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 459 Amboy Avenue
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 (201) 634-6400
 Attorneys for Plaintiffs

Plaintiff,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
JOSEPH RENDEIRO, GEORGE C. PECK	:	
and HOVBILT, INC., a New Jersey	:	MORRIS COUNTY/VENUE
Corporation	:	MIDDLESEX COUNTY/TRIAL
	:	
vs.	:	
	:	
Defendants,	:	Docket No.:
	:	
BOROUGH OF LINCLON PARK, a	:	MT. LAUREL II
Municipal Corporation located in	:	Civil Action
Morris County	:	COMPLAINT
	:	

Plaintiffs, Joseph Rendeiro and George C. Peck, with offices at 1200 Route 46, Clifton, Passaic County, New Jersey and Hovbilt, Inc., a New Jersey Corporation with offices at Suite 12, Dag Hammardskjold Blvd., Freehold, Monmouth County, New Jersey, by way of Complaint, say:

FIRST COUNT

1. Plaintiffs Rendeiro and Peck are the owners of property known and designated as a portion of Lots 7,10,12 and 14 in Block 3 as shown on the Tax Map of the Borough of Linclon Park, County of Morris, State of New Jersey. Plaintiff Hovbilt, Inc. is the contract purchaser of the aforesaid property which is located in the TH-S zone, a Set-Aside Zone under the Ordinances of defendant Borough. (Plaintiffs Rendeiro, Peck and Hovbilt, Inc. are hereinafter referred to as "plaintiffs.")

2. Plaintiffs have pending before the Planning Board of defendant an application for development of the aforesaid property.

3. Defendant Borough of Linclon Park is a Municipal Corporation located in the County of Morris.

4. On or about March 18, 1985, the governing Body of the Borough of Lincoln Park adopted Ordinance 788 entitled "AN ORDINANCE TO AMEND CHAPTER 28, ZONING ORDINANCE OF THE CODE OF THE BOROUGH OF LINCOLN PARK, IMPLEMENTING THE TERMS AND CONDITIONS OF THE SETTLEMENT OF A CERTAIN ACTION ENTITLED 'MORRIS COUNTY FAIR HOUSING COUNCIL, ET ALS., v. BOONTON TOWNSHIP, ET ALS., SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, DOCKET NO. L-6001-78 P.W.,' BY ESTABLISHING ARTICLE VI-D, PHASING OF DEVELOPMENT." (Ordinance 788 is attached hereto as Exhibit A). Said Ordinance became effective on April 7, 1985.

5. Ordinance 788 establishes as a goal, in Sec. 28-50 D, the limitation of the number of new townhouse and apartment units to 890, including 178 set-aside units for low or moderate income households prior to December 31, 1990. Ordinance 788 is applicable only to the "Set-Aside Zones" designated in Article VI-A, VI-B and VI-C of Chapter 28 of the Code of defendant. (These articles are attached hereto as Exhibit B).

6. Ordinance 788 establishes a Borough wide limitation upon development approvals in all set-aside zones.

7. Sec. 28-51-D 1 of Ordinance 788 prohibits the Planning Board of defendant from approving development for more than 600 units through December 31, 1986.

8. There is no statutory authority for the defendant establishing a limitation upon the number of units of any kind which may be approved by the Planning Board.

9. There is no statutory authority for the defendant establishing a developmental limitation.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

SECOND COUNT

1. Plaintiffs repeat and incorporate all allegations of the First Count as if set forth herein at length.

2. The establishment of the limitation upon development set forth in Ordinance 788 is arbitrary, capricious, discriminatory and unreasonable.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.

- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

THIRD COUNT

1. Plaintiffs repeat and incorporate all allegations of the Second Count as if set forth herein at length.

2. Sec. 28-51-D 1a of Ordinance 788 establishes a priority ranking if more than one application for development has been submitted and has not yet received Preliminary Approval and if such applications would bring the total number of approved set aside units to more than 120 in all set aside zones.

3. To establish said priority of applications, the following factors are examined by the Plainning Board:

- (1) Impact of the projected peak hour traffic on the flow of existing peak hour traffic on surrounding streets and on major and secondary streets throughout the Borough, and on the safety of pedestrians and motorists;
- (2) Impact of the projected development on adjacent developments in terms of compatibility and property values;
- (3) Need for contribution of Borough facilities at public expense;
- (4) Need for extension of Borough Utilities;
- (5) Acreage of flood plain to be filled and acreage of wet lands areas to be filled or otherwise destroyed;
- (6) Total volume of fill required to raise housing above flood level or if a develop-

ment is not in a flood plain, the volume of fill required to raise housing and roads above the water table if such fill is proposed.

The depths to water table will be calculated as the shallowest depth shown by the Soils Map and Soils Characteristics Tables published in the Master Plan unless the developer provides evidence as to a greater depth at the highest seasonal level.

- (7) Ease of access to site as determined by 10 year flood elevations;
- (8) Suitability of the size of the development in relation to the goal of limiting development to not more than 600 new townhouse, garden apartment and adult community housing units (120 Set-Aside units) Borough-wide by December 31, 1986, giving due consideration to the ultimate set-aside unit mix expressed in Section 28-51D 2 a (8) of this ordinance.

4. The Planning Board is instructed by Ordinance 788 to rate every application against each other application for each of the above stated criteria. The best rated application for each category shall receive a rating of 1, the next best a 2, and so on. The total score of each application shall be established. Applications are then rated with the lowest total score being ranked first and the highest total score being ranked last.

5. There is no statutory authority for the Planning Board of defendant considering those factors set forth in Ordinance 788 during the course of evaluating an application for development.

6. The consideration of those factors set forth in Ordinance 788 by a Planning Board is contrary to law.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

FOURTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Third Count as if set forth herein at length.

2. The criteria to be used by the Planning Board of defendant to determine the priority as set forth in Ordinance 788 are arbitrary, capricious, discriminatory and unreasonable.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

FIFTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Fourth Count as if set forth herein at length.

2. There is no statutory authority for the rating of one developmental application against other applications for the purpose of determining which application shall be granted by a Planning Board and which shall be denied by the Planning Board.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

SIXTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Fifth Count as if set forth herein at length.

2. The comparison of one application to another application as a basis of determining whether to grant or deny an application before a Planning Board, as is required pursuant to Ordinance 788 is arbitrary, capricious, discriminatory and unreasonable.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.

- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

SEVENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Sixth Count as if set forth herein at length.
2. The procedure set forth in Ordinance 788 denies each application consideration based upon its own merits, all in contravention of law.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

EIGHTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Seventh Count as if set forth herein at length.
2. The comparison of one application for development to other applications for development denies all applicants the substantive due process and equal protection guarantees inherent in ARTICLE I, Section 1 of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

NINTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Eighth Count as if set forth herein at length.

2. Ordinance 788 provides that the criteria set forth in the ordinance may be weighted "depending on the Planning Board's assessment of the relative importance of each factor."

3. Permitting this weighing of factors by the Planning Board as set forth in Ordinance 788 is arbitrary, capricious, discriminatory and unreasonable.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Ninth Count as if set forth herein at length.

2. Sec. 28-51-D 1b of Ordinance 788 provides that once the 600 townhouse or apartment units have been approved by the Planning Board, all other applications for such development in set-aside zones shall be denied until January 1, 1987.

3. There is no statutory authority for the a Planning Board denying an application for development because other similar developments have been approved.

4. The aforesaid provision of Ordinance 788 denies an applicant the substantive due process and equal protection guarantees inherent in ARTICLE I, Section 1 of the New Jersey Constitution.

5. The aforesaid provision of Ordinance 788 denies an applicant a hearing on the merits of its application in violation of the law.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

ELEVENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Tenth Count as if set forth herein at length.

2. The denial of an application for development because other similar developments have been approved, as set forth in Sec. 28-51-D 1b of Ordinance 788 is arbitrary, capricious, discriminatory and unreasonable.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TWELFTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Eleventh Count as if set forth herein at length.

2. Sec. 28-51-D 1c of Ordinance 788 provides that any priority development which has not received preliminary approval within 180 days following Determination of Completeness shall be denied.

3. The aforesaid provision of Ordinance 788 is contrary to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

THIRTEENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Twelfth Count as if set forth herein at length.

2. Sec. 28-51-D 2 of Ordinance 788 prohibits the Planning Board of defendant from approving development for more than 890 units in all set-aside zones (at least 178 set-aside units) through December 31, 1988.

3. There is no statutory authority for the defendant establishing a limitation upon the number of units of any kind which may be approved by the Planning Board.

4. There is no statutory authority for the defendant establishing a developmental limitation.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.

- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

FOURTEENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Thirteenth Count as if set forth herein at length.
2. The establishment of the limitation upon development set forth in Sec. 28-51 D 2 of Ordinance 788 is arbitrary, capricious, discriminatory and unreasonable.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

FIFTEENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Fourteenth Count as if set forth herein at length.
2. Sec. 28-51-D 2a of Ordinance 788 establishes a priority ranking if more than one application for development has been submitted and has not yet received Preliminary Approval and if such applications would

bring the total number of approved set aside units to more than 178 in all set aside zones prior to December 31, 1988.

3. To establish said priority of applications, the following factors are examined by the Plainning Board:

- (1) Impact of the projected peak hour traffic on the flow of existing peak hour traffic on surrounding streets and on major and secondary streets throughout the Borough, and on the safety of pedestrians and motorists;
- (2) Impact of the projected development on adjacent developments in terms of compatibility and property values;
- (3) Need for contribution of Borough facilities at public expense;
- (4) Need for extension of Borough Utilities;
- (5) Acreage of flood plain to be filled and acreage of wet lands areas to be filled or otherwise destroyed;
- (6) Total volume of fill required to raise housing above flood level or if a development is not in a flood plain, the volume of fill required to raise housing and roads above the water table if such fill is proposed.

The depths to water table will be calculated as the shallowest depth shown by the Soils Map and Soils Characteristics Tables published in the Master Plan unless the developer provides evidence as to a greater depth at the highest seasonal level.

- (7) Ease of access to site as determined by 10 year flood elevations;
- (8) Suitability of the size of the development in relation to the goal of limiting development to not more than 600 new townhouse, garden apartment and adult community

housing units (120 Set-Aside units)
Borough-wide by December 31, 1986, giving
due consideration to the ultimate set-aside
unit mix expressed in Section 28-51D 2 a
(8) of this ordinance.

4. The Planning Board is instructed by Ordinance 788 to rate every application against each other application for each of the above stated criteria. The best rated application for each category shall receive a rating of 1, the next best a 2, and so on. The total score of each application shall be established. Applications are then rated with the lowest total score being ranked first and the highest total score being ranked last.

5. There is no statutory authority for the Planning Board of defendant considering those factors set forth in Ordinance 788 during the course of evaluating an application for development.

6. The consideration of those factors set forth in Ordinance 788 by a Planning Board is contrary to law.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

SIXTEENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Fifteenth Count as if set forth herein at length.

2. The criteria to be used by the Planning Board of defendant to determine the priority as set forth in Sec. 28-50 D 2a of Ordinance 788 are arbitrary, capricious, discriminatory and unreasonable.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

SEVENTENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Sixteenth Count as if set forth herein at length.

2. There is no statutory authority for the rating of one developmental application against other applications for the purpose of determining which application shall be granted by a Planning Board and which shall be denied by the Planning Board.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.

- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

EIGHTEENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Seventeenth Count as if set forth herein at length.

2. The comparison of one application to another application as a basis of determining whether to grant or deny an application before a Planning Board, as is required pursuant to Ordinance 788 is arbitrary, capricious, discriminatory and unreasonable.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

NINETEENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Eighteenth Count as if set forth herein at length.

2. The procedure set forth in Ordinance 788 denies each application consideration based upon its own merits, all in contravention of law.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TWENTITH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Nineteenth Count as if set forth herein at length.

2. The comparison of one application for development to other applications for development denies all applicants the substantive due process and equal protection guarantees inherent in ARTICLE I, Section 1 of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TWENTY-FIRST COUNT

1. Plaintiffs repeat and incorporate all allegations of the Twentieth Count as if set forth herein at length.

2. Ordinance 788 provides that the criteria set forth in the ordinance may be weighted "depending on the Planning Board's assessment of the relative importance of each factor."

3. Permitting this weighing of factors by the Planning Board as set forth in Ordinance 788 is arbitrary, capricious, discriminatory and unreasonable.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TWENTY-SECOND COUNT

1. Plaintiffs repeat and incorporate all allegations of the Twenty First Count as if set forth herein at length.

2. Sec. 28-51-D 2b of Ordinance 788 provides that once the 890 townhouse or apartment units have been approved by the Planning Board, all other applications for such development in set-aside zones shall be denied until January 1, 1989.

3. There is no statutory authority for the a Planning Board denying an application for development because other similar developments have been approved.

4. The aforesaid provision of Ordinance 788 denies an applicant the substantive due process and equal protection guarantees inherent in ARTICLE I, Section 1 of the New Jersey Constitution.

5. The aforesaid provision of Ordinance 788 denies an applicant a hearing on the merits of its application in violation of the law.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TWENTY-THIRD COUNT

1. Plaintiffs repeat and incorporate all allegations of the Twenty-Second Count as if set forth herein at length.

2. The denial of an application for development because other similar developments have been approved, as set forth in Ordinance 788 is arbitrary, capricious, discriminatory and unreasonable.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.

- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TWENTY-FOURTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Twenty-Third Count as if set forth herein at length.

2. Sec. 28-51-D 2c of Ordinance 788 provides that any priority development which has not received preliminary approval within 180 days following Determination of Completeness shall be denied.

3. The aforesaid provision of Ordinance 788 is contrary to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TWENTY-FIFTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Twenty-Fourth Count as if set forth herein at length.

2. In Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158, 456 A.2d 390 (1983) (hereinafter referred to as Mt. Laurel II), the Court determined that every municipality located within the growth or limited growth area as designated on the Statewide Developmental Guide Plan, has an affirmative obligation to provide a realistic opportunity for the development of that municipality's fair share of the regions need for low and moderate income housing.

3. Defendant is a municipality which has such affirmative obligation to provide the realistic opportunity for the development of low and moderate income housing.

4. To comply with the mandate of Mt. Laurel II, a municipality must be free from all excessive restrictions and exactions or other cost generating devices not necessary to protect health and safety.

5. Ordinance 788 makes it impossible for an applicant for development in Lincoln Park to determine when and if his application will be approved.

6. The priority setting mechanism of Ordinance 788 does not come into play until after a completed application is submitted and all expenses involved therewith have been incurred.

7. Ordinance 788 is an excessive restriction and exaction which is cost generating and which is unrelated to the protection of health or safety.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TWENTY-SIXTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Twenty-Fifth Count as if set forth herein at length.

2. The uncertainty created by Ordinance 788 makes it less likely that actual construction of low and moderate income housing will occur.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TWENTY-SEVENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Twenty-Sixth Count as if set forth herein at length.

2. The standards for assigning priority set forth in Ordinance 788 are unrelated to the concerns articulated by the Court in Mt. Laurel II.

3. The standards for assigning priority set forth in Ordinance 788 are contrary to principals of sound planning.

4. The criteria set forth in Ordinance 788 lack standards and are vague.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

TWENTY-SEVENTH COUNT

1. Plaintiffs repeat and incorporate all allegations of the Twenty-Seventh Count as if set forth herein at length.

2. An action entitled Morris County Fair Housing Council, et al. v. Boonton Township, et al., Docket No. L-6001-78 P.W. was instituted alleging, inter alia, that the zoning ordinance of defendant Lincoln Park was violative of the Constitution in that it did not provide a realistic opportunity for the development of low and moderate income housing in the municipality.

3. On August 17, 1984, an agreement was entered into among defendant and the plaintiffs in the Boonton Township case which agreement represented the terms of settlement of the action as to defendant (Exhibit C hereto).

4. In October, 1984, the Honorable Stephen Skillman, J.S.C., entered a conditional Order Approving Negotiated Settlement as to Lincoln Park Borough (Exhibit D hereto).

5. Paragraph 6 b) of the aforesaid judicially approved settlement agreement provided that defendant was to:

Use its best efforts to expedite disposition of complete applications and municipal approvals by a developer in the affordable housing zones;

6. Paragraph 16 of the aforesaid judicially approved settlement agreement provided that:

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 plaintiff. . . .

7. Plaintiffs in the Boonton Township case never consented to Ordinance 788

8. Paragraph 16 of the aforesaid judicially approved settlement agreement provided that:

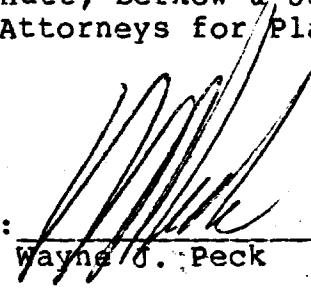
In the event of any breach of any provision of this agreement the plaintiffs may seek relief by way of any remedy provided by law. The owners or assignees of the lands which are rezoned by this amendment are also recognized as third party beneficiaries with authority to enforce the terms of this settlement agreement.

9. Ordinance 788 is violative of the aforesaid judicially approved settlement agreement.

WHEREFORE, plaintiffs demand judgment as follows:

- A. Declaring Ordinance 788 to be ultra vires.
- B. Declaring Ordinance 788 to be invalid.
- C. Awarding compensatory and punitive damages.
- D. Awarding costs of suit and counsel fees.
- E. Such other relief as the Court may deem just and proper.

Hutt, Berkow & Jankowski
Attorneys for Plaintiff

By: 

Wayne J. Peck

CERTIFICATION

Pursuant to R. 4:5-1, this is to certify that to the best of my knowledge the within matter is not the subject of any other action pending in any court or arbitration and none is contemplated.



Wayne J. Peck