

ML - Morris County Fair Housing Council

Aug. 2, 1985

vs. Boonton

- Mount Olive

Final Judgment of Compliance as to Mt. Olive
Township

Pg. 6

Note: double-sided pages

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FILED

AUG 2 1985

STEPHEN SKILLMAN, J.S.C.

AMY R. PIRO, ACTING PUBLIC ADVOCATE
DEPARTMENT OF THE PUBLIC ADVOCATE
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX/MORRIS COUNTY
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING :
COUNCIL, et al., :

Plaintiffs, :

vs. :

BOONTON TOWNSHIP, et al., :

Defendants. :

AND :

CHESTER AND VAN DALEN :
ASSOCIATES, INC. EMPLOYEES :
RETIREMENT TRUST, JOHN :
CHESTER, GREGORY PLOUSSAS, :
and JOHN VAN DALEN, as co- :
trustees, :

DOCKET NO. L-06504-83 P.W.

Civil Action

(Mt. Laurel Action)

Plaintiffs, :

FINAL JUDGMENT OF COMPLIANCE
AS TO MT. OLIVE TOWNSHIP

vs. :

MOUNT OLIVE TOWNSHIP, etc. :

Defendant. :

This matter having been heard on July 17 and 18, 1985 in the presence of counsel for plaintiffs in Docket No. L-6001-78 P.W., Morris County Fair Housing Council, et al., plaintiffs in Docket No. L-06504-83 P.W., Chester and Van Dalen Associates Employees Pension Trust, and defendant Mt. Olive Township on

the joint application of plaintiffs and defendant Mt. Olive Township for approval of a negotiated settlement and entry of a judgment of compliance in favor of Mt. Olive Township, and

The Court having considered the papers, evidence, and arguments of counsel, and

There being no objection to approval of the settlement agreement or entry of judgment of compliance, and

It appearing to the Court for the reasons set forth in its oral opinion of July 18, 1985 that the negotiated settlement is fair, adequate, and reasonable and should be approved, and

It appearing to the Court that entry of a judgment of compliance is justified and within the powers of the Court;

It is on this *2nd* day of *August*, 1985, ORDERED and ADJUDGED that:

1. The settlement agreement annexed as Attachment 1 (including Exhibits A, B, C annexed thereto) as modified by the stipulation of counsel annexed as Attachment 2, the amendment to the agreement between Mt. Olive Township and Mt. Olive Complex annexed as Attachment 3, and the amendment to the agreement between Mt. Olive Township and Oakwood Village, et al. set forth in the letter annexed as Attachment 4, is fair, adequate and reasonable.

2. Defendant Mt. Olive Township, by implementation of the settlement agreement set forth in Attachments 1, 2, 3, and 4, is complying with its constitutional obligation to provide realistic opportunities for creation of sufficient safe, decent housing affordable to low and moderate households to meet its

indigenous need and its fair share of the present and prospective regional need.

3. Final judgment is hereby entered in favor of defendant Mt. Olive Township as to all claims made by plaintiffs. All counterclaims made by Mt. Olive Township are dismissed with prejudice.

4. The agreement annexed as Attachments 1, 2, 3, and 4 shall, in accordance with its terms be effective immediately upon entry of judgment and shall be implemented by the parties.

5. Costs shall not be taxed against either party.

6. It is certified pursuant to R. 4:42-2 that this judgment is a complete adjudication of all rights and liabilities asserted in this litigation as to Mt. Olive Township and there is no just reason for delay of entry of final judgment.



HONORABLE STEPHEN SKILLMAN, J.S.C.

Dated: 8/2/75

THIS AGREEMENT, made this 14th day of May, 1985,
by and between:

THE TOWNSHIP OF MT. OLIVE,
A municipal corporation of the State of New Jersey,
with offices located at Route 46, Mt. Olive, New
Jersey hereinafter designed 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 H. RODRIGUEZ, the Public
Advocate of the State of New Jersey,
hereinafter designated as "Plaintiffs Public Advocate,
et al."

and

CHESTER AND VAN DALEN ASSOCIATES, INC., EMPLOYEES RETIREMENT
TRUST, JOHN CHESTER, GREG PLOUSSAS, and JOHN VAN DALEN,
as co-trustees,
hereinafter designated as "Plaintiffs Chester, et al."

WHEREAS, the Plaintiffs Public Advocate, et al., on October 13,
1978, instituted a certain action in the Superior Court, Law
Division, Morris County, bearing Docket No. L-6001-78 P.W., against
the Township of Mount Olive and other parties; and

WHEREAS, the Plaintiffs Chester, et al., instituted a certain
action in Superior Court, Law Division, Morris County, bearing Docket
No. L-06504-83 P.W., against the Township of Mt. Olive; and

WHEREAS, the aforementioned court actions were consolidated by
Order of the Superior Court; and

WHEREAS, the parties hereto are desirous of entering into an
agreement of settlement to resolve their differences in the aforesaid
litigation and insure that Mt. Olive Township's Zoning and Land Use
Ordinances comply with the requirements of Mt. Laurel Township and to
ensure that Mt. Olive Township receives a judgment of compliance with
the requirements of Mt. Laurel II.

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 general welfare to settle the aforesaid litigation upon the terms and conditions contained herein so as to fully meet the Mt. Laurel II housing obligations of the Township.

2. The parties agree that the total low and moderate income fair share housing obligation for Mt. Olive Township is 500 units of housing, 250 of which shall be affordable to persons of low income and 250 of which shall be affordable to persons of moderate income. In addition, in order to resolve this dispute amicably and ensure that there is no question of full and adequate compliance with Mt. Laurel II, Mount Olive will make provision for (see Exhibit C) additional moderate income units for a total of 540 units. In accordance with the law, the Township has amended the Zoning Ordinance of the Township to establish a Residential 5 ML Zone (R-5ML zone) and a Residential 3 Senior Citizen Zone (R-3SC zone) as set forth in the Ordinance designated as Exhibit A which is attached hereto and incorporated herein by reference. In accordance with the law, the Township has entered into an agreement with the landlords or owners of the large garden apartment complexes in Mt. Olive Township in accordance with the terms and conditions of the proposed agreement designated as Exhibit B which is attached hereto and incorporated herein by reference. The 540 units of

housing will be provided as follows:

a. Approximately 117 units of low income housing shall be provided within the R-5ML Zone which shall be applied to the property of the Plaintiffs Chester, et al. See Exhibit A. In the event that the preliminary site plan approval of the property owned by the plaintiffs Chester, et al. (sometimes designated as the Van Dalen site) does not yield 150 units of low income housing, then within three (3) months of the preliminary site plan approval, Mt. Olive Township will satisfy the balance of low income housing needed by adopting an ordinance rezoning sufficient suitable and sewerable land to provide for the balance of the low income units. Said zoning ordinance shall be substantially similar to the R-5ML Zoning Ordinance.

b. 100 units of senior citizen low income housing shall be provided within the R-3SC Zone by the Abiding Peace Senior Housing Corp sponsored by the Lutheran Church pursuant to the Federal Section 202 Housing Program or other State or Federal low income senior citizen subsidy programs. See Exhibit A. In the event that the low income senior citizen housing project does not receive funding within 2 1/2 years of the date of the Judgment of Compliance, then within three months, Mt. Olive Township will rezone sufficient suitable and sewerable land for 100 units of low income senior citizen housing as a 15% setaside of a 667 unit development as a means to achieve such low income housing mutually acceptable to the parties. The site shall have a means of sewage treatment or be sewerred or located within the same general watershed as the PUD site and Mt. Olive Township shall retain 100,000 gallons per day in the proposed PUD sewer plant expansion to serve the project until such time as this obligation has been satisfied.

c. 250 moderate income housing units shall be provided by the existing garden apartment landlords located within the Township of Mt. Olive in accordance with the Agreement between Mt. Olive Township and said garden apartment project owners which is attached hereto and incorporated herein by reference. See Exhibit B.

d. An additional 40 moderate income units shall be provided within the Mount Olive Complex PUD as set forth in the agreement attached hereto as Exhibit C.

3. 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.

4. In the event that additional subsidized or privately built housing affordable to low or moderate income households is constructed in the Township on or before March 1, 1990, the Township shall receive credit for each unit towards satisfaction of its Mt. Laurel housing obligations.

5. In addition to the provisions in Exhibits A, B and C, the municipality shall take all reasonable steps to foster development of units affordable to low and moderate income households called for by Paragraphs 2 and 3 including, but not limited to:

A. Adoption of such resolutions of need, execution of payments in lieu of taxes resolution, or public housing cooperation agreements as may be necessary to facilitate a developer in obtaining public subsidies for the construction of housing affordable to low and moderate income households;

B. 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. Establishment of mechanisms and procedures to ensure that units are marketed to eligible households.

6. The Township shall provide written notice to Plaintiff Public Advocate, et al. 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. The Township shall, on an annual basis furnish the plaintiffs and the Court with a statement describing what lower income housing development has occurred and the status of each site rezoned under this agreement.

7. This settlement is conditioned upon the entry of a final judgment of compliance by the Courts pursuant to Southern Burlington County N.A.A.C.P. vs. Mt. Laurel Twp., 92 N.J. 158 at 291 (Mt. Laurel II). Plaintiffs agree to support any attempt by defendant to obtain such a final judgement of compliance.

8. Upon receipt of a Judgment of Compliance by the Courts, the parties shall enter a Stipulation of Dismissal of these Complaints with prejudice incorporating this Agreement and Exhibits.

9. Upon the construction and occupancy of sufficient units affordable to low and moderate income households under the ordinance

set forth as Exhibits A to satisfy the municipality's Mt. Laurel housing obligations under Paragraphs 2, 3 and 5 of this Agreement and upon written notice to plaintiffs, the municipality may repeal or amend the ordinances set forth in Exhibits A as to properties not developed or subject to preliminary or final site or subdivision approvals in accordance with those ordinances.

10. In the event that any site in any of the zones established under this Agreement ceases to be available for development pursuant to the provisions adopted under Section 2 of this Agreement because of development for other purposes, condemnation, State or Federal prohibitions or restrictions upon development or any other reason, the municipality, upon written notice to and with the approval of plaintiffs, shall rezone sufficient other developable land pursuant to this provision to make it realistically likely that a sufficient number of units affordable to low and moderate income households will be constructed to satisfy the municipality's Mt. Laurel housing obligations.

11. Upon enactment of law, the zoning amendments and agreements with the landlords set forth in Exhibits A, B and C shall not be repealed, amended, or modified without the express consent of the plaintiffs, through their counsel, except as provided in Paragraph 10 above. In the event of any breach of any provision of this Agreement, the plaintiffs may seek relief by way of any remedy provided by law. The owners or assignees of the lands which are rezoned by this amendment are also recognized as third party beneficiaries with authority to enforce the terms of this settlement agreement.

12. The Municipality 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 4 units per acre unless:

(a) The development is subject to a mandatory setback for units affordable to low income households identical to that contained in Exhibit A, or

(b) The Municipality has met its fair share obligation.

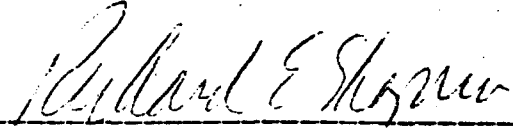
13. The parties affirmatively agree that the 500 units of low and moderate income housing represents the Township's total Mt. Laurel housing obligation through the year 1990, that the total provisions of 540 units including the 40 additional moderate income units constitutes full and adequate compliance with Mt. Laurel and that this Agreement and the zoning amendments and agreements incorporated herein completely fulfill Mt. Olive Township's Mt. Laurel housing obligation through the year 1990.

14. The Township shall provide the plaintiffs with copies of all reports submitted to the business administrator by the landlords pursuant to the agreement designated Exhibit B and all reports made by the business administrator to the mayor or municipal governing body relating to said agreement. Such reports shall also include the actions taken to insure that vacant moderate income rental units have

been and are duly advertised or otherwise filled with moderate income households. The Township, shall, upon written request, make all records pertaining to implementation of the agreement attached as Exhibit B, including but not limited to registration statements, waiting lists, records obtained in the course of any audits or investigations, and correspondence, available to plaintiffs for examination and copying. Upon written request by plaintiffs, the business administrator or his delegee shall conduct an investigation or audit to determine the accuracy and completeness of the registration statements and reports filed by the landlords and the extent of compliance with the agreement. Plaintiffs shall not request more than one complete investigation or audit every three years, except that plaintiffs may require additional audits or investigations where reason can be shown to believe that the records may be incorrect or incomplete or that there may be a lack of compliance with the agreement.

15. In the event that any of the landlords who are parties to the Agreement attached hereto as Exhibit B begin converting rental units to condominiums, then upon the sale of 50% of the units in said complex, Mt. Olive Township shall begin preparing a plan for replacement of any moderate income rental units with other controlled moderate income units. Said plan shall be in effect prior to the sale of 80% of the total number of apartments in any complex and

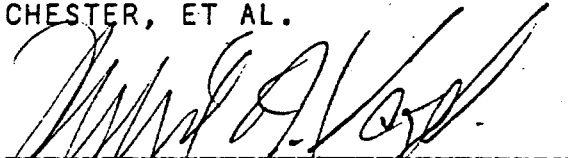
prior to the sale of any moderate income controlled units. Any replacement units shall be available at rents complying with this Agreement and the Agreement attached as Exhibit B.



RICHARD E. SHAPIRO, DIRECTOR OF
DIVISION OF PUBLIC INTEREST
ADVOCACY, DEPT. OF PUBLIC ADVOCATE,
ATTORNEY FOR PLAINTIFFS, PUBLIC
ADVOCATE, et al.



CARL S. BISGAIER, ESQ.
ATTORNEY FOR PLALINTIFFS,
CHESTER, ET AL.



HERBERT A. VOGEL, SPECIAL
COUNSEL FOR THE TOWNSHIP OF
MT. OLIVE