether such settlements should be approved for purposes of issuance of a Certificate of Compliance. The criteria is whether the settlement provides a realistic opportunity for the construction of low and moderate income units to be constructed and the equivalency of that opportunity as implemented by the Settlement Agreement with the results of a Final Judgment if that were to occur.

POINT II

LINCOLN PARK'S FAIR SHARE SETTLEMENT
NUMBER IS SUBSTANTIALLY EQUIVALENT TO
THE NUMBER MADE ACCORDING TO THE MORRIS
COUNTY ADJUSTMENT TO THE MIDDLESEX
COUNTY CONSENSUS (CARLA LERMAN) METHOD

In the course of settlement negotiations, the Public Advocate offered a fair share number of 350 low and moderate units. The Borough in the context of a challenge to the State Development Guide Plan (motion filed August 1983 and Court advised immediately thereafter of Settlement in concept) submitted engineering and other studies referred to by the Planning Expert as the Storch Report and Thonet Report (PANJ-3,4) showing that Lincoln Park's growth area and fair share obligation shall be reduced by at least 31% due to physical and regulatory development constraints.

The Public Advocate thereupon agreed to a reduction of Lincoln Park's fair share obligation by 31% from 350 to 242 units. The Public Advocate later adjusted the 242 units to 212 units because of a "reduction in credit for lower-income units in apartments from 50% to 20%. (PANJ-5). The Planning Expert concludes that:


"A fair share determination for Lincoln Park for the period through 1990 was made according to the Morris County Adjustment to the Middlesex County Consensus (Carla Lerman) Method. This number was determined to be 257 lower-income units. The unadjusted settlement figure of 242 units is not substantially below this number."
(Ibid.)

CONCLUSION

Considering the physical limitations that affect all vacant lands in the Borough, Lincoln Park has through the process of substantial overzoning afforded every realistic opportunity for the construction of the number of low- and - moderate income housing units agreed upon in the settlement. Further Lincoln Park's fair share settlement number is substantially equivalent to the number made according to the Morris County adjustment to the Middlesex County Consensus Method.

Since the foregoing meet the criteria, the Court should grant a Judgment of Compliance.

Respectfully submitted,


FRANK SCANGARELLA

FILED

OCT 32 1984

*Brenda -
please
review*

*Scangarella and Feeney
Counsellors at Law*

STEPHEN SKILLMAN, J.S.C.
*J#5 Newark-Tompton Turnpike, P.O. Box 216
Tompton Plains, New Jersey 07444 77-839-5100*

*Frank Scangarella
John F. Feeney
—
Cynthia S. Butler*

October 29, 1984^M RECEIVED AT CHAMBERS

OCT 30 1984

The Honorable Stephen Skillman
Court House
New Brunswick, N.J. 08903

JUDGE STEPHEN SKILLMAN

Re: Order Approving Negotiated Settlement
as to Lincoln Park Borough

Dear Judge Skillman:

The parties have resolved their differences in
connection with the subject Order submitted by
Mr. Eisdorfer.

Paragraph 1.e), dealing with the Schedule of House-
hold Sizes and Bedroom Sizes, should be changed
to read:

- 1-bedroom = 2 person household
- 2-bedrooms = 3 person household
- 3-bedrooms = 5 person household

Mr. Eisdorfer and Mr. Israelow, Counsel to Hovnanian,
have consented to the foregoing.

Respectfully,
Frank Scangarella
FRANK SCANGARELLA,
Lincoln Park borough Attorney

FS/g

cc: S. Eisdorfer, Esq.
E. Israelow, Esq.