

~~ML~~ - Morris County Fair Housing Council

9/25/84

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v.
Beaumont Twp

Certified Statement of Theodore E.B. Einker,
att'y for Mt. Hope Mining Co + for Halcroft
Co.

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EINHORN, HARRIS & PLATT
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 (201) 627-7300
 Attorneys for Mt. Hope Mining Company
 and Halecrest Company

MORRIS COUNTY FAIR HOUSING COUNCIL, et als)	SUPERIOR COURT OF N.J. LAW DIVISION
)	MORRIS COUNTY/MIDDLESEX COUNTY
Plaintiffs,)	DOCKET NO. L 6001-78 P.W.
vs.)	
BOONTON TOWNSHIP, et als)	
Defendants.)	
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MT. HOPE MINING COMPANY, etc., et al)	SUPERIOR COURT OF N.J. LAW DIVISION
)	MORRIS COUNTY/MIDDLESEX COUNTY
Plaintiffs,)	DOCKET NO.
vs.)	
TOWNSHIP OF ROCKAWAY, etc., et al)	CERTIFIED STATEMENT OF THEODORE E. B. EINHORN
Defendants.)	

1. I am the attorney for Mt. Hope Mining Company and for Halecrest Company and have been so since August 1982. During that period of time, I have become familiar with the premises which are owned by the Plaintiffs which are located in the Township of Rockaway and have also represented Mt. Hope Mining Company and Halecrest Company in a lawsuit against the Township of Rockaway which, in part, dealt with the provisions of the Zoning Ordinance

of the Township of Rockaway as they pertain to the premises of Mt. Hope Mining Company and Halecrest Company in the Township of Rockaway.

2. Mt. Hope Mining Company is the record owner of approximately 1281 acres of land in the Township of Rockaway and Halecrest Company is the sole shareholder in said Mt. Hope Mining Company. Richard Hale and Philip Hale are the shareholders in Halecrest Company.

3. The aforesaid 1281 acres is almost exclusively undeveloped and vacant property.

4. Approximately 181 acres of the property owned by Mt. Hope Mining Company is located in what is now designated as the PRD-1 Zone and 735 acres of the property owned by Mt. Hope Mining Company is located in what is now designated as the PRD-2 Zone.

5. On or about August 7, 1984, the Municipal Council of the Township of Rockaway adopted a Zoning amendment pursuant to the settlement with the Public Advocate, which settlement had been entered into as a result of the litigation in the above-captioned Morris County Fair Housing case. (Said Agreement is attached hereto as Exhibit A and said Ordinance is attached hereto as Exhibit B, said Complaint being attached hereto as Exhibit C.)

6. The Complaint filed by the Plaintiffs and the action to which Plaintiffs seek to consolidate with the Morris County Fair Housing case, involves common questions of law as well as fact, as to, the nature and extent of the means by which the Township of Rockaway is to provide its "fair share" of low and moderate income housing within that Municipality. It is the contention of the Plaintiffs that the proposed Agreement (Exhibit A) and the proposed Ordinance (Exhibit B) do not, in fact, meet this obligation and, more specifically, it is the contention of the Plaintiffs that the effect of the Agreement and the Zoning Amendment on the property of the Plaintiffs in the PRD-1 and PRD-2 Zones is such that there is no reasonable expectation that the amount of low and moderate income housing ostensibly pro-

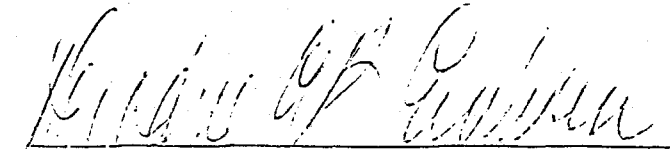
vided for by said Zoning Amendment will, in fact, be constructed on said premises. In view of the fact that both matters deal with whether the Township of Rockaway has met its "fair share" obligation and, whether or not the zoning as to Plaintiffs' premises, namely, the PRD-1 and PRD-2 Zones will, in fact, provide a reasonable opportunity for the construction of said "low and moderate income housing", the matters should be consolidated. Furthermore, Plaintiffs contend that the present zoning (PRD-1 and PRD-2) is, in fact, exclusionary which is also a common question of fact and law in the "Fair Housing" case, and finally, this Court is to rule on the adequacy of the Agreement (Exhibit A), and the Zoning Amendment (Exhibit B) which are being challenged in Plaintiffs' action for reasons which would be relevant to this Court's ruling thereon and similarly involve "common questions of fact and law arising out of the same transaction."

7. As to the question of intervention, Plaintiffs, as property owners with a large part of the acreage contained in the PRD-1 and PRD-2 Zones have a real interest in the effect of said Zoning Amendment on its premises. As noted previously, Plaintiffs contend that the PRD-1 and PRD-2 Zones do not provide a high enough density so as to realistically provide low and moderate income housing units. Plaintiffs are entitled to be heard and raise their objections as a party to said proposed settlement (the Agreement and the Zoning Amendment), as well as to file pleadings in said action to protect their interests as a property owner. Also as a party, Plaintiffs, if necessary, could file an appeal from this Court's ruling as to said Agreement (Exhibit A) and Zoning Amendment (Exhibit B).

8. Attached hereto are copies of the proposed Complaint to be filed if intervention is granted. (Exhibit D).

9. I hereby certify that the foregoing statements made by me are true. I am fully aware that if any of the foregoing

statements made by me are wilfully false, I am subject to punishment.


Theodore E. B. Einhorn

Dated: September 25, 1984

THIS AGREEMENT, made this _____ day of _____, 1984, by and between:

The Township of Rockaway,
A Municipal Corporation of the State of New Jersey,
hereinafter designated as the "Township";

-and-

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

The Morris County Fair Housing Council; and

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

hereinafter collectively designated as "Plaintiffs".

WHEREAS, the Plaintiffs on October 13, 1978,
instituted a certain action in the Superior Court, Law
Division, Morris County, bearing docket number L-60001-78 P.W.,
against the Township and other parties; and

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

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

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

obligation of the Township.

2. In accordance with the law, the Township agrees to amend the zoning ordinance of the Township to establish the PRD-1, PRD-2, OR-3 and R-20M affordable housing zones as set forth in Exhibit "A" attached hereto and made part hereof. The coverage of these zones is limited to lands designated in Exhibit A.

3. The parties have agreed that 1,135 units represents the Township's fair share through the year 1990.

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

5. In the event that additional publicly subsidized housing affordable to low or moderate income households including housing which meets the standards of Section 8 of the Community Development Act of 1974, as amended, or equivalent program, is constructed in the Township on or before March 1, 1990, the Township shall receive credit for each unit towards satisfaction of its fair share obligation.

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

(a) adoption of such resolutions of

need, execution of payment in-lieu-of-taxes resolutions, or public housing cooperation agreements as may be necessary to assist a developer in obtaining public subsidies for the construction of housing affordable to low and moderate income households; provided, however, that nothing herein shall be construed to require the Township to directly or indirectly subsidize construction of such housing.

- (b) expedited disposition of site plan applications and municipal approvals by a developer in the affordable housing zones;
- (c) cooperation with a developer in the affordable housing zones in obtaining sewage and water connections;
- (d) cooperation with the needs of a developer and the requirements of state and federal agencies concerning the administration of resale price controls.

(e) waiver of the following fees on a pro rata basis based upon the percentage of low and moderate income units in the development, except to the extent such fees are paid by the Township to outside consultants for plan review, inspection or similar services:

- (1) Subdivision and site plan application fees.
- (2) Building permit fees, except state fees.
- (3) Certificate of Occupancy fees.
- (4) Engineering fees.

(f) establishment of mechanisms and procedures to ensure the units are marketed to eligible households.

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

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

9. Upon the approval of site plan applications for

construction of sufficient units affordable to low and moderate income households under the ordinance set forth as Exhibit A to satisfy the Township's fair share under paragraphs 2, 3 and 5 of this agreement and upon written notice to plaintiffs, the Township may repeal or amend the ordinance set forth in Exhibit A, subject, however, to reinstatement of such ordinance in the event any of such units for which approval has been granted are not constructed and occupied within a reasonable period of time after approval.

10. In the event that any of the zone districts established under this agreement ceases to be available for development pursuant to the provisions adopted under section 2 of this agreement because of development for other purposes, condemnation, state or federal prohibitions or restrictions upon development or any other reason and as a result thereof, such zone districts are no longer sufficient to allow for construction of 1,135 low and moderate income housing units, the Township, upon written notice to and with the reasonable approval of plaintiffs, shall rezone sufficient other developable land pursuant to this provision to make it realistically likely that a sufficient number of units affordable to low and moderate income households will be constructed to satisfy the Township's fair share.

11. (a) The Township shall not zone, rezone, grant variances, or grant any preliminary or final site plan approval for townhouses, garden apartments,

or residential uses at gross densities higher than 5 units per acre unless:

(i) The development is subject to a mandatory set aside for units affordable to low and moderate income households identical to that contained in Exhibit A, or

(ii) the municipality has met its fair share obligation, as herein defined.

(b) The provisions of paragraph 11(a) above shall not apply with respect to:

(i) any property for which a developer has received preliminary site plan approval prior to the date hereof provided that final site plan approval is for the same gross density as that for which preliminary approval was granted, or such developer wishes to alter its development plan to provide a lower density than that previously approved; and

(ii) that property known and designated as Lots 54 and 54A in Block 151 on the Tax Map of the Township of Rockaway, as to which good faith activities have taken place between the Township and the developer with respect to development proposals which were not predicated on such set aside requirements.

12. The Township shall require developers of low and moderate income housing units to offer such units for rental or sale exclusively to residents of Rockaway Township for a period of no more than 15 days.

13. Upon enactment into law, the low and moderate income housing amendments as set forth in Exhibit A shall not be repealed, amended, or modified without the express consent of the plaintiffs, through their counsel, the Department of the Public Advocate, except as provided in paragraph 9 above. In the event of any breach of any provision of this agreement the plaintiffs may seek relief by way of any remedy provided by law. The owners or assignees of the lands which are rezoned by this amendment are also recognized as third party beneficiaries with authority to enforce the terms of this settlement agreement.

14. This Agreement shall be binding upon the parties subject only to the granting by the Court of a judgment of compliance.

JOSEPH H. RODRIGUEZ, PUBLIC ADVOCATE
Attorney for plaintiffs

WILEY, MALEHORN and SIROTA

By: 

Fredric J. Sirota
Attorneys for Rockaway Township

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 54,
LAND USE ORDINANCE, OF THE TOWNSHIP OF ROCKAWAY CODE

BE IT ORDAINED, by the Township Council of the Township of Rockaway:

Section 1 Purpose of this Amendatory Ordinance:

It is the intent of this amendment to create four new zone districts and accompanying regulations within the Township of Rockaway which will result in a realistic opportunity for the construction of a variety of housing types for all income levels in the Township, particularly including housing for low and moderate income households. It is further intended that these four zones, namely, the PRD-1, PRD-2, OR-3 and R-20M zones will encourage the development of said low and moderate income housing by providing specific land use regulations addressing those needs. The PRD-1, PRD-2, OR-3 and R-20M zones are designed to meet the mandate of the Mt. Laurel II doctrine established by the New Jersey Supreme Court. In the event there is specific and irreconcilable conflict between the standards established for any one of these four zones and other sections of the Land Use Ordinance not related to health and safety, the standards as set forth herein shall prevail.

Section 2 There is hereby created a new PRD-1 Zone the boundardies of which are set forth on the accompanying Zoning Map. This PRD-1 Zone shall be regulated by the following requirements:

54-14 PRD-1 PLANNED RESIDENTIAL DEVELOPMENT

A. PRIMARY INTENDED USE. This zone district is designed to accomodate various types of residential development as a single entity according to a plan containing one or more residential clusters. The types of residential units permitted in the PRD-1 Zone are:

- (1) Single family detached dwellings.
- (2) Two family dwellings.
- (3) Single family attached (townhouses).
- (4) Multi-family dwellings (garden apartments).

Also permitted in this zone are accessory uses customarily incident and ancillary to the various permitted principal uses outlined above. These accessory uses may include:

- (1) Personal recreation facilities.
- (2) Accessory buildings.

- (3) Off-street parking-streets-driveways.
- (4) Garages.
- (5) Fences.
- (6) Signs.

B. PROHIBITED USE. Any use other than those uses listed in Section 54-14A above is prohibited.

C. REQUIRED CONDITIONS. The following requirements must be complied with the PRD-1 Zone:

- (1) Height. No single family detached, single family attached, or two family dwelling shall exceed 2-1/2 stories, provided, however, said building is not higher than 35 feet. No multi-family apartment building shall exceed 3 stories, provided, however, said building is not higher than 40 feet.
- (2) Front Yard Setback For Individual Lots. There shall be a front yard setback of 25 feet for single family detached dwellings, two family dwellings and single family attached dwellings. There shall be a front yard setback for multi-family dwellings of 30 feet.
- (3) Side Yard Setback For Individual Lots. There shall be two side yards and no side yard shall be less than 6 feet, provided, however, that the aggregate width of the two side yards combined shall not be less than 20 feet for all structures.
- (4) Rear Yard Setback For Individual Lots. There shall be a rear yard setback of 20 feet for all structures.
- (5) Minimum Lot Size For Individual Lots. Every individual lot developed with a single family detached dwelling shall have a minimum lot size of 5,000 square feet with a minimum lot width of 50 feet. Every individual lot developed with a two family dwelling shall have a minimum lot size of 6,000 square feet with a minimum lot width of 60 feet. Every individual lot developed with a single family attached dwelling shall have a minimum lot size of 2,000 square feet with a minimum lot width of 20 feet.
- (6) Maximum Gross Density. The maximum gross density for any project shall be one dwelling unit per acre, provided, however, a density bonus shall be

permitted as herein regulated which is related to a reduction in energy consumption or demand. The reduction shall be based on comparison of the proposed development over the minimum requirements of the F.H.A. energy standards. The relationship of energy conservation to permitted density is as follows:

Gross Density with less than 10% energy savings - 1 dwelling unit per acre;

Gross Density from 10% to 20% energy savings - 1.1 dwelling units per acre;

Gross Density from 20% to 30% energy savings - 1.2 dwelling units per acre;

Gross Density with 30% and over energy savings - 1.3 dwelling units per acre.

- (7) Setback From Tract Boundary. Any development that takes place in the PRD-1 zone that is other than on individual lots, such as a condominium project, shall be setback 40 feet from any tract boundary.
- (8) Distance Between Buildings. Any development that takes place in the PRD-1 zone that is other than on individual lots, such as a condominium project, shall comply with the following minimum distances between buildings:
- (a) End wall to end wall - 20 feet.
 - (b) Window wall to end wall - 25 feet.
 - (c) Window wall to window wall (front to front) - 75 feet.
 - (d) Window wall to window wall (rear to rear) - 50 feet.

The distance between buildings not parallel shall be determined by taking the average distance between said buildings, provided, however, at no point shall any part of said buildings be closer than one-half the required standards set forth above.

- (9) Off-Street Parking. Off-street parking shall be provided to meet the following standards:

- (a) Every dwelling unit containing 3 or more bedrooms - 2.5 parking spaces.
 - (b) Every dwelling unit containing 2 bedrooms - 2.0 parking spaces.
 - (c) Every dwelling unit containing less than 2 bedrooms - 1.5 parking spaces.
- (10) Street Widths, Shoulders, Rights-of-Way. Street widths, shoulders and rights-of-way shall meet the following minimum standards:
- (a) Paved Street Widths
 - [1] Collector Streets. All collector streets shall have a pavement width of 36 feet between a masonry curb of at least 6 inches in height constructed on both sides of the street.
 - [2] Minor Streets. All internal streets shall have a pavement width of 26 feet between a masonry curb of at least 6 inches in height, constructed on both sides of the street, provided, however, cul-de-sacs less than 300 feet in length need not be wider than 20 feet between curbs.
 - (b) Shoulders. A planted shoulder of at least 8 1/2 feet shall be provided on either side of the paved roadway.
 - (c) Rights-of-Way. The total right-of-way to be reserved shall be computed by adding the shoulder requirement to the paved roadway width required.
 - (d) Road Gradients. Shall not be less than 0.5% for any road. The maximum gradient shall be 15% for minor streets and 10% for collector streets.
 - (e) Cul-de-sacs. Shall serve a maximum of 25 units or shall not be longer than 1,000 feet, whichever is less. The paved right-of-way of a cul-de-sac turnaround shall be at least 80 feet in diameter and the right-of-way radius shall not be less than 50 feet.
 - (f) Sidewalks. Sidewalks shall be provided as required by the Planning Board.
- (11) Minimum Development Size. A minimum development size of 100 units shall be required.

(12) Minimum Adverse Impact Due to Environmental Constraints. Every development within the PRD-1 zone shall be designed to minimize any adverse impacts due to environmental constraints. This shall be accomplished by employing innovative design and construction of clustering development on lands having minimal environmental constraints. In this regard all plans shall comply with the following requirements, as well as complying with all requirements related to preparation of environmental impact statements as required by applicable provisions of the Township of Rockaway Code.

(a) Flood Plains. Development within the Flood Plains, as established by the New Jersey Department of Environmental Protection, shall be prohibited, provided, however, roads crossing the flood plains needed for access may be constructed within the flood plains, subject to the approval of the New Jersey Department of Environmental Protection .

(b) Stream Encroachment. Development within 100 feet of the center line of any stream as set forth on the "Community Facilities Plan" of the 1983 Township Master Plan shall be prohibited.

(c) Excessive Slopes. The development of lands having steep slopes shall be regulated as follows:

[1] Lands having a slope from 10% to 15% - Not more than 40% of such areas shall be developed.

[2] Lands having a slope from 15% to 25% - Not more than 30% of such areas shall be developed.

[3] Lands having a slope of 25% or greater - Not more than 15% of such areas shall be developed.

(d) Lakes, Ponds and Water Bodies. Lakes, ponds and water bodies greater than one acre in size shall not be filled in or developed. No building shall be constructed within 100 feet of the shore line of any such water body.

- (f) Mining Locations. No building shall be constructed within 100 feet of any mine shaft. Any development within 100 to 500 feet of any mine shaft shall be permitted after the developer has submitted evidence to the Township, from core borings, that development will not result in any adverse environmental impacts for the Township.
- (g) Conservation Areas. Development within those land areas designated on the zone map as conservation areas shall be prohibited.

Section 3 There is hereby created a new PRD-2 Zone, the boundaries of which are set forth on the accompanying Zoning Map. This PRD-2 Zone shall be regulated by the following requirements:

54-15 PRD-2 PLANNED RESIDENTIAL DEVELOPMENT

- A. PRIMARY INTENDED USE. This zone district is designed to accommodate and permit all of those uses permitted in the PRD-1 zone as set forth in Section 54-14A of this Ordinance.
- B. PROHIBITED USE. Any use other than those uses listed in Section 54-14A of this Ordinance is prohibited.
- C. REQUIRED CONDITIONS. The following requirements must be complied with in the PRD-2 zone.
 - (1) Height. The maximum height permitted shall be the same as regulated in the PRD-1 zone as set forth in Section 54-14C.(1) of this Ordinance.
 - (2) Front Yard Setback For Individual Lots. The front yard setback shall be the same as regulated in the PRD-1 zone as set forth in Section 54-14C.(2) of this Ordinance.
 - (3) Side Yard Setback For Individual Lots. The rear yard setback shall be the same as regulated in the PRD-1 zone as set forth in Section 54-14C.(3) of this Ordinance.
 - (4) Rear Yard Setback for Individual Lots. The rear yard setback shall be the same as regulated in the PRD-1 zone as set forth in Section 54-14C.(4) of this Ordinance.
 - (5) Minimum Lot Size for Individual Lots. The minimum lot size for the various uses permitted shall be the same as regulated in the PRD-1 zone as set forth in Section 54-14C.(5) of this Ordinance.

- (6) Maximum Gross Density. The maximum gross density for any project shall be two dwelling units per acre, provided, however, a density bonus shall be permitted, as herein regulated, which is related to a reduction in energy consumption or demand. The reduction shall be based on comparison of the proposed development over the minimum requirements of the F.H.A. energy standards. The relationship of energy conservation to permitted density is as follows:

Gross Density with less than 10% energy savings - 2 dwelling units per acres;

Gross Density from 10% to 20% energy savings - 2.2 dwelling units per acre;

Gross Density from 20% to 30% energy savings - 2.4 dwelling units per acre;

Gross Density with 30% and over energy savings - 2.6 dwelling units per acre.

- (7) Setback From Tract Boundary. Any development that takes place in the PRD-2 zone that is other than on individual lots, such as a condominium project, shall be setback 40 feet from any tract boundary.
- (8) Distance Between Buildings. Any development that takes place in the PRD-2 zone that is other than on individual lots, such as a condominium project, shall comply with the standards regulating the PRD-1 zone as set forth in Section 54-14C.(8) of this Ordinance.
- (9) Off-Street Parking. Off-street parking shall be provided to meet the standards of Section 54-14C.(9) of this Ordinance.
- (10) Street Widths, Shoulders, Rights-of-Way. Street widths, shoulders and rights-of-way shall meet the standards of Section 54-14C.(10) of this Ordinance.
- (11) Minimum Development Size. A minimum development size of 100 units shall be required.
- (12) Minimize Adverse Impact Due to Environmental Constraints. Every development within the PRD-2 zone shall be designed to minimize any adverse impacts due to environmental constraints and shall comply with all requirements as set forth in

Section 54-14C. (12) of the Ordinance.

Section 4 There is hereby created a new OR-3 Zone, the boundaries of which are set forth on the accompanying Zoning Map. This OR-3 Zone shall be regulated by the following requirements:

54-16 OR-3 OFFICE RESIDENTIAL ZONE

- A. PRIMARY INTENDED USE. This zone district is designed to accommodate and permit office building development and/or those types of residential development permitted in Section 54-14A of this Ordinance. Any office building construction shall only be permitted if it meets the mandatory requirement for the construction of low and moderate income housing as set forth in Section 54-16C. as hereinafter regulated.
- B. PROHIBITED USE. Any use other than office building and/or residential development permitted in Section 54-14A of this Ordinance is prohibited.
- C. REQUIRED CONDITIONS. The following requirements must be complied with in the OR-3 zone. Office development shall meet all requirements of the OR zone provided, however, for every 2,000 square feet of office building floor area the developer shall construct one housing unit of low and moderate income housing at a ratio of 50% low and 50% moderate income housing units. Any residential construction constructed within the OR-3 zone shall meet the requirements of the PRD-1 zone as set forth in Sections 54-14C. (1), (2), (3), (4), (7), (8), (9), (10), (11) and (12) of this Ordinance as well as:
- (5) Minimum Lot Size for Individual Lots. Every individual lot developed with a single family detached dwelling shall have a minimum lot size of 5,000 square feet with a minimum lot width of 50 feet. Every individual lot developed with a two family dwelling shall have a minimum lot size of 6,000 square feet with a minimum lot width of 60 feet. Every individual lot developed with a single family attached dwelling shall have a minimum lot size of 1,200 square feet with a minimum lot width of 16 feet.
- (6) Maximum Gross Density. The maximum gross density for residential development shall be 8 dwelling units per acre, provided, however, a density bonus shall be permitted, as herein regulated, which is

related to a reduction in energy consumption or demand. The reduction shall be based on comparison of the proposed development over the minimum requirements of the F.H.A. energy standards. The relationship of energy conservation to permitted density is as follows:

Gross Density with less than 10% energy savings - 8 dwelling units per acre;

Gross Density from 10% to 20% energy savings - 8.8 dwelling unit per acre;

Gross Density from 20% to 30% energy savings - 9.6 dwelling units per acre;

Gross Density with 30% and over energy savings - 10.4 dwelling units per acre.

Section 5 There is hereby created a new R-20M Zone, the boundaries of which are set forth on the accompanying Zoning Map. This R-20M Zone shall be regulated by the following requirements:

54-17 R-20M RESIDENTIAL ZONE

- A. PRIMARY INTENDED USE. This zone district is designed to permit any use as permitted and regulated in the R-20 Zone or those uses permitted in the PRD-1 zone as set forth in Section 54-14A of this Ordinance, provided, however, those uses as set forth in Section 54-14A of this Ordinance shall only be permitted if said uses qualify as low and moderate income housing units and are part of a County, State or Federal housing subsidy program and comply with the standards of Section 54-17C of this Ordinance.
- B. PROHIBITED USE. Any use other than those uses permitted in Section 54-17A above is prohibited.
- C. REQUIRED CONDITIONS.
 - (1) Any use other than a subsidized housing project for low and/or moderate income households shall comply with the required conditions regulating the R-20 zone. Any subsidized housing project for low and/or moderate income households shall comply with the requirements as set forth in Section 54-14C. (1), (2), (3), (4), (5), (7), (8), (9), (10), (11) and (12) of this Ordinance as well as:

- (6) Maximum Gross Density. Single family attached townhouse units shall meet the density requirements of Section 54-16C.(6). Multi-family dwellings (garden apartments) shall be permitted at a maximum density of 10 units per acre.

Section 6 A new Section X shall be added to Section 54-86 of the Land Use Ordinance which shall read as follows:

X. LOW AND MODERATE INCOME HOUSING REQUIRMENTS

- (1) At least 10 percent of the total number of residential dwellings hereinafter constructed within each development in the PRD-1, PRD-2 and OR-3 zones shall be made affordable and sold or rented to low income persons and 10 percent shall be made affordable and sold or rented to moderate income persons. If any developer builds residential housing in any zone district at a gross density of greater than 5 units per acre, at least 10 percent of the total number of residential dwellings hereinafter constructed within each such development shall be made affordable and sold or rented to low income persons and 10 percent shall be made affordable and sold or rented to moderate income persons. Notwithstanding the provisions of this section, the following sites shall be excluded from the requirements of this provision due either to preliminary approvals heretofore having been granted by the Township or activities between the Township and developer conducted in good faith that were not predicated upon the foregoing provisions:

Lots 54 and 54A in Block 151 -
Lots 52 and 53 in Block 151 -
Lot 11 in Block 197 U -

- (2) At least twenty (20%) percent of both the low income units and moderate income units shall be three bedroom units, and no more than fifty (50%) percent of each shall be one bedroom units or efficiency units.
- (3) The developer shall agree not to impose any residency requirements upon prospective renters or purchasers of any low and moderate income units, except that the Township of Rockaway shall require the developer to offer units for rental or sale exclusively to residents of Rockaway Township for a period of no more than 15 days. The developer

shall agree not to impose age requirements upon occupants of low and moderate income units, except that in units designated by the Planning Board, on an approved site plan, as senior citizen units, which shall include a total of no more than 114 low income units and 114 moderate income units constructed under this ordinance, the developer may be required to restrict sale or rental to eligible low or moderate income persons over the age of 62.

- (4) The developer shall formulate and implement a written affirmative marketing plan acceptable to the Planning Board with the approval of the Township Council. The affirmative marketing plan shall be realistically designed to inform all components of the population of the housing opportunities in the development, that they are welcome to seek to buy or rent such housing, and that they have the opportunity to buy or rent such housing. It shall include advertising and other outreach activities realistically designed to reach all components of the lower income population in municipalities in the Mt. Laurel housing region of which the Township is a part.
- (5) A developer shall submit a phasing schedule for the construction of the low and moderate income units. The developer may construct the first twenty (20%) percent of the development without constructing any low or moderate income units. By the time forty (40%) percent of the units in the development are constructed, at least twenty (20%) percent of the low and moderate income units shall be constructed. By the time sixty (60%) percent of the units in the development are constructed, at least forty-five (45%) percent of the low and moderate income units shall be constructed. By the time eighty (80%) percent of the units in the development are occupied, at least seventy (70%) percent of the low and moderate income units shall be constructed. No certificate of occupancy shall be issued for units other than units affordable to low or moderate income households until all low and moderate income units in the previous phase have been completed.
- (6) A developer shall submit a plan for resale or rental controls to ensure that the units remain affordable to low and moderate income households for at least thirty (30) years. The purchaser shall be entitled to sell the units for:

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

The low income units upon resale may be sold only to low income persons, and the moderate income units may be sold to low or moderate income purchasers. If, however, no low income purchaser is found within sixty (60) days, the low income unit may be sold to a moderate income purchaser or, if none is available, to any interested purchaser. If no moderate income purchaser is found for a moderate income unit within sixty (60) days, the unit may be sold to any purchaser. Regardless of the income of the purchaser, the resale controls shall remain in effect for subsequent resales. The developer may create a non-profit corporation, enter into an agreement with a non-profit corporation or a governmental agency, or choose to administer to resale controls itself, but in no event may the resale controls be administered merely by a deed restriction.

Where units are offered as rental units they shall continue to be offered as rental units for fifteen (15) years. After fifteen (15) years they may be sold at prices affordable to moderate income households, subject to such resale price controls as may be necessary to ensure that the units continue to be affordable to moderate income households for the remainder of the thirty (30) year period commencing from the date of initial rental.

- (7) Upon the construction of 1,135 units of affordable low and moderate income housing pursuant to the conditions imposed by this Ordinance, including housing which meets the standards of Section 8 of the Community Development Act of 1974, as amended, or equivalent program, the Township of Rockaway will not require of any developer the further construction of said affordable low and moderate

income household units.

- (8) The Planning Board shall review the location and design of units in any proposal for development involving construction of affordable low and moderate income housing units and may, in its discretion, require the developer to alter its development proposal if necessary to ensure reasonable integration of low and moderate income housing units within the development.
- (9) If any housing units in the proposed development are associated together through condominium ownership, cooperative ownership, membership in a homeowners or similar association, or other organization providing for common upkeep and maintenance of property, then the low and moderate income housing units provided for in this ordinance and the owners of such units shall be an integral part of such common ownership regime and members of such organization with the same rights and privileges accorded to other units and unit owners in the development.
- (10) A developer in the zone may request that the Planning Board and/or Township waive or modify cost-generating requirements in the zoning, subdivision or site plan ordinance (not including density limitations), waive or reduce fees, or grant tax abatement to the extent authorized by law, if the developer claims that such actions are necessary to provide the 20% low and moderate income housing. A developer may choose one of three impartial housing experts from a list prepared by the Planning Board and have the expert make recommendations, at the expense of the developer, on the necessity for the proposed waivers, modifications or other actions. The expert shall also consider whether the requirement for which the waiver or modification is sought is a necessary minimum standard required for public health and safety. In the event that the expert determines that, even after full municipal cooperation, it is not economically feasible for the developer to provide the full amount of affordable low and moderate income units, the expert may recommend that the developer provide twelve (12%) percent moderate income and eight (8%) percent low income units. Such a modification in the low and moderate income obligations shall not be approved unless the expert determines that the Township has substantially

complied with his recommendations for municipal actions to reduce costs. The Planning Board shall not be bound to accept or approve the recommendations of the expert but may in its discretion reject any or all of such recommendations. In the event that the Planning Board declines to accept one or more of the recommendations of the expert, it shall detail its reasons in writing.

Section 7 Section 54-5 of the Land Use Ordinance shall be expanded by including the following definitions:

LOW INCOME HOUSEHOLD. A household having a total gross household income of not more than 50% of the median household income for households of the same size using the median income data for household size prepared by the United States Department of Housing and Urban Development, (Newark SMSA) contained in HUD, Section 8, Rental Assistance Program Income by Family Size.

MODERATE INCOME HOUSEHOLDS. A household having a total gross household income between 50% and 80% of the median household income for households of the same size using the median income data for household size by the United States Department of Housing and Urban Development (Newark SMSA) contained in HUD, Section 8, Rental Assistance Program Income by Family Size.

AFFORDABLE means that a household at the ceiling income for each income group, for each household size, is not required to pay more than twenty-five (25%) percent of its gross household income for the total of principle, interest, property taxes, insurance and homeowner's association assessments, calculated on the basis of a ten (10%) percent downpayment, and realistically available mortgage interest rates. In the case of rental housing, such a household is not required to pay more than twenty-five (25%) percent of income for rent excluding utilities.

Section 15 This Ordinance shall take effect in accordance with the law.