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Boonton

July 1985

Morris County Fair Housing
v. Boonton

Brief of D Borough of Lincoln Park in
Support of Application for Final
Judgment of Compliance and Approval
of Proposed Agreed-upon Modification
to Original Negotiated Settlement
⊕ affidavits and Exhibits

pgs = 67

ML00427B

MORRIS COUNTY FAIR HOUSING
COUNCIL, et al.,

Plaintiffs,

-vs.-

BOONTON TOWNSHIP, et al.,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION:MORRIS/MIDDLESEX
: COUNTIES
: DOCKET #L-6001-78 P.W.

: CIVIL ACTION

BRIEF OF DEFENDANT BOROUGH OF LINCOLN PARK IN SUPPORT OF
APPLICATION FOR FINAL JUDGMENT OF COMPLIANCE AND APPROVAL
OF PROPOSED AGREED-UPON MODIFICATION TO ORIGINAL NEGOTIATED
SETTLEMENT

Cynthia S. Butler
and
Frank Scangarella,
On the Brief

SCANGARELLA & FEENEY, Esqs.
565 Newark-Pompton Turnpike
P.O. Box 216
Pompton Plains, New Jersey 07444
(201) 839-5100
Attorneys for Defendant,
Morris County

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STATEMENT OF FACTS

INTRODUCTION. This brief is in support of an application for entry of a final Judgment of Compliance as to Lincoln Park Borough based upon: (1) the execution by the parties of a certain Supplemental Agreement and implementing ordinances, (Exhibits B and C respectively)*, embodying the conditions set forth in the Order of the Court, dated October 31, 1985, and (2.) the proposed agreed-upon modifications to the original Negotiated Settlement,** the Supplemental Agreement and implementing ordinances- (Exhibits D-G)

ORDER OF COMPLIANCE. The Court held a hearing on the original Negotiated Settlement on October 11, 1984, and entered an Order of Compliance on October 31, 1984. The negotiated Settlement, as approved by the Court, had 2 key features:

(1) provision for substantial over-zoning for Mt. Laurel development in consideration of the environmental sensitivity of most of the set-aside zone districts and so as to provide for a realistic opportunity to meet the Borough's agreed-upon set-aside obligation; and (2) provision for suspension of the Mt. Laurel zoning at such time as 178 low/moderate units were constructed and occupied. Zone suspension is provided for in

*Except as hereinafter set forth, all Exhibits have been heretofore filed with the Court and copies delivered to counsel on July 29, 1985. (Exhibits A-G) Exhibit references adopted in July 29, 1985, cover letter are continued herein.

**Original Negotiated Settlement annexed Exhibit H.

Paragraph 10 of the original Negotiated Settlement Agreement, (Exhibit H), approved by the Court in the Order of Compliance and in Sec. 28-51, of the Lincoln Park Zoning Ordinance as to Townhouse Set-Aside Zones, and Sec. 28-51A, as to Garden Apartment Set-Aside Zones. Paragraph 10 of the agreement provides:

"10. Upon the construction and occupancy of sufficient units 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."

The Mt. Laurel zones adopted pursuant to the settlement are contrary to the Master Plan which seeks to maintain a proportional balance between one- and two-family and multi-family units of about 27% multi-family. The settlement will increase the proportion of apartments and town houses over that of the Master Plan if 890 (178 low/moderate units) are built. If all the land zoned for Mt. Laurel housing and now available for building were to be developed, the proportion of town house and apartment units would be so substantially increased over that intended by the Borough and otherwise projected in the Master Plan, that almost 54% of the Borough's¹ housing would be multi-family. See Affidavit of Jane Lyle Diepeveen (Diepeveen Affidavit) paragraph 7. Susan Small, the Borough Director of Planning and Building indicates in paragraph 7 of her affidavit that "if all over-zoned lands were developed the total number of multi-family units would exceed 3350".

MULTIPLICITY OF DEVELOPMENT APPLICATIONS. Following adoption of the Set-Aside Ordinance and within a matter of a few months, the Borough received a flood of applications well in excess of that which was needed to meet the municipality's agreed-upon fair share obligation. Also, in the Spring of 1984, substantial areas of the Borough were inundated by flood waters, underlining the Borough's concern regarding residential building in the flood plain. This post-settlement experience readily demonstrated to the Borough that suspension of the Mt. Laurel zoning conditioned upon construction and occupancy would not be feasible as a means of affording the opportunity to limit the construction of over zoned units.

To complicate the matter on the procedural level, the Municipal Land Use Law imposes rigid time constraints on the processing of development applications, and since developer's rights are vested upon preliminary approval, construction of set-aside units would continue to occur even after suspension of the Mt. Laurel Zoning. See generally, Diepeveen Affidavit, paragraph 8-10. Susan Small states in paragraph 7 of her affidavit:

"7. The Settlement Agreement, Sec. 10, provided for suspension of set-aside zones only after actual construction and occupancy of the 178 set-aside units (890 total units). Projects granted preliminary approval prior to construction of the 178 set-aside units would continue to have vested rights and such project could be constructed even after suspension had taken effect. If all the applications pending before the Planning Department received approval within the next year, the Borough would have a potential for 1335 constructed units. This number, added to existing multi-family units, would exceed 2000, and if all over-zoned lands were developed the total number of multi-family units would exceed 3350."

PHASING OF DEVELOPMENT. In response to the foregoing problems, the Borough adopted a Phasing of Development Ordinance, (Phasing Ordinance), based upon the belief that the ordinance was conceptually acceptable to the Plaintiffs. Thereafter, the Planning Board conducted public hearings pursuant to the Phasing Ordinance, priority ranked two (2) competing developments and ultimately granted priority to a project involving 384 units including 77 set-aside units.

Subsequently, on July 24, 1985, the Public Advocate indicated disapproval, in part, of the Phasing Ordinance. At the time of the disapproval action, and inclusive of the ranked development, there were then pending applications for development totaling more than 1300 units.

LIMITATIONS OF DEVELOPMENT ORDINANCE. So as to avoid prejudicing the development review process and the settlement, on July 15, 1985, Lincoln Park adopted a Resolution of Intent to introduce for consideration at a public hearing, a Limitations of Development Ordinance, (Limitations Ordinance), (Exhibit D), having the effect of repealing the title and objectionable portions of the Phasing Ordinance.

By letter dated July 23, 1985, the Public Advocate approved the Limitations Ordinance conditioned upon a change in date in section 28-51-D, paragraph 2 from December 31, 1988, to December 31, 1987. (Exhibit F) The Governing Body introduced the

Limitations Ordinance in compliance with this condition on July 29, 1985. See Exhibit I hereto annexed.

The Limitations of Development Ordinance limits the number of multi-family units to be constructed in Lincoln Park Borough, pursuant to the Negotiated Settlement and Supplemental Agreement, to 890 units over-all, including in the GA-S and TH-S set-aside zones, 178 new set-aside units. The procedure for accommodating this purpose is by providing that the Planning Board shall not grant approval for more than the above stated number of units, through December 31, 1990. Development applications shall be considered and acted upon in chronological order of being declared complete, except as may be modified by extensions of time. When preliminary site plan approvals have been granted for 890 units, including at least 178 set-aside units, the Planning Board shall deny further site plan approvals for set-aside development, and shall not process further applications. If by December 31, 1987, less than 150 building permits for lower income housing have been issued or it appears to the Planning Board that less than 178 units will be constructed on approved sites prior to 1990, the Planning Board shall receive additional applications and shall consider and act upon such applications in chronological order until sufficient applications have been approved to make it realistically likely that 178 set-aside units shall be constructed and rented or sold prior to December 31, 1990.

The restrictions in the Limitations of Development Ordinance shall also be applicable to development in all other zones in the Borough in which the applicant proposes a gross density in excess of 4 units per acre triggering the provisions for set-aside of a percentage of units for low and moderate income households pursuant to paragraph 14 of the original Negotiated Settlement Agreement. (Exhibit H)

The Limitations of Development Ordinance constitutes an amendment in title and scope of a Phasing of Development Ordinance adopted by the Borough on March 18, 1985, and to such extent, a repealer of all inconsistent provisions of the previously titled Phasing Ordinance.

SET-ASIDE DISTRIBUTIONS ORDINANCE. On June 17, 1985, the Governing Body adopted an ordinance authorizing the distribution of the 20% set-aside requirement between 2 or more set-aside zones in a single development. This ordinance provides that in the event a development covers 2 or more set-aside housing types, the 20% set-aside requirement for low and moderate income households may be furnished all in one housing type or distributed among the housing types in proportion other than 20%, provided that 20% or the total units are set-aside units. This ordinance represents a minor modification of the Negotiated Settlement and for that reason the Borough sought and obtained the approval of the Public Advocate by his letter of June 24, 1985. (Exhibit G)

ACTION CHALLENGING PHASING ORDINANCE. On June 17, 1985, the Borough was served with a complaint challenging the validity of the Phasing Ordinance entitled: Joseph Rendeiro, George C. Peck and Hov-Built, Inc., vs. Borough of Lincoln Park, Docket No. L-042457-85. (Hov-Built suit). Trial venue in this action was appropriately placed in Middlesex County. The Hov-Built suit challenges each and every provision of the Phasing Ordinance

The Governing Body, by its Resolution and introduction of a Limitations Ordinance, has expressed its intent to consider a substantial revision and partial repealer of the Phasing Ordinance (Exhibit D and I). Public hearing and adoption of the Limitations Ordinance is scheduled for September 9, 1985. (Exhibit I). Notwithstanding such adoption, the limitation on Planning Board approval and processing of more than 890 units including 178 set-aside units, challenged in the Hov-Built suit remains as the central feature in the Limitations Ordinance.

In Mount Laurel II, South Burlington City, N.A.A.C.P. vs. Mount Laurel Township, 92 N.J. 158 (1983), the New Jersey Supreme Court expressed its intent "to conclude in one proceeding, with a single appeal, all questions involved", in a given case. Ibid. at 290. In enunciating broad powers of judicial management, at pages 292 and 293 of the opinion, the Supreme Court directed that "[T]he trial court shall use any aids that may sensibly dispose of this litigation fairly, practically, promptly, and effectively." Given this mandate, it is appropriate that the Court consider and adjudicate the Hov-Built challenge as part of the disposition of this matter.

LEGAL ARGUMENT

POINT I

LIMITATION OF DEVELOPMENT AND ZONE SUSPENSION ARE CONCEPTS GROUNDED IN THE NEGOTIATED SETTLEMENT AND ORDER OF COMPLIANCE AND AUTHORITY THEREFORE RESTS UPON THE BROAD RANGE OF REMEDIAL POWERS AND POWERS OF JUDICIAL MANAGEMENT SET FORTH IN MOUNT LAUREL II.

The Negotiated Settlement Agreement, (Exhibit H), approved by the Court by its Order of Compliance contains 2 main features: (1) provision for substantial over-zoning for Mt. Laurel development in consideration of the environmental sensitivity of the set-aside zone districts and at the same time, so as to provide for a realistic opportunity to meet the Borough's agreed-upon set-aside obligation; and (2) provision for suspension of the substantial over-zoning at such time as 178 low/moderate units are constructed and occupied. Otherwise, however, the set-aside or Mt. Laurel zones adopted pursuant to the settlement are contrary to the Master Plan and otherwise inconsistent with the mandate contained in the Municipal Land Use Law. N.J.S.A. 40:55D-62. See Diepeveen affidavit, paragraphs 6 and 7.

The factual basis for zone suspension and Limitations of Development has been heretofore established in this brief. Zone suspension as an element of the Negotiated Settlement Agreement and implementing ordinance was considered and approved by the Court by the issuance of the Order of Compliance.

The concept of Limitations of Development flows from both logic and Borough experience in its attempt to effectuate the terms and conditions of the settlement, including the provision for zone suspension. If the Trial Court has the requisite powers to approve and authorize a settlement providing for extensive over-zoning and zone suspension, then the same powers exist to approve the concept of Limitations of Development.

The Supreme Court in Mount Laurel II enunciated a broad range of remedial powers to assure municipal compliance. These powers are obviously likewise appropriate to aid voluntary municipal compliance.

"The scope of remedies authorized by this opinion is ... 3 , similar to those used in a rapidly growing area of the law commonly referred to as 'institutional litigation'¹ or 'public law litigation'¹. While it may not have been appropriate at the time of Mount Laurel to employ those remedies, regularly used in such public law litigation, we clearly recognized 'the further extent of judicial ^..in povel in, the, field'- by citing the lower court's decision in Pascack, 131 N.J. Super. 195 (Law Div. 1974), a case in which the panoply of remedies appropriate in institutional litigation was used. What we said in Mount Laurel in reference to remedy eight years ago was that such remedies were 'not appropriate at this time, r- particularly in view of the advanced view of zoning law as applied to housing laid down by this opinion...' 67 N.J. at 192. That view is no longer 'advanced,'¹ at least not in this state. It is eight years old. Our warning to Mount Laurel and to all other municipalities- that if they do 'not perform as we expect, further - judicial action, may be sought. ...,' id. at 192, will seem hollow indeed if the best we can do to satisfy the constitutional obligation is to issue orders, judgements and injunctions that assure never-ending litigation but fail to assure constitutional vindication."

Supra at 288-290.

*Footnote omitted.

Limitations of Development therefore exists in this case as an essential element of voluntary municipal compliance with Mount Laurel II, in furtherance of the constitutional mandate and the general welfare.

"The constitutional basis for Mount Laurel doctrine remains the same. The constitutional power to zone, delegated to the municipalities subject to legislation, is but one portion of the police power and, as such, must be exercised for the general welfare. When the exercise of that power by a municipality affects something as fundamental as housing, the general welfare includes more than the welfare of that municipality and its citizens: it also includes the general welfare-in this case the housing needs-of those residing outside of the municipality but within the municipality..."

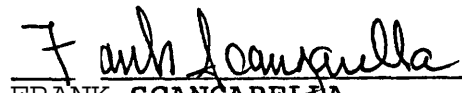
As such, there would be no merit to a Hov-Built challenge to the Limitations of Development Ordinance. Further, the Trial Court should likewise conclude this litigation in a single proceeding by¹ adjudicating all claims related to the settlement and the implementing ordinance, including the Hov-Built suit.

"We intend by our remedy to conclude in one proceeding, with a single appeal, all questions involved..." ibid, at 290.

Respectfully submitted,

SCANGARELLA & FEENEY, Esqs.
Attorneys for Defendant,
Morris Township

By:


FRANK SCANGARELLA
Borough Attorney

DATED:

SCANGARELLA AND FEENEY, ESQS.
565 Newark-Pompton Turnpike
Pompton Plains, New Jersey 07444
(201) 839-5100
Attorneys for Defendant, Borough
of Lincoln Park.

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)
AFFIDAVIT OF JANE LYLE DIEPEVEEN

STATE OF NEW JERSEY)
)SS.
COUNTY OF MORRIS)

JANE LYLE.DIEPEVEEN, of full age, being duly sworn according
to law upon her oath, deposes and says:

1. I am an Associate Planner with the Planning Association
of North Jersey^ a non-profit Corporation, which has acted as
Lincoln Park Borough's Planning Consultant since 1966.
2. I have participated in planning consulting for Lincoln
Park Borough and the Lincoln Park Planning Board, since 1971.
3. I participated in settlement proceedings with the Public
Advocate in connection with the subject litigation. I also pre-
pared a Report submitted to the Court in connection with the
hearing on Lincoln Park's application for an Order of Compliance

in September 1984. The Report was entitled "Planning Expert's Report in Support of a Judgment of Compliance for Lincoln Park, New Jersey", September 20, 1984. It should also be noted that I testified at the hearing on the Judgment of Compliance held on October 11, 1984.

4. I am familiar with all of the documentation in support of this application for approval, as follows:

- a) Supplemental Agreement and implementing Ordinances adopted pursuant to the Order approving negotiated Settlement as to Lincoln Park Borough, dated October 31, 1984.
- b) Subsequent agreed-upon modifications to the negotiated Settlement, as set forth in the Limitations Ordinance and the Set-Aside Distribution Ordinance filed with the Court.
- c) Final Judgment of Compliance.

5. Following the entry of the Order of the Court approving the negotiated Settlement, on October 31, 1984, a Supplemental Agreement was entered into between the Plaintiffs and Lincoln Park Borough, dated the 26th day of December, 1984, and implementing Ordinances were duly adopted by the Governing Body on December 27, 1984.

6. The negotiated Settlement, as approved by the Court, had 2 key features: (1) provision for substantial over-zoning for Mt. Laurel development in consideration of the environmental sensitivity of most of the set-aside zone districts and so as to provide for a realistic opportunity to meet the Community's

agreed-upon set-aside obligation; and (2) provision for suspension of the Mt. Laurel zoning at such time as 178 low/moderate units were constructed and occupied. Zone suspension is provided for in Par. 10 of the negotiated Settlement Agreement, dated October 31, 1984, and in Sec. 28-51 of the Lincoln Park Zoning Ordinance as to Townhouse Set-Aside Zones, and Sec.28-51A as to Garden Apartment Set-Aside Zones.

7. It should be observed that the Mt. Laurel zones adopted pursuant to the Settlement are contrary to the Master Plan in both its present version and earlier versions. The Master Plan seeks to maintain the present proportional balance between one- and two-family and multi-family units of about 27% multi-family. The Settlement will increase somewhat the proportion of apartments and townhouses over that of the Master Plan if only 178 low/moderate income units are built. If all the land zoned for Mt. Laurel housing and now available for building were to be developed, the proportion of townhouse and apartment units would be substantially increased over that projected in the Master Plan, to the extent that almost 54% of the Borough's housing would be in multi-family units.

8. in the Spring of 1984, substantial areas of the Borough were inundated by flood waters, underlining the Borough's concern regarding residential building on environmentally sensitive lands.

9. Further, following adoption of the Set-Aside Ordinance and within a matter of a few months, the Borough received a flood of applications far in excess of that which was needed to meet the municipality's agreed-upon fair share obligation.

10. This post-Settlement experience readily demonstrated to the Borough that suspension of the Mt. Laurel zoning conditioned upon construction and occupancy would not be feasible as a means of limiting or affording opportunity to limit the construction of far more units than required to fulfill the Borough's obligation.

Since the Municipal Land Use Law imposes rigid time constraints on the processing of development applications, and since developer's rights are vested upon preliminary approval, construction of set-aside units would continue to occur even after suspension of the Mt. Laurel Zoning.

11. In response to the foregoing problems, the Borough adopted a Phasing of Development Ordinance based upon the representation of the Public Advocate that the ordinance was conceptually acceptable to the Plaintiffs in this action.

12. Following the Public Advocate's disapproval, in part, of the Phasing of Development Ordinance, on June 24, 1985, the Borough Council adopted a Resolution of Intent, dated the 15th day of July, 1985, to amend the Phasing of Development Ordinance

and, in effect, convert such ordinance into a Limitations of Development Ordinance.

13. In addition to the above, the Borough Council also adopted a Set-Aside Distribution Ordinance with the approval of the Public Advocate. This Ordinance authorizes the re-distribution of the 20% set-aside requirement between two set-aside zones in a single development.

Jane Lyle Diepeveen

JANE LYLE DIEPEVEEN *

Sworn and Subscribed;
to before me this
1985.

/f A
w n.

_____ *[Signature]*

&APGA5.F.T.C. GARDNER

W Jersey

16. 1985

SCANGARELLA & FEENEY, ESQS.
565 Newark-Pompton Turnpike
Pomnton Plains, New Jersey 07444
(201) 839-5100
Attorneys for Defendant, Borough
of Lincoln Park.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISIONrMORRIS/MIDDLESEX
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DOCKET #L-6001-78 P.W.

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

Civil Action

AFFIDAVIT OF SUSAN SMALL

STATE OF NEW JERSEY)
)SS.
COUNTY OF MORRIS)

-SUSAN SMALL, of full age, being duly sworn according to law
upon her oath, deposes and says:

1. I am the Director of the Lincoln Park Department of
Planning and Building, and have served in this capacity since
June of 1982.

2. My office is responsible for processing development
review applications and with the supervision and assistance of
the Borough Planning Consultant, Planning Association of North
Jersey, and the Borough Engineer, we review applications for
completeness and ordinance compliance and make recommendations
to the Boards.

3. I am familiar with all of the documentation and ordinances submitted in support of the Settlement.

4. Following the execution of the Supplemental Settlement Agreement and enactment of implementing Zoning Ordinance, the Lincoln Park Planning Department received the following applications for development review:

<u>NAME</u>	<u>NO. OF UNITS</u>	<u>NO. OF SET ASIDE UNITS</u>	<u>LOCATION</u>
Society Hill II	276	56	Pine Brook Road
Widoniak	60	12	E. Main Street
Maselli	44	9	Comly Road (Between William & Ellis Street)
Hovbilt, Inc.	360	72	Jacksonville Rd. (Airport Property)
Custon Living Communities	180 (TH) (GA-S)	77	Skyline Drive & Pine Brook Road)
BDR Associates	125	25	Route 202 Borinski Tract
Beaver Brook Commons	86	16 (ACH)	Beaver Brook Road (conceptual presentation)
TOTAL	<u>1335</u>	<u>267</u>	

5. The influx of the development applications as indicated above, highlighted the need for control of the volume of development approvals being processed by the Planning Board to enable thorough and detailed review to insure sound development. The Planning Board, as a volunteer group, was engaged in a regular

meeting schedule of 4 meetings per month in order to handle this flood of applications. Two (2) additional employees were hired for the Planning Department to keep up with the volume of work.

6. Procedural need for some form of phasing of development approval became apparent.

7. The Settlement Agreement, Sec. 10, provided for suspension of set-aside zones, only after actual construction and occupancy of the 178 set-aside units (890 total units). Projects granted preliminary approval prior to construction of the 178 set-aside units would continue to have vested rights and such project could be constructed even after suspension had taken effect. If all the applications pending before the Planning Department received approval within the next year, the Borough would have a potential for 1335 constructed units. This number, added to existing multi-family units, would exceed 2,000, and if all available lands were developed the total number of multi-family units would exceed 3350.

8. Based upon these conditions, the Governing Body adopted a Phasing Ordinance providing: a mechanism for selection of only the most environmentally desirable development proposals for initial processing. The goal of the Phasing Ordinance was to meet the terms of the Settlement Agreement by controlling approvals in 2 phases, the first phase ending December 31, 1986 and the second December 31, 1988.

9. The phasing ordinance also established a ranking system by which the Planning Board could select projects posing the least adverse environmental impacts, for initial processing.

10. The Governing Body also adopted a Set-Aside Distribution Ordinance which provided flexibility for set-aside distribution which would enable the Borough to meet its fair share obligation.

11. Following submission of these ordinances to the Public Advocate, a written response was received, on June 24, 1985, which indicated a partial disapproval of the Phasing Ordinance, and concurrence on the Set-Aside Distribution ordinance.

12. In response to the Public Advocate's comments and concerns, the Lincoln Park Borough Council authorized the preparation of an amendment to the Phasing Ordinance, entitled "Limitations of Development Ordinance". (Limitations Ordinance)

13. This ordinance would impose a limitation on Planning Board approvals, within the Garden Apartment Set-Aside, Townhouse Set-Aside and ACH Set-Aside zones, to not more than 890 total units and at least 178 set-aside units through December 31, 1990.

14. The Limitation Ordinance was submitted to the Public Advocate on June 27, 1985 and his written approval thereof was given on July 23, 1985.

15. In the interim, on July 15, 1985, the Governing Body adopted a Resolution of Intent to introduce for consideration at a public hearing the Limitations Ordinance.

16. On July 29, 1985, following receipt of written approval from the Public Advocate, the Limitations Ordinance was formally introduced by the Governing Body and a public hearing thereon scheduled for September 9, 1985.

17. It should be noted however, that the Governing Body excluded the ACH - Adult Community Housing zone from the scope of the Limitations Ordinance.

18. The court shall also be aware that as of this date, site construction has already commenced on one set-aside project approved pursuant to the the settlement providing for 276 over all units including 56 set-aside units. Additionally, the Planning Board has scheduled a public hearing for preliminary subdivision approval for a 384 unit project including 77 set-aside units.

19. It is my judgment unless the Limitations Ordinance is approved, the Borough will be unable to feasibly enact zone suspension or otherwise limit development to the numbers of units provided for in the negotiated settlement.

20. Such a result would be contrary to the expectation and intent of Lincoln Park Borough in entering into the negoti-

ated settlement and given the intensity of Developer interest may potentially result in an emasculation of the local zoning and planning process.

Susan Small

SUSAN SMALL

Sworn to and Subscribed
before me this (jth) day
of August , 1985

Margaret C. Gardner

MARGARET C. GARDNER
A Notary Public of New Jersey
My Commission Expires 10/10/88

SCANGARELLA & FEENEY
565 Newark-Pompton Turnpike
Pompton Plains, New Jersey 07444
(201) 839-5100
Attorneys for Defendant, Borough
of Lincoln Park

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

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

Civil Action
(Mt. Laurel Action)
AFFIDAVIT

STATE OF NEW JERSEY)
) SS.
COUNTY OF MORRIS)

MARGARET *C. GARDNER* of full age, being duly sworn upon her
oath according to law, deposes and says:

1. I am a Paralegal employed by the firm of Scangarella &
Feeney, Esqs.

2. In connection with the subject action, I state that
Notice of Proposed Modification to Settlement was -

(a) Published in the Star-Ledger, the Morristown Daily
Record and Suburban Trends, on August 4, 1985, and Affidavits
of Publication are hereto annexed as Exhibit A-1 to A-3,

(b) I mailed copies of the Order of the Court, dated
July 31, 1985, annexed hereto as Exhibit B, to all Counsel, and
I mailed copies of the Notice of Proposed Modification to Settle-
ment, annexed hereto as Exhibit C, to the following persons or

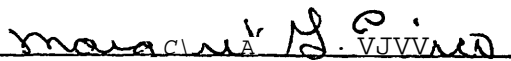
organizations, on or before August 2, 1985, as follows:

- i. All parties to the action entitled
Morris County Fair Housing Council,
et al. v. Boonton Township et al.
- ii. Morris County Planning Board
- iii. New Jersey Department of Community Affairs
- iv. Legal Aid Society of Morris County
- v. Urban League of Morris County
- vi. Pending applicants for development and any other developer or property owner who has expressed an interest in constructing low income housing

3. I know of my own knowledge that copies of the Settlement and any supporting papers were made available for public inspection and copying during ordinary business hours at the offices of the Lincoln Park Borough Clerk and the offices of Frank Scangarella, Esq., Counsel for Lincoln Park Borough, and Morris County Fair Housing Council, et al. from August 2, 1985, until final action by the Court.


MARGARET C. GARDNER

Sworn and Subscribed to
before me this T[^]HS day
of GUxx?vUAJr , 1985.



MAS^RETG. ENRICO
A Noteiy Public o? &sv* Je^cy
My commission expires &fy 27,1G33

suburban trends

AUG - 7. 1985

AFFIDAVIT OF PUBLICATION

STATE OF NEW JERSEY:

S.S.

COUNTY OF MORRIS:

Laura McConnel

_____, of full age, being
duly sworn according to law upon his oath deposes and says:

He is employed by Suburban Trends, a public newspaper, published weekly on Wednesday and Sunday, in Morris County, New Jersey and that a Notice, of which the annexed is a true copy was published in Suburban Trends on August 4, 1985, making (5-AJL) insertions in all, the same was circulated through the municipality of

Lincoln Park

Sworn and subscribed to

5th

day

of August 1985.

John H. Countryman

JOHN H. COUNTRYMAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 30, 1987

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX/MORRIS COUNTIES
DOCKET NO. L-6001-78 P.W.
Civil Action (ML Laurel Action)
NOTICE OF PROPOSED MODIFICATION TO SETTLEMENT

TO: ALL INTERESTED PERSONS:

A hearing will be held on September 11, 1985, before The Honorable Stephen Skillman, Superior Court of New Jersey, at 9:00 a.m. in the Middlesex County Court House, New Brunswick, New Jersey, to consider entry of B final Judgement of compliance in favor of Lincoln Park Borough, based upon certain revisions to the Negotiated Settlement, which have been submitted to the Court, as follows:

- 1) Supplemental Agreement and Implementing ordinances embodying the conditions set forth in the Order of the Court, dated October 31, 1984.
- 2) Proposed agreed-upon modifications to the original Negotiated Settlement, the Supplemental Agreement and Implementing ordinances.

The Supplemental Agreement and implementing ordinances embody the terms and conditions set forth in the NOTICE OF PROPOSED SETTLEMENT, dated August 6, 1984, as modified by the Order of the Court dated October 31, 1984.

The proposed agreed-upon modifications to the original Negotiated Settlement, the Supplemental Agreement and implementing ordinances consist of the following:

- (1) Resolution of Intent adopted by Lincoln Park Borough on July 15, 1985, and draft Limitations of Development Ordinance. The Resolution of Intent provides that it is the stated intent of Lincoln Park Borough to introduce for consideration at a public hearing, the Limitations of Development Ordinance following receipt of written approval of such ordinance from the Public Advocate. The Limitations of Development Ordinance limits the number of multi-family units to be constructed in Lincoln Park Borough, pursuant to the Negotiated Settlement and Supplemental Agreement, to 890 units over-all, including in the GA-S, TH-S and ACH set-aside zones, 178 new set-aside units. The procedure for accommodating said purpose is by providing that the Planning Board shall not grant approval for more than the above stated number of units, through December 31, 1990. Development applications shall be considered and acted upon in chronological order of being declared complete, except as may be modified by extensions of time. When preliminary site plan approvals have been granted for 890 units, including at least 176 set-aside units, the Planning Board shall deny further site plan approvals for set-aside development and shall not process further applications.
- If by December 31, 1987, less than 150 building permits for lower income housing have been issued or it appears to the Planning Board that less than 178 units will be constructed on approved sites prior to 1990, the Planning Board shall receive additional applications and shall consider and act upon such applications in chronological order until sufficient applications have been approved to make it realistically likely that 178 set-aside units shall be constructed and rented or sold prior to December 31, 1990.
- The restrictions in the Limitations of Development Ordinance shall also be applicable to applications for development in all other zones in the Borough in which the applicant proposes a gross density in excess of 4 units per acre and the provisions for set-aside of a percentage of units for low and moderate income households as defined by the provisions of Sec. 28-50-C of the Affordability Control Ordinance of the Borough of Lincoln Park.
- The Limitations of Development Ordinance constitutes an amendment in title and scope of a Phasing of Development Ordinance adopted by the Borough on March 18, 1985, and to such extent, a repealer of all inconsistent provisions of the previously titled Phasing Ordinance.
- (2) Letter of the Public Advocate, dated July 23, 1985, approving the terms and conditions of the Limitations of Development Ordinance.
- (3) Ordinance Authorizing the Distribution of the 20% Set-Aside Requirement between 2 or more Set-Aside Zones in a single development, adopted on June 17, 1985. This ordinance provides that in the event a development covers 2 or more set-aside housing types, the 20% set-aside requirement for low and moderate income households may be furnished all in one housing type or distributed among the housing types in proportion other than 20%, provided that 20% of the total units are set-aside units.
- (4) Letter of Public Advocate, dated June 24, 1985, approving the Set-Aside Distribution Ordinance.

Copies of the following Agreements, letters and ordinances referred to in this Notice may be examined at the Lincoln Park Borough Clerk's Office, or by appointment, at the office of either Frank Scangarella, Esq., Scangarella and Feeney, 565 Newark-Pompton Turnpike, Pompton Plains, N.J. 07444 (201-839-5100) or Stephen Bsdorfer, Esq., Division of Public Interest Advocacy, Department of the Public Advocate, Hughes Justice Complex, CN 850, Trenton, N.J., 08625 (1-609-292-1692):

1. Supplemental Agreement, dated 12/26/84
2. Implementing Ordinance 44-84 (Ord. #777), adopted 12/27/84, entitled, "An Ordinance to Further Amend Chapter 28, Zoning Ordinance of the Code of the Borough of Lincoln Park...."
3. Resolution of Intent, dated July 15, 1985.
4. Draft Limitations of Development Ordinance.
5. Letter of Public Advocate conditionally approving Limitations of Development Ordinance, dated July 23, 1985.
6. Set-Aside Distributions Ordinance.
7. Letter of Public Advocate approving Set-Aside Distributions Ordinance, dated 6/24/85.

Legal and factual justifications for the proposed settlement will be provided upon request, directed to Stephen Eisdorfer, Esquire, at the above address.

Any interested party, including any low or moderate income person residing in northern New Jersey, any organization representing the interests of low or moderate income persons, any owner of property in Lincoln Park Borough, or any organization representing the interests of owners of property in Lincoln Park Borough, may file objections to the proposed agreement and may present evidence in support of such objections. Objections must be filed in writing together with copies of any supporting affidavits or documents with the Honorable Stephen Skillman, Middlesex County Court House, New Brunswick, New Jersey 08903 on or before August 29, 1985. Copies must be filed with the Middlesex County Clerk, Middlesex County Court House, New Brunswick, New Jersey, and each of the lawyers listed above.

This notice is promulgated by order of the Superior Court. It is intended to inform all interested parties of the existence of a proposed settlement and the possible consequences of court approval of this settlement. It does not indicate any view by the Court as to the merits of the law suits, the fairness, reasonableness or adequacy of the proposed settlement, or whether the Court will approve the settlement.

>65NCV,arn,fompien iumfire
Pompton Plains, NJ 07444
(201)839-5100
Attorneys for Lincoln Park Borough
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX/
MCSR IS COUNTIES
DOCKETNO.L-6001-7BP.W.
Civil Action
J (Mt. Laurel Action)
JT NOTICE OF PROPOSED
MODIFICATION TO SETTLEMENT
MORRIS COUNTY FAIR HOUSING COUNCIL, et
al., Plaintiffs,

vs.
BOONTON TOWNSHIP, et al., Defendants.
TO: ALL INTERESTED PERSONS:

A hearing will be held on September 11, 1985, before
The Honorable Stephen Skillman, Superior Court of
New Jersey, at 9:00 a.m. in the Middlesex County
Court House, New Brunswick, New Jersey, to consid-
er entry of a final judgment of compliance in favor of
Lincoln Park Borough, based upon certain revisions to
the Negotiated Settlement, which have been sub-
mitted to the Court, as follows:

- 1) Supplemental Agreement and Implementing
ordinances embodying the conditions set forth in the
Order of the Court, dated October 31, 1985;
- 2) Proposed agreed-upon modifications to the
original Negotiated Settlement, the Supplemental
Agreement and implementing ordinances.

The Supplemental Agreement and Implementing
ordinances embody the terms and conditions set
forth in the NOTICE OF PROPOSED SETTLEMENT,
dated August 6, 1984, as modified by the Order of the
Court, dated October 31, 1984.

The proposed agreed-upon modifications to the
original Negotiated Settlement, the Supplemental
Agreement and implementing ordinances consist of
the following:

(1) Resolution of Intent adopted by Lincoln Park
Borough on July 15, 1985, and draft Limitations of
Development Ordinance. The Resolution of Intent
provides that it is the stated intent of Lincoln Park
Borough to introduce for consideration at the public
hearing, the Limitations of Development Ordinance
following receipt of written approval of such ordi-
nance from the Public Advocate.

The Limitations of Development Ordinance limits
the number of multi-family units to be constructed in
Lincoln Park Borough, pursuant to the Negotiated
Settlement and Supplemental Agreement, to 890 units
over-all, including in the GA-S, TH-S and ACH set-
aside zones, 178 new set-aside units. The procedure
for accommodating said purpose is by providing that
the Planning Board shall not grant approval for more
than the above stated number of units, through De-
cember 31, 1990. Development applications shall be
considered and acted upon in chronological order of
being declared complete, except as may be modified
by extensions of time. When preliminary site plan
approvals have been granted for 890 units, including
at least 178 set-aside units, the Planning Board shall
deny further site plan approvals for set-aside devel-
opment, and shall not process further applications.

If by December 31, 1987, less than 150 building per-
mits for lower income housing have been issued or it
appears to the Planning Board that less than 178 units
will be deconstructed on approved sites prior to 1990, the
Planning Board shall receive additional applications
and shall consider and act upon such applications in
chronological order until sufficient applications have
been approved to make it realistically likely that 178
set-aside units shall be constructed and rented or sold
prior to December 31, 1990.

The restrictions in the Limitations of Development
Ordinance shall also be applicable to applications for
development in all other zones in the Borough in
which the applicant proposes a gross density in ex-
cess of 4 units per acre and the provisions for set-
aside of a percentage of units for low and moderate
income households as defined by the provisions of
Sec. 28-50-C of the Affordability Control Ordinance of
the Borough of Lincoln Park.

The Limitations of Development Ordinance consti-
tutes an amendment in title and scope of a Phasing of
Development Ordinance adopted by the Borough on
March 18, 1985, and to such extent, a repealer of all
inconsistent provisions of the previously titled Phas-
ing Ordinance.

(2) Letter of the Public Advocate, dated July 23,
1985, approving the terms and conditions of the Limi-
tation of Development Ordinance.

(3) Ordinance Authorizing the Distribution of the
20% Set-Aside Requirement between 2 or more Set-
Aside Zones in a single development, adopted on
June 17, 1985. This ordinance provides that in the
event a development covers 2 or more set-aside
housing types, the 20% set-aside requirement for low
and moderate income households may be furnished
all in one housing type or distributed among the hous-
ing types in proportion other than 20%, provided that
20% of the total units are set-aside unit;

(4) Letter of Public Advocate, dated June 24, 1985,
approving the Set-Aside Distribution Ordinance.

Copies of the following Agreements, letters and
ordinances referred to in this Notice may be exam-
ined at the Lincoln Park Borough Clerk's Office, or
by appointment, at the office of either Frank Scan-
garella, Esq., Scangarella and Feeney, 565 Newark-
Pompton Turnpike, Pompton Plains, N.J. 07444 (201-
839-5100) or Stephen Eisdorfer, Esq., Division of Pub-
lic Interest Advocacy, Department of the Public Ad-
vocate, Hughes Justice Complex, CN B50, Trenton,
N.J. 08625 (1-609-292-1692):

1. Supplemental Agreement, dated 12/26/84
2. Implementing Ordinance 44-84 (Ord. »777),
adopted 12/27/84, entitled "An Ordinance to Further
Amend Chapter 28, Zoning Ordinance of the Code of
the Borough of Lincoln Park..."
3. Resolution of Intent, dated July 15, 1985
4. Draft Limitations of Development Ordinance
5. Letter of Public Advocate conditionally approv-
ing Limitations of Development Ordinance, dated
July 23, 1985
6. Set-Aside Distributions Ordinance
7. Letter of Public Advocate approving Set-Aside
Distributions Ordinance, dated 6/24/85.

Legal and factual justifications for the proposed
settlement will be provided upon request, directed to
Stephen Eisdorfer, Esquire, at the above address.

Any interested party, including any low or moder-
ate income person residing in northern New Jersey,
any organization representing the interests of low or
moderate income persons, any owner of property in
Lincoln Park Borough, or any organization repre-
senting the interests of owners of property in Lincoln
Park Borough, may file objections to the proposed
agreement and may present evidence in support of
such objections. Objections must be filed in writing
together with copies of any supporting affidavits or
documents with the Honorable Stephen Skillman,
Middlesex County Court House, New Brunswick, New
Jersey 08903 on or before August 29, 1985. Copies must
be filed with the Middlesex County Clerk, Middlesex
County Court House, New Brunswick, New Jersey,
and each of the lawyers listed above.

This notice is promulgated by order of the Superior
Court, it is intended to inform all interested parties of
the existence of a proposed settlement and the possi-
ble consequences of court approval of this settle-
ment. It does not indicate any view by the Court as to
the merits of the law suits, the fairness, reasonable-
ness or adequacy of the proposed settlement, or
whether the Court will approve the settlement or
enter a judgment of compliance.

SCANGARELLA AND PEENfcv
Attorneysfor Defcncent
Lincoln Park Forough
By: FRANK SCANGARELLA

STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss

Andrew West

Being duly sworn, according to law, on h-^{is} oath say-
eth that- £ he is 111 of the

Star-Ledger, in said County of Essex, and that the notice,

of which the attached is a copy, was published in said

paper on the 11 day of 11 1985

and continued therein for 0

successively, at least once in each 1

for 111

Andrew West

Sworn to and subscribed,

before me this 11

day of 11 1985,

NOTARY PUBLIC of NEW JERSEY

DMO

STATE OF NEW JERSEY, J.S.S.
Morris County

LEGAL NOTICE
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX/MORRIS COUNTIES
DOCKET NO. L-6001-78 P.W.
Civil Action
(Mt. Laurel Action)

NOTICE OF PROPOSED MODIFICATION TO SETTLEMENT
MORRIS COUNTY FAIR HOUSING COUNCIL, et al., Plaintiffs,
vs. BOONTON TOWNSHIP, et al., Defendants.

TO: ALL INTERESTED PERSONS:

A hearing will be held on September 11, 1985, before The Honorable Stephen Skillman, Superior Court of New Jersey, at 2:00 a.m., in the Middlesex County Court House, New Brunswick, New Jersey, to consider entry of a final judgment of compliance in favor of Lincoln Park Borough, based upon certain revisions of the negotiated Settlement, which have been submitted to the Court, as follows:

1) Supplemental Agreement and Implementing ordinances embodying the conditions set forth in the Order of the Court, dated October 31, 1985;

2) Proposed agreed-upon modifications to the original Negotiated Settlement, the Supplemental Agreement and Implementing ordinances.

The Supplemental Agreement and implementing ordinances embody the terms and conditions set forth in the NOTICE OF PROPOSED SETTLEMENT, dated August 6, 1984, as modified by the Order of the Court, dated October 31, 1984.

The proposed agreed-upon modifications to the original Negotiated Settlement, the Supplemental Agreement and implementing ordinances consists of the following:

(1) Resolution of Intent adopted by Lincoln Park Borough of July 15, 1985, and draft Limitations of Development Ordinance. The Resolution of Intent provides that it is the stated intent of Lincoln Park Borough to introduce for consideration at a public hearing, the Limitations of Development Ordinance following receipt of written approval of such ordinance from the Public Advocate.

The Limitations of Development Ordinance limits the number of multi-family units to be constructed in Lincoln Park Borough, pursuant to the Negotiated Settlement and Supplemental Agreement, to 890 units over-all, including the GA-S, TH-S and ACH set-aside zones, 178 new set-aside units. The procedure for accommodating said purpose is by providing that the Planning Board shall not grant approval for more than the above stated number of units, through December 31, 1990. Development applications shall be considered and acted upon in chronological order of being declared complete, except as may be modified by extensions of time. When preliminary site plan approvals have been granted for 890 units, including at least 178 set-aside units, the Planning Board shall deny further site plan approvals for set-aside development, and shall not process further applications.

If by December 31, 1987, less than 150 building permits for lower income housing have been issued or it appears to the Planning Board that less than 178 units will be constructed on approved sites prior to 1990, the Planning Board shall receive additional applications and shall consider and act upon such applications in chronological order until sufficient applications have been approved to make it realistically likely that 178 set-aside units shall be constructed and rented or sold, prior to December 31, 1990.

The restrictions in the Limitations of Development Ordinance shall also be applicable to applications for development in all other zones in the Borough in which the applicant proposes a gross density in excess of 4 units per acre and the provisions for set-aside of a percentage of units for low and moderate income households as defined by the provisions of Sec. 28-50-1C of the Affordability Control Ordinance of the Borough of Union Park.

The Limitations of Development Ordinance constitutes an amendment in title and scope of a Phasing of Development Ordinance adopted by the Borough on March 18, 1985, and to such extent, a repealer of all inconsistent provisions of the previously titled Phasing Ordinance.

(2) Letter of the Public Advocate, dated July 23, 1985, approving the terms and conditions of the Limitations of Development Ordinance.

(3) Ordinance Authorizing the Distribution of the 20% Set-Aside Requirement between 2 or more Set-Aside Zones in a single development, adopted on June 17, 1985. This ordinance provides that in the event a development covers 2 or more set-aside housing types, the 20% set-aside requirement for low and moderate income households may be furnished all in one housing type or distributed among the housing types in proportion other than 20%, provided that 20% of the total units are set-aside units.

(4) Letter of Public Advocate, dated June 24, 1985, approving the Set-Aside Distribution Ordinance.

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- 1. Supplemental Agreement, dated 12/26/84
2. Implementing Ordinance 44-84 (Ord. #777), adopted 12/27/84, entitled "An Ordinance to Further Amend Chapter 28, Zoning Ordinance of the Code of the Borough of Lincoln Park..."
3. Resolution of Intent, dated July 15, 1985
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5. Letter of Public Advocate conditionally approving limitations of Development Ordinance, dated July 23, 1985
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This notice is promulgated by order of the Superior Court. It is intended to inform all interested parties of the existence of a proposed settlement and the possible consequences of court approval of this settlement. It does not indicate any view by the Court as to the merits of the lawsuits, the fairness, reasonableness or adequacy of the proposed settlement, or whether the Court will approve the settlement or enter a judgment of compliance.

By: FRANK SCANGARELLA
Scangarella & Feeney
565 Newark-Pompton Tpk.
Pompton Plains, N.J. 07444

KATHY NEEDLE

Of full age, being duly sworn according to law, doth depose and say that she is the CLASSIFIED ADVERTISING SUPERVISOR, MORRISTOWN DAILY RECORD, INC., a newspaper printed and published in the County of Morris, in this State, and circulating in the said county, and that the notice of which the annexed is a printed copy, has been regularly published in said newspaper once.

Publication being made the 4th day of August A.D. 1985.

[Handwritten signature: Kathy Needle]

Sworn to and subscribed before me August 5, A.D. 1985. [Handwritten signature: Sharon] Notary Public

SHARON GLOVER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 28, 1989

SCANGARELLA & FEENEY, ESQ.
565 Newark Pompton Turnpike
P.O. Box 216
Pompton Plains, NJ 07444
(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

based on what?

Not asking for 1980

*↑
pre-1980*

now under construction and 200 units have been granted certificates 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 overzoning, 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.

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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.

That's their oblig w/ to 1990 - will subject themselves to another suit after that if they repeal the provisions.

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.)

242
212
30
150

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



State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY

CN 850
TRENTON, NEW JERSEY 08625

RICHARD E. SHAPIRO
DIRECTOR
TEL: 609-292-1593

JOSEPH H. RODRIGUEZ
PUBLIC ADVOCATE

October 9, 1984

RECEIVED- AT CHAMBERS

DOT 9-1934

Honorable Stephen Skillman
Superior Court of New Jersey
Middlesex County Court House
New Brunswick, N.J. 08903

NYDQE STEPHEN SKILLMAN

RE: Morris County Fair Housing Council, et al. v. Boonton Tp
Docket No. L-6001-78 P.W (Lincoln Park) "

Dear Judge Skillman:

Enclosed please find the affidavit of Alan Mallach in support of the joint application by plaintiffs and Lincoln Park for approval of a negotiated settlement and entry of a judgment of compliance.

Yours truly,

STEPHEN EISDORFER

Assistant Deputy Public Advocate

SE:id
enc.

cc: All Counsel
Alfred Ferguson, Esq.
Reno Smith
Mark Baumgarten

JOSEPH H. RODRIGUEZ, PUBLIC ADVOCATE
 DEPARTMENT OF THE PUBLIC ADVOCATE
 BY: STEPHEN EISDORFER
 ASSISTANT DEPUTY PUBLIC ADVOCATE
 DIVISION OF PUBLIC INTEREST ADVOCACY
 CN 850
 TRENTON, NEW JERSEY 08625
 (609) 292-1692

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

MORRIS COUNTY FAIR HOUSING	:	
COUNCIL, <u>et al.</u> ,	:	
	:	
Plaintiffs,	:	AFFIDAVIT OF ALAN MALLACH
	:	
vs.	:	
	:	
BOONTON TOWNSHIP, <u>et al.</u> ,	:	
	:	
Defendants.	:	

STATE OF NEW JERSEY :
 : SS.
 COUNTY OF MERCER :

ALAN MALLACH, being of full age and duly sworn, upon his oath deposes and says:

1. I have been retained as a consultant on affordable housing by the Department of the Public Advocate in connection with the case of Morris County Fair Housing Council, et al. v. Boonton Township, et al.

2. In that connection I have prepared a report entitled Standards for the Provision of Low and Moderate Income Housing Pursuant to the New Jersey Court Mt. Laurel II Decision, which is attached as Exhibit A. This report accurately states my opinions as to what provisions must be included in a municipal zoning ordinance to create realistic opportunities for housing affordable to low and moderate income households in Morris County municipalities.

3. During the course of settlement negotiations between the Department of the Public Advocate and representatives of Lincoln Park Borough, I reviewed a draft ordinance rezoning fourteen (14) sites in Lincoln Park. I also personally inspected those sites, and discussed development prospects for each of the sites with the municipal planner, Susan Small.

4. Much of the remaining vacant land in Lincoln Park is subject to flooding and to high water tables. These are characteristics which can make construction more difficult and expensive. There are few, if any, vacant sites in the municipality that are wholly without some such constraint on development. In selecting sites for rezoning to provide low and moderate income housing, the task is to choose the sites for which these constraints pose the fewest problems and where sound site planning and design are most likely to be able to avoid or eliminate the problems.

5. Each of the sites proposed to be rezoned has some degree of constraint on development. Each of the sites, however, is developable with sound planning and design for multi-family housing at the proposed densities and with the proposed 20 percent set-aside for low and moderate income housing.

6. The proposed settlement calls for establishment of three new zones summarized in the chart below:

<u>Zone</u>	<u>Acreage of vacant developable land</u>	<u>Use</u>	<u>Density</u>	<u>Total number of lower income units</u>
TH/S	180.5	townhouses	10/acre	120
G/S	45.4*	garden apts.	15/acre	20
ACH	85*	senior citizen townhouses	10/acre	38

* G/S and ACH are overlay zones and include a 35.1 acre overlap. In each of these zones developers are required to market 20 percent of the units, and at prices affordable by low and moderate income households.

7. The sites rezoned TH/S are attractive sites, although partially subject constraints due to wetness or steep slopes. Development of multi-family housing at a density of 10 units/acre with a 20 percent set aside is feasible on all three sites.

8. Two of the three sites zoned G/S have some of constraints on development due to high water tables and flooding. With appropriate site planning and design, however, these sites are developable at 15 units/acre and will support a 20 percent lower income set-aside. The remaining site, located on Pine Brook Road, is not subject to any substantial constraints on development and is a highly attractive site. Development of this 10.3 acre site at a density of 15 units/acre with a 20 percent set-aside is quite feasible and can generate by itself more than 20 low and moderate income garden apartment units contemplated by the settlement.

9. The areas zoned ACH are quite varied. Some of the sites have rather extensive limitation due to high water tables and flooding. Others have only minimal problems. There appears, however, to be more than ample land in this zone that is developable at 10 units/acre and capable of supporting a 20 percent set-aside to permit construction of 190 units, including 38 low and moderate income housing. Achievement of this goal requires that only 20% of the acreage in this overlay zone actually be utilized for this purpose.

10. Overlay zones create real opportunities for development of lower income housing only if they permit development on terms that are sufficiently more attractive to a developer than the underlying zoning to justify his assuming the burden of satisfying the set-aside obligations. The ACH and G/S zones are overlay zones. With the exception of a small area zoned for business uses (B-2), all the vacant areas covered by the ACH and G/S overlays are either zoned for single-family and two-family houses on relatively large lots (R-15, R-20) or are zoned for multi-family housing development subject to the same 20 percent low and moderate income set-aside as

the overlay zone (PRD-II). The bonus provided by the G/S and ACH zones is therefore likely to be sufficient to create realistic housing opportunities.

11. The G/S and ACH zones overlap. The ACH zone includes all but 10.3 acres of the G/S zone. The one site zoned G/S which is not also zoned ACH, the site on Pine Brook Road, is also the most attractive and least constrained site. This site by itself has the capacity for more than 100 garden apartments, including more than 20 low and moderate income units. The overlap between the zones therefore does not seriously interfere with the settlements capacity to create realistic housing opportunities.

12. The ACH zone permits construction of housing for households in which at least one person is aged 52 or over. The effectiveness of this zone in creating housing opportunities depends upon the existence of a market not only for lower income senior citizen housing units, but also market-rate senior citizen housing units. While it is impossible to evaluate the demand for this type of market rate housing without a detailed market survey, the fact that households with elderly persons (over age 65) in New Jersey increased both during the period 1970-1980 as a percentage of all households in New Jersey (22% in 1970; 24.5% in 1980) and in absolute numbers (494,860 in 1970, 625,334 in 1980) tends to indicate that there is a strong and growing potential demand for such housing.

13. The proposed ordinance includes the features that are essential to create realistic opportunities for housing affordable to lower income households:

- a. Eliminating cost-increasing design requirements and municipal fees.
- b. Requiring that 20% of the units be marketed to low and moderate income households at realistically affordable prices.
- c. Effective resale and re-rental price controls.

d. Providing additional municipal concessions if needed to make development of lower income housing feasible.

14. In a community where there is a strong demand for multi-family housing, any developable property rezoned exclusively for multi-family will in all likelihood ultimately be developed for that purpose, even if the owner has no current plans for such development. If the goal, however, is to secure affordable housing within six years, a relatively short period, one must either ascertain that the owner is ready, willing, and able to develop or one must compensate by overzoning. Given the great variety of circumstances in which developable land might not be developed during a short period of time, overzoning by at least 50% is prudent.

15. Each new zone established under the proposed settlement contains at least 50% more vacant developable land than would be required to provide the planned for number of lower income units at the specified densities and set-asides. Even discounting the area rezoned in light of overlaps between the ACH and G/S zones and the fact that some of the land rezoned has environmental constraints affecting development, there appears to be at least 50% overzoning in all zones.

16. A negotiated settlement has a number of substantial advantages over court-imposed rezoning. It avoids significant costs to both the municipality and the plaintiffs incurred in litigation. It avoids the delay of a lengthy court proceeding. Most important, however, a negotiated settlement brings municipal officials and plaintiffs together in a joint undertaking to devise effective means of providing affordable housing opportunities. It greatly increases the likelihood that the municipal officials will actually implement the plan in good faith, and try to make it work. In my opinion, a negotiated settlement is significantly more likely to produce housing than a court-decree containing exactly the same provisions.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Alan Mallach

ALAN MALLACH

DATED: *October 5, 1984*



K. HOVNIANIAN COMPANIES OF NEW JERSEY, INC.

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

September 26, 1984

RECEIVED W CHAMBERS

SEP 27 1984

Honorable Stephen Skillman
Middlesex County Court House
New Brunswick, NJ 08903

JYDG£ STEPHEN SKILLMAN

Re: Morris County Fair Housing Council, et al V.
Boonton Township, et al - Docket #L-6001-78 P.W.
Settlement regarding the Borough of Lincoln Park

Dear Judge Skillman:

This is to advise that K. Hovnanian Companies of New Jersey, Inc. has an option to purchase a tract of land which has been rezoned in Lincoln Park's TH/S Townhouse-set-aside zone. We are in receipt of a Notice of Proposed Settlement filed by the attorneys for the Borough of Lincoln Park.

Paragraph 2 (ii) of said notice refers to the parcel we have under option and states as follows: "Southwest Borough (Toms Point) - 34 acres, single ownership, zoned at 10 units per acre, which will allow for 280 to 300 units overall, of which 60 will be set-aside units."

The Lincoln Park ordinance requires a 20% set-aside for low and moderate income housing in this zone. We will provide such 20% set-aside but do not plan to construct 60 such units because, due to certain development constraints, we will be constructing less than 300 units overall. We just wanted to clarify that we would not be required to construct greater than a 20% set-aside as required by the ordinance.

Respectfully yours,

K. HOVNIANIAN COMPANIES OF NEW JERSEY, INC.

Edward A. Israelow
Edward A. Israelow, Esq.
Associate Legal Counsel

EAI/pm

cc: Scangarella & Feeney
Stephen Eisdorfer, Esq.
Middlesex County Clerk

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, made this 5th day of December
, 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 parties hereto have heretofore entered into
an Agreement, dated the 17th day of August, 1984, in settlement of
an action in the Superior Court, Law Division, Morris County,
New Jersey, bearing Docket #L-6001-78 P. W., commonly known as
the Morris 27 Action - Lincoln Park; and

WHEREAS, the parties made application to the Superior Court
of New Jersey, before the Honorable Stephen Skillman, J.S.C., for
the entry of a Final Judgment of Compliance; and

WHEREAS, an Order was entered by Judge Skillman on the 31st
day of October, 1984, which provided that a Final Judgment of
Compliance would be entered conditioned upon certain revisions
in the Agreement between the parties, dated August 17, 1984.

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. The Settlemental Agreement shall provide for annual reporting by the Borough of Lincoln Park to the Court and to the Plaintiffs in the action.

2. The Schedule for Phasing construction of lower income units and market rate units, set forth on Page 39 & 40 of the Ordinance, shall be revised as follows:

"The Developer shall submit a phasing schedule for the construction of Low and Moderate Income Units. The phasing schedule shall provide that the number of Low Income Units constructed in each phase shall be approximately equal to the number of Moderate Income Units constructed in that phase. The developer may construct and receive certificates of occupancy for the first twenty (20%) per cent of the Market Units without receiving certificates of occupancy for any Low or Moderate Income Units. Not more than forty (40%) per cent of the Market Units in the development shall receive certificates of occupancy until at least twenty (20%) per cent of the Low and Moderate Income Units shall have received certificates of occupancy. Not more than sixty (60%) per cent of the Market Units in the development shall receive certificates of occupancy until at least forty-five (45%) per cent of the Low and Moderate Income Units shall have received certificates of occupancy. Not more than eighty (80%) per cent of the Market Units in the development shall receive certificates of occupancy until at least seventy (70%) per cent of the Low and Moderate Income Units shall have received certificates of occupancy. The developer may receive certificates of occupancy for 90% of the Market Units as soon as 90% or more of the Low and Moderate Income Units have received certificates of occupancy. The developer may receive certificates of occupancy for 100% of the Market Units as soon as 100% of the Low and Moderate Income Units have received certificates of occupancy."

3. The zoning ordinance shall provide that one-half of all 2 and 3-bedroom lower income units will be low income units.

4. The formula for resale prices, set forth at Pages 37 and 39 of the Ordinance, shall be conformed to the formula set forth at Page 40, which is as follows:

"The Purchaser of a unit shall be entitled to resell the unit for:

- (a) the original sales price plus the original sales price multiplied by seventy-five (75%) of the percentage increase in the Consumer Price Index between the date of purchase and the date of resale, and
- (b) reimbursement of documented monetary outlays for reasonable improvements, and
- (c) any reasonable costs incurred in selling the unit."

5. The Schedule of Household Sizes and Bedroom Sizes, set forth at Page 32 of the ordinance, shall be amended as follows:

"1 Bedroom = 2 person household
2 Bedrooms = 3 person household
3 Bedrooms = 5 person household"

6. The term "flat" shall be defined in the ordinance, as follows:

"Flat" means a 1-story apartment unit in a building which may or may not contain 2-story apartment units."

7. The ordinance shall incorporate the provisions of

Paragraph 14 of the Agreement, dated August 17, 1984. Paragraph 14 provides that the Borough shall not zone, rezone, grant variances or grant any preliminary or final site plan approval for townhouses, or garden apartments, at gross densities higher than 4 units/acre unless the development is subject to a mandatory set-aside for units affordable to low and moderate income households as defined in the Set-Aside Zoning Ordinance of the Borough of Lincoln Park, adopted July 23, 1984, (or) the Borough has then met its fair share obligation.

8. The term "Federal Home Loan Bank" shall be substituted for "Federal Mortgage Bank", on Page 34 of the ordinance.

9. The phrase "not more than" shall be deleted from Sec. 28-50B of Page 23 of the ordinance so that such provision shall now read "The developer shall set aside twenty (20%) per cent of the total units for low and moderate senior citizens households"

10. Lincoln Park Borough shall make the appropriate amendment in its Set-Aside Zoning Ordinance, adopted on July 23, 1984, to implement the terms and conditions of this Supplemental Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

BOROUGH OF LINCOLN PARK
By: Stephen J. Marafietti
STEPHEN J. MARAFIETI, Mayor

JOS~~PH~~PH. RODRIGUEZ
BY: /s/ Stephen J. Marafietti fw^T.
STEPHEN J. MARAFIETI, ESQUIRE
ATTORNEY FOR PLAINTIFF. "S

ATTEST:
Kay Wittman
KAST/ft.WITTMAN, Borough Clerk

Joseph H. Rodriguez II
JOSEPH H. RODRIGUEZ, II, ATTORNEY FOR
BOROUGH OF LINCOLN PARK

Scangarella and Feeney
Counsellors at Law

Frank Scangarella
John F. Feeney
—
Cynthia S. Butler

565 Newark-Pompton Turnpike, P. O. Box 216
Pompton Plains, New Jersey 07444 (201) 839-5100

July 29, ~ 1985

RECEIVED AT CLERK'S

JUL 3n 1985

The Honorable Stephen Skillman

Court House

JUDGE STEPHEN SAJLLMAN

New Brunswick, N.J. 08903

Re: Application for Order to Set Hearing"

Date and Approve Form of Notice in
Connection with: (1) Supplemental
Agreement and Ordinance, pursuant
to Order of Court, dated 10/31/84
and (2) Subsequent Agreed-Upon
Modifications to Negotiated Settle-
ment - Lincoln Park Borough

Dear Judge Skillman:

I enclose herewith two (2) copies each of the
following relative to the subject matter:

1) Notice of Motion with annexed exhibits:

- Exhibit A - Notice of Proposed Modi-
fication to Settlement
- Exhibit B - Supplemental Agreement
- * Exhibit C - Ordinance 44-84 (No. 777)
- Exhibit D - Resolution of Intent and
Draft Limitations of
Development Ordinance
- Exhibit E - Ordinance No. 807
Set-Aside Distribution)
- Exhibit F - Public Advocate's approval
of Draft Limitation of
Development Ordinance
- Exhibit G - Public Advocate's approval
of Set-Aside Distribution
Ordinance

2) Order Setting Hearing Date and Approving
Form of Notice

*Amends Ordinance 19-84 (No, 750) enclosed for
reference.

A proposed final Judgment of Compliance, Supplemental Agreement and implementing ordinance was submitted to the Court by Mr. Eisdorfer on March 4, 1985 and subsequently withdrawn pending consideration of a Phasing of Development Ordinance.

The Phasing Ordinance was adopted on March 18, 1985 and subsequently disapproved (in part) by the plaintiff, on June 23, 1985. On July 15, 1985 Lincoln Park adopted a Resolution of Intent to introduce for consideration at a public hearing, a Limitations of Development Ordinance having the effect of repealing the title and objectionable portions of the Phasing Ordinance. The Limitations Ordinance was approved by Mr. Eisdorfer by letter dated July 23, 1985.

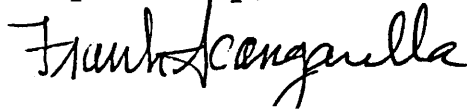
A Set-Aside Distributions Ordinance, also consisting of a modification to the negotiated settlement, was adopted on June 11, 1985 and approved by Mr. Eisdorfer on June 24, 1985. This ordinance is likewise submitted to the Court for consideration and approval.

The Supplemental Agreement referred to in the Motion as Exhibit B, and the implementing Ordinance as Exhibit C, embody the conditions set forth in the Order of the Court, dated October 31, 1984.

Since Lincoln Park has pending applications for development exceeding .1300 over-all units, including in excess of 250 set-aside units, I respectfully request that a hearing date be scheduled immediately after the Laobr Day Holiday.

The original Pleadings have been filed with the Clerk of Middlesex County.

Respectfully,



FRANK SCANGARGkLA,
Lincoln Park Borough Attorney

FS/g
enc.

cc: Thomas Molyneux, Middlesex County Clerk (w.originals) ✓
All Counsel

Law Offices

Hutt, Berkow & Jankowski

A PROFESSIONAL CORPORATION

Park Professional Bldg.

459 Amboy Avenue

P.O. Box 648

Woodbridge, N.J. 07095

Call
Eisendorfer

Reply to

P. O. Box 648

(201) 634-6400

Case File #

Gordon Berkow
Stewart M. Hutt
Joseph J. Jankowski
Janice H. Scherer
3. Bruce Weger
Ronald L. Shimanowitz
Wayne J. Peck

September 6, RECEIVED AT CHAMBERS

SEP 9 1985

Honorable Stephen Skillman, J.S.C.
Middlesex County Court House
New Brunswick, NJ 08903

JUDGE STEPHEN SKILLMAN

Re: Morris County Fair Housing Council v. Boonton Township
Docket No.: L-6001-78 P.W.

Dear Judge Skillman:

Please accept this letter in opposition to entry of a Final judgment of Compliance in favor of Lincoln Park Borough in the above matter. Pursuant to the Notice of Proposed Modification to Settlement, copies of our opposition are being sent to Frank Scangarella, Esq., and Stephen Eisendorfer, Esq.

This office represents Joseph Rendeiro and George C. Peck, owners of a portion of Lots 7, 10, 12 and 14 in Block 3 as shown on the Tax Map of the Borough of Lincoln Park, and Hovbilt, Inc., a New Jersey Corporation which is the contract purchaser of said property. This property is located in the TH-S zone, a Set-Aside Zone under the Ordinances of Lincoln Park. Our clients applied to the Lincoln Park Planning Board for siteplan approval, which application was denied on September 5, "W851". Once a memorializing resolution is adopted and transcripts are prepared, it is our intention to file an appropriate appeal.

Since the entry of the Order of this Court dated October 31, 1984, which Order granted conditional approval of a negotiated settlement, the Borough of Lincoln Park has adopted a net fill requirej kent ordinance, without permission of the Court, which will hegatfwiy"afiecfTTTEe opportunity of our clients to provide for the development of low and moderate income housing within the dictates of Mt. Laurel II and according to the zoning of the property in question. The property of our clients was rezoned as part of the ordinance adopted to implement the conditional settlement. The adoption of the net fill ordinance should preclude the entry of any Order of Compliance at this time.

Hutt, Berkow & Jankowski

A PROFESSIONAL CORPORATION

Honorable Stephen Skillman, J.S.C.
September 6, 1985
Page 2

Ordinance 30-85 (a copy is attached hereto) limits the volume of net fill which may be within the flood fringe area of delineated streams or within the 100 year flood plain, but outside of encroachment lines of non-delineated streams to 10% of the total volume of new fill which is from between the natural or existing ground surface, whichever is lower, and the level of the flood hazard along delineated streams or the 100-year storm elevation along non-delineated streams, in residential zones. In non-residential zone twice the amount of fill, 20% may be placed.

The fill requirement, which is 10j3% more stringent than the fill limitations adnp+^i-by L-W-T^AP, are cost generating while in no way affecting health or safety. Furthermore, there is no rational reason for the differing treatment between residential and non-residential zones other than the discouragement of the development of low and moderate income housing.

It is respectfully submitted that the sole aim and purpose of this ordinance^JLs- t.o thwart, development, nf, m-v-filienJiS-propertyr The Stormwater Control Ordinance of Borough of Lincoln Park as ^PTHpated by sfofch Engineers arcThat contain the net fill requirements. Yet, when the Ordinance 30- 85 was introduced, these requiremehts werein place.

Lincoln Park seeks a Final judgment of Compliance, yet it has acted with the purpose of thwarting development by a developer who stands ready to build low and moderate income housing. The Ordinance in question was never approved by the Public Advocate as required by the settlement. No final Order should issue. We intend to appear before Your Honor on September 11, 1985, at the hearing to object to the entry of the, Order.

Respectfully yours,


WAYNE J. PECK
For the Firm

WJP:kp

cc: Frank Scangarella, Esq.
Stephen Eisendorfer, Esq.
Dan Reiss, Esq.

LEGAL ADVERTISEMENT

30-85
BOROUGH OF LINCOLN PARK
NOTICE OF INTRODUCTION

NOTICE IS HEREBY GIVEN, that the following Ordinance was submitted in writing at a meeting of the Governing Body of the Borough of Lincoln Park in the County of Morris and State of New Jersey, held on the 13th day of May, 1985 introduced and read by title and passed on first reading and that the said Governing Body will further consider the same for second reading and final passage thereof at a meeting to be held on the 24th day of June, 1985, at 8:00 PM, prevailing time, at the Municipal Building the said Borough, at which time and place a public hearing will be held thereon and citizens in Interest shall have an opportunity to be heard concerning same.

Kay A. Wittman, Clerk
BOROUGH OF LINCOLN PARK
OF MORRIS COUNTY
AND STATE OF NEW JERSEY

PREFACE

The conversion by people of pervious soils to non-pervious man-made surfaces produces increased runoff volumes and flow. This generally leads to serious physical problems which are difficult and expensive to resolve. The impact of these physical problems are manifested in soil erosion, sedimentation, flooding, washouts, backups of water conveyance systems, infiltration and inflow of storm water into sanitary sewers, loss of human life and damage to real and personal property. The Borough of Lincoln Park lies within the Passaic River Basin, the State's most hazardous flood area, and the rivers and streams within the Borough are subject to frequent recurrent flooding which endangers life and damages public and private property. Encroachments in the flood plain increase the potential for flooding, and all development within the flood plain contributes to this condition by decreasing flood storage volume. To allow a continuation of development in the Borough without stormwater management that established regulations, outlines area wide policy, and defines criteria and guidelines for development of stormwater programs and facilities, could lead to even greater flood losses in the future.

This Stormwater Management Plan documents the objectives, standards and procedures to be utilized by the Borough of Lincoln Park in regulating land development, drainage planning and upgrading the existing stormwater system for the successful management of stormwater.

The Stormwater Management Plan is a phased plan comprising of 2 phases which are documented in separate volumes. The Phase 1 element of the plan will be in Volumes I and II. Volume I is the Stormwater Control Ordinance which is designed to comply with the State of New Jersey Department of Environmental Protection Stormwater Management Regulations NJAC 7:8, and Flood Hazard Area Regulations fcjA. The ordinance provides specific requirements and controls for the regulation of storm drainage for the entire Borough area. Volume II documents the studies and design work for borough-wide Master Detention Basins to supplement or replace individual detention basins or other facilities otherwise required at each site. It will include recommendations for the Phase 2 element of the Plan.

Volume II and future volumes will contain Phase 2 of the Stormwater Management Plan. This will be a long term comprehensive Stormwater Master Plan providing an updated inventory of the existing drainage systems, and recommended preventative and remedial measures for implementation. It will also contain tables, charts, graphs and recommended design procedures. Storch Engineers, of Florham Park, New Jersey, is responsible for the preparation and assemblage of the text under the general guidance of Frank Scangarella, the Borough Attorney for coordination of drainage criteria with local policy and law. The Governing Body and Planning Board of the Borough of Lincoln Park were also intimately involved in the planning and review of the original documents.

BOROUGH OF LINCOLN PARK
STORMWATER MANAGEMENT PLAN
VOLUME 1 - STORMWATER CONTROL ORDINANCE
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STORMWATER CONTROL ORDINANCE

AN ORDINANCE TO ESTABLISH STORMWATER CONTROL REGULATIONS FOR THE MANAGEMENT OF STORMWATER WITHIN THE BOROUGH OF LINCOLN PARK, MORRIS COUNTY, STATE OF NEW JERSEY.

The Governing Body of the Borough of Lincoln Park does ordain as follows:

SECTION 1.0 SHORT TITLE

This ordinance shall be known as "The Stormwater Control Ordinance of the Borough of Lincoln Park".

SECTION 2.0 STATEMENT OF FINDINGS, PURPOSE AND OBJECTIVE.

2.1 Findings

It has been determined that the Passaic River, Pompton River, Beaver Dam Brook, East Ditch, West Ditch and their tributaries and artificially ponded segments, lakes and watercourses within the Borough of Lincoln Park are subject to recurrent flooding; that such flooding is a danger to the lives and property of the public; that such flooding is also a danger to the natural resources of the Borough, County and State; that development tends to accentuate such flooding by increasing stormwater runoff, due to alteration of the hydrologic response of the watershed in changing from the undeveloped to the developed condition; that such increased flooding precluded by the development of real property contributes increased quantities of water-borne pollutants, and tends to increase channel erosion; that such increased flooding, increased erosion, and increased pollution constitutes deterioration of the water resources of the Borough, the County and the State; and that such increased flooding, increased erosion and increased pollution can be controlled, to a large extent by the regulation of stormwater runoff from such development. It is therefore determined that it is in the public interest to regulate the development of real property and to establish standards to regulate the additional discharge of stormwater runoff from such developments as provided in this ordinance.

2.2 Purposes

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Prevent the installation of structures which increase flood heights;
- (3) Prevent excessive property damage and to protect public and private property, wildlife and fisheries;
- (4) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (5) Reduce or minimize public expenditures for emergency operations, evacuations and restorations;
- (6) Minimize damage to or disruption of public facilities, transportation and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges;
- (7) Preserve, protect and enhance the natural environment of the floodplains;
- (8) Minimize losses and damages due to inundation and siltation caused by floodwaters;
- (9) Remove the impediment to community development created by recurrent flooding;
- (10) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas and floodplains in such a manner as to minimize future damages from floods;
- (11) Regulate and restrict those land uses in floodways, flood hazard areas and floodplains which at times of flood cause increases in flood heights and/or velocities, in order to reduce or minimize future expenditures for protective measures;
- (12) Protect individuals or corporations from buying land which are unsuited for intended purposes because of flood hazards;
- (13) Minimize prolonged business interruptions;
- (14) Protect the public from dangers caused by materials being swept onto nearby or downstream lands;
- (15) Insure that potential property purchasers are notified that property is in flood hazard area or floodplain; and
- (16) Insure that those who occupy the flood hazard areas of floodplains assume responsibility for their actions.

This ordinance is also enacted for the purpose of complying with the requirements of the National Flood Insurance Act of 1968 and the rules and regulations of the United States Federal Emergency Management Agency; and the State of New Jersey, Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq, and the State's Department of Environmental Protection Stormwater Management Regulations of February 7, 1983 and Flood Hazard Area Regulations of May 21, 1984.

2.3 Objective

The objective of this ordinance is to accomplish its purposes as outlined in Section 2.2 herein. In order to achieve this, the following methods and provisions shall be used:

- (1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural flood plains, stream channels, and natural protective barriers, which are necessary to accommodate or channel flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands;
- (6) Consider the need for master detention basins on an area-wide basis to supplement or replace individual detention basins or other facilities otherwise required at each site of development.
- (7) Maintain the adequacy of existing and proposed culverts and bridges, dams, and other structures;

Adopted July 25, 1985
Effective July 27, 1985

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- (8) Prevent, to the greatest extent feasible, an increase in non-point source pollution;
- (9) Induce water recharge where natural storage and geologically favorable conditions exist when practical;
- (10) Maintain the integrity of stream channels for their biological functions, as well as (or drainage and other purposes);
- (11) Prevent, to the greatest extent feasible, an increase in non-point source pollution;
- (12) Reduce and minimize the increase in runoff pollution and erosion due to any development or construction project, which otherwise would delegate the quality of water; and
- (13) Preserve and protect water facilities and resources by means of controlling increased flood discharges, stream erosion and runoff pollution.

SECTION 3.0 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. The following words and terms when used in this ordinance shall therefore have the following meanings unless the context clearly indicates otherwise:

- "Act"** means The Flood Hazard Area Control Act, N.J.S.A. 58:16A-50, et seq.
- "Alteration"** means changes in banks, bed and vicinity of a stream which affects its flood carrying capacity or environment
- "Appeal"** means a request for a review of the Borough Engineer's interpretation of any provision of this ordinance or a request for a variance.
- "Applicant"** means the owner of the property on which the permit is applied for or his legal agent.
- "Application"** means the Municipal Agency application form.
- "Base Flood"** means the flood having a one percent chance of being equalled or exceeded in any given year.
- "Borough"** means the Borough of Lincoln Park.
- "Bridge or culvert structure"** means any structure, other than a culvert pipe, erected over a depression or an obstruction, which requires an area equal to or larger than the area represented by a five (5) foot diameter pipe to pass the runoff from the one hundred (100) year storm.
- "Bureau"** means the Bureau of Flood Plain Management, State of New Jersey Department of Environmental Protection.
- "Channel"** means a watercourse with a definite bed and banks which confine and conduct continuously or intermittent flowing water.
- "Channelization"** means any artificial reconstruction of the stream channel such as by straightening, lining or deepening.
- "Culvert or Culvert Pipe"** means any structure not classified as a bridge or culvert structure which provides an opening to carry water under a roadway or embankment, or is part of a closed conduit collection system allowing the free passage of storm water, and has an opening area less than that represented by a five (5) foot diameter pipe. All culvert or culvert pipes shall be designed on the basis of a twenty-five (25) year storm.
- "Dam"** means any artificial dike, levee or other barrier together with appurtenant works, which is constructed for the primary purpose of impounding water on a permanent or temporary basis that raises the water level five feet or more above its usual mean low water height to the emergency spillway crest or in the absence of an emergency spillway, the top of dam.
- "Delineated Floodway"** means any floodway designated by the State of New Jersey Department of Environmental Protection under the provisions of the Act
- "Delineated Stream"** means a stream that has a delineated floodway that has been officially adopted by the New Jersey Department of Environmental Protection and published in the New Jersey Register.
- "Developer"** means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
- "Developer's Agreement"** means a document executed by the Borough and the Developer stipulating various conditions to which both parties have agreed.
- "Development"** means any man-made change to improved or unimproved real estate, including but not limited to the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the corporate limits of the Borough.
- "Development Permit"** means a permit issued by the Municipal Agency pursuant to the provisions of this ordinance and other applicable ordinances in force.
- "Diversion"** means a channel with or without a supporting ridge on the lower side constructed across or at the bottom of a slope.
- "Drainage"** means the removal of surface water or ground water from land by drains, grading or other means and includes control of runoff to minimize erosion and sedimentation during and after construction or development and means necessary for water supply preservation or prevention or alleviation of flooding.
- "Drainage Basin or Subbasin"** means an area or subarea drained by a water course.
- "Encroachment Line"** means a line encompassing the channel of a natural stream and portions of the 100 year flood plain adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any natural stream. It is approximately equal to the floodway line along delineated streams.
- "Erosion"** means detachment and movement of soil or rock fragments by water, wind, ice or gravity.
- "Excavation"** means removal or recovery by any means whatsoever of minerals, mineral substances or organic substances, other than vegetation, from the water, land surface or beneath the land surface, whether exposed or submerged. Normal agricultural activities shall not be considered to be excavation.
- "Exceptional and undue hardship"** means situations where literal enforcement of or strict compliance with this ordinance would result in peculiar and substantial burdens upon the owner and where such enforcement or compliance would not be necessary to avoid substantial detriment to the public health, safety and general welfare.
- "Fill"** means sand, gravel, earth or other materials of equal quality placed or deposited within the 100-year floodplain or flood hazard area so as to form an embankment or raise the elevation of the land surface.
- "Flood" or "Flooding"** means a general and temporary condition of partial or complete inundation of abnormally dry area from:
- (1) The overflow of inland or tidal waters and/or
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- "Flood Boundary and Floodway Map" (FBFM)** The official map on which the Federal Emergency Management Agency, Federal Insurance Administration has delineated the floodway and one hundred year floodplain boundary applicable to the municipality.

"Flood carrying capacity" means the ability of a channel or floodway to transport flood waters, as determined by its shape, cross-sectional area, bed slope, coefficient of hydraulic friction, and upstream and downstream channel configurations as used in accepted engineering practices.

"Flood damage potential" means the susceptibility at a particular site to damage by potential floods at that site, as well as increased off-site flooding or flood related damages caused by such use.

"Flood fringe" means that portion of the flood hazard area not designated as the floodway.

"Flood hazard area" means the floodway and the flood fringe area of a delineated stream.

"Flood hazard area design flood" means the 100-year storm in non-delineated areas and the 100-year storm plus 25 percent in the delineated areas.

"Flood hazard design elevation" means the elevation of the Flood hazard area design flood.

"Flood Insurance Rate Map" (FIRM) means the official map on which the Federal Emergency Management Agency, Federal Insurance Administration has delineated both the special flood hazard area and the risk premium zones applicable to the municipality.

"Flood Insurance Study" means the official report in which the Federal Emergency Management Agency, Federal Insurance Administration has provided flood profiles, as well as the Flood Boundary and Floodway Map and the water surface elevation of the base flood.

"Flood level" means the elevation indicated on the flood map.

"Flood plain" means the relatively flat area adjoining the channel of a natural stream which has been or may be hereafter covered by flood water.

"Flood plain/Floodway/Wetlands" means the official maps on which the Borough of Lincoln Park has provided the Flood Hazard Area Design Flood Boundary, the One Hundred Year Flood Plain Boundary, the Floodway limits and the Wetlands Conservation Areas for the natural streams, watercourses, waterbodies, and areas where the water table is usually at or near the surface as well as land covered by shallow water within the corporate limits of the Borough.

"Floodproofing" means any combination of structural and nonstructural design features, additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Floodway" means the channel of a natural stream or other watercourse and portions of the adjacent land areas which are reasonably required and must be reserved to carry and discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

"Hazardous materials" means any waste or combination of waste which poses a present or potential threat to human health, living organisms or the environment. It shall include waste materials that are toxic, carcinogenic, genetically harmful, corrosive, irritating or sensitizing, radioactive, biologically infectious, explosive, or flammable. It includes, but need not be limited to, those materials and concentrations of materials that are determined to be toxic by the Federal Secretary of Health and Human Services pursuant to section 20(6) of the Occupational Safety and Health Act of 1970 (Public Law 91-596, OSHA) and those materials listed in the current Part 172, Title 49 of the Code of Federal Regulations issued by the Federal Department of Transportation.

"Historic site" means any building, structure, area or property that is significant in the history, architecture, archeology or culture of this municipality, and has been so designated.

"Impervious Surface" means any natural or manmade surface impervious by water and causes surface runoff, including but not limited to, sidewalks, street pavement, driveways, patios and buildings, expressed as a percentage arrived at by dividing the area of impervious surface by the gross site area.

"Lowest Floor" means the lowest level (including basement, crawl space, and garage) of the lowest enclosed area.

"Major project" means that class of project defined as major in the 90-Day Rules, N.J.A.C. 7:1C-1.

"Manual" means the Technical Manual for Stream Encroachment published August 1984 by the Bureau.

"Minor project" means that class of project defined as minor in the 90-Day Rules.

"MLUL" means the Municipal Land Use Law, N.J.A.C. 40:550-1 et. seq.

"Mobile home" means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

"Municipal Agency" means the Municipal Planning Board, Board of Adjustment, or Governing Body of the Borough when acting pursuant to this Ordinance.

"Net Fill" means additional earth or other till beyond the total quantity already present above the low water level of the stream or ground water level (whichever is higher) in that portion of the project site which is in the flood hazard area or 100-year flood plain.

"New Construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

"Ninety day rules" means N.J.A.C. 7:1C (90-Day Construction Permits).

"NJDEP" means the New Jersey Department of Environmental Protection.

"Non-point Source Pollution" means pollution from any source other than from any discernible, confined and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

"Obstruction" means but is not limited to any structure, excavation, fill or other materials placed in, along, across, or projecting into any channel, watercourse or floodway which may impede, retard, or change the direction of the flow of water either in itself or by catching or collecting debris carried by such water or that is placed where the flow of water might carry the same downstream to the damage of life or property.

"Off-site" means located outside the lot lines of the lot in question but within the property (of which the lot is a part) which is the subject of a development application or contiguous portion of a street or right-of-way.

"Off-tract" means not located on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

"On-site" means located on the lot in question.

"On-tract" means located on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

"One hundred year flood plain" means the area inundated by a 100-year flood. A 100-year flood is estimated to have a 1 percent chance, or one chance in 100, of being equalled or exceeded in any one year.

"Open space" means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use of enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that such areas may be improved with only those buildings, structures street and off-street parking and other improvements that are designed to be incidental to the natural openness of the land.

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"Owner" means any Individual, family group, firm, association, syndicate, co-partnership or corporation having sufficient proprietary interest in land.

"Permitted Use" means any use which shall be allowed upon approval by the Municipal Agency pursuant to this ordinance.

"Zoning Board" means the Borough Planning Board.

"Prohibited Use" means a use which shall not be allowed under any circumstances.

"Public drainage way" means the land reserved or dedicated for the installation of storm water sewers or drainage ditches, or required along a natural stream or watercourse for preserving the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation and erosion.

"Recharge" means the replenishment of underground water reserves.

"Restricted Use" means any flood fringe use which requires a restricted use permit from the Borough.

"Runoff Rate" means the volume rate of movement or quantity of stormwater flowing past a given point with respect to time, expressed in cubic feet per second or gallons per minute.

"Runoff Volume" means the amount or quantity of stormwater that flows on the surface of the ground, as a result of precipitation, and expressed in cubic feet, acre feet or gallons.

"Sediment" means any solid material, both mineral and organic, that is in suspension, or that is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.

"Sediment basin" means a natural or man-made hollow to retain rock, sand, gravel, silt or other material.

"Site" means any plot or parcel of land or combination of contiguous lots or parcels of land where clearing or grading is performed or permitted.

"Soil Conservation District" means a political subdivision of the State of New Jersey authorized under N.J.S.A. 4:24-2 et seq.

"Solid waste" means garbage, sludge, refuse, trash, rubbish, debris or other discarded solid materials.

"Special Flood Hazard Area" means the land in the flood plain within the community subject to a one percent or greater chance of flooding in any one year.

"Start of Construction" The first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation.

"Stormwater Runoff or Runoff" means flow on the surface of the ground, resulting from precipitation.

"Stream Encroachment" means any structure, alteration, filling, construction or other development within the area which would be inundated by the 100-year flood of any non-delineated stream or within the flood hazard area of a delineated stream.

"Stream Encroachment Permit" means a permit issued by the Department, or delegated authority under the provisions of N.J.S.A. 58:16A-50 et seq. • A.C. 7:13.

"Structure" means any assembly of materials above or below the surface of or water, including but not limited to buildings, fences, pipelines, landings, dams, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, roads, railroads, bridges and the facilities of any utility or governmental agency. Trees or other vegetation shall not be considered to be structures.

"Substantial Improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either

a. Before the improvement or repair is started, or

b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not however, include either:

(1) Any project for the improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

(2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

SECTION 4.0 GENERAL PROVISIONS

This ordinance shall apply to all areas within the corporate limits of the Borough of Lincoln Park and shall be applicable but limited to each of the types of development named below.

(1) Residential construction or redevelopment of dwelling units (except as provided in subpara. 4 below).

(2) All governmental, commercial or industrial developments which cover land with additional impervious surface (except as provided in subpara. 4 below).

(3) Any construction of one or more of the following uses: (a) confined feeding and holding areas that provide for more than 150 head of cattle or 1000 head of poultry; (b) pipelines, storage, or distribution systems for petroleum products or chemicals; (c) storage, distribution or treatment facilities (excluding home septic systems) for liquid waste; (d) solid waste storage, disposition, incineration or landfill; (e) quarries, mines or borrow pits; (f) land application of sludge or effluents; and (g) storage distribution or treatment facilities for radioactive wastes.

(4) Control of stormwater runoff is mandated in all areas for residential construction or non-residential construction which add impervious surface. If the planning area is classified as a rural area under provisions of N.J.A.C. 7:8, residential construction of more than 25 units shall be considered by the Department of applicability.

In the case of projects for which State and county as well as municipal approval of proposed drainage facilities is required, the applicant shall be required to comply with all provisions of this ordinance. In such a case, the only provisions of the municipal ordinance which shall govern are those requirements which are stricter than those of the State or county.

4.1 Administration

The administration and enforcement of the provisions of this ordinance relating to the construction, erection, maintenance and continued operation of storm water and drainage facilities and other facilities, structures, devices and techniques required to carry out the objectives of this ordinance shall be the responsibility of the Municipal Agency.

4.2 Basis of Establishing Special Flood Hazard Areas and Flood Hazard Areas.

The special flood hazard areas identified by the Federal Emergency Management Agency, Federal Insurance Administration through a scientific and engineering report entitled "Flood Insurance Study, Borough of Lincoln Park, Morris County, New Jersey", dated August 24, 1984, with accompanying Flood Insurance Rate Maps and Flood Boundary and Floodway Maps and any revisions thereto are hereby adopted by reference and declared a part of this ordinance. The Flood Insurance Study is on file in the Borough Municipal Building, 34 Chapel Hill Rd., Lincoln Park, New Jersey.

The flood hazard areas delineated by Thonet Associates for the Borough of Lincoln Park on the maps entitled "Floodplain/Floodway/Wetlands, Lincoln Park, New Jersey," dated April 1985 along with the delineated wetland area limits and any revisions thereto are hereby adopted by reference and declared a part of this ordinance.

4.3 Submission Materials Due

The applicant shall submit materials, as required by Section 11 hereof, to the Planning Board prior to or at least at the same time he submits his application for the municipal approval.

4.4 Review

The applicant's project shall be reviewed by the Planning Board. The Planning Board shall consult with the Borough engineer to determine if the project meets the standards set forth in this ordinance.

4.5 Variance

For good reason, the Municipal Agency may grant a waiver of the provisions of this ordinance. In each such case, the Planning Board shall make a report within 30 days to the county planning board, giving a full explanation of the nature of the variance, and the reasons why it was granted.

4.6 Penalties for Non-Compliance

No structure of land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of the ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor.

Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than Five Hundred Dollars (\$500.00) or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Borough of Lincoln Park from taking such other lawful action as is necessary to prevent or remedy any violation.

4.7 Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap whichever imposes the more stringent restrictions shall prevail.

4.8 Interpretation

In the interpretation and application of this ordinance, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under State statutes.

4.9 Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards and flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Borough of Lincoln Park, any officer or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION 5.0 STORMWATER CONTROL

Any application for development shall include a stormwater control plan containing sufficient information to effectuate the intent and purpose of this section. Applications for the following shall be exempt from the requirements of this Section:

(1) Additions or alterations to one and two family residences;

(2) A one or two family residence to be constructed on a lot which is not contiguous to any other vacant buildable lot;

(3) A subdivision which results in only one vacant buildable lot for a one or two family residence;

(4) The use or reoccupancy of any other land, building or structure without a change of use or substantial alteration or reconstruction thereof following an affirmative finding by the Municipal Agency of compliance with the standards herein.

5.1 General Standards

Whenever an applicant seeks approval from the Municipal Agency for a development to which this ordinance is applicable, the applicant shall be required to demonstrate that his stormwater control plan and design of stormwater control facilities are based on sound planning, engineering and architectural techniques and adhere to the standards set forth in this ordinance.

Development includes all residential, governmental, commercial or industrial developments which add impervious surface, and/or pose a significant potential for pollution of surface or ground waters.

Stormwater control and runoff standards shall be as follows:

(1) Volumes and rates of stormwater runoff shall be controlled so that after development the site will generate no greater peak runoff from the site than prior to development, for a two-year, ten-year, twenty-five, and one-hundred-year storm considered individually.

(2) The drainage of adjacent areas shall not be adversely affected.

(3) Soil erosion during or after development shall not increase over that which naturally occurs.

(4) If applicable, soil absorption and groundwater recharge capacity of the area shall not be decreased below that which occurs under existing conditions.

(5) The natural drainage pattern of the area shall not be significantly altered.

(6) The regulation and control of stormwater runoff for any land area to be developed shall be through appropriate detention and/or ground absorption systems that meet the specific conditions of the site; and the total of the detained or absorbed water shall be in an amount necessary to duplicate as nearly as possible existing conditions.

(7) All streets shall be provided with manholes, catch basins and pipes where the same may be necessary for proper surface drainage. Additionally, all work shall be in accordance with the established design standards of the borough.

(8) The system shall be adequate to convey and/or store the stormwater and natural drainage water which originates not only within the lot or tract boundaries, but also that which originates beyond the lot or tract boundaries. No stormwater

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... natural drainage water or water discharged from any source shall be so bed as to overload the existing drainage systems or create flooding or the) for additional drainage structures on other private properties or public s without proper and approved provisions being made for taking care of these conditions. Over-the-curb drains for the purpose of disposing of sump pump and/or roof leader runoff is prohibited. These facilities must outlet into an adequate watercourse or drainage system as approved by the Borough Engineer. Specific findings shall be made by the Borough Engineer in this regard for review and adoption by the approving authority as part of its written resolution.

(9) The materials used in the construction of storm sewers, bridges and other drainage structures shall be in accordance with the specifications of the Standard Specifications for Road and Bridge Construction of the New Jersey State Highway Department, current edition, and any supplements, addenda and modifications thereof unless otherwise specified by the Borough Engineer. Modifications or change of these specifications may be requested by the applicant but may be implemented only with the knowledge and written consent of the Borough Engineer.

(10) Lots shall be graded to secure proper drainage away from buildings and into streets, where possible. Additionally, drainage shall be provided in a manner which will prevent the collection of stormwater in pools or other unauthorized concentrations of flow and, to the extent possible, and unless specifically approved in writing by the adjacent property owner and incorporated into appropriate resolution by the approving authority, water shall not flow across adjacent property lines.

(11) Approval for drainage structures shall be obtained from the appropriate municipal, county, state and federal agencies and offices where required. Each applicant shall make application to the New Jersey Department of Environmental Protection, Division of Water Resources, the Morris County Engineering Department, the Borough Engineer and, if applicable, the United States Army Corps of Engineers. Letters of approval from the appropriate governmental authorities shall be furnished to the Borough Engineer, with copies to the approving authority, prior to the granting of final approval.

(12) Where required by the Borough and a lot or tract is traversed by a watercourse, surface or underground drainage system, channel or stream, there shall be provided and dedicated a drainage right-of-way easement to the Borough conforming substantially with the lines of such watercourse, and such further width or construction or both as will be adequate to accommodate expected stormwater runoff in the future, based upon reasonable growth potential in the Borough and. In any event, meeting any minimum widths and locations shown on any adopted official map or Master Plan. Such easement dedication shall be expressed on the plat as follows: "Drainage easement granted for the purpose provided for and expressed in the Development Review Ordinance of the Borough".

(13) Where appropriate, seepage pits may be required in order to recharge aquifer.

(14) Surface water runoff shall not be transferred from one watershed to another without the approval of the Planning Board and the Borough Engineer.

(15) The Stormwater Control plan shall coordinate with other applicable environmental ordinances in force.

(16) Re-establishing vegetative cover shall be in accordance with "Standards and Specifications for Soil Erosion and Sediment Control in New Jersey", current edition.

(17) The Stormwater Control Plan shall establish a time schedule for temporary and permanent surface water management measures prior to, during, and after construction or other disturbance to include seeding and establishing sod in grass waterways.

(18) All outfalls are to be designed in a manner to retard velocities at the outfall, provide stream channel protection, and comply with "Standards and Specifications for Soil Erosion and Sediment Control in New Jersey", current edition.

(19) All structures and land treatment practices shall conform to "Standards and Specifications for Soil Erosion and Sediment Control in New Jersey", current edition.

(20) All water carrying structures and/or retention areas shall be completed and stabilized prior to diversion of water to them.

(21) All development will be required to treat the runoff generated from the rainfall from the developed site for pollution abatement purposes. Treatment of this runoff may be achieved by filtration or other appropriate means prior to release from detention. The additional volume generated by the site due to development from a 25 year frequency storm event must be controlled by a detention facility and released at a rate of discharge not to exceed the peak rate of discharge of the site in the predeveloped condition and conveyed to a point of legal and positive discharge.

Special engineering features to minimize the transport of pollutants remaining in the above mentioned volume shall be incorporated into the design of the outlet control structure. The design of the system shall make adequate provision to minimize erosion. All detention facilities that limit the rate of discharge must be designed to provide for one (1) foot of freeboard above the design high water of the pond.

(22) Vacuum street sweeping may be substituted for the water quality requirement. In cases in which continuity of the service can be assured, and where the pollution in question originates on the pavement.

Detention areas may be depressions in parking areas, excavated basins, basins elevated through use of curbs, stabilized earth berms or dikes, or any form of grading which serves to temporarily impound and store water.

Innovative surface water runoff control and recharge devices may be proposed, such as rooftop storage, dry wells, roof drains, infiltration trench, underground tank storage, gravel layers underneath paving, swale storage, front and back yard ponding, oversized sewers, detention within Pedestrian Plazas and Malls, parking lot detention including precast concrete turf grids, etc., providing they are accomplished by detailed engineering plans and performance capabilities.

Non-structural management practices, such as cluster land use development, stream encroachment and flood hazard controls should be coordinated with detention requirements. Changes in land use can often reduce the scope and detention provisions required by means of appropriate changes in runoff standards.

Specific Standards

For engineering review by the Municipal Agency, each proposed project not exempted from the operation of this ordinance shall provide a stormwater control plan that establishes runoff volumes and peak rates of discharge by current techniques. The methods of computation shall meet the following specific standards:

(1) Design Frequency (minimum)
Facility

Bridges/Culvert Structures
Channels, Ditches (or drainage external to the develop-
ment

Design
Frequency
* 100 Year

100Year

Culverts, crossdrains, storm sewers and collection system

25 Year

Roadside swales for drainage internal to the develop-
ment

.5 Year

Detention/Retention Basins or storage systems

100 Year

*This standard to be revised to meet new Bureau requirements when published.

(2) Methods for Computing Runoff Volumes, Rates and Hydrographs

A. Drainage basins or sub-basins 0 to 5 acres • Rational Method.

B. Drainage basins or sub-basins 0 to 25 acres • Modified Rational Method.

C. Drainage basins or sub-basins 5 to 300 acres • U.S.O.A. Soil Conservation Service (SCS) TR55 Method with option of using SCS computer program TR20 method.

D. Drainage basins or sub-basins 300 to 2,000 acres • SCS TR20 computer program method, or U.S. Army Corps of Engineers HEC-1 computer program.

E. Drainage basins or sub-basins over 2,000 acres - U.S. Army Corps of Engineers HEC-1 computer program, and/or New Jersey Department of Environmental Protection Special Report 38.

(3) Rainfall Intensity and Time of Concentration

Rainfall Intensity shall be based on rainfall intensity curves developed by the State of New Jersey Department of Environmental Protection. 1976 and published in their Technical Manual for Stream Encroachment

Time of concentration (TC) shall be derived from appropriate engineering techniques. TC shall consist of two components referred to as the "inlet time" and the "time of flow". The "inlet time" is the period of time consumed by the flow of water from the most distant point in the drainage area to the inlet. The "time of flow" is the period of time during which water flows through the drainage system from the inlet to any point being investigated below the inlet. The minimum "inlet time" to be used for design is 10 minutes.

(4) Storm Sewer Requirements

Storm sewer line design shall be performed using technical procedures as outlined in American Society of Civil Engineers (ASCE) Manual and Report on Engineering Practice No. 37. For storm sewer lines under traffic areas, reinforced concrete culvert pipe (RCCP) of appropriate Class shall be used. Corrugated metal pipe (CMP) may be used elsewhere.

The minimum inside diameter of pipe shall be fifteen (15) inches and a minimum cover of two (2) feet on top of all lines shall be required.

The maximum design velocity for conduits shall be fifteen (15) feet per second, and the minimum design velocity shall be three (3) feet per second. Where discharge is made into a stream bed, adequate protection shall be provided and the allowable velocities shall be as shown in the Standards and Specifications for Soil Erosion and Sediment Control in New Jersey. Design of Roadside Channels, Hydraulic Design Series No. 4, Department of Transportation, Federal Highway Administration, or in Design Charts for Open Channel Flow, United States Department of Commerce, Bureau of Public Roads.

Ends of pipeline starting or terminating in an open channel shall have reinforced concrete headwalls of flared end sections.

Storm sewer lines shall not have a horizontal or adverse slope.

Storm sewer structures shall be placed where lines change alignment, grade or size, or are joined by other lines. In addition, storm sewer structures shall be placed not more than three hundred (300) feet apart. Inlets shall be located to prevent gutter flow from crossing street pavement and to prevent runoff accumulations above curbing at all intersections and low points along the roadway. Maximum inlet flow rate shall be based on the capacity of the type of inlet and shall not exceed six and zero-tenths (6.0) cubic feet per second. All hydraulic structures shall have sufficient depth to prevent overflow due to energy losses or changes in flow regimes.

(5) Bridges, Culverts

All bridges and culverts shall be designed in accordance with the following publications:

a. New Jersey Department of Transportation Design Manual - Bridges and Structures.

b. U.S. Department of Transportation • Hydraulic Charts for the Selection of Highway Culverts.

All bridges and culverts shall meet the requirements and procedures set forth in the Manual.

(6) Channels

When channels, swales or ditches are used as part of the storm drainage system, they shall be designed in accordance with the following publications:

a. U.S. Army Corps of Engineers • Hydraulic Design of Flood Control Channels.

b. U.S. Department of Transportation - Design of Roadside Channels, Hydraulic Design Series No. 4.

c. New Jersey State Soil Conservation Committee - Standards for Soil Erosion and Sediment Control in New Jersey.

All channels and ditches shall meet the requirements and procedures set forth in the Manual.

(7) Storm Water Detention Facilities

A. There are three basic/main types of stormwater detention facilities. They are the detention basin, the retention pond and the infiltration basin. These may be constructed above or under ground. A detention basin temporarily stores stormwater runoff, releasing the water through an outlet structure at a designed controlled rate, until the basin is completely empty. A retention pond is a permanent body of water, which receives additional water as a result of stormwater runoff. This additional stormwater is retained temporarily and released at a designed controlled rate through an outlet structure. An infiltration basin collects and stores stormwater, which percolates completely into the ground, and performs the function of replenishing groundwater supply. This type facility has no outlet structure. A detention facility must accommodate site runoff generated from 2 year, 10 year, 25 year, and 100 year 24 hour storms considered individually. Runoff greater than that occurring from the 100 year 24 hour storm will be passed over an emergency spillway. Detention will be provided such that after development neither the peak rate of flow from the site, nor the total flow during the hour of maximum releases will exceed the corresponding flows which would have been created by similar storms prior to development. This detention provision is commonly referred to as the production of "zero (0) increase run-off" from the site in changing from undeveloped to developed condition. For purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good condition (if the lands are pastures, lawns or parks), with good cover (if the lands are woods), or with conservation treatment (if the land is cultivated), regardless of conditions existing at the time of computation.

B. The water quality requirement for detention will require prolonged retention of a small design storm, termed the settleability design storm, which shall be either a one year frequency Type III 24 hour storm as defined by the Soil Conservation Service or a storm of one and one-quarter (1 1/4) inches of rainfall in two (2) hours. Provisions shall be made for it to be retained and released so as to evacuate ninety percent (90%) in approximately eighteen (18) hours in the case of residential developments and thirty-six (36) hours in the case of other develop-

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menu. This is usually accomplished by a small outlet at the lowest level of detention storage, with a larger outlet or outlets above the level sufficient to control the small design storm. If the above requirement would result in an opening with flow area equivalent to a pipe smaller than three (3) inches in diameter, the period of retention shall be waived so the three (3) inches equivalent diameter will be the minimum pipe size used. Where soils have sufficient permeability, the production of zero (0) increase runoff from the site will be considered sufficient to meet the water quality requirement for residential developments, provided that the ground water does not rise to within two (2) feet of the bottom of the detention basin. Infiltration basins may satisfy the water quality requirement provided that they will retain runoff from the settleability design storm and allow its complete infiltration within 24 hours. For other than residential developments, approvals will be on a case-by-case basis after technical review by the Borough Engineer. The object of this review will be to avoid pollution of ground water.

In all cases, multiple level outlets shall be provided, and designed so that discharge rates from the development for the design storms will not be increased from what would occur if the development were not constructed. Outlet waters shall be discharged from the development at such locations and velocities that will cause no additional erosion to channels below the development.

C. Runoff from areas uphill or upstream from the development site may be passed across the development site without detention of storage. If it is more convenient, part or all of such water may be passed through the detention means described above and an equal amount of water that originates on the site may be passed downhill or downstream. If any such upstream water enters detention means provided as specified under paragraph A above, the design shall be increased accordingly. This exchange of water is permitted only if the site is not more polluted than the detained runoff from uphill or upstream. The intention is to require retention for the full period specified in paragraph 8 above, of the actual runoff from the site or its equivalent and not just of an equivalent amount of water (which may be less polluted).

D. Where a project consists of two phases, (I) new construction which requires provisions of storm drainage under the terms of this ordinance and (II) repair or rehabilitation of structures and surfaces which do not result in increasing the extent of impervious areas or in rendering existing surfaces less pervious, the detention requirements may be computed on the basis of phase (I) exclusively.

E. If detention basins or other detention facilities are provided through which water passes at times other than following rainfall, the Borough Engineer should be consulted concerning design criteria. It will be necessary for detention requirements to be met, despite the necessity of passing certain low flows.

F. Outlets from detention facilities shall be designed to function without manual, electric, or mechanical controls. Outlet waters shall be discharged at such locations (with adequate protection) and velocities as not to cause additional erosion or cause additional channels below the development.

G. The retention of site runoff as required by this ordinance will result in the accumulation in the detention basin of sediment. Including particulate polluting substances, silt, and debris. Provision must be made for periodic removal of accumulated solid materials. Computations for storage capacity shall include estimates for one year's accumulation of solid materials (In appropriate cases, this must include shopping carts, beer cans, and other cultural debris).

H. Responsibility for operation maintenance and repair of detention facilities installed, including periodic removal and disposal of accumulated particulate and debris, mowing of grass, and mosquito control shall remain with the owner or owners of the property, with permanent arrangements that shall pass to any successive owner, unless assumed by a governmental agency. If portions of the land are to be sold, legally binding arrangements satisfactory to the Borough Engineer and the Borough Attorney, shall be made to pass the responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for operation, maintenance and repair hereinafter in this section referred to as the responsible person.

Prior to granting approval to any project subject to review under this ordinance, the applicant shall enter into an agreement with the Municipal Agency to ensure the continued operation and maintenance of the detention facility. This agreement shall be in a form satisfactory to the municipal attorney, and may include, but may not necessarily be limited to, personal guarantees, deed restrictions, covenants, and bonds. In cases where property is subdivided and sold separately, a homeowner's association or similar permanent entity should be established as the responsible entity, absent an agreement by a governmental agency to assume responsibility.

A schedule of maintenance inspections shall be developed and followed by the owner subject to the approval of the Borough Engineer. In the event that the detention facility becomes a danger to public safety or public health, or if it is in need of maintenance, the Municipal Agency shall so notify in writing the responsible person. From that notice, the responsible person shall have fourteen (14) days to affect such maintenance and repair of the facility in a manner that is approved by the Borough Engineer or his designee. If the responsible person falls or refuses to perform such maintenance and repair, the municipality may immediately proceed to do so and shall bill the cost thereof to the responsible person in accordance with the provisions of the Developer's Agreement.

I. In instances where the provisions of separate detention facilities for a number of single sites are technically and economically prohibitive and more difficult to maintain than provisions of joint facilities for a number of sites, the Municipal Agency will be willing to consider provisions of joint and/or master detention facilities which will fulfill the requirements of this ordinance. Where these detention facilities may have to be located outside the property limits of the site, they will be considered as "off-site" drainage detention facilities and shall comply with criteria outlined in Section 6 of this ordinance. In such cases, a properly planned staged program for the facilities may be approved by the Municipal Agency in which compliance with some requirements may be postponed at early stages while preliminary phases are being undertaken and construction fund accumulated.

J. Detention facilities in special flood hazard areas and flood hazard areas as established in Section 4.2 or flood hazard areas as determined by the State of New Jersey Department of Environmental Protection under provisions of the Act all comply with the following:

1. Whenever practicable, developments and their storm water detention duties should be beyond the extent of the flood hazard area of a stream. When it is not feasible and detention facilities are proposed to be located partially or wholly within the flood hazard area, or other areas which are frequently flooded, some storm conditions will make the facility ineffective at providing retention of site runoff. This will happen if the stream is already overflowing its banks and the detention basin, causing the basin to be filled prior to the time it is needed. In such cases the standards established in these regulations will be modified in order to give only partial credit to detention capacities located within a flood hazard area. The credit will vary in a ratio intended to reflect the probability that storage in a detention basin will be available at the time a storm occurs at the site.

2. Detention storage provided below the elevation of the edge of the flood hazard area will be credited as effective storage at a reduced proportion as indicated in the table below:

Elevation	Size of Drainage Area*	
	Less than	Greater than 100mi.'
5mi.'	5-100mi.'	90%
Less than 2' below	40%	65%
Between 2 and 4' below	25%	50%
Over 4' below	10%	25%

*Area contributing floodwaters to the flood hazard area at the site in question.

This effective detention storage will be required to provide for drainage of the developed land in accordance with the criteria already established in these regulations. However, the gross storage considered for crediting will not exceed that which would be filled by runoff of a 100 year storm from the site.

3. As an alternative to approach 2 above. If the developer can demonstrate that the detention provided would be effective, during runoff from the 100 year 24 hour storm, peaking simultaneously at the site and on the flood hazard area, his plan will be accepted as complying with provisions of paragraph 2 above.

4. In making computations under paragraph 2 or 3 above, the volume of net fill added to the flood hazard area portion of the project's site will be subtracted from the capacity of effective detention storage provided. Net fill is defined as the total amount of fill created incidental to the completion of the project less the amount of excavated material removed during the completion of the project, both measured below the elevation of the edge of the flood hazard area.

5. Where detention basins are proposed to be located in areas which are frequently flooded but have not been mapped as flood hazard areas, the provisions of either paragraph 2 or 3 will be applied, substituting the elevation of a computed 100 year flood for the elevation of the edge of the flood hazard area in paragraph 2.

6. Developers are also required to show compliance with stream encroachment and flood plain regulations of the New Jersey Department of Environmental Protection, where applicable.

K. In the event that specific site conditions are such that the specific design standards/criteria as outlined in this Section may not be suitable for effective stormwater control at the particular site, the Borough Engineer shall be consulted concerning applicable design criteria.

SECTION 6.0 OFF-SITE AND OFF-TRACT DRAINAGE FACILITIES

6.1 Purposes of this section the definition of "off-site" shall also include off-

6.1 Off-Site Drainage Facilities Requisites

As a condition for final approval of any development proposal (or) proposal prior to the issuance of any development permit for any land use. Including any residence or other use of property, the developer or applicant shall be required to:

(a) Pay a base amount to an off-site drainage improvement fund or a stormwater management trust account to compensate for the increased runoff volume of water that will flow directly from the site as a result of the addition of impervious surface in changing from undeveloped to developed condition. This base amount will be determined by criteria established herein and will be mandatory.

(b) Pay in addition to the base amount in (a) his pro-rata share of the cost of providing any reasonable and necessary drainage facilities, and easements therefor, located outside the property limits of the development, but necessitated or required by construction or improvements within such development. The pro-rata share of such improvements and facilities that shall be borne by each developer within a related or common drainage basin area shall be based on criteria established herein.

6.2 Determination of Off-Site Drainage Facilities Requirements

The decision regarding what if any, off-site drainage improvements are to be required of a developer shall be made by the Municipal Agency. This decision will be made upon analysis and review of the stormwater control plan proposal submitted by the developer's engineer. The Municipal Agency will also, prior to the imposition of any conditions on an applicant for development, determine whether the off-site drainage improvements are to be constructed by the Borough or the developer. Once the foregoing determination has been made, the Municipal Agency shall estimate with the aid of the Borough Engineer and other such persons have pertinent information or expertise: (1) the cost of the improvement and (2) the amount by which all properties within a related or common drainage area, will be specially benefited therefrom.

The developer's pro-rata share of the cost of off-site drainage improvements shall be based on the impact of the proposed development on existing drainage facilities and computed based on unit costs at the time of granting final approval of the development proposal. The amounts of money required pursuant to this Section shall be estimated sums and such amounts shall be redetermined by the Borough following the completion of the improvement to insure that the developer shall pay only his appropriate share of the cost thereof.

6.3 Off-Site Drainage Facilities Criteria

(a) The capacity and design of the drainage system required to control and convey stormwater runoff from the proposed development to a point of positive discharge shall be based on methods and standards consistent with other Sections of the Ordinance. Calculations, plans and cost estimates shall be provided by the applicant's engineer and approved by the Borough Engineer.

(b) The applicant shall be required to pay a mandatory base amount for the addition of impervious surface to any site which does not provide an adequate storage system to permanently handle the increased runoff volume. This is necessary because of the following findings:

(1) The majority of the land area within the Corporate limits of the Borough of Lincoln Park lies within the Special Flood Hazard Area and floodplain as defined in Flood Insurance Studies for the Borough, and is subject to recurring flooding from its rivers and streams.

(2) The natural watercourses, depression storage areas and existing drainage facilities within the drainage basin of the Borough of Lincoln Park are inadequate and do not possess sufficient flood storage or flood carrying capacity to safely pass flood waters without endangering life and causing damage to public and private property.

(3) All development of land which adds impervious surface area will contribute additional runoff volume from a site than it did prior to development.

(4) Additional storage volume be provided by constructing master detention basins and other storage system improvements where practical, to handle the additional volumes that will runoff sites which change from undeveloped to developed conditions.

(5) It is in the public interest that these master detention basin facilities be part of the Borough's Stormwater Management Plan, installed and maintained by the Borough, and assessed by the municipality as local improvements to be paid for by all property contributing additional runoff volume.

(c) The applicant shall be required to pay a pro-rata share of the off-site stormwater drainage improvements. Including the installation, relocation or

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replacement of storm drains, culverts, catch basins, manholes, riprap or improved drainage ditches, detention or retention basins and appurtenances thereto and installation, relocation and replacement of other storm facilities or appurtenances associated therewith. The pro-rata share shall be determined with consideration given to the following:

1. The relationship between the acreage of the developer's property and the acreage in the total drainage basin.

2. The specific nature of the proposed development, the amount of area to be covered by impervious surfaces and the amount of storm water runoff to be controlled and conveyed from the development

3. The existing and projected use based on zoning as defined in the Borough Land Use Plan of the remaining area in the drainage basin.

6.4 Developer's Share of Cost for Off-Site Drainage Facilities

(a) If it is determined that the developer will contribute additional run off volume from the site than the developer will be required to pay a base amount pursuant to Section 6.5 herein.

(b) If it is determined that the developer shall be required to construct and/or be responsible for the construction of the entire off-site drainage facility, then the developer's share is an amount equal to the estimated cost of the drainage improvement.

(c) In the event that the developer shall not be required to construct and/or not be responsible for the construction of the entire off-site improvements, but it is determined that such improvements are necessary, then there shall be paid to the Borough Treasurer the amount of the developer's share, pursuant to Section 6.5 herein, of the finally determined cost of the off-site improvements.

(d) If an off-site drainage improvement or improvements are necessitated or required by a proposed development application and it is determined that properties outside of the development will also be benefited by the improvement, and the developer shall construct at its own cost and expense the necessary improvement(s), pursuant to the resolution of the Municipal Agency granting development approval, then the cost of such improvement shall be credited against the developer's pro-rata share of the cost of off-site drainage improvements as otherwise determined in accordance with Section 6.5 herein. The amount of such credit shall be determined by the Borough Engineer after review of information submitted by the developer's engineer setting forth the cost of, such construction.

(e) In instances where separate detention facilities for a single site or for a number of single sites are technically and/or economically prohibitive and the zero (0) increase runoff requirement from the site cannot be fulfilled, the Municipal Agency will be willing to consider accommodation of the additional runoff from the site within joint or master detention facilities outside the property limits of the site. The developer(s) share or contribution to these master detention basins shall be as in (a), (b) and (c) above. However, adequate technical justification shall be provided and shall meet the provisions set forth in Section 10 of this ordinance.

6.5 Off-Site Drainage Facilities Formula

The developer's base amount for any storage system improvement to compensate for increased runoff volumes due to the addition of impervious surface shall be determined by the following formula:

Developer's Base Cost equals \$250.00 per each 0.5 acre of part thereof, of gross site area times (change in % impervious surface)

The developer's pro-rata share for any proposed off-site drainage facilities improvements shall be determined by formula as follows:

(a) Bridges, Culvert Structures:

Developer's Share of Cost = $(\text{Total Improvement Cost}) \times (\text{Developer's CFS}) / (\text{Total Structure CFS})$

(b) Culverts, Pipes and other drainage conduit:

Developer's Share of Cost = $(\text{Total Improvement Cost}) \times (\text{Developer's CFS}) / (\text{Total Conduit CFS})$

(c) Detention Facilities:

Developer's Share of Cost = $(\text{Total Improvement Cost}) \times (\text{Developer's Required Storage Volume}) / (\text{Total Facilities Storage Volume})$

(d) Channels, Ditches:

Developer's Share of Cost = $(\text{Total Improvement Cost}) \times (\text{Developer's Area}) / (\text{Total Sub Basin Drainage Area})$

* Improvement Cost to consist of design, construction and maintenance costs. Maintenance cost to be estimated as the present worth of an annual series cost at the prevailing interest rate over the useful life of the improvement, which for purposes of applying this formula will be 20 years.

** From Stormwater Master Plan based on the ultimate future development plans.

6.6 Method of Payment and Off-Site Drainage Facilities Account

The developer's pro-rata share of the cost of an off-tract improvement or improvements shall, as a condition of final development plan approval, and as set forth in that approval, be deposited and paid in the following manner:

(a) Fifty (50%) percent of the applicant's share of the aforesaid cost shall be paid at the time of issuance of the final development permit and the remaining fifty (50%) percent of the applicant's share shall be paid at the time of issuance of the certificate of occupancy for the development.

(b) If the development approval provides for construction in stages and separate application for final approval for each stage, the applicant may elect to have the provisions of subparagraph (a) hereof apply separately to each stage of the development. In such event, the total cost of improvements shall be allocated among such stages based on the estimated cost of each such stage as it bears to the total estimated cost of the development.

(c) The developer shall, at the time of the issuance of the development permit, post adequate security in an amount equal to the difference between the initial payment of the applicant hereunder and the total amount of the applicant's share of the aforesaid cost.

Any money paid to the Borough Treasurer pursuant to this section shall be segregated into an off-tract drainage improvement fund or in a separate stormwater management trust account which shall be dedicated and used for the improvements for which they are deposited or improvements serving the same purpose.

The applicant and the Borough shall enter into a Developer's Agreement. Said Agreement shall stipulate the amount and method of payment of the applicant's share of costs for off-tract improvements, which costs shall be determined pursuant to the provisions of this section. If the Borough fails to initiate the improvements for a period of fifteen (15) years from the date the Developer's Agreement is signed, or other mutually agreeable period of time, all deposited funds shall be returned to the developer, together with accumulated interest.

SECTION 7.0 DEVELOPMENT WITHIN SPECIAL FLOOD HAZARD AREAS OR FLOOD HAZARD AREAS

All development in special flood hazard areas or flood hazard areas and the flood plain must be in compliance with applicable regulations under the Flood Hazard Area Control Act N.J.S.A. S8:16A-50 et seq.

7.1 Development Permit

A Development Permit shall be obtained before construction or development of any property begins within any special flood hazard area or flood hazard area established in Section 4.2. Application for a Development Permit shall be made on forms furnished by the Municipal Agency, and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

(1) Elevation in relation to mean sea level (National Geodetic Vertical Datum), of the lowest floor within any proposed structure (including basement) after its completion.

(2) Elevation in relation to mean sea level to which any structure has been floodproofed.

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 6.

(4) Description of the extent to which any water course will be altered or relocated as a result of proposed development

(5) The base flood elevation.

(6) Proof of stream encroachment line approved by the New Jersey Department of Environmental Protection, where applicable.

(7) The extent of filling of land for all new residential construction and/or substantial improvement of any residential structure. If any, and proof that the net fill volume is equal to or less than ten percent (10%) pursuant to fill requirements outlined in Section 6.3 of this ordinance.

(8) The extent of filling of land for all new non-residential construction and/or substantial improvement of any non-residential structure, if any, and proof that the net fill volume is equal to or less than twenty percent (20%) pursuant to fill requirements outlined in Section 8.3 of this ordinance.

(9) The applicant shall submit proof that:

(a) Proposed structures are designed and adequately anchored to prevent flotation, collapse or lateral movement;

(b) Materials and utility equipment used are resistant to flood damage;

(c) Construction utilizes methods and practices that minimize flood damage;

(d) Subdivision proposals are consistent with the need to minimize flood damage in flood prone areas.

(e) All public utilities and facilities, such as sewer, gas, electrical and water systems are designed, constructed, and located to prevent, minimize, or eliminate flood damage or infiltration.

(f) On-site disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(g) The fill to be placed on any project site is counterbalanced by corresponding excavation within the flood fringe area of Lincoln Park borough pursuant to Section 8.3 of this ordinance.

(10) The developer shall furnish information relating to subsurface conditions based on percolation tests and soil borings. Test borings and percolation tests shall be performed by a licensed professional engineer and shall be in accordance with acceptable engineering standards and practices. A detailed report of the test shall be submitted to the Planning Board and the Borough Engineer for review.

7.2 Other Permits

No person or persons shall engage in a permitted use with a designated flood plain or flood hazard area until all necessary permits have been obtained from those governmental agencies from which approval is required.

7.3 Conditions

(a) The Planning Board may impose such conditions on permitted uses as it deems appropriate to promote the public safety, health, and welfare, to protect public and private property, wildlife and fisheries, and to preserve, protect and enhance the natural environment of the flood plain. No certificate of occupancy shall be issued unless all conditions of approval have been complied with.

(b) It is understood to be a condition of any approval which is or has been granted for a development application for property which is subject to the Storm Water Control provisions of this Ordinance that it shall be the responsibility of the owner of such property, and the heirs, successors and assigns of said owner to maintain, renew and/or reconstruct any required Storm Water Control Facilities in such a manner that said facility shall continue to effectively perform as originally designed.

Such maintenance by the owner shall insure the continual functioning of the systems at design capacity and prevent the hazards associated with debris buildup and stagnant water. In no case shall water be allowed to remain in any facility long enough to constitute a mosquito breeding, disease, or any other type of problem. If the land or storm water detention facility or facilities is proposed to be dedicated to the Borough and said dedication is accepted by the Municipal Agency, the procedures for the construction, dedication and acceptance shall be stipulated in the Developer's Agreement.

(c) The designated agent of the Borough shall have the right to take whatever steps may be reasonably necessary. Including entry upon private property upon actual notice to the occupant, to ascertain that storm water control facilities are effectively performing as originally designed; and if a storm water control facility is found to be not effectively performing as originally designed, the Borough may, at its option after compliance by the Borough Engineer with the provisions of Section 9 of this ordinance, take steps to maintain, renew and/or reconstruct said facility and may assess the costs therefor against the property owner if said owner is found by the governing body not to have met the responsibilities under paragraph (a) above.

(d) Surveys of property which has been developed subject to the storm water control provisions of this Ordinance shall show the location and type of storm water facilities located on said property.

8.0 SPECIFIC FLOOD PLAN REQUIREMENTS

8.1 Preservation of Natural Land

a. It has been found that natural flood plains display complex intimate relationships among streams, periodic flooding, soils, vegetation, fish, and wildlife and that periodic flooding of lowland areas, marshes, and swamps adjacent to stream channels produces a rich physical-chemical environment for many living organisms. It is further found that flood plains contain biological communities which are among the most productive of natural systems and perform the following functions essential to the natural environment.

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- (1) Passage and storage of storm floodwaters;
- (2) Removal of sediment loads from streams through deposition;
- (3) Replenishment of ground water supplies through soil infiltration;
- (4) Dissipation of energy of flood flows, thereby reducing downstream erosion;
- (5) Provide areas of recreational and aesthetic pleasure.

Because of the importance of the natural flood plain as cited above, all natural land within any delineated flood plain, except for land to be developed in accordance with this Ordinance, shall be preserved in its natural state and, where possible, developed land within the flood plain shall be restored to its natural state so as to duplicate the natural or undeveloped drainage characteristics in terms of runoff and velocity.

c. The Borough of Lincoln Park has determined that only steadfast restrictions on the amount of "net fill" allowed in flood hazard areas will result in effective flood hazard protection to accomplish the purposes of this ordinance. This means that areas which may be flooded at some time in the future can only be filled-in up to the amount of fill (net fill) allowed by this ordinance.

rt-Whannvr.fhn.P...-ly.L.U... watercourse is re...
applicant shall notify the Federal Insurance Administrator, New Jersey, Department of Environmental Protection, County of Morris and adjacent communities. The applicant shall assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

8.2 Performance Standards

In reviewing any proposed construction of development, the Planning Board shall be reasonably assured upon evidence submitted by the applicant that any structure, when built or altered, can be occupied without peril to the health or safety of the occupant and that the proposed land use:

- a. Has an inherent low flood damage potential;
- b. Either acting alone or in combination with existing or future uses, does not obstruct flood flows;
- c. Does not affect adversely the water carrying or storage capacity of any channel, floodway, or flood fringe area;
- d. Does not increase erosion or the rate of local runoff;
- e. Does not duly stress or degrade the natural environment of the flood plain or degrade the quality of surface water or the quality and quantity of ground waters;
- f. Does not effect modifications or relocation;
- g. Utilizes proper planning in the grading and filling of the property to meet fill requirements.

Fill Requirements

Requirements for fill under permitted uses:

1. Within the flood fringe area of delineated streams or within the 100-year flood plain but outside of encroachment lines of non-delineated streams, the volume of net fill and structures to be placed on an applicant's site shall be limited as follows:

- (i) For Residential Construction - to occupy ten (10) percent of the total volume of new fill which is from between the natural or existing ground surface, whichever is lower, and the level of the flood hazard design elevation along non-delineated streams.
- (ii) For Non-Residential Construction - to occupying twenty (20) percent of the total volume of net fill which is from between the natural or existing ground surface whichever is lower, and the level of the flood hazard design elevation along delineated streams or the 100-year storm elevation along non-delineated streams.

2. It will have to be shown adequately on submitted plans and in calculations that these limits of 10 percent and 20 percent for residential construction and non-residential construction respectively, are not being exceeded. There shall be no net fill in the floodway or within stream encroachment lines except as provided in N.J.A.C. 7:13-3.1.

3. All fill shall be graded in a manner so as not to adversely affect overland drainage flows.

4. Fill shall be placed so that slopes are not steeper than a ratio of two horizontal to one vertical.

5. Fill shall be compacted and stabilized in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey" or latest amendment thereto, adopted pursuant to N.J.A.C. 2:90-1.3.

6. When a stream encroachment permit and development permit has been granted allowing the placement of fill, under the provisions of this ordinance, any subsequent subdivision of the property shall not have the effect of increasing the total amount of fill allowed to be placed upon the property covered by the previous permit. Additional fill may be placed on the newly divided property only to the extent that the total amount of fill allowed under these rules for the original defined property has not been exceeded.

7. A variance from the requirements of this subsection may be granted by the Municipal Agency, on a case-by-case basis, for Federal, State, county or municipal highway or road construction projects, pursuant to N.J.A.C. 7:13-5.4(b) and Section 10 of this ordinance.

8. The requirements of this subsection are not applicable to flood control projects approved as flood control projects by the NJDEP and the Municipal Agency.

9. Where dikes, levees, floodwalls or other structures, not approved as flood control projects, impede the entry of flood waters into an enclosed space, the enclosed space shall be considered as solid fill for the purposes of this subsection.

b. Additional requirements for fill in the Central Passaic Basin:

1. In addition to the requirements of a. above, as the streams of Lincoln Park are within the Central Passaic Basin all fill, beyond the total quantity already present, placed upon an applicant's project site must be counterbalanced by corresponding excavation within the flood fringe area of the Borough of Lincoln Park.

2. Said fill must be taken from between the natural ground surface and the mean low water level of the adjacent stream, or the seasonally adjusted high groundwater level, whichever is higher.

3. A variance from the requirements of this subsection may be granted by the Municipal Agency, on a case-by-case basis, for Federal, State, county or municipal highway or road construction projects, pursuant to N.J.A.C. 7:13-5.4(b) and Section 10 of this ordinance.

4. The requirements of this subsection are not applicable to flood control projects approved as flood control projects by the NJDEP and the Municipal Agency.

5. Where dikes, levees, floodwalls or other structures, not approved as flood control projects, impede the entry of flood water into an enclosed space, the enclosed space shall be considered as solid fill for the purposes of this subsection.

S.4 Soil Erosion and Sediment Control

a. Soil erosion and sediment control measures are required on all submissions under this sub-chapter if such submissions require disturbance of more than 5,000 square feet of the surface area of land within the flood hazard area along delineated streams.

b. The latest revised version of the "Standards for Soil Erosion and Sediment Control in New Jersey" promulgated by the New Jersey State Soil Conservation Committee pursuant to the Soil Erosion and Sediment Control Act of 1975 as amended (N.J.S.A. 4:24-39 et. seq.) and N.J.A.C. 2:90-1.3 shall be used in the preparation and submission of Development Permit Applications.

8.5 Prohibited Uses in Channels, Floodways and Flood Fringe Areas.

a. Channel: Within any channel, structures shall not be erected, enlarged, expanded or externally altered; and fill, excavation or other improvement so states shall not be permitted except in connection with stream improvements or stabilization, which improvements of changes shall have the specific approval of the New Jersey Department of Environmental Protection and the Borough Planning Board. The Morris County Planning Board shall receive copies of all exhibits for their review and approval as required.

b. Floodway: Located within areas of special flood hazard are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

(1) With any floodway, structures shall not be erected, enlarged, expanded or externally altered; and fill, excavation or other improvements or changes shall not be permitted, except in connection with stream improvement or stabilization, which improvement or changes shall have the specific approval of the New Jersey Department of Environmental Protection and the Borough Planning Board. The Morris County Planning Board shall receive copies of all exhibits for their review and approval as required.

(a) In all flood hazard areas in which Base Flood Elevation

data has been provided, and no floodway has been designated, the cumulative effect of any development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the Base Flood more than 0.2 feet at any point.

(2) The accepted practices of soil husbandry and farming, as well as recreational uses in the nature of parks, playgrounds, picnic areas, golf courses, and boat landings shall be permitted in accordance with the issuance of a permit as provided by Section 7 of this Ordinance. No material, equipment or vehicles shall be parked or stored in the floodway even in conjunction with a permitted use.

c. Flood Fringe Area: Within any flood fringe area structures other than mobile homes may be constructed, erected, enlarged, expanded, externally altered or modified; and fill, excavation, and other improvements may be permitted in the flood fringe area after receiving specific approval of the Borough Planning Board for a permitted use and further subject to the conditions set forth in this Ordinance.

Upon application for such a permit, the Planning Board shall notify the County Planning Board, and the governing bodies and environmental agencies of other municipalities which may be affected by the proposed use. Such notifications shall include the name and address of the applicant, the location of the proposed use, and abbreviated description of the proposed use, and announcement as to where and at what times the complete application may be reviewed, and to whom and by what date interested parties may communicate their positions concerning the application and any date that they may have developed in reference to the effects of the proposed use.

The Planning Board shall review the application and all information received under provisions of this Ordinance.

In reviewing the application and arriving at findings, the Planning Board shall consult with the Borough Engineer and other experts and consider the following criteria in addition to those set forth in Section 8.2.

(1) The danger to life and property due to increased flood heights or velocities caused by encroachments;

(2) The danger that materials may be swept onto other lands or downstream to the injury of others;

(3) The proposed water supply and sanitation systems and the insulation of these systems from disease, contamination, and unsanitary conditions resulting from flooding;

(4) The susceptibility of the proposed use to flood damage and the effects of such damage;

(5) The need for a waterfront location;

(6) The availability of alternate locations not subject to flooding;

(7) The duration, rate of rise and sediment transport of flood waters expected at the site;

(8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;

(9) The extent to which the hydraulic capacity of the floodway will be disrupted;

(10) The degree to which the proposed use serves the general public's health, safety, and welfare;

(11) The degree to which any aspect of food chain or plant, animal, fish, or human life processes are affected adversely within or beyond the proposed use area;

(12) The degree to which the proposed activity alters natural water flow or water temperature;

(13) The degree to which the proposed use provides facilities for the proper handling of litter, trash, refuse, and sanitary and industrial waste;

(14) The degree to which irreplaceable land types will be destroyed;

(15) The degree to which the natural, scenic, and aesthetic values at the proposed development site can be retained;

(16) The degree to which materials not subject to major damage by floods are firmly anchored to prevent flotation and/or are readily removable from the area within the time available after flood warning.

d. If the Planning Board finds that the proposed use would violate or tend to violate the purpose and intent of this Ordinance, the application shall be denied.

8.6 Conditions of Approval for Permitted Uses

If the application will not violate the purposes and intent of this Ordinance the Planning Board may approve the application and impose such conditions as are necessary to promote the public safety, health, and welfare, to protect public and private property, wildlife and fisheries, and to preserve, protect, and enhance the natural environment of the flood plain.

a. General Conditions

These conditions may include, but are not limited to, the following:

(1) Modification of waste disposal and water supply facilities;

(2) Imposition of operational controls, surties, and deed restrictions;

(3) Requirements for construction of storm water detention facilities, channel modifications, dikes, levees, and other protective measures;

(4) Installation of an adequate flood warning system;

(5) Postponement of development until such time as protective measures are installed, or until the floodway and flood hazard areas have been delineated by the State Department of Environmental Protection or the Borough.

b. Specific Conditions

In all special flood hazard areas the following standards are required:

(1) Where the lowest floor of any new structure is more than two (2) feet above the existing grade at the perimeter of said structure the site may be filled. All fill in flood hazard areas must be in compliance with the State of New Jersey.

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Flood Hazard Area Regulations of May 21, 1984. Such fill shall be subject to the following conditions:

- (a) All fill material shall be well compacted;
- (b) The elevations of the fill shall be not less than two feet below the base flood elevations;
- (c) The elevation of the fill at the perimeter of the structure shall be equal to the elevation of the fill beneath the structure;

- (d) Fill at the perimeter of the structure shall be stabilized by a retaining wall or by slopes of not greater than 4:1 and shall be protected from erosion;
- (e) Where fill is stabilized by a retaining wall, said fill shall extend beyond the perimeter of the structure a distance equal to not less than twice the height of the retaining wall or five feet, whichever is the greater.

(2) All new residential construction, residential additions and substantial improvements of residential structures within the Flood Fringe Area and Floodway shall have the lowest floor (including basement) elevated to not less than one (1) foot above the base flood elevation. For purposes of site plan review and approval, the requirement of one (1) foot above the base flood elevation shall not include a patio, terrace, or deck, provided any entrance from such a structure to a main entrance shall be minimum of one (1) foot above the base flood elevation.

(3) New nonresidential construction or substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated one (1) foot above the base flood elevation, or, together with attendant utility and sanitary facilities be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water; and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyance. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Floodproofing measures shall be consistent with those outlined in the Manual.

(4) (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(b) All recreation equipment shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that

- (i) over-the-top ties be provided at each of the four corners of the recreation equipment with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side;
- (ii) frame ties be provided at each corner of the home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side;
- (iii) all components of the anchoring system be capable of carrying a force of 4,800 pounds.

(5) Materials Prohibited in Channels, Floodways and Flood Fringe Areas

No person shall hereafter engage in, cause, or permit other persons to engage in prohibited uses within a delineated flood plain. The following uses shall be prohibited:

- (a) Placing, depositing, or dumping any solid waste, garbage, refuse, trash, rubbish, or debris;
- (b) Dumping or discharging untreated domestic sewerage or industrial wastes, either solid or liquid;
- (c) The storage or disposal of pesticides;
- (d) The storage or processing of materials that are in time of flooding buoyant, flammable, or explosive;
- (e) The storage or processing of hazardous materials that could be injurious in time of flooding to human, animal, or plant life;
- (6) Pre-existing Nonconforming Structures and Uses

(a) Structures or land uses in any flood plain which existed on or before the effective date of this Ordinance may be permitted to continue subject to the following conditions:

(i) If any pre-existing structure is destroyed by and means including floods, to an extent of 50 percent or more of its replacement cost at time of destruction, it shall not be reconstructed, except in conformity with the provisions of this Ordinance;

(ii) No pre-existing structure shall be moved, altered, expanded, changed, or enlarged unless the provisions of this Ordinance are complied with. This provision does not apply to routine maintenance and repair, provided that such maintenance and repair does not increase the flood damage potential of the structure;

(iii) In any portion of the floodplain an existing nonconforming use or structure may be altered or expanded provided that such alteration or expansion does not increase its ground coverage or flood damage potential.

(b) If actual construction of a structure is underway on or before the effective date of this Ordinance, then such construction may be completed. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. The provisions of (a) above shall apply to such structures upon completion of construction.

(c) Structures in the floodway abandoned for six (6) consecutive months or longer and structures abandoned for twelve (12) consecutive months or longer in the flood fringe area after the effective date of this Ordinance shall not qualify as pre-existing uses.

8.7 Flood Map

The Planning Board, after proper investigation, survey and public hearing, may recommend amendments to (i) the Federal Emergency Management Agency risk changes in the Flood Insurance Rate Map, and the Municipal Agency for changes in the Floodplain/Floodway/Wetlands map of Lincoln Park.

9.0 ADMINISTRATION AND ENFORCEMENT

9.1 RESPONSIBILITY

The administration and enforcement of the provisions of this Ordinance relating to the construction, erection, maintenance and continued operation at design capacity of storm water detention facilities and other facilities, structures, devices and techniques required to carry out the objectives of this Ordinance shall be the responsibility of the Borough Engineer. Duties of the Borough Engineer shall include, but not be limited to:

a. Review all development permit applications to determine that the permit requirements of this Ordinance have been satisfied.

b. Review all development permit applications to insure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

c. Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) as defined in 8.4.b(2) and 8.4.b(3) of all new or substantially improved structures, and whether or not the structure contains a basement.

d. For all new or substantially improved floodproofed structures:

- (1) verify and record the actual elevation (in relation to mean sea level), and

(2) maintain the floodproofing certifications required in Section 8.4.

Maintain for public inspection all records pertaining to the provisions of this Ordinance. 9.2 Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 4.2. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS, then the Borough Engineer shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source. In order to administer Sections 8.4.b(2) SPECIFIC CONDITIONS, first floor information, Residential Construction, and 8.4.0(3) SPECIFIC CONDITIONS, Nonresidential Construction.

9.3 Alteration of Watercourses

The Borough Engineer shall:

a. Notify adjacent communities and the New Jersey Department of Environmental Protection prior to any alteration or relocation of a water course, and submit evidence of such notification to the Federal Insurance Administration.

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

9.4 Interpretation of Firm Boundaries

Make interpretations where needed, as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Ordinance.

10.0 VARIANCE AND EXCEPTION PROCEDURE

10.1 The issuance of a variance from the provisions of this Ordinance is for floodplain management purposes only and is subject to applicable State and Federal laws and regulations. The Borough Planning Board, after examining the applicant's hardships shall approve or disapprove a variance request. While the granting of variances generally is limited to a lot size less than one-half acre as set forth in Subsection 2 of this section, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.

The Federal Insurance Administrator may review the Borough Planning Board's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Federal Insurance Administrator may take appropriate action as set forth in Section 1909.24 paragraph (b) of Federal Register, Vol. 41, No. 207, dated Tuesday, October 26, 1976.

Variances may be issued by the Borough Planning Board for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places without regard to the procedures set forth in this Section.

Procedures for the granting of variances by the Borough Planning Board are as follows:

1. Variances shall not be issued by the Borough Planning Board within any designated regulatory floodway if any increase in flood level above the allowable 0.2 foot during the base flood discharge would result;

2. Variances may be issued by the Borough Planning Board only for the replacement or reconstruction of existing non-conforming structures, and for additions of not more than 150 square feet to existing residential structures on lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation. In conformance with the procedures of subsection 4 of this section.

3. Variances may be issued by the Borough Planning Board for the construction of off-site detention facilities, when onsite constraints such as topography, inadequacy of receiving water conveyance system to provide positive discharge, seasonal high groundwater less than 2 feet below ground, and wetland conservation areas make it impossible to achieve the zero (0) increase runoff requirement for development.

4. Variances may be issued by the Borough Planning Board for cases in which there is no feasible and prudent alternative to the proposed project, including the no-action alternative, which would avoid or substantially reduce any anticipated adverse effects and where the waiver is consistent with the reasonable requirements of the public health, safety and welfare.

5. Variances may be issued for cases in which the Borough Planning Board determines that the costs of strict compliance are unreasonably high in relationship to the benefits achieved by strict compliance.

6. Variances may be issued for cases in which the Borough Planning Board and the applicant agree to alternative requirements that, in the judgement of the Board, provide equal or better protection to the public health, safety and welfare.

7. Variances shall only be issued by the Borough Planning Board upon:

- a. A showing of good and sufficient cause by the applicant;
- b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

8. Variances shall only be issued after or advance public notice and where requested or needed, a fact-finding meeting or public hearing which determines that the variance is the minimum necessary to afford relief, considering the flood hazard and/or site constraints.

9. The Borough Planning Board shall notify the applicant in writing that:

a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

b. Such construction below the base flood elevation increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in subparagraph (4) of this section.

c. The issuance of a variance to construct off-site or off-tract detention facilities will require that the applicant meet the requirements, criteria and share of costs as set forth in Section 6 of this ordinance.

10. The Borough Planning Board shall:

a. Maintain a record of all variance actions including justification for their issuance; and shall make a report within 30 days to the county planning board.

b. Report such variance issued in its annual report submitted to the Federal Insurance Administrator and/or the New Jersey Department of Environmental Protection.

11. The burden of proof to establish all of the elements required for the issuance of a variance shall be upon the applicant who shall submit the request in a validly signed BSSRG and prava these elements by a validly signed and documented demonstration in the following manner:

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a. That by reason of the extraordinary or exceptional situation or condition of the property, the strict enforcement of the provisions of this ordinance would result in exceptional and undue hardship upon the applicant in question;

b. That the waiver will not substantially impair the appropriate use or development of adjacent property and will not pose a threat to the public health, safety, and general welfare;

c. That the hardship is unique or peculiar to the applicant; and,

d. That the exceptional or undue hardship claimed as grounds for the waiver has not been created by the applicant

e. The applicant shall submit to the Board with an application for a hardship) waiver as much of the following information as is relevant to the projects:

(1) A plan for flood proofing, the implementation of which shall be a condition of the waiver;

(2) Proof that appropriate steps shall be taken to anchor materials in order to prevent flotation, collapse, or lateral movement;

(3) The relationship of the proposed project to the comprehensive land use plan and flood plain program for the area;

(4) Proposed routes to and from the property during flood times;

(5) The projected height, velocity and duration of the flood waters expected at the site during the Design Flood;

(6) The type of soil located at the proposed site;

(7) A statement concerning the land use and value absent the granting of the hardship waiver;

(8) Information regarding the existing development of the area and the impact of the additional work;

(9) Evidence that the project will not distort the stream's flood carrying capacity so as to cause substantial problems along the stream; and,

(10) An analysis of the extent to which the sediment regimen and water quality of the stream will be affected by the proposed exemption

(11) A description of the potential effects of the project upon the environment

12. The Planning Board shall notify the applicant of the results of its review within ninety (90) days.

13. Before making a decision the Planning Board may request that additional information and/or documentation be supplied. When additional information is not provided by the applicant as requested, the variance will be denied.

14. If the material submitted to the Board by the applicant in support of the petition for a variance or hardship waiver does not satisfactorily demonstrate that a variance or hardship waiver is warranted, the Board shall so notify the applicant by letter advising the applicant that the petition for a variance or hardship waiver has been denied by the Board and shall also state the reasons for this denial.

15. The denial of a variance request shall be treated as the denial of an application without prejudice.

16. A variance or hardship waiver granted pursuant to this section does not relieve the applicant from obtaining any other approvals, certifications or permits required by law. A copy of the notification granted the variance or hardship waiver shall be forwarded to the Bureau of Flood Plain Management

17. If any person shall be aggrieved by the action of the Planning Board or Borough Engineer, appeal in writing to the Governing Body may be taken within (10) days after the date of such action. The Governing Body shall fix and notify

appellant of a time and place for a public hearing on said appeal, and the appellant shall cause notice such hearing to be published in the official newspaper of the Borough at least ten (10) days prior to the hearing. All parties in interest shall be afforded an opportunity to be heard thereon. After such hearing, the Governing Body, or Borough Engineer, stating its findings and reasons for its action, and a written copy of such action shall be given to the applicant

a. In passing upon such application, the Governing Body shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Ordinance, and:

(1) the danger that materials may be swept onto other lands to the injury of others;

(2) the danger to life and property due to flooding or erosion damage;

(3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) the importance of the service provided by the proposed facility to the community;

(5) the necessity to the facility of a waterfront location, where applicable;

(6) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) the compatibility of the proposed use with existing and anticipated development;

(8) the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

(9) the safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site; and

(11) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

b. Upon consideration of the factors listed above and the purposes of this ordinance, the Governing Body may attach such conditions to the granting of variances as it deems necessary to the further purposes of this ordinance.

c. The Borough Engineer shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration and the New Jersey Department of Environmental Protection annually.

11.0 SUBMISSIONS

The following submissions shall be required for each proposed development subject to review under this ordinance. The applicant is free to combine exhibits or otherwise consolidate the required information, so long as all required information is clearly presented.

11.1 Topographic Base Map

Topographic base map of the site including a minimum of 200' beyond the limits of the proposed development shall be prepared at a scale of 1" equal 50' and show 2' contour intervals. The map shall indicate at least the following: existing surface water drainage, marshlands, outlines of woodland cover, existing man-made structures, roads, utilities, bearing and distances of property lines, and other significant natural and man-made features.

11.2 Vicinity Map

Applicants must prepare a map at a scale of 1" equal 400' or greater on a

paper print of the latest air photograph available from the County Manning Board, updated in the field to reflect current conditions, showing the relationship of the proposed development to significant features in the general surroundings. The map must indicate at least the following: roads, pedestrian ways, access to the site, adjacent land uses, existing open space, public facilities, landmarks, places of architectural and historic significance, utilities, drainage (including, specifically, streams and other surface waters shown on SCS maps), and other significant features.

11.3 Environmental Site Analysis

A written and graphic description of the natural and man-made features of the site and its environs, as required. This description should include a discussion of soil conditions, slopes, wetlands, vegetation and animal life on the site, particular attention should be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.

11.4 Project Description and Site Plan(s)

A map (or maps) at the scale of the topographical base map indicating the location of proposed buildings, roads, parking areas, utilities, structural facilities for detaining or recharging stormwater and sediment control, and other permanent structures. The map(s) shall also clearly show areas where alterations in the natural terrain, cover, and grade are proposed, proposed changes in natural cover, including lawns and other landscaping. A written description of the site plan a justification of proposed changes in natural conditions should also be provided.

11.5 Water Detention Facilities Map

The following information, illustrated on a map of the same scale as the topographic base map, shall be included:

(a) total area to be paved or built upon, estimated land area to be occupied by water detention facilities and the type of vegetation thereon, and details of the proposed plan to control and dispose of surface water.

(b) Details of all water detention plans, during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge capacity of each spillway.

(c) Maximum discharge and total volume of runoff which would occur from the project area without the improvement for the following storms:

(1) One and one-quarter inch of rainfall occurring within two hours, or a one year frequency type III 24 hour storm.

(2) The specified design storms (2 year, 10 year, 25 year and 100 year recurrence intervals).

The municipal official or board reviewing an application under this ordinance may, in consultation with the Borough Engineer, may waive submission of any of the above requirements when the information, requested is impossible to obtain or when it would work a hardship on the applicant to obtain and where its absence will not materially affect the review process.

11.6 Engineering Report

The stormwater control plan should be accompanied by an engineering report. The engineering report must be prepared by an engineer licensed by the New Jersey State Board of Professional Engineers and Land Surveyors and should include all investigations, analyses, studies undertaken and conclusions drawn during the design of the stormwater control plan, including but not limited to the following:

(1) Hydrologic computations to determine the design discharge along with reasoning for the methods used and the underlying assumptions. Recommendations concerning the hydrologic methods to be used are explained in earlier parts of this ordinance.

(2) Hydraulic computations for the analysis & design of the stormwater facilities. All assumptions made in the analysis should be justified and documented.

(3) Detention Basin routing computations by the Storage Indication (Modified Puls) Method or other appropriate procedure or method for the specified design storms.

Color photographs of the project site and of immediate vicinity. Photographs should encompass the whole project site and give a clear picture of the waterway and surrounding topographic and environmental conditions. Photograph locations must be keyed onto the plan and cross-sections.

Cross-sections and computations indicating the following:

(a) the volume of "net fill" and structures to be placed on the applicant's property within the flood fringe of delineated streams or within the 100-year flood plain but outside the encroachment lines of non-delineated streams.

(b) Volume of flood storage between the natural ground surface of the applicant's property and the Flood Hazard Design Elevation for delineated streams of 100-year flood elevation for non-delineated streams. This computation is to exclude areas within the floodway of delineated streams and encroachment lines of non-delineated streams.

(c) The quantity (a) expressed as a percentage of (b) above.

(6) Water diversion plan or method of diverting storm water during construction shall be provided where applicable.

(7) Data. Illustrations and narrative outlining provisions to meet the water quality requirement

(S) Computations showing change in percentage impervious surface for the development.

12.0 FEES

In addition to any fee due to the municipality as a result of the applicant's underlying application for a municipal approval, there shall be due to the municipality at the time of submission of materials in support of this application a fee as follows:

(a) \$20.00 for each 10,000 square feet to be graded or developed as part of the project.

(b) This fee is an approximation of the estimated cost to the municipality to have its professional staff and consultants review the proposed project for compliance with the provisions of this Ordinance.

13.0 SEVERABILITY

Should any section or provision of this ordinance be declared invalid by a court of competent jurisdiction, such a declaration shall not affect the remaining sections or provisions of this ordinance which are hereby declared to be severable.

This ordinance shall take effect twenty (20) days after final passage and publication as prescribed by law.

Suburban Trends

IT

May 22, 1985

Fee: \$1474.20

SECTION 13

Reconciliation for Ordification

ARTICLE 10 A. of the Code of the Borough of Lincoln Park.

STORM WATER CONTROL ORDINANCE

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	135 A. 5.	Developer's Share Of Cost For Off-Site
	135 A. 6.	Drainage Facilities
	135 A. 7.	Off-Site Drainage Facilities Formula
	135 A. 8.	Method Of Payment And Off-Site Drainage
	135 A. 9.	Facilities Accounts
7-1	Sec. 17-136 A.	DEVELOPMENT WITHIN SPECIAL FLOOD HAZARD AREAS
	136 A. 1.	Development Permit
	136 A. 2.	Other Permits
	136 A. 3.	Conditions
8-1	Sec. 17-137 A.	SPECIFIC FLOOD PLAIN REQUIREMENTS
	137 A. 1.	Preservation Of Natural Land
	137 A. 2.	Performance Standards
	137 A. 3.	Fill Requirements
	137 A. 4.	Soil Erosion and Sediment Control
	137 A. 5.	Prohibited Use In Channels* Floodways And Flood
		Fringe Areas
	137 A. 6.	Conditions Of Approval For Permitted Uses
	7.	Flood Map
9-1	Sec. 17-138 A.	ADMINISTRATION AND ENFORCEMENT
	138 A. 1.	Responsibility
	138 A. 2.	Use Of Other Base Flood Data
10-1	Sec. 17-139 A.	VARIANCE AND EXCEPTION PROCEDURE
11-1	Sec. 17-140 A.	SUBMISSIONS
	140 A. 1.	Topographic Base Map
	140 A. 2.	Vicinity Map
	140 A. 3.	Environmental Site Analysis
	140 A. 4.	Project Description And Site Plans
	140 A. 5.	Water Detention Facilities Map
12-1	Sec. 17-141	FEES
13-1	Sec. 17-142	RECORDATION
14-1	Sec. 17-143	SEVERABILITY
15-1	Sec. 17-144	EFFECTIVE DATE

SCANGARELLA AND FEENEY, ESQS.
565 Newark-Pompton Turnpike
Pompton Plains, NJ 07444
(201) 839-5100
Attorneys for Lincoln Park Borough

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

MORRIS COUNTY FAIR HOUSING)	
COUNCIL, et al.,)	
)	Civil Action
Plaintiffs,)	(Mt. Laurel Action)
)	
VS.)	NOTICE OF MOTION TO SET HEARING
)	DATE AND APPROVE FORM OF NOTICE
)	FOR MODIFICATION OF SETTLEMENT
BOONTON TOWNSHIP, et al.,)	AND ENTRY OF JUDGMENT OF COMPLI-
)	ANCE, AS TO LINCOLN PARK BOROUGH.
Defendants.)	

PLEASE TAKE NOTICE, that on _____, 1985,
at _____ a.m., or as soon thereafter as counsel may be heard,
plaintiffs, Morris County Fair Housing Council, et al., and
defendant, Lincoln Park Borough, will jointly apply to the
Honorable Stephen Skillman, Superior Court, Law Division, at the
Middlesex County Court House, New Brunswick, New Jersey, for an
order to approve the form of Notice, annexed hereto as Exhibit
A, and to set a date for a hearing to approve the following:

1. Supplemental Agreement and Ordinance, annexed as Exhibits B and C, embodying the conditions set forth in the Order of the Court, dated October 31, 1984.
2. Subsequent agreed-upon modifications to the Negotiated Settlement, as set forth in Resolution of Intent and attached draft Limitations of Development Ordinance, annexed as Exhibit D, and Set-Aside Distribution Ordinance #807, annexed as Exhibit E.

3. Public Advocate's approval of draft Limitations of Development Ordinance and Set-Aside Distribution Ordinance #807, as set forth in Exhibits F and G annexed.
4. Final Judgment of Compliance.

SCANGARELLA AND FEENEY
Attorneys for Lincoln
Park Borough

By: Frank Scangarella
FRANK SCANGARELLA

Dated: July 29, 1985

CERTIFICATION

I certify that the original of this Motion has been filed with the Clerk of Middlesex County and a copy with the Honorable Stephen Skillman, J.S.C.

I further certify that copies of the foregoing Motion and accompanying papers were served on counsel for all parties by mailing copies of the same to their respective addresses.

I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to penalties.

SCANGARELLA AND FEENEY
Attorneys for Lincoln
Park Borough

By: Frank Scangarella
FRANK SCANGARELLA

Dated: July 29, 1985

SEP 10 1985



State of New Jersey

JUDGE STEPHEN SKILLMAN

DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY

CN 850
TRENTON, NEW JERSEY 08625

Alfred A. Slocum

PUBLIC ADVOCATE

RICHARD E. SHAPIRO
DIRECTOR
TEL: 609-292-1693

September 9, 1985

Hon. Stephen Skillman
Superior Court of New Jersey
Middlesex County Court House
New Brunswick, New Jersey
08903

RE: Morris Country Fair Housing Council et al v Boonton Township et al, Docket No. L6001-78P.W. (Lincoln Park Borough)

Dear Judge Skillman:

This letter memorandum is submitted by plaintiffs in the above entitled matter in support of the joint application by plaintiffs and defendant Lincoln Park Borough for entry of a judgment of compliance in favor of Lincoln Park Borough.

This Court has previously considered and, subject to certain conditions, approved, the settlement agreement between the parties. These conditions, which were set forth in the Court's order of October 31, 1984, have been complied with by execution by the parties of a supplemental agreement and the adoption by Lincoln Park of an amendatory ordinance.

By consent of the parties, the agreement approved by this Court has also been modified in two additional respects. First, Lincoln Park has adopted a technical ordinance dealing with developments that span more than one affordable housing zone. This ordinance permits a development spanning more than one affordable housing zone to locate its low and moderate income units in either zone and to utilize any housing type permitted in either zone. Second, Lincoln Park has adopted an ordinance that

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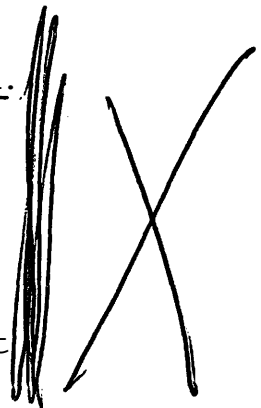
limits the number of units for which the planning board must grant preliminary subdivision or site plan approval in the affordable housing zones. Since this second modification is the only item that raises new issues before this Court, plaintiffs will limit their comments to this ordinance.

This ordinance has four significant provisions. First, it requires the planning board to consider site plan and subdivision applications in chronological order of certification of completeness. Second, it permits the planning board to deny additional preliminary site plan and subdivision approvals in the affordable housing zones once it has granted preliminary approvals to developments totaling 890 units, including 178 low and moderate income units. Third, it requires the planning board to resume consideration of applications for development in the affordable housing zone if, by December 31, 1987, less than 150 building permits have been granted for low and moderate income units in the affordable housing zones or it appears to the planning board that less than 178 low and moderate income units will be constructed by December 31, 1990. Finally, it requires the municipality to notify plaintiffs annually as to the number of low and moderate income units that have been constructed and the number that have been granted building permits.

The Lincoln Park Planning Board has already received applications for construction of more units (including more low and moderate income units) in the affordable housing zones than it is required to provide under the settlement agreement approved by this Court. This reflects the fact that the agreement

includes a significant degree of overzoning. In its original form, the agreement permits Lincoln Park to repeal or suspend the affordable housing zones only when units satisfying the municipality's housing obligation are actually constructed. See, e.g., Lincoln Park Zoning Ordinance sections 28-51(3), 28-51A(5). If the planning board is required to continue considering, and approving eligible applications for preliminary site plan or subdivision approval in the affordable housing zones even after a sufficient number of units has already been approved and until the units are actually constructed, Lincoln Park will be required to absorb more than 178 low and moderate income units.

This was not the intent of the parties. Nor is it necessary to comply with the Supreme Court's mandate in Southern Burlington County NAACP v. Mount Laurel Township, 92 N.J. 158 (1983). That decision requires that municipalities provide realistic affordable housing opportunities to meet their fair share of, the regional housing need, but it does not require that they do more.



The amendatory ordinance establishes machinery to avoid this outcome. It permits the planning to cease granting preliminary approvals once approvals have been granted for developments that include 178 low and moderate income units. It also seeks to avoid the peril that approved developments may be abandoned or delayed and may therefore not create sufficient lower income housing opportunities during the term of the agreement. It does so by requiring the planning board to resume consideration and approval of applications if appropriate progress, as measured by issued building permits for lower income units, is not being made toward

provision of 178 low and moderate income units-

Given the specific circumstances of Lincoln Park, this modification carries out the intent of the parties and appears likely to have no negative impact upon vindication of the rights of low and moderate income persons. Plaintiffs therefore recommend that the Court approve the proposed modifications to the settlement agreement and enter judgement of compliance in favor of Lincoln Park based upon the negotiated agreement, as modified.

Respectfully submitted,
ALFRED A. SLOCUM
PUBLIC ADVOCATE OF NEW JERSEY
ATTORNEY FOR PLAINTIFFS

By: 
Stephen I&sdorfer
Assistant Deputy Public Advocate

cc: All Counsel