

UL v. Cateret, Old Bridge

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- Appendix A to Ordinance Amendments

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APPENDIX A

A.1 Purpose

The material set forth herein is intended to form both a framework for the Township's adoption of Ordinance amendments, as well as to provide a mechanism to permit O&Y and Woodhaven to commence development immediately without waiting for the promulgation of a new Township Ordinance.

A.2 Definitions

"Adjusted Median Income" shall mean and refer to the product of multiplying the published median income of the Middlesex-Hunterdon-Somerset Primary Metropolitan Statistical Area as may be adjusted by an agency of the United States Government from time to time, by **94%**.

"Affordable Housing" shall mean and refer to the housing setaside for qualified Lower Income Households which is priced as follows:

- i. Housing for sale: The combination of costs for principal, interest, taxes and insurance (or homeowners association assessments, if applicable) shall not exceed 28% of the Total Lower Income Household Income; and
- ii. Housing for rent: The combination of contract rent plus an allowance for utility costs shall not *exceed* 30% of the Total Lower Income Household Income.

"Agency" shall mean and refer to the Township Agency referenced below.

"Approving Board" shall mean either the Planning Board or the Zoning Board of Adjustment, as appropriate.

"Building" is any continuously enclosed structure containing one or more separate dwelling units.

"Cluster" is any grouping of buildings in close physical proximity to each other, usually arranged around a common feature such as a courtyard or parking area.

"Household" shall mean and refer to all persons living as a single non-profit housekeeping unit, whether or not related by blood, marriage or other affiliation.

"Housing Plan" shall mean and refer to a proposed scheme for providing affordable housing for lower income households within the Township of Old Bridge, submitted to and certified by the Affordable Housing Agency .

"Lower Income" shall mean and refer to both low and moderate income housing.

"Low Income" shall mean and refer to incomes which are 50% or less than the adjusted median income.

"Moderate Income" shall mean and refer to incomes which are between 50% and 80% of the adjusted median income.

"Order" shall mean and refer to the Order and Judgment issued by the Hon. Eugene D. Serpentelli, A.J.S.C, dated _____, resolving the litigation between O&Y, Woodhaven, the Urban League and the Township of Old Bridge et al, and shall also mean and refer to all appendices and memoranda attached thereto.

"Section" is any building or grouping of buildings, or any cluster or grouping of clusters set apart by natural features, landscaping or buffers from other parts of the development so as to constitute an identifiably separate portion of the development. A separately named building or grouping as defined herein is presumptively a section.

"Township Agency" shall mean and refer to any entity established by the Township of Old Bridge to administer any portion of the lower income housing program within the control of the Township of *Old* Bridge.

"Total Household Income" shall mean and refer to all gross income from all sources of all members of the household or family.

A.3 Lower Income Residential Requirement

A.3.1 Requirement:

✓ Every application for ^{development of} housing for resale^{rent} within the Township of Old Bridge shall set aside ten (10%) percent of all housing units which shall be affordable to lower income households. Once a Certificate of Occupancy is issued for a lower income housing unit, the Township of Old Bridge shall receive a credit for such unit against its fair share housing requirement.

A.3.2 Distribution:

Five (5%) percent of all housing units built within the Township of Old Bridge shall be affordable to low income households; and five (5%) percent of all housing units built within the Township of Old Bridge shall be affordable to households of moderate income.

A.3.3. Dispersal

Developments governed by this Order shall physically disperse the lower income units as follows:

a. No more than 24 lower income units may be located in any single building. No Building, cluster or section shall be required to contain any lower income units. In any section containing lower income housing

units, clusters may contain only lower income units provided that such a cluster is as much a part of a section as the clusters of market units, and that the boundaries between lower income clusters and market clusters, such as grassy areas, internal roads or sidewalks shall be no different than the boundaries between market clusters.

b. The restrictions contained in paragraph (a) above shall not apply to any building, cluster or section when necessary to finance the development of the building, cluster or section through public or tax exempt funding, but in no event shall any one building, cluster or section developed pursuant to this paragraph contain more than 150 lower income units.

A.4. Affordable Housing Plan:*

✓ ^{or rent} Applicants seeking approval for any residential development for resale /vshall submit a proposed affordable housing plan for approval by the Approving Board as part of the documentation required for the first section of the development, wherein preliminary approval is requested for either subdivision or site plan, or, if the application is for development of housing for resale/ via the variance process, as part of the variance application.

✓ ^{or rent}

The affordable housing plan shall contain the following major elements:

- (a) Description of the units, by number, size and probable location;
- (b) Description of the affordability control mechanism, such as deed restrictions, rental price controls, resale controls, etc.;
- (c) Description of means of assuring affordability over a thirty (30) year period.
- ? | 4d) Description of the relationship of lower income housing units to Township screening procedure; <
- (e) Description of the duration of the affordability controls (minimum requirement for lower income housing is thirty (30) years); minimum requirement for maintenance as rental units, if contemplated, is ten (10) years, but after conversion to sale units, such units must remain price controlled for the balance of the thirty year period;
- (f) Description of any proposed conversion process, if applicable, involving the rental units;
- (g) Description of the proposed marketing scheme for the lower income housing units, which, at a minimum, shall include the affirmative marketing requirements set forth in the ordinances establishing procedures for occupancy of lower income housing, established as Ordinance No. 54-85.

* The Settlement Agreement presides a different filing schedule for O&Y and Woodhaven.

Such marketing plans shall include assurances that the opportunities for low and moderate income units will be advertised throughout the eleven (11) county region, including Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren counties, and specifically including newspapers of general circulation in Elizabeth, Jersey City, Newark, New Brunswick, Paterson and Perth Amboy. In addition, the plan shall require that the developers notify the Civic League of Greater New Brunswick, the Housing Coalition of Middlesex County, the Middlesex County Office of Community Development, the Council on Affordable Housing, the New Jersey Housing Mortgage and Finance Agency, and all fair housing centers and housing referral organizations in the aforementioned eleven (11) counties; and

- (h) Description of a disclosure statement to be attached to all contracts for rental or sale of all housing units within the development, whether market or price controlled.

A.5 Screening Procedures, Other Regulations;

The Township of Old Bridge, by ordinance, shall establish an affordable housing agency, which shall review all affordable housing plans and certify them to the Planning Board. The affordable housing agency shall also establish, by rules and regulations, mechanisms whereby lower income households can be screened for income eligibility and for potential placement in available affordable housing.

A.5.1. Hardship Exemptions

A Developer may apply to the Agency for a Hardship Exemption, as follows:

- a) The Developer may only apply to the Agency for a Hardship Exemption after the later of (i) six (6) months after the Developer has commenced marketing the Lower Income Unit and (ii) ninety (90) days after the Developer has received the Certificate of Occupancy for such Lower Income Unit.

- b) In order for the Developer to be entitled to a Hardship Exemption from the Agency, the Developer must show the Agency that (i) the time periods set forth in subsection (a) above have lapsed, and (ii) that the Developer has been marketing such Lower Income Unit for such time period and in accordance with the affirmative marketing plan approved as part of the housing plan, and (iii) no Qualified Purchaser is obligated under a contract to purchase, or a lease to rent, as the case may be, for such Lower Income Unit.

✓ *If* a Developer has complied with the requirements of (a) and (b) above, and has not been able to obtain a Qualified Purchaser, the Developer may offer such unsold unit to a person or household whose income is up to fifty (50%) higher than the ceiling income for the category for which the unit was intended.

In the event an additional ninety (90) days elapses with the unit remaining unsold, despite the best efforts of the developer to sell the unit, the Developer, with the permission of the Agency, may offer the unit to any person or household, regardless of income.

However, all units build as affordable housing units under this Appendix are to be price-controlled and deed-restricted so that the sale and re-sale prices reflect the price category for which the unit was originally intended to be offered.

A.6 Affordability Standards:

Applicants for each subdivision and/or site plan approval, following the initial submission of the housing plan, shall demonstrate to the Planning Board how the applicant is meeting the commitments and schedules set forth in the affordable housing plan.

Applicants shall demonstrate that affordable housing units are being priced so that, on the average, they are affordable to households earning ninety (90%) percent of the limits established for the income groupings, such that housing for low income households shall, on the average, be affordable to persons earning forty-five (45%) percent of the Adjusted Median Income and housing for moderate income households shall, on the average, be affordable to persons earning seventy-two (72%) percent of the Adjusted Median Income.

A.7 Bedroom Mix and Unit Size:

Lower income housing units shall be provided in combinations of efficiency, one bedroom, two bedroom and three bedroom or larger units. While the distribution of units should be reasonably reflective of the market units to be provided, the lower income units shall include not more than 50% efficiency and one bedroom units ~~Of that amount~~ less than 35% two bedroom units; and not less than 15% three bedroom units. Unit sizes shall not be less than the following:

<u>Unit type</u>	<u>Minimum size</u>
efficiency units	480 s.f.
1 Bedroom	550 s.f.
2 Bedroom	750 s.f.
3 Bedroom	950 s.f.

A.8 Phasing Schedule:*

Set forth below is the minimum phasing schedule for the construction of lower income units for O&Y and Woodhaven. The numbers set forth are based on Certificates of Occupancy.

* Section A.8 and A.8.1. apply to only O&Y and Woodhaven Village. Other developers of inclusionary housing shall be subject to their own phasing schedule as set forth by court order or ordinance provision.

<u>MARKET RATE HOUSING UNITS Maximum</u>	<u>LOW & MODERATE INCOME HOUSING UNITS Minimum</u>	TOTAL
Up to 800 units	No immediate lower income housing required	800
801 units	89 lower income units for which CO's have been issued	890
each 200 units thereafter:	<u>22 lower income units</u>	890+200+22

Notwithstanding the foregoing, there shall be a "cap" of 10% of the total market units, currently projected to be 10, 560 units. If O&Y acquires additional land, additional lower income housing units shall be provided, on the basis of ten (10%) percent of residential units constructed on such lands. Further, it is understood that while the development will be inclusionary as a whole, no section, cluster, or building will be required to have lower income housing within its boundaries.

In addition, the following items are understood:

1. A subdivision of any size can be submitted by a developer, so long as the affordable housing is supplied in accordance to the above schedule.
2. There shall be no prohibition placed on obtaining building permits. The phasing is controlled by the issuance of Certificates of Occupancy.

A.8.1 Anticipated Applications

O&Y and Woodhaven intend to submit their initial applications for preliminary approval of the first section of the development as soon as the Order, of which this is an Appendix, is entered. It is anticipated that O&Y's initial subdivision will be for approximately 890 residential units; and Woodhaven's subdivision will be for approximately 900 residential units. Thereafter, O&Y and Woodhaven will be submitting development applications for other phases of their developments, which will include market units, lower income units and industrial and commercial phases. Actual applications for development will be submitted in accord with marketing, financing, and other considerations. Any application which includes lower income units shall identify the approximate location of such units.

A.9 Fee Waivers:

Notwithstanding any ordinance requirement of the Township of Old Bridge, the applicable Township approving agency shall waive the following fees for lower income units:

- (a) Planning Board application fees;
- (b) Engineering review fees;
- (c) Building permit fees;
- (d) Certificate of Occupancy fees; and
- (e) Inspection fees for all on-tract improvements and structures;

A.10 Certification Procedures:

Developers constructing lower income housing under these provisions shall report their progress to the Township Agency as follows:

A.10.1. Quarterly Report.

Each developer providing lower income housing shall provide the Township Agency with a report at the end of any calendar quarter (defined as the period ending March 31, June 30, September 30 and December 31 of each year). The Township Agency shall supply copies to the Urban League, the Court-appointed Master, and all interested parties. This report shall set forth:

- a) the total number of all Certificates of Occupancy issued for residential units within the development during that particular three-month period;
- b) the total number of Certificates of Occupancy issued for low and moderate housing units within the development during that particular three-month period;
- c) whether the lower income units are rental units or "for sale" units;
- d) the percentage of low and the percentage of moderate income units Certificates of Occupancy issued during the three-month period expressed as a percentage of the total number of residential units Certificates of Occupancy issued within the development during the same three-month period;

- e) whether there is a surplus or deficit of low and moderate income units Certificates of Occupancy issued during the three-month period measured against the ten (10) percent low and moderate housing requirement for the development;
- f) the sales prices and rents charged for lower income housing.

A.10.2 Letters of Certification

The Township Agency shall, within thirty (30) days of receipt, issue a Letter of Certification, certifying that the Status Report is correct, or advise in writing that the Status Report is incorrect and specifying the inaccuracies therein, whereupon:

- (a) the developer will correct and resubmit the Status Report; or
- (b) will formally appeal by representation before the Board of Directors of the Township Agency; or
- (c) if the Status Report remains an issue of contention between the Township Agency and the developer, the matter will be placed before the Court Appointed Master whose adjudication will be final and binding upon both the Township Agency and the developer.

A.10.3 Certificate of Compliance

There shall be no penalty to the developer if any quarterly Status Report reveals noncompliance with the requirements to provide low and moderate income housing units provided:

- (a) no additional Certificates of Occupancy for market units shall be issued if there has been noncompliance with the phasing schedule set forth in Section A.8.
- (b) that the developer show compliance on an annual basis supported by the Letters of Certification for the previous four (4) quarters, which Letters of Certification, taken together, substantiate compliance for that fiscal period and which Letters of Certification showing annual compliance shall be submitted to the Court Appointed Master, whereupon;
- (c) the Court appointed Master shall, within thirty (30) days, issue a "Statement of Annual Compliance" certifying that the development is, as of the date of accounting, in compliance with the mandate of the Court with respect to providing low-and moderate income housing in accordance with Mount Laurel II.

A.10.4 Establishment of Monitoring Fund

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O&Y and Woodhaven shall, upon receipt of a Certificate of Occupancy for any lower income unit*G instructed as a result of this settlement, pay \$30.00 (thirty dollars) for each low income unit to the Urban League for purpose of monitoring compliance with the resale price controls, marketing plan, and other provisions of this settlement agreement and appendix. The Planning Board shall be informed as to the receipt of the funds by Urban League.

A.10.5 Annual Report

No later than June 30 of each calendar year during which lower income housing has been constructed within the Township, the Township Agency shall file a report setting forth the progress being made to supply affordable housing under these procedures. Such report shall be provided to the Mayor and Council and be made available as a public document by filing with the Township Clerk. A copy of such report shall also be filed with the Court, the Urban League and any interested developer providing lower income housing in the Township.

A.11: Review and Appeal Procedures

A.11.1. Accelerated Review and Approval Schedule:

The following schedule will apply to all development applications submitted by O&Y or Woodhaven:

A. As to Preliminary Subdivision and Site Plan applications:

<u>ACTION TAKEN</u>	<u>CUMULATIVE TIME</u>
i. Application submitted to Board	0 days
ii. Checklist review completed	10 days
iii. Written notice of completeness	15 days
iv. Planning Board Staff reviews (Applicant may submit additional material)	45 days
v. Documentation available to public	46 days
vi. Public hearing to be held	57-81 days
vii. Board action by Resolution	95 days

B. As to Minor Subdivision and Final Major Subdivision applications:

<u>ACTION TAKEN</u>	<u>CUMULATIVE TIME</u>
i. Application submitted to Board	0 days
ii. Declaration of completeness	10 days
iii. Planning Board staff reviews	30 days
iv. Public Hearing held	45 days
v. Board action by Resolution	45 days

The applicant may grant extensions of time; but it is anticipated that such extensions will not be routinely sought or granted. The Planning Board will

not be required to schedule more than two (2) special meetings per month for all applicants using the accelerated review and appeal procedure.

A.11.2: Appeal to the Master

If O&Y and/or Woodhaven shall have complied with all of the requirements of the processes set forth in the Order and the appendices thereto, and have not received approvals from the Planning Board within ninety-five (95) or forty-five (45) days from the date on which the application was deemed complete, depending on the type of application, they may appeal to the Master, using the procedures set forth in Appendix B.

This does not conform to App B § 8108

A.12: Contributions in Lieu of Development:

The Township Agency shall prepare and recommend for adoption by the Township Council an arrangement whereby applicants for residential development for resale may make a contribution of funds, equivalent to the pro-rata cost of providing affordable housing units, in lieu of building such units within their lands. The Township Agency shall use these funds to purchase sites and construct lower income housing units or for such other purposes as the Agency may determine useful in providing lower income housing.

A.13: Concept Plan Approval Hearings:

The Planning Board shall hold hearings to approve Plates A and B, using the standards set forth in the Settlement Agreement. The hearings shall be scheduled as soon as feasible in January, 1986, and may continue to March 14, 1986.

The Planning Board shall schedule a minimum of two meetings per month, which meetings shall be devoted exclusively to reviewing the applications submitted by O&Y and Woodhaven. At least one meeting per month shall be devoted to each developer's application. The applicant shall deposit a processing fee in the amount of \$ 5.00 per residential unit contemplated to be built in the overall development. Such sums as are directly attributable to the review of the specific application shall be charged against these funds; any funds not expended in this review process shall be refunded to the applicant. Copies of invoices or vouchers substantiating time expended for professional reviews shall be submitted to the applicant on a monthly basis, and a full accounting of all monies used shall be provided to the applicant within thirty (30) days following the Board's decision.

The Planning Board Attorney shall instruct the Board as to the limited nature of the Board's jurisdiction and the nature of the plans to be reviewed, and shall indicate that the Plates are at the "master-plan-concept" level and are part of a settlement of litigation, and cannot be changed without sound reasons. Each applicant may present such testimony as the applicant feels is necessary to provide information to the Board. In the event the Board, at the conclusion of any specific hearing, feels that it needs additional information or testimony or a specific point, the Board shall so inform the applicant, in writing, no later than three (3) days following the conclusion of the specific hearing.

The Court-appointed Master *shall* be invited to attend any hearing on Plates A and 5, and may offer comments, suggestions and recommendations to the Planning Board and the applicants.