ML - Morris County Fair Housing Council 9/25/84

v. Boonton Twp

Certified Statement of Theodore E.B. Einhorn, attorney for Mt. Hope Mining Company and for HaleCrest Company

+exhibits

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EINHORN, HARRIS & PLATT
A Professional Corporation
Broadway at Second Avenue
P.O. Box 541
Denville, New Jersey 07834-0541
(201) 627-7300
Attorneys for Mt. Hope Mining Company
and Halecrest Company

MORRIS COUNTY FAIR HOUSING COUNCIL, et als Plaintiffs, vs. BOONTON TOWNSHIP, et als Defendants.	SUPERIOR COURT OF N.J. LAW DIVISION MORRIS COUNTY/MIDDLESEX COUNTY DOCKET NO. L-6002-7[illegible] P.W.
MT. HOPE MINING COMPANY, etc., et al Plaintiffs, vs. TOWNSHIP OF ROCKAWAY, etc., et al Defendants.	SUPERIOR COURT OF N.J. LAW DIVISION MORRIS COUNTY/MIDDLESEX COUNTY DOCKET NO. CERTIFIED STATEMENT OF THEODORE E. B. EINHORN

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 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 H. 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.

EXHIBIT B

(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 year 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 condominimum 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 Ordiance 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 withn 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 resales 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 condominimum 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 necesary 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 unles 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.

EINHORN, HARRIS & PLATT
A Professional Corporation
Broadway at Second Avenue
P.O. Box 541
Denville, New Jersey 07834
(201) 627-7300
Attorneys for Plaintiff

MT. HOPE MINING COMPANY, a New Jersey Corporation and HALECREST COMPANY, a New Jersey Corporation, Plaintiffs, vs. TOWNSHIP OF ROCKAWAY, a Municipal Corporation of the State of New Jersey; GERALD HARTMANN, Building Inspector of the Township of Rockaway; and LUTZ RONLUND, Zoning Official of the Township of Rockaway, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MORRIS/MIDDLESEX COUNTY Docket No. Civil Action MOUNT LAUREL COMPLAINT IN LIEU OF PREROGATIVE WRITS (Vicinage of Hon. Stephen Skillman)

Plaintiffs, MT. HOPE MINING COMPANY, a New Jersey Corporation, and HALECREST COMPANY, a New Jersey Corporation, with offices located at 321 Talmadge Road, Township of Edison, County of Middlesex and State of New Jersey, by way of Complaint against the defendants, SAY:

EXHIBIT C

FIRST COUNT

1. Plaintiff, MT. HOPE MINING COMPANY, is the owner of approximately 1280 acres in the Township of Rockaway which are known and described as Block 229 Lots 10 and 10-3, Block 224 Lots 1, 2, 3 and 4, Block 201 Lots 1, 32, 49 and 52, Block 137 Lots 10, 11, 12 and 13 and Block 136 Lots 3, 4, 5, 6 and 8 also known as Block 135 Lot 10, Block 136 Lot 3, Block 201 Lots 1, 32 and 49, Block 229 Lots 10 and 10.3,and Block 224 Lot 1.

2. Plaintiff, HALECREST COMPANY, is the parent company of the plaintiff, MT. HOPE MINING COMPANY.

3. Since on or about December 30, 1972, plaintiffs, MT. HOPE MINING COMPANY and HALECREST COMPANY, have had an interest in the aforesaid premises and plaintiff, MT. HOPE MINING COMPANY took title of said premises by deed dated December 29, 1976.

4. Defendant, TOWNSHIP OF ROCKAWAY, is a Municipal Corporation of the State of New Jersey (hereinafter "defendant Municipality").

5. The defendant Municipality is a defendant in the lawsuit entitled "Morris County Fair Housing Council, et al. vs. Boonton Township, et al.," Docket No. L-6001-78 P.W., which lawsuit was conditionally settled by an Agreement entered into between the Public Advocate of the State of New Jersey (Exhibit "A") subject to the approval of the Honorable Stephen Skillman, Judge of the Superior Court.

6. Pursuant to said Agreement (Exhibit "A"), the defendant Municipality adopted an amendment to its Zoning Ordinance on or about August 7, 1984 whereby a large portion of plaintiffs' acreage in defendant Municipality was rezoned to the PRD1 and PRD2 Zones (Exhibit "B"). Plaintiffs own 181 acres in the PRD1 Zone and 735 acres in the PRD2 Zone.

7. While ostensibly defendant Municipality has declared its intention to provide for and encourage the construction of 1135 low and moderate income housing units pursuant to its "Mt. Laurel" obligations as set forth in the aforesaid Agreement (Exhibit "A") and the aforesaid Zoning Amendment (Exhibit "B"), the terms of said Agreement and Zoning Amendment are neither intended nor realistically provide for a reasonable opportunity

to build the aforesaid 1135 low and moderate income housing units in Rockaway Township and, more specifically, are neither intended nor do they realistically provide for a reasonable opportunity to build the required low and moderate income units on the lands of plaintiffs in said PRD1 and PRD2 Zones. Said 1135 low and moderate income housing units are "phantom units" in that there is no realistic possibility of being constructed in Rockaway Township for said units and again, more specifically, the amount of units required by said Agreement and Zoning Amendment to be constructed on plaintiffs' premises are certainly "phantom units" in that they will not be constructed at the called for density. In short, said Agreement and said Zoning Amendment are a sham in terms of providing for the construction of low and moderate income housing in defendant Municipality and, specifically, on plaintiffs' premises.

8. Plaintiffs premises in the PRD1 and PRD2 Zones are ideally suited in terms of location and topography for residential development, including low and moderate income housing. Plaintiff wishes to develop its land for such residential use with gross densities of at least 2.06 units per acre in the PRD1 Zone and 3.74 units per acre in the PRD2 Zone and appropriate net densities and other proper conditions for Mt. Laurel housing. However, as previously set forth, based on the implementation of the aforesaid Agreement (Exhibit "A" and Zoning Amendment (Exhibit "B") there is no realistic opportunity that plaintiffs' premises, in fact, will be developed for residential purposes including low and moderate units together with "market" units.

9. The aforesaid Agreement (Exhibit "A") and the aforesaid Zoning Amendment (Exhibit "B") are exclusionary in that the aforesaid 1135 low and moderate income units and, more specifically, the low and moderate income units to be constructed on plaintiffs' premises, do not have a realistic opportunity to be constructed and, therefore, said defendant Municipality has failed to meet its "fair share" obligations under the doctrine of Mt. Laurel I and II decisions.

10. The plaintiffs, if given the aforesaid gross densities of 2.06 units per acre in the PRD1 Zone and 3.74 units per acre

in the PRD2 Zone together with appropriate net densities and other proper conditions will be able to build a significant number of low and moderate income units on their premises thereby meeting a substantial share of the defendant Municipality's Mt. Laurel obligations, said development to be constructed in a manner consistent with good planning and without any adverse effect on the environment.

11. Said Agreement (Exhibit "A") and said Zoning Amendment (Exhibit "B") are also in violation of the laws and Constitution of the State of New Jersey as well as the Constitution of the United States of America in that they, by way of illustration and not by way of limitation, are arbitrary, capricious, unreasonable and represent an illegal and improper use of the zoning power and/or police power.

WHEREFORE, plaintiffs demand Judgment for the following relief:

(a) Declaring the Agreement (Exhibit "A") and the Zoning Amendment (Exhibit "B") to be null and void and of no force and effect as to plaintiffs' premises in the PRD1 and PRD2 Zones;

(b) An Order enjoining the defendant Municipality from enforcing the terms of the aforesaid Agreement (Exhibit "A") and Zoning Amendment (Exhibit "B") as to the aforesaid premises of plaintiffs in the PRD1 and PRD2 Zones;

(c) An Order appointing a Special Master to develop proper zoning and land use regulations for the defendant Municipality generally and, specifically, on plaintiffs' premises in the PRD1 and PRD2 Zones so as to provide for a realistic opportunity to construct the required low and moderate income housing;

(d) An Order requiring the defendant Municipality to adopt the appropriate zoning and land use regulations within a specified time to meet its "fair share" housing obligations as set forth in the Mt. Laurel I and II decisions;

(e) Granting a "Builder's Remedy" to plaintiffs so as to allow them to construct on their premises in the PRD1 and PRD2 Zones at gross densities of 2.06 units per acre and 3.74 units per acre, respectively, together with appropriate net densities and other proper conditions, residential housing of which

a substantial amount will be low and moderate income housing;

(f) An Order denying a Judgment of compliance as to the aforesaid Agreement (Exhibit "A") and the aforesaid Zoning Amendment (Exhibit "B");

(g) Such other relief that the Court deems to be fair and proper; and

(h) Counsel fees and costs.

SECOND COUNT

1. Plaintiffs repeat and reiterate each and every allegation contained in the First Count as if set forth at length and made a part hereof.

2. Located on the premises owned by the plaintiffs in the PRD1 Zone is the Mt. Hope Pond which has been leased by plaintiffs to defendant Municipality for the purpose of allowing the residents of the defendant Municipality to swim therein. Said lease is a year to year lease and the rental is $1.00 per year.

3. The defendant Municipality has expressed its desire to prevent any development by plaintiffs of said Mt. Hope Pond and the surrounding premises by plaintiffs.

4. Pursuant to said intent the defendant Municipality has provided for a "conservation easement" and other provisions in the aforesaid Zoning Amendment which effectively prevent plaintiffs from obtaining any type of reasonable use and/or return from said Mt. Hope Pond and surrounding premises.

5. Said "conservation easement" and other provisions of said Zoning Amendment (Exhibit "B") constitute arbitrary, capricious and unreasonable action by said defendant Municipality.

6. Furthermore, said "conservation easement" and other provisions of said Zoning Amendment (Exhibit "B") constitute a public taking of the aforesaid Mt. Hope Pond and surrounding premises by said defendant Municipality without just compensation in violation of the laws and Constitution of the State of New Jersey and the Constitution of the United States of America.

7. As the result of the location of the said Mt. Hope Pond and surrounding premises, the illegal public taking of said premises also has such an effect on the remaining premises

of plaintiffs as to constitute an illegal public taking of such remaining public lands of plaintiffs.

8. Finally, the illegal public taking of Mt. Hope Pond and the surrounding areas by the use of the "conservation easement" and related provisions of the Zoning Amendment (Exhibit "B") also create a situation whereby there is no realistic possibility of the construction of low and moderate income housing on the remaining lands of plaintiffs in the PRD1 and PRD2 Zones.

WHEREFORE, plaintiffs demand Judgment on this Count as follows:

(a) An Order declaring those provisions of the Zoning Amendment (Exhibit "B") providing for a "conservation easement" and other provisions dealing with development at and/or adjacent to Mt. Hope Pond to be null and void and of no force and effect.

(b) An Order requiring defendant Municipality to pay to plaintiffs the full fair market value of all of the plaintiffs' premises in the PRD1 and PRD2 Zones based on the zoning and land use regulations to be adopted by the defendant Municipality as requested in the First Count;

(c) As to the Mt. Laurel aspects of this Count, as set forth in Paragraph 5 of this Count, the relief sought by plaintiffs in the First Count;

(d) Such other relief as the Court deems proper and fair; and

(e) Counsel fees and costs.

THIRD COUNT

1. Plaintiffs repeat and reiterate each and every allegation contained in the First and Second Counts, inclusive, as if set forth at length and made a part hereof.

2. Since the purchase of the aforesaid premises, plaintiffs' premises were basically zoned in the then M Zone, R88 Zone, R15 Zone, R-13 Zone and R-25 Zone until on or about August 7, 1984 approximately 916 acres of said premises

previously in the M Zone, R88 Zone and R15 Zone were rezoned to PRD1 and PRD2 Zones.

3. Almost immediately after taking plaintiffs' title to said premises, the defendant Municipality, through its agents, servants and employees, has embarked upon an illegal course of conduct to effectively prevent the plaintiffs from utilizing its property for any reasonable use and/or any economically feasible use. By way of illustration, and not by way of limitation, the defendant Municipality, by adoption of various illegal Ordinances and interpretations thereof, has prevented plaintiffs from conducting mining operations at said premises notwithstanding the fact that a portion of said premises have traditionally been used for mining purposes dating back to the Revolutionary Era. Plaintiffs have advised defendant Municipality of this inability to use the premises for mining purposes due to this illegal action of defendant Municipality but defendant Municipality has and still does refuse to enact reasonable requirements which would allow plaintiffs to continue to operate this long standing use of the premises.

4. Notwithstanding this concerted and conscious effort on the part of defendant Municipality to effectively prevent plaintiffs from utilizing its property for any reasonable use and/or any economically feasible use thereof, plaintiffs have on many occasions attempted to cooperate with defendant Municipality in the public interest. By way of illustration, but not by way of limitation, plaintiffs have in the past allowed defendant Municipality to lease for $1.00 per year Mt. Hope Pond so the defendant Municipality would be able to provide to its inhabitants swimming and related recreational facilities. Additionally, defendant Municipality would not allow the plaintiffs to bring in certain types of soil to be placed upon the premises of the plaintiffs but, notwithstanding said objections on the part of the defendant Municipality to plaintiffs bringing in environmental sensitive "muck," the defendant Municipality obtained permission from the plaintiffs to allow contractors who were constructing the new Municipal Building to

bring in and dispose upon the plaintiffs' premises material which was far more objectionable from an environmental point of view than that which the plaintiffs had unsuccessfully requested permission from the defendant Municipality.

5. Plaintiffs have on numerous occasions requested the defendant Municipality and its Planning Board to rezone the premises owned by plaintiffs so as to allow plaintiffs reasonable use of their premises and/or an economically feasible use of their premises but defendant Municipality has and still does consciously and knowingly and illegally refuse to adopt such amendments. By way of illustration, and not by way of limitation, after one of such requests by plaintiffs, the defendant Municipality and/or its Planning Board through their elected and appointed officials in the spring of 1981 requested plaintiffs to prepare and deliver to defendant Municipality and its Planning Board a Master Plan for the development of the premises as a unit rather than to allow it to be developed in a piecemeal fashion which could be to the detriment of the inhabitants of the defendant Municipality. Pursuant to that suggestion, plaintiffs retained an architectual and planning firm which prepared a state of the art land use development plan for the premises effectively utilizing solar, geothermal and other advanced techniques which would result in an orderly, structured and reasonable development for the premises protecting the public's interest. This plan, developed at great cost to the plaintiffs was submitted to the defendant Municipality and its Planning Board in December, 1981 and to date, defendant Municipality, again, in accordance with its conscious plan to prevent and thwart plaintiffs from making any reasonable use of the premises and/or preventing any economically feasible use of the premises, has failed to take any action on said development plan and/or adopt any reasonable zoning as an alternative to plaintiffs' development plan.

6. Defendant Municipality has further acted illegally towards plaintiffs by the discriminatory enactment and enforcement of ordinances. By way of illustration and not by way of

limitation, the defendant Municipality has adopted a certain ordinance entitled "Ordinance to Amend Chapter 83A Entitled 'Tree Removal and Farming' of the Township Code of the Township of Rockaway" which was knowingly adopted for the express purpose of preventing plaintiffs from utilizing their premises for the purpose of tree farming which is legal and proper use of the premises in New Jersey, and in fact, a use which is encouraged by the State Statutes of the State of New Jersey.

7. As further evidence of the discriminatory and illegal manner in which defendant Municipality has acted towards plaintiffs, notwithstanding the fact that plaintiffs have made the aforesaid requests to rezone their premises over the years so they can obtain beneficial enjoyment of their premises and said requests have been refused and/or not acted upon by defendant Municipality and its Planning Board, the defendant Municipality and its Planning Board have been able to rezone premises owned by defendant Municipality in less than two months without conformance to the applicable laws of the State of New Jersey and without regard to the nature and quality of the zoning regulations and their effect in an attempt to obtain a higher price for said municipal lands to be auctioned at a public sale.

8. As a direct and proximate result of these illegal acts and conduct of the defendant Municipality, the Ordinances of the defendant Municipality affecting the use and occupancy of the premises of the plaintiffs, including but not limited to the Zoning Ordinance, the Soil Removal Ordinance, the Tree Removal Ordinance, are illegal and null and void as to the premises of plaintiffs in that they are in violation of the laws of the State of New Jersey, the Constitution of the State of New Jersey, as well as the Constitution of the United States of America.

WHEREFORE, plaintiffs demand Judgment against defendants as follows:

(a) The provisions of the Zoning Ordinance and/or the Land Use Ordinance of defendant Municipality affecting the

use and enjoyment of plaintiffs' premises are null and void and of no further force and effect as to said premises and an Order temporarily and permanently restraining the defendant Municipality and defendants, Hartmann and Ronlund, from enforcing said illegal Zoning Ordinance and/or Land Use Ordinance as to these plaintiffs;

(b) An Order wherein the Court will provide for zoning provisions affecting the use and enjoyment of the premises of plaintiffs so as to allow plaintiffs to make reasonable use of said premises and/or obtain an economically feasible use of said premises in accordance with the aforesaid development plan submitted by the plaintiffs to defendants; or in the alternative, order and direct defendant Municipality to enact such amendments to the said Zoning Ordinance within 60 days of Judgment so as to allow plaintiffs to make reasonable use of said premises and/or obtain an economically feasible use of said premises;

(c) The Court declare the Soil Removal, Mining and Tree Removal Ordinance null and void and of no force and effect as to premises of plaintiffs;

(d) Such other relief as the Court may deem to be equitable and just; and

(e) Counsel fees and costs.

FOURTH COUNT

1. Plaintiffs repeat and reiterate each and every allegation contained in the First, Second and Third Counts, inclusive, as if set forth at length and made a part hereof.

2. The aforesaid Zoning Ordinance and Zoning Amendment (Exhibit "B"), as well as the aforesaid Soil Removal, Mining and Tree Removal Ordinance are in violation of the laws of the State of New Jersey and the due process and equal protection clauses of the New Jersey Constitution, in that they, by way of illustration and not by way of limitation, represent an illegal and improper use of the zoning power and/or police power, have not objective standards, represent an illegal delegation of

municipal power, are void for vagueness, forbid conduct far beyond the public need for protection, are incapable of being enforced on an uniform and equal basis, and are not in accordance with and consistent with the Land Use Plan Element of the Master Plan of defendant Municipality.

3. The aforesaid Zoning Ordinance and Zoning Amendment (Exhibit "B"), as well as the aforesaid Soil Removal, Mining and Tree Removal Ordinances are similarly in violation of the Constitution of the United States of America, including, but not limited to, due process and equal protection clauses of the United States Constitution.

WHEREFORE, plaintiffs demand Judgment against defendants on this Fourth Count as follows:

(a) The provisions of the Zoning Ordinance and/or the Land Use Ordinance of defendant Municipality and/or Zoning Amendment (Exhibit "B") affecting the use and enjoyment of plaintiffs' premises are null and void and of no further force and effect as to said premises and an Order temporarily and permanently restraining the defendant Municipality, Planning Board and defendants, Hartmann and Ronlund, from enforcing said illegal Zoning Ordinance and/or Land Use Ordinance and/or Zoning Amendment (Exhibit "B") as to these plaintiffs;

(b) An Order wherein the Court will provide for zoning provisions affecting the use and enjoyment of the premises of plaintiffs so as to allow plaintiffs to make reasonable use of said premises and/or obtain an economically feasible use of said premises in accordance with the aforesaid development plan submitted by the plaintiffs to the defendants; or in the alternative, order and direct defendant Municipality to enact such amendments to the said Zoning Ordinance within 60 days of Judgment so as to allow plaintiffs to make reasonable use of said premises and/or obtain an economically feasible use of said premises;

(c) The Court declare the Soil Removal, Mining and Tree Removal Ordinance null and void and of no force and effect as to premises of plaintiffs;

(d) Such other relief as the Court may deem to be equitable and just; and

(e) Counsel fees and costs.

FIFTH COUNT

1. Plaintiffs repeat and reiterate each and every allegation contained in the First, Second, Third and Fourth Counts, inclusive, as if set forth at length and made a part hereof.

2. The aforesaid illegal and unlawful conduct of defendant Municipality coupled with the unlawful and unreasonable refusal of the defendant Municipality to properly rezone the premises owned by plaintiffs after numerous requests over the years by plaintiffs, constituted a public taking of the aforesaid premises of plaintiffs by defendant Municipality without just compensation in violation of the laws of the State of New Jersey, the Constitution of the State of New Jersey and the Constitution of the United States of America.

3. Furthermore, the unlawful and illegal adoption of the aforesaid Ordinances, including but not limited to the Soil Removal Ordinance, Mining Ordinance and Tree Removal Ordinance, also constitute a public taking of the aforesaid premises of plaintiffs without just compensation.

WHEREFORE, plaintiffs demand Judgment against defendants as follows:

(a) An Order requiring defendant Municipality to pay to plaintiffs the full fair market value of the premises as based on reasonable zoning regulations, in accordance with the aforesaid development plan submitted by plaintiffs to defendants, rather than the present illegal zoning regulations and also based on reasonable soil removal, mining and tree removal regulations rather than the present illegal soil removal, mining and tree removal regulations, together with interest;

(b) Alternatively, in the event that the defendant Municipality determines to attempt to mitigate the public

taking by enacting reasonable and proper zoning regulations and reasonable and proper soil removal, mining and tree removal ordinances, during the course of this litigation, then, in such event, the Court should order defendant Municipality to pay reasonable and just compensation to plaintiffs for the temporary public taking of its premises for the period of time covered by the enactment of the aforesaid illegal Zoning, Soil Removal, Mining and Tree Removal Ordinances, together with interest;

(c) Such other relief as the Court may deem to be equitable and just; and

(d) Counsel fees and costs.

SIXTH COUNT

1. Plaintiffs repeat and reiterate each and every allegation contained in the First, Second, Third, Fourth and Fifth Counts, inclusive, as if set forth at length and made a part hereof.

2. Defendant, GERALD HARTMANN, is the Building Inspector of the defendant Municipality.

3. Defendant, LUTZ RONLUND, is the Zoning Official of the defendant Municipality.

4. As such, it is defendants Hartmann and Ronlund's duties to enforce the aforesaid illegal Zoning, Soil Removal, Mining and Tree Removal Ordinance.

WHEREFORE, plaintiffs demand Judgment against defendants Hartmann and Ronlund, Building Inspector and Zoning Official respectively, as follows:

(a) An Order temporarily and permanently restraining the defendants Hartmann and Ronlund from enforcing said illegal Zoning, Soil Removal, Mining and Tree Removal Ordinances during the pendency of this litigation as to plaintiffs, MT. HOPE MINING COMPANY and HALECREST COMPANY, and/or as to the aforesaid premises of plaintiffs, MT. HOPE MINING COMPANY and HALECREST COMPANY;

(b) An Order permanently enjoining said defendants Hartmann and Ronlund from enforcing said illegal Zoning, Soil

Removal, Mining and Tree Removal Ordinances as against these plaintiffs, MT. HOPE MINING COMPANY and HALECREST COMPANY, and/or as to the aforesaid premises of plaintiffs, MT. HOPE MINING COMPANY and HALECREST COMPANY;

(c) Such other relief as the Court may deem to be equitable and just; and

(d) Counsel fees and costs.

SEVENTH COUNT

1. Plaintiffs repeat and reiterate each and every allegation contained in the First, Second, Third, Fourth, Fifth and Sixth Counts, inclusive, as if set forth at length and made a part hereof.

2. Plaintiffs are corporations organized under the law of the State of New Jersey with their principal place of business in New Jersey.

3. Defendant Municipality is a Municipality organized and existing under the laws of the State of New Jersey.

4. This action arises under Title 42 of the United States Code Section 1983, and this Court has concurrent jurisdiction of the action under Title 28 of the United States Code Section 1331 et. seq.

5. This Count is brought for injunctive relief and damages, both compensatory and punitive, against defendant Municipality on the grounds that defendant Municipality has consciously and knowingly entered upon a course of conduct designed, and which, in fact, has so done, to prevent plaintiffs from the beneficial use and enjoyment of their premises and thereby deprive plaintiffs of rights secured under the Constitution and laws of the United States of America.

6. Acting under color of law, the defendant Municipality has intentionally and knowingly entered upon a predetermined course of conduct designed to prevent plaintiffs, MT. HOPE MINING COMPANY and HALECREST COMPANY, from the beneficial use and enjoyment of their premises, all of which has resulted in the violation of the civil rights of plaintiffs guaranteed by

the United States Constitution, including, but not limited to the Fifth and Fourteenth Amendments, all in violation of Section 1983 of Title 42 of the United States Code.

7. As a direct and proximate result of the aforesaid illegal acts and conduct of defendant Municipality, plaintiffs have been deprived of the beneficial use and enjoyment of their premises and, as such, have sustained considerable financial damage, loss of income and loss of profits.

WHEREFORE, plaintiffs demand Judgment against defendants as follows:

(a) An Order declaring the aforesaid Zoning Ordinance, Soil Removal, Mining and Tree Removal Ordinances are null, void and illegal;

(b) Preliminarily and permanently enjoining defendant Municipality, and defendants Hartmann and Ronlund and all of their agents, servants and employees from enforcing the terms of said Ordinance as to plaintiffs and any use of their premises;

(c) Damages, both compensatory and punitive, against defendant Municipality;

(d) Such other relief as the Court may deem to be equitable and just; and

(e) Counsel fees and costs.

EIGHTH COUNT

1. Plaintiffs repeat and reiterate each and every allegation contained in the First and Second Counts, inclusive, as if set forth at length and made a part hereof.

2. Said Zoning Amendment (Exhibit B) is in violation of the laws and Constitution of the State of New Jersey as well as the Constitution of the United States of America in that it, by way of illustration not by way of limitation, represents an illegal and inproper use of the zoning and/or police power and is arbitrary, capricious and unreasonable.

WHEREFORE, plaintiffs demand Judgment for the following

relief:

(a) Declaring the Zoning Amendment (Exhibit B) to be null and void and of no force and effect as to plaintiffs' premises in the PRD1 and PRD2 Zones;

(b) An Order enjoining the defendants from enforcing the terms of said Zoning Ordinance as to plaintiffs' premises;

(c) An Order appointing a Special Master to develop proper zoning and land use regulations for plaintiffs' premises so as to allow plaintiffs' to make reasonable use and/or obtain an economically feasible use of said premises;

(d) An Order requiring the defendant Municipality to adjust the appropriate zoning and land use regulations as to plaintiffs' premises;

(e) Such other relief as the Court may deem to be equitable and just; and

(f) Counsel fees and costs.

Dated: 9/2/84

EINHORN, HARRIS & PLATT, P.C.
Attorneys for Plaintiffs

By

Theodore E. B. Einhorn