

ML - Morris County Fair Housing Council
v. Hanover

5/1984

Proposed Settlement agreement w/ Hanover

Pg. 15

ML000935z

THIS AGREEMENT, made this day of May, 1984,

BY AND BETWEEN

THE TOWNSHIP OF HANOVER, a Municipal Corporation of the State of New Jersey, with offices located at 1000 Route 10, Whippany, 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 H. RODRIGUEZ, THE PUBLIC ADVOCATE OF THE STATE OF NEW JERSEY,

hereinafter referred to 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 6001-78 P.W., against the Township of Hanover 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 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.

A. In addition to any other limitations which the Township may place on the granting of site approvals on these sites under the terms of this agreement, the Township may in its discretion phase construction of units on these sites by limiting the total number of units granted preliminary and final approval on these sites in accordance with the following schedules:

<u>Initial Date for Granting Preliminary Approval</u>	<u>Total Number of Units for which Preliminary Approval is Available Upon Application</u>
Immediately	620
March 1, 1985	935*
March 1, 1986	1,250*

<u>Initial Date for Granting Final Approval</u>	<u>Total Number of Units for which Final Approval is Available Upon Application</u>
Immediately	620
March 1, 1986	935*
March 1, 1987	1,250*

* Or number sufficient to satisfy municipality's fair share obligation, whichever is less.

B. If, at any time prior to March 1, 1990, there is insufficient vacant developable land on the sites rezoned under this agreement to permit construction of sufficient units affordable to low and moderate income households at the densities and set-asides set forth in Exhibit A to satisfy the current portion of the Township's obligation under this agreement, the Township shall, with the consent of the plaintiffs, rezone sufficient other vacant developable land pursuant to the provision

adopted pursuant to section 2 of this Agreement 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 fair share obligation.

3. The parties have agreed that 250 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 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 provision in Exhibit A, the municipality shall take all reasonable steps to foster development of the units affordable to low and moderate households called for by paragraphs 2 and 3 including, but not limited to:

- A. adoption of such resolutions of need, execution of payment in-lieu-of-taxes resolutions, or public housing cooperation agreements as may be necessary to facilitate a developer in obtaining public subsidies for the construction of housing affordable to low and moderate income households;
- B. 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 sewerage 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 for the low and moderate income units in the affordable housing developments
 - (1) Subdivision and site plan application fees on a pro-rata basis based upon the percentage of low and moderate income housing in the development.
 - (2) Building permit fees, except state fees.
 - (3) Certificate of Occupancy fees.
 - (4) Engineering fees on a pro-rata basis based upon the percentage of low and moderate income housing in the development.
- F. establishment of mechanisms and procedures to ensure that 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. This settlement is not conditioned upon any entry of any final judgment of compliance by the courts pursuant to Southern Burlington County N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158 at 291. Plaintiffs, nevertheless, agree to support, with experts and their counsel, any attempt by defendant to obtain such a final judgment of compliance.

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 2, 3 and 5 of this Agreement and upon written notice to plaintiffs, the municipality may repeal or amend the ordinance set forth in Appendix A.

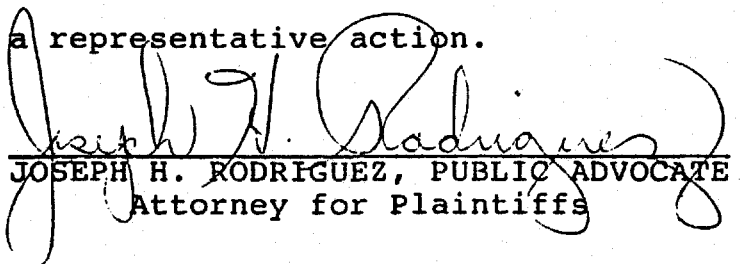
11. In the event that more than any site in any of the zones established under this Agreement ceases to be available for development pursuant to the provisions adopted under section 2 of this Agreement because of development for other purposes, condemnation, state or federal prohibitions or restrictions 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 fair share.

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 set aside for units affordable to low and moderate income households identical to that contained in Exhibit A, or
- B. the municipality has met its fair share obligation.

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 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. This action is one which is considered to be a representative action.


JOSEPH H. RODRIGUEZ, PUBLIC ADVOCATE
Attorney for Plaintiffs

YOUNG, DORSEY AND FISHER, ESQS.

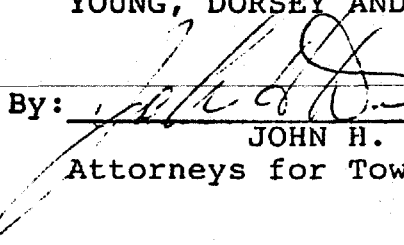
By: 
JOHN H. DORSEY
Attorneys for Township of Hanover

EXHIBIT A

A. Purpose: The purpose of this Ordinance is to establish affordable housing zones (AH) to permit townhouses, garden apartments or other types of residential units to be constructed at a maximum gross density of 13 units per acre, conditioned upon the provision of a 22% set-aside for low and moderate income units. In the event that an owner shall seek to develop at a gross density of less than 13 units per acre, the owner or developer seeking to so develop shall be required to provide the same number of low and moderate income units as if the land were developed on the basis of 13 units per acre with a 22% set-aside for low and moderate income units, unless the Planning Board shall grant a variance to this requirement. The ordinance is being adopted for the purposes of settlement of Morris County Fair Housing Council v. Tp. of Boonton L-6001-78 P.W. insofar as the case involves the Township of Hanover.

B. Permitted Uses: Single family detached, two-family homes, townhouses and multi-family garden apartments or condominium developments shall be permitted in the AH zones in accordance with the requirements of this section.

C. Zoning Design Standards: The following standards shall be adopted for the AH zones:

	Single Family Dwelling	Two Family Dwelling	Town Houses	Garden Apartments or Condo- miniums
Minimum Lot Size (sq. ft.)	5,000	6,000	--	--
Maximum Gross Density (dwelling units/acre)*	--	--	12	15

	Single Family Dwelling	Two Family Dwelling	Town Houses	Garden Apartments or Condo- miniums
Front Setback Require- ment (feet)	25	25	25	25
Rear Setback Require- ment (feet)	20	20	20	20
Side Yard Setback (ft.)**	20	20	20	20
Building Coverage (%)	30	30	30	30
Maximum Building Height (stories)	2½	2½	3	3
(feet)	35	35	40	40

* Gross density is total dwelling units divided by total lot area.

** Side yards are required on both sides, added together to be 20 feet, but no yard shall be less than 6 feet. Longer side shall be free of obstruction for emergency vehicle access.

	Single Family Dwelling	Two Family Dwelling	Town Houses	Garden Apartments or Condo- miniums
Usable Open Space (%)*	--	--	20	20
Minimum Sq. Footage Requirements	none	none	none	none

* Usable Open Space is open space exclusive of roads, parking areas, buffers, walkways and buildings.

Minimum set back from internal roadway and parking areas should be no more than 10 feet.

Minimum distances between buildings should be no more than 20 feet for townhouses and garden apartments and 30 feet for mid-rises.

D. Unit Mix: In the event that a development contains more than one of the permitted uses described in paragraph B, that part of the total acreage used for each purpose shall conform to the standards established in paragraph C.

E. Recreation: Multi-family developments of between 10 and 50 units shall provide 250 square feet space in a usable configuration for play lots, or a shaded area for the elderly, or other space for recreation which is appropriate for that development. Multi-family developments of larger than 50 units shall provide for an additional 20 square feet per unit above 50 for such purposes. In large developments such space shall be subdivided into two or more usable areas, distributed throughout the development so as to be convenient to residents.

F. Off-street parking shall be provided as follows:

Single Family, Townhouse Units, Garden Apartments or Condominiums:

For each 3 bedroom unit or larger, 2.0 spaces.

For each 2 bedroom unit, 1.75 spaces.

For each 1 bedroom unit, 1.5 spaces.

Parking Stalls:

Parking stalls shall be 9' x 19'.

G. Streets Widths, Shoulders, Right-of-Way: Shall be provided as follows:

1) Paved Widths.

Collector: 36 feet for 2 lanes in each direction and emergency street parking only.

36 feet for 1 lane in each direction and parking on either side.

Minor: 26 feet for 2 lanes and parking on 2 sides.

22 feet for 2 lanes and parking on one side, or cul-de-sacs over 300 feet long.

20 feet for cul-de-sacs up to 300 feet long.

18 feet for short one-way loops serving up to 15 dwelling units or for cul-de-sacs serving 5 to 7 dwellings.

- 2) Shoulders. A planted shoulder of at least 8½ feet shall be provided on either side of the paved roadway.
- 3) Right-of-Way. The total right-of-way to be reserved shall be computed by adding the shoulder requirement to the paved roadway width required.
- 4) Curbs. Shall be provided as follows:

Collector:	A masonry curb of at least 6 inches shall be provided.
Minor:	A straight, battered curb of asphalt shall be provided.
- 5) 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.
- 6) 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.

H. Low and Moderate Income Housing Requirements:

- 1) At least eleven percent of the total number of residential dwellings within each development in the AH zone shall be made affordable and sold or rented to low income persons and 11% shall be made affordable and sold or rented to moderate income persons.

"Low income" is defined as having total gross household income equal to fifty (50%) percent or less of the median household income for households of the same size and using the median income data for household size prepared by the United States Department of Housing and Urban Development (HUD) for the region which includes Hanover Township (presently the Newark S.M.S.A.), or, if HUD data

is not available, equivalent data from other sources acceptable to the planning board.

"Moderate Income" is defined as having total gross household income between fifty (50%) percent and eighty (80%) percent of the median household income for households of the same size for the region which includes Hanover Township, using the median income data for household size prepared by HUD, or if HUD data is not available, equivalent data from other sources acceptable to the planning board.

"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.

2) At least twenty (20%) percent of the low and moderate income units shall be three bedroom units, and no more than fifty (50%) percent 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 may require the developer to offer units for rental or initial sale exclusively to residents of Hanover 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 as senior citizen units, which shall include a total of no more than 25 low income units and 25 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. The affirmative marketing plan shall be realistically designed to ensure that lower income persons of all races and ethnic groups are informed of the housing opportunities in the development, feel welcome to seek to buy or rent such housing, and have the opportunity to buy or rent such housing. It shall include advertising and other outreach activities realistically designed to reach:

A. Lower income persons of all races and ethnic groups in municipalities in northeastern New Jersey that have higher than average proportions of blacks, Hispanics or lower income households; and

B. Lower income persons of all races and ethnic groups who work in Morris County, but do not live within the county.

The plan shall include advertisement in newspapers, periodicals and other media aimed at black and Hispanic populations.

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 and sold to lower income purchasers. 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 and sold to lower income persons. By the time eighty (80%) percent of the units in the development are constructed, at least seventy (70%) percent of the low and moderate income units shall be constructed and sold to lower income persons. 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;

B. Reimbursement for documented monetary outlays for reasonable improvements; and

C. Any reasonable costs incurred in selling the unit.

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.

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 the resale controls himself, but in no event may the resale controls be administered merely by a deed restriction.

I. A developer in the AH zone may request the planning board and/or the Township to further increase densities, waive or modify cost-generating requirements in the zoning, subdivision or site plan ordinance, to waive or reduce fees, or to grant tax abatement to the extent authorized by law, if the developer determines 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 affordable low and moderate income units as defined in Section H, 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 obligation shall not be approved unless the expert determines that the Township has substantially complied with his recommendations for municipal actions to reduce costs. 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.

J. Upon the construction of 250 units affordable low and moderate income households pursuant to Section H of this Ordinance, the planning board, in its discretion, may refuse to consider further applications for site plan approval for townhouses or garden apartments.