

U2 v. Cartset

2/26

(1986)

Proposed order in re operating judges  
rulings

31 pgs

CA0002740

275

School of Law-Newark • Constitutional Litigation Clinic  
S.I. Newhouse Center For Law and Justice  
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

February 26, 1986

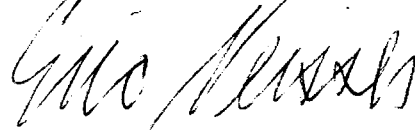
The Honorable Eugene D. Serpentelli  
Judge, Superior Court  
Ocean County Court House  
CN 2191  
Toms River, NJ 08754

Urban League v. Carteret, No. C 4122-73

Dear Judge Serpentelli:

Enclosed please find the original and two copies of a proposed form of Order incorporating your Honor's rulings at yesterday's hearing, which I submit under the five-day rule. I have served all counsel and Ms. Lerman with copies. I also enclose a stamped return envelope for your secretary to return the Order when signed for me to serve.

Respectfully submitted,



Eric Neisser  
Barbara Stark  
Urban League Co-Counsel

encls

cc: Carla Lerman, Master  
Leslie Lefkowitz, Esq.  
Stewart Hutt, Esq.  
Douglas Wolfson, Esq.  
Donald Daines, Esq.  
Jeffrey Kantowitz, Esq.



IT IS HEREBY ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 1986

1. The Township's motion to carry this matter for a brief time is granted and the matter is carried to Thursday, March 6, 1986 at 1:30 P.M.

2. If the North Brunswick Township Council has adopted a compliant affordable housing ordinance by March 6, 1986, this Court shall forthwith enter the attached Judgment of Repose granting the Township repose from further exclusionary zoning litigation until July 2, 1991.

3. If the North Brunswick Township Council has not adopted a compliant affordable housing ordinance by March 6, 1986, this Court shall forthwith enter the attached Order and Judgment of Repose adopting the January 29, 1986 revision of the Affordable Housing Ordinance on behalf of the Township and granting the Township repose from further exclusionary zoning litigation until July 2, 1991, unless prior to that date any party informs the Court of its intent to file any further motion.

EUGENE D. SERPENTELLI, A.J.S.C.



hereby granted repose from any further exclusionary zoning litigation until July 2, 1991 in accordance with P.L.1985, c. 222, Section 22.

EUGENE D. SERPENTELLI, A.J.S.C.

ERIC NEISSER, ESQ.  
BARBARA STARK, ESQ.  
Rutgers Constitutional Litigation Clinic  
15 Washington Street  
Newark, NJ 07102  
201/648-5687  
ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX/OCEAN COUNTY  
(Mount Laurel)

URBAN LEAGUE OF GREATER ]  
NEW BRUNSWICK, et al., ]  
Plaintiffs, ]

No. C 4122-73

vs. ]

THE MAYOR AND COUNCIL OF ]  
THE BOROUGH OF CARTERET, ]  
et al., ]  
Defendants. ]

ORDER AND JUDGMENT OF REPOSE  
(North Brunswick)

The Township of North Brunswick having failed to adopt an affordable housing ordinance in accordance with Paragraph 17 of this Court's Consent Order of September 10, 1984 and Paragraphs 2 and 3 of this Court's Order of \_\_\_\_\_, 1986,

IT IS HEREBY ORDERED THIS \_\_\_ DAY OF MARCH 1986

1. The attached January 29, 1986 revision of the Affordable Housing Ordinance of North Brunswick, adoption of which was favored by a majority of the voting members of the North Brunswick Township Council at its February 3, 1986 meeting, is hereby placed into effect, upon entry of this Order, as the Affordable Housing Ordinance of North Brunswick. The ordinance shall have the same effect as if it had been formally adopted by

the Township Council and the Township Clerk shall forthwith publish and record this ordinance in the same manner as ordinances formally adopted by the Council.

2. As a result of this Order placing this ordinance into effect, the Township of North Brunswick is in compliance with the Consent Order of September 10, 1984 and the constitutional requirement to provide a realistic opportunity for its fair share of the regional need for low and moderate income housing and is hereby granted repose from any further exclusionary zoning litigation until July 2, 1991.

EUGENE D. SERPENTELLI, A.J.S.C.



DRAFT.

AFFORDABLE HOUSING ORDINANCE

Prepared for the  
NORTH BRUNSWICK TOWNSHIP MAYOR AND COUNCIL  
by  
E. EUGENE OROSS ASSOCIATES  
PROFESSIONAL PLANNING,  
ENVIRONMENTAL CONSULTANTS  
and  
LANDSCAPE ARCHITECTS

NOVEMBER 21, 1984  
Revised June 18, 1985  
" " December 9, 1985  
" " January 3, 1986  
" " January 20, 1986  
" " January 29, 1986

Section I. Short Title.

This Ordinance shall be known and may be cited as the "Affordable Housing Ordinance of the Township of North Brunswick."

Section II. Purpose.

The purpose of this Ordinance is to comply with the Court Order of the Superior Court of New Jersey in Urban League of Greater New Brunswick, et al. v. Mayor and Council of the Borough of Carteret, et al., by establishing a mechanism for assuring that housing units designated for occupancy by low and moderate income households remain affordable to, and occupied by, low and moderate income households.

Section III. Definitions.

The following terms wherever used or referred to in this Chapter shall have the following meanings unless a different meaning clearly appears from the context:

Affordable Housing Plan. An instrument to be recorded with the Office of the Recorder, Middlesex County, New Jersey, constituting restrictive covenants running with the land with respect to the Lower Income Units described and identified in such instrument. The instrument shall set forth the terms, restrictions and provisions applicable to the Lower Income Units and shall be consistent with the Affordable Housing Ordinance including but not limited to those provisions of the Ordinance concerning use; occupancy; sale; resale; rental; re-rental; sales price and rental determination; duration of restrictions; exempt transactions; hardship exemptions; foreclosure; violation; legal description of the specific Lower Income Units governed by the instrument; determination of eligible purchasers and owners; responsibilities of owners; improvements; and creating the liens and rights of the Agency upon such Lower Income Units, all as such provisions of the Ordinance exist at the time that the instrument is executed by the Agency. The instrument shall refer to this Affordable Housing Ordinance and the rules and regulations of the Affordable Housing Agency. The terms, restrictions and provisions of the instrument shall bind all purchasers and Owners of any Lower Income Unit, their heirs, assigns and all persons claiming by, through or under their heirs, assigns and administrators. If a single instrument is used to govern more than one Lower Income Unit, then the instrument must contain the legal description of each Lower Income Unit governed by the instrument and the deed of each and every individual Lower Income Unit so governed must contain the recording information of the instrument applicable to such Lower Income Unit. It is intended that the terms of the Affordable Housing Plan be wholly consistent with the Affordable Housing Ordinance and the rules and regulations of the Agency, as such ordinance and rules and regulations of the Agency existed on the date the Affordable Housing

Plan is executed by the Agency, however, in the event of conflict or inconsistency, the Affordable Housing Ordinance and rules and regulations as they existed on the date of the Plan shall control. Changes, amendments or revisions to the Affordable Housing Ordinance and rules and regulations subsequent to the date of an Affordable Housing Plan shall not affect, amend or alter the Affordable Housing Plan and such Affordable Housing Plan shall continue to be interpreted and applied in accordance with the Affordable Housing Ordinance and rules and regulations as same existed on the date of the particular Affordable Housing Plan. Such instrument shall be executed by the Agency prior to recording of the Affordable Housing Plan and the Agency shall certify that the Affordable Housing Plan is consistent with the then current Affordable Housing Ordinance and rules and regulations. The Instrument shall also be executed by the developer and/or the then current title holder of record of the property upon which the Lower Income Units are to be constructed.

Agency. The Affordable Housing Agency of the Township of North Brunswick created pursuant to this Ordinance or any successor duly authorized by the Township Council to carry out the powers and responsibilities of the Agency.

Assessments. Shall mean and refer to taxes, levies, charges or assessments both public and private, including those imposed by the Association, as the applicable case may be upon the Lower Income Units which are part of the Association.

First Purchase Money Mortgage. Shall mean and refer to the most senior mortgage lien to secure repayment of funds for the purchase of a Lower Income Unit.

First Purchase Money Mortgagee. Shall mean and refer to the holder and/or assigns of the First Purchase Money Mortgage and which must also be an institutional lender or investor, licensed or regulated by a State or Federal government or an agency thereof. Other lenders, investors or persons may be holders of a First Purchase Money Mortgage, however, for purposes of this ordinance, such other lenders, investors or persons shall not be First Purchase Money Mortgagees for purposes of this Ordinance.

Foreclosure. Shall mean and refer to a termination of all rights of the mortgagor or the mortgagor's assigns or grantees in an Lower Income Unit covered by a recorded mortgage through legal processes, or through a Deed in Lieu of Foreclosure which has been executed and delivered prior to a judicially-regulated sale.

Gross Aggregate Household Income. The total annual income from all sources of all members of the household, with the exception of income exclusions provided for in the rules and regulations promulgated by the Agency. Household income shall specifically exempt interest income earned on the first \$25,000 of assets for senior citizen households (62 years of age and over). Imputed interest income shall be added to annual income only in the event that households are selling houses in order to move into lower income units.

Household. One or more persons living as a single non-profit housekeeping unit whether or not they are related by blood, marriage or otherwise.

Improvement. Shall mean and refer to additions within a Lower Income Unit, including materials, supplies, appliances or fixtures which become a permanent part of, or affixed to, such Lower Income Unit.

Income Ceiling. 80% of the regional median income for moderate income households and 50% of the regional median income for low income households, with adjustments for household size.

Low Income Household. A household with a gross aggregate household income which does not exceed 50% of the regional median income, with adjustments for household size.

Low Income Purchaser. A Low Income Household purchasing either a Low Income Unit or a Moderate Income Unit as the case may be.

Low Income Unit. A unit which is Affordable to a Low Income Household.

Lower Income Household. A Household which is either a Low Income Household or a Moderate Income Household, as the case may be.

Lower Income Purchaser. A purchaser of a Lower Income Unit which is either a Low Income Purchaser or a Moderate Income Purchaser as the case may be.

Lower Income Unit. A residential unit within a development which has been designated as either a Low Income Unit or a Moderate Income Unit, as the applicable case may be, pursuant to this Affordable Housing Ordinance.

Market Unit. Any residential unit within a development which is not designated a Lower Income Unit.

Moderate Income Household. A household with a gross aggregate household income which is greater than 50% of the regional median income, but which does not exceed 80% of said regional median income, with adjustments for household size.

Moderate Income Purchaser. A Moderate Income Household purchasing a Moderate Income Unit.

Moderate Income Unit. A unit which is affordable to a Low or Moderate Income Household.

Owner. The then current title holder of record of a Lower Income Unit. Owner shall refer to and mean the title holder of record as same is reflected in the most recently dated

and recorded deed for the particular Lower Income Unit. For purposes of the initial sales or rentals of any Lower Income Unit, Owner shall include the developer/owner of such Lower Income Units. Ownership of a Lower Income Unit shall be deemed to be acceptance and ratification of the provisions of this Affordable Housing Ordinance and the Affordable Housing Plan. Where appropriate, the term Owner shall also mean and refer to a person who owns a Lower Income Unit as a landlord or who occupies a Lower Income Unit as a tenant. Owner shall not include any co-signor or co-borrower on any First Purchase Money Mortgage unless such co-signor or co-borrower is also a named title holder of record of such Lower Income Unit.

Qualified Purchaser. Shall mean and refer to a person whom pursuant to this Ordinance and the Affordable Housing Plan, (1) submits an Application for Certification as a Qualified Purchaser to the Agency; (2) whose Gross Aggregate Household Income at the time of proposed purchase of a Lower Income Unit is within Low or Moderate Income Levels, as these Income Levels are designated herein; and (3) who obtains Certification as a Qualified Purchaser of an Lower Income Unit from the Agency pursuant to the rules and regulations of the Agency. Once a Qualified Purchaser becomes an Owner of a Lower Income Unit in accordance with the provisions of this Ordinance, any increase or decrease in the Gross Aggregate Household Income of such Owner shall not affect ownership rights, privileges or obligations of such Owner. The term "Qualified Purchaser" shall also include a person or family who occupies the Lower Income Unit on a rental basis, subject to the qualifications and conditions stated above and elsewhere herein. Any person who submits false information in support of an application for certification and who subsequently received such certification and either title to a Lower Income Unit as Owner or possession of a Lower Income Unit as tenant shall be deemed to have committed a substantial breach of the provisions of this Ordinance and the Affordable Housing Plan and any right of ownership of such unit shall be subject to forfeiture pursuant to the provisions of Section XII(C) of this Ordinance. A qualified purchaser shall not be permitted to own more than one lower income unit at the same time.

Regional Median Income. The median household income for the eleven county present need region determined by the Court to include the following counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Union, Sussex, Warren. For ease of calculation, regional median income shall mean 94% of the median income for the Primary Metropolitan Statistical Area (PMSA) in which Middlesex County is located.

Utilities. Those utilities that are essential for safe and sanitary occupancy of a rental unit, including water, sanitary sewage, gas, electricity and heat. For the purposes of this ordinance, cable television and telephone are specifically excluded.

Section IV. Establishment of Affordable Housing Agency.

A. Creation.

There is hereby created an Affordable Housing Agency ("Agency") of the Township of North Brunswick.

B. Composition.

1. The Agency shall consist of five members, and 2 alternate members, all of whom shall be appointed by the Council. The membership of the Agency may consist of one or more Township officials, no more than 2 of whom may be Council members. All remaining members must be Township residents. However, one appointment shall be reserved for a tenant or owner occupant of a low or moderate income unit who is not a Township official.

2. Alternate members shall have all of the powers of regular members when sitting in place of a regular member. Until such time as a low or moderate income owner or renter appointment can be made, an alternate member shall function as a regular member.

The Council shall designate annually one regular member to serve as chairperson.

3. Attendance by 3 regular members or alternates shall constitute a quorum. Passage of any motion requires an affirmative vote by a majority of members present.

4. The initial term of office of the Agency members shall be one (1), two (2) or three (3) years to be designated by the Council in making the appointment. The terms of office shall thereafter be three (3) years. The appointments shall be made in such a manner so that the terms of approximately one-third (1/3) of the members shall expire each year.

C. Vacancies; Removal for Cause.

The Council may remove any member of the Agency for Cause. Written charges served upon the member shall be followed by a hearing thereon, at which time the member shall be entitled to be heard either in person or by Counsel. A vacancy in the Agency occurring otherwise than by expiration of the term, shall be filled for the unexpired term in the same manner as an original appointment.

D. Powers and Duties. Within 30 days of the effective date of this Ordinance the Agency shall hold its first organizational meeting.

1. Within 90 days of its organizational meeting, to prepare and forward to the Township Council, such rules and

regulations as may be necessary to implement the policies and goals of this Section, specifically, to ensure that housing units designated as low or moderate income units, once constructed, shall remain affordable to, and be occupied by, low or moderate income households. Such rules shall be subject to review and approval of the Township Council. The Council shall review and approve or disapprove or recommend changes within sixty (60) days of the Agency's proposal to the Council. The Agency must revise and resubmit proposed rules and regulations to the Council within twenty (20) days of the Council's disapproval or recommended changes. The Council shall then review and approve the revisions within twenty (20) days of resubmittal by the Agency. The final approved rules and regulations shall be approved by the Council within a maximum total of 190 days from the organizational meeting of the Agency.

Guidelines for regulations of capital improvements shall be established within 150 days of its organizational meeting.

The Agency shall at a minimum review its rules and regulations and implementing guidelines annually and report to the Township Council on its findings.

2. To determine the maximum sale, resale and rental charges for low or moderate income units, and to provide certification of same to the developer, Planning Board, Mayor and Council and the construction official in charge of issuing building permits as required by this Ordinance. Said sales and rental prices shall be adjusted annually to reflect recalculations of the regional median income.

3. To pre-qualify prospective owners and renters based upon income and household size, and to issue a certificate as to income eligibility status.

4. To establish selection procedures and criteria for determining Qualified Purchasers and Households. Preference shall be given for up to 40 percent of the lower income units being offered for sale or rent in each phase of a project to qualified households who live or work in the Township. In order to be entitled to said preference, the application must be submitted within 30 days of the unit initially being offered for sale or rent. In the class "live or work", there shall be no preference given to either "live" or "work".

5. To verify that an Affordable Housing Plan has been recorded and the deeds of individual Lower Income Units reference such Affordable Housing Plan.

6. To develop a formula for use in calculating the maximum resale price of low and moderate income units which is consistent with the provisions of Section VII.B. of this Ordinance.

7. To determine whether the cost or value of the installation of improvements or amenities within or as part of a low or moderate income unit should be included in calculation of the resale price or rental charge for the unit and to establish procedures whereby a homeowner can obtain a determination from the Agency in this regard prior to the time the improvements are made. The Agency shall publish within 30 days of adoption the guidelines and regulations setting forth the allowable capital improvements that will be considered for inclusion in the resale price of any Lower Income Unit. These regulations will indicate those improvements whose value will be included; the maximum cost allowed to be included within the resale price for each improvement, as well as guidelines for the total maximum percentage by which the base price of a Lower Income Unit may be increased by the cost of all capital improvements and the rate at which such maximum percentage increase may be attained, all for the purposes of determining the Maximum Resale Price of the Lower Income Units. No portion of the cost or value of any improvement not specifically set forth in the guidelines and regulations and which is not approved by the Agency prior to installation shall be included within the base price for purposes of resale price calculation. If the Owner receiving approval from the Agency for an Improvement, a portion of the cost or value of which is to be included within the base price of the Lower Income Unit, is in need of a second mortgage in order to pay for such Improvement, then the Agency shall execute and deliver to the Owner for recording by the Owner a document by which the Agency's rights, claims and liens under this Affordable Housing Ordinance and the Affordable Housing Plan are also subordinated to such second mortgage. The Agency's rights, claims and liens shall not be subordinated to any second mortgages unless the Agency shall execute and deliver such instrument to an Owner in connection with an Improvement approved by the Agency.

8. To review and to approve or disapprove the Affordable Housing Plan required of all developers of low and moderate income housing.

9. To review and approve or disapprove the developer's proposed Affirmative Marketing Plan and to require developers to submit proofs of publication in accordance with approved affirmative marketing Plans, and to monitor the marketing practices of developers of low and moderate income units to ensure that they comply with the affirmative marketing requirements of this Chapter.

10. To report quarterly to the Township Council on the status of low and moderate income units including but not limited to such things as the Agency's actions in connection with any Statements of Exemption and foreclosures upon any Lower Income Units.

11. The Agency shall at all times maintain a waiting list of qualified purchasers and shall provide said list to any owner in the event of default proceedings.



E. Appropriation and Accountability.

Developers of lower income units shall, at the time of submission of an application to the Township Planning Board, reimburse the Township on a pro-rata basis for the cost of all initial start-up costs. Start up costs are those costs necessary to enable the Agency to establish rules, regulations and guidelines, and shall include, but not be limited to, attorney's fees, accountant's fees and fees for other required professional services. The total obligation for start-up costs to all developers shall be \$15,000. The pro-rata calculation shall be performed by the Agency utilizing the Township's total lower income obligation established by pursuant court order.

The Agency may employ or contract for professional services required to carry out its duties and responsibilities and all developers of lower income units shall be required to pay application fees at the time of submission for site plan approval. Said fee shall be equal to \$10 per lower income unit included in the application for site plan approval.

The Agency shall report to the Township Council through the Township Administrator.

Section V. General Provisions.

A. Wherever reference is made to low or moderate income housing in the Township's Zoning Ordinance, the standards, definitions and procedures set forth in this section shall apply.

B. Except as otherwise expressly provided herein, no low income unit shall be offered for sale or rental except at prices that are affordable by low income households and no moderate income unit shall be offered for sale or rental except at prices that are affordable by moderate income households and, except as otherwise expressly provided herein, no low income unit shall be sold, resold, rented or re-rented except to a household that has been qualified as a low income household by the Agency and no moderate income unit shall be sold, resold, rented or re-rented except to a household that has been qualified as a moderate income household by the Agency. The provisions of this paragraph shall apply equally to qualified lower income owners or renters, in terms of controls on sale, resale, rental or re-rental of any Lower Income Unit.

C. However, nothing contained in this Chapter, or in the rules and regulations promulgated by the Agency, shall restrict or preclude any household which was classified as low or moderate income based upon its gross aggregate household income at the time it purchased or leased a low or moderate income unit, from continuing to own or lease said unit, after its income exceeds the income ceilings established in this Chapter.

D. Prospective purchasers of Lower Income Units shall receive prior to or simultaneously with the execution of the

contract to purchase a Lower Income Unit a copy of the Affordable Housing Plan and shall execute a Disclosure Statement which briefly summarizes the salient features of the use, occupancy and resale restrictions applicable to the Lower Income Unit. It shall be the Developer's responsibility to provide such for the initial sales and subsequent Owner's responsibility to provide same for resales. The Developer shall record the Affordable Housing Plan prior to conveying any title to any individual Lower Income Unit or executing a lease for any individual Lower Income Unit and the deeds or leases of individual Lower Income Units must reference such recorded Affordable Housing Plan.

E. The Township of North Brunswick shall forever receive full credit towards its "then current total fair share obligation" as may be determined from time to time so long as the "then current total fair share obligation" includes previous fair share obligations for all Lower Income Units developed pursuant to this Affordable Housing Ordinance, so long as such Lower Income Units are actually sold, resold, used, occupied, rented, re-rented and maintained in full and complete compliance with the provisions of this Ordinance including but not limited to those provisions covering Hardship, Foreclosure and Exempt Transactions and the Affordable Housing Plan.

F. The initial proportional relationship between condominium fees assessed against market units and lower income units shall not be increased in future years and said restrictions shall be reflected in the Articles of Incorporation and in the required Disclosure Statement. Association fees assessed against said lower income units shall be no less than 1/3 of the fee which would have been assessed had all condominiums (both lower income and market units) been assessed equally. Such initial calculations shall be provided by the developer.

Section VI. Determination As to Income Eligibility.

A. A prospective purchaser or renter of a low or moderate income unit must be qualified as a low or moderate income household by the Agency prior to the purchase or rental of such unit. The Agency shall periodically recalculate the regional median income and determine adjustments for household size as updated data or estimates of regional median income become available.

B. The income ceilings for low and moderate income households of 4 members shall be 50% and 80% respectively of the regional median income, with adjustments for household size in accordance with guidelines of the U.S. Department of Housing and Urban Development.

Section VII. Determination of Maximum Sales Prices and Rental Charges.

Prior to the sale, resale, rental, or re-rental of a low or moderate income unit, the Agency shall determine the maximum sales price or rental charge that may be charged for that size unit in each income category in accordance with the following:

A. Estimated Maximum Initial Sales Prices for Units

1. As part of the preliminary site plan application submittal to the Planning Board by a Developer for a development containing Lower Income Units, the developer shall also submit to the Agency information demonstrating the mortgage financing generally available to lower income homebuyers and the developer's calculations as to the estimated maximum sales prices in accordance with subsection B below.

2. The Agency shall review the developer's calculations and shall determine the estimated maximum sales prices for applicable sized units in each income category in accordance with the financial terms determined to be generally available, and shall notify the Planning Board and the developer of said estimated maximum sales prices prior to final approval by the Planning Board. The delay of the Agency shall not postpone or delay the Planning Board's decision as to the proposed development.

B. Actual Maximum Initial Sales Prices for Units.

1. A base sales price shall be calculated such that the sum of the monthly payments for principal, interest, taxes, fire, theft and liability insurance, and homeowner association fees, if any, shall not exceed twenty-eight percent (28%) of the low or moderate income ceilings determined in accordance with Section VI.

2. In order to assure that low and moderate income units are affordable by households whose income is less than the low or moderate income ceilings, the maximum sales price that may

be offered for each such unit shall not exceed ninety percent (90%) of the base price for that size unit in each income category.

3. At least a minimum of thirty (30) days prior to the developer's anticipated need of building permits, with the exception of permits for model units, the developer shall provide the Agency with information demonstrating the financing that is generally, available locally to lower income homebuyers and the developers calculations as to Maximum Initial Sales Prices. The interest rate used by the developer in calculating the maximum sales price shall be the rate that the Agency determines to be generally available locally for a 90%, 30-year, fixed-rate mortgage.

4. If the developer proposes to provide financing through an adjustable rate mortgage (ARM) or establishes that ARMS are generally available locally to lower income purchasers, then the interest rate to be used for calculating the maximum sales price shall be the greater of either (1) the current index of one-year Treasury bills plus two points or (2) two points less than the best available fixed rate mortgage.

5. The Agency shall use this information to determine the Maximum Initial Sales Prices for the different sized units in each income category as described above. The Agency shall certify the actual Maximum Initial Sales Prices to the planning board, the developer and the construction official in charge of issuing building permits within 30 days of submission of complete information by the developer. No building permits, except for complete models (including models of non-lower income units) foundation permits for units other than models, permits for underground utilities, and site development work, shall be issued until the maximum initial sales prices have been certified by the Agency. These sales prices shall remain in effect for a period of one year. However, the developer may request a modification of the maximum sales prices at any time by applying to the Affordable Housing Agency for recalculation of these prices based on changes in any of the factors used to calculate the prices.

#### C. Maximum Resale Prices.

Prior to the resale of any low or moderate income unit, the Agency shall determine the maximum sales price for the unit in accordance with a formula developed by the Agency, which formula takes into account the following: 1) increases in the regional median income, 2) the cost or value of improvements to the property made by the owner, as determined in accordance with the rules and regulations established pursuant to Section IV (D)(7), 3) prevailing financing terms generally available in the market, and 4) reasonable out-of-pocket costs of the sale as determined by the Agency. To the extent feasible, the formula shall ensure that the sales price will be consistent with the affordability standards set forth in this chapter.

#### D. Maximum Rental Charges for Units.

1. A base rent shall be calculated such that the sum of the monthly rental payment, including utilities, does not exceed thirty percent (30%) of the low or moderate income ceilings determined in accordance with Section VI.

2. If the cost of all utilities is not included in the monthly rental charge, the Agency shall calculate for each unit size an estimated monthly charge for those utilities not included in the rent. These charges shall be estimated utilizing estimating techniques acceptable in the industry. This estimated charge shall be subtracted from the maximum gross rent to determine the maximum rental charge that may be charged for each low and moderate income unit.

3. In order to assure that low and moderate income units are affordable by households whose income is less than the low or moderate income ceilings, the maximum gross rent that may be charged for any such unit shall not exceed ninety percent (90%) of the base rent for that size unit in each income category. Notwithstanding these requirements, landlords shall have the option, to set rents equal to thirty percent of the tenant's gross household income, with the requirement that the average of all rents charged for the same size unit shall not exceed ninety percent of the base rent charge for such size unit. The cost of any additional administrative charges incurred by the Agency in the monitoring of such rental distribution shall be the sole responsibility of such Landlord.

4. The developer shall calculate the maximum rental charge for applicable sized units in each income category and shall submit said calculations to the Agency for review. The Agency shall determine, based upon its review, maximum rental charges. These rental charges shall remain in effect for a period of at least one year, except that the developer may request a modification of these charges by applying to the Agency for recalculation of the prices based on changes in any of the factors used to calculate the rental charges.

To the extent feasible, these criteria and procedures should ensure that the new rental charges are consistent with the affordability standards set forth in this Chapter.

5. The Agency shall establish appropriate criteria and procedures for allowing periodic rental charges increases.

#### E. Relationship Between Household Size and Unit Size.

For the purpose of determining maximum sales prices and rental charges pursuant to this Chapter, the ceiling incomes of the following household sizes shall be used to determine the maximum prices for each of the following unit sizes:

efficiency	1 person
1 bedroom	2 persons
2 bedrooms	3 persons
3 bedrooms	5 persons
4 bedrooms	6 persons

Any room other than a bathroom, kitchen, dining area or living room and which was initially designed for regular sleeping by regular members of the Household shall be considered a bedroom for purposes of calculating the Maximum Initial Sales Prices. No alterations or improvements by Owners after initial occupancy shall increase the number of bedrooms unless the total area of habitable living space is increased by an amount at least equal to the new area being claimed as a new bedroom.

#### Section VIII. Expiration of Restrictions.

Restrictions governing the Lower Income Units offered initially for sale shall expire as to a particular Lower Income Unit 30 years from the date of recording of the initial deed of the particular Lower Income Unit to a Qualified Purchaser.

The restrictions governing the rental of Lower Income Units shall expire as to a particular Lower Income Unit 30 years from the date of the initial certificate of occupancy of such Lower Income Unit and a document shall be recorded stating such date immediately after such initial certificate of occupancy is issued by the Township.

If rental units are converted within 30 years of initial occupancy, the same number of low and moderate income units, respectively, must be maintained after conversion, subject to resale controls ensuring their continued affordability and occupancy for the balance of the 30 year period.

#### Section IX. Foreclosure, Exempt Transactions and Hardship Exemptions

A. Exempt Transactions. The following transactions shall be deemed "non-sales" for purposes of this Ordinance and the Affordable Housing Plan and the Agency shall issue a Statement of Exemption to the Owner receiving title by virtue of any of the following transactions:

(1) Transfer of Ownership of a Lower Income Unit between husband and wife;

(2) Transfer of Ownership of a Lower Income Unit between former spouses ordered as a result of a judicial decree of divorce or judicial decree of separation (but not including sales to third parties);

(3) Transfer of Ownership of a Lower Income Unit between family members as a result of inheritance;

(4) Transfer of Ownership of a Lower Income Unit through an Executor's Deed to any Person;

(5) Transfer of Ownership of a Lower Income Unit through an Order of the Superior Court or other court.

Such Transfer of Ownership neither extinguishes the Restrictions and applicability of this Ordinance or the Affordable Housing Plan to such Lower Income Unit nor terminates any liens set forth under this Plan. Liens must be satisfied in full prior to the subsequent resale of the Lower Income Unit and all such subsequent resales are fully subject to the terms and provisions of this Ordinance and the Affordable Housing Plan.

B. Hardship Exemptions. The Developer and subsequent Owners may apply to the Agency for a Hardship Exemption.

1. Provisions Applicable to Initial Sales or Rentals

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 in accordance with the requirements of the Affirmative Marketing Requirements as set forth in Section X, 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 in accordance with the Affirmative Marketing Requirement for such time period 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.

2. Provisions Applicable to Other than Initial Sales or Rentals

a. Owners or the Developer may only apply to the Agency for a Hardship Exemption after one hundred twenty (120) days after such Owner or Developer has notified the Agency that such Lower Income Unit is available for resale or re-rental to Qualified Lower Income Households.

b. In order for such Owner or Developer to be entitled to a Hardship Exemption from the Agency, such Owner or Developer must show the Agency that (i) the 120 day time period has lapsed and (ii) the Owner or Developer has been affirmatively marketing such unit in accordance with the Affirmative Marketing Requirement for such time period 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.

C. Procedural Requirements for Issuance of a Statement of Exemption for both Exempt Transactions and Hardship Exemptions

1. The Agency must act upon an application for a Statement of Exemption within thirty (30) working days of receipt of such application.

2. The Agency shall approve the application for a Statement of Exemption if the Agency finds that the applicant has met its burden of proof as described above in subsections (B)(1)(b) and (B)(2)(b) or subsection (A) above.

3. If the Agency fails to approve, deny or conditionally approve an application within such thirty (30) day period, such failure to act shall be deemed to be an approval by the Agency of the application for a Statement of Exemption.

4. The Agency shall issue a written decision to the applicant immediately after making its decision. If the application is approved, the Agency shall immediately issue to the applicant a Statement of Exemption in recordable form describing the specific Lower Income Unit covered by the Statement of Exemption.

5. The original of the Statement of Exemption shall be given to the purchaser at the time of closing of title and shall be recorded simultaneously with the deed, or to the tenant prior to taking possession and occupancy, of the applicable Lower Income Unit.

D. Effect of Statement of Exemption for both Hardship Exemptions and Exempt Transactions

1. A Statement of Exemption issued pursuant to Subsection B (Hardship) above shall authorize the Owner or Applicant to sell or rent the particular Lower Income Unit to a household whose Gross Aggregate Household Income is up to fifty percent (50%) higher than the original relevant income ceilings applicable to such Lower Income Unit as determined in accordance with Section VI of this Ordinance.

2. A Statement of Exemption issued in accordance with subsection A (Exempt Transactions) above shall permit the named grantee or lessee to receive title or possession of the particular Lower Income Unit in the same manner as a Qualified Purchaser.

3. The Statement of Exemption under Section (A) or (B) above shall exempt only the specific sale or rental transaction for which it was issued.

4. The Statement of Exemption under (A) or (B) above shall deem the grantee or lessee to be a Qualified Purchaser of such Lower Income Unit for purposes of this Ordinance and the Affordable Housing Plan.



5. The Statement of Exemption under (A) or (B) above shall only relieve the specific transaction of the restriction of selling, reselling or renting such Lower Income Unit to only Qualified Purchasers. All other restrictions, requirements and provisions of the Ordinance and the Affordable Housing Plan shall remain in full force and effect, including but not limited to the Maximum Sales Prices and Rental Charges which are established pursuant to Section VII of this Ordinance.

6. The restrictions of resale or rental to only Qualified Purchasers shall apply to subsequent resales or rentals of the particular Lower Income Unit unless a new Statement of Exemption is issued by the Agency in accordance with the provisions of this Ordinance.

7. Nothing shall preclude the Agency from purchasing the specific Lower Income Unit and holding, renting or conveying it to a Qualified Purchaser provided such right is exercised prior to the Owner signing a valid contract to sell such Lower Income Unit and such right is further exercised before the expiration of the applicable fifteen (15) day period.

E. Foreclosure and First Purchase Money Mortgages

1. Provisions for First Purchase Money Mortgagees.

a. The terms and restrictions of this Ordinance and the Affordable Housing Plan shall be subordinate only to the First Purchase Money Mortgage lien on any Lower Income Unit and in no way shall impair the First Purchase Money Mortgagee's ability to exercise the contract remedies available to it in the event of default as such remedies are set forth in the First Purchase Money Mortgage documents for the unit.

b. So long as the First Purchase Money Mortgage is not sold to the Federal National Mortgage Association or in the secondary mortgage market, the First Purchase Money Mortgagee and/or mortgage servicer shall serve written notice upon the Agency within ten (10) days after the First Purchase Money Mortgage is three (3) months in arrears, and within ten (10) calendar days of the filing of the complaint seeking foreclosure of the First Purchase Money Mortgage held on a Lower Income Unit.

c. The obligation of First Purchase Money Mortgagee and/or servicer to notify the Agency shall cease automatically and immediately upon the sale of the First Purchase Money Mortgage to the Federal National Mortgage Association or in the secondary mortgage market unless the rules and regulations or guidelines of the Federal National Mortgage Association are amended so as to not prohibit or exclude placing such obligation upon the holder of the mortgagee or its service representative, in which case, an instrument duly evidencing same must be recorded with the Office of the Recorder, Middlesex County, New Jersey, and the Clerk of the Township of North Brunswick before any such obligation shall exist.

d. Provided that the First Purchase Money Mortgagee is obligated to give the Agency the above mentioned notices, the First Purchase Money Mortgagee shall also serve written notice of any proposed Foreclosure sale upon the Agency at least thirty (30) days prior to the first scheduled date of such sale.

e. The First Purchase Money Mortgagee shall serve notice upon the Agency within thirty (30) days of the sale of the First Purchase Money Mortgage to the Federal National Mortgage Association or in the secondary mortgage market.

f. The Township of North Brunswick and/or the Agency or any instrumentality designated by the Township shall have the right to purchase any mortgage which is in default at any time prior to the entry of a foreclosure judgment, or within the redemption period thereafter. Notification of a default and of the institution of a Foreclosure action and of a sheriff's sale shall be served in writing upon the Chairman of Agency as aforesaid. The Township of North Brunswick shall at all times be considered a party in interest and shall have the right to be joined as a party defendant and/or shall have the right to intervene in any foreclosure action seeking foreclosure of a first mortgage and/or shall have the right to redeem and acquire the owner's equity of redemption or to acquire the unit from the Owner upon such terms and conditions as may be determined by the Agency.

2. Effect of Foreclosure. Any Lower Income Unit which is acquired by a First Purchase Money Mortgagee by Deed in lieu of foreclosure, or by any purchaser at a mortgage foreclosure sale conducted by the holder of the First Purchase Money Mortgagee (including the First Purchase Money Mortgagee but excepting the defaulting mortgagor) shall be permanently released from the restrictions and covenants of this Plan and all resale restrictions shall cease to be effective as to the First Purchase Money Mortgagee and all subsequent purchasers and mortgagees of that particular unit (except for the defaulting mortgagor, who shall be forever subject to the resale restrictions of this plan with respect to the unit owned by him at the time of his default). The Agency shall execute a document in recordable form evidencing that such Lower Income Unit has been forever released from the restrictions of the Ordinance and the Affordable Housing Plan. Execution or Foreclosure sales by any other class of creditor or mortgagees shall not result in a release of the unit from the provisions and restrictions of this Ordinance or the Affordable Housing Plan.

3. Surplus Funds. In the event of a Foreclosure sale by the holder of the First Purchase Money Mortgage, the Owner shall be personally obligated to pay to the Agency any Surplus Funds. For purposes of this paragraph, Surplus Funds shall be the total amount paid to the sheriff in excess of the greater of (i) the Maximum Resale Price of the Unit pursuant to Section VII

(C), and (ii) the amount required to pay and satisfy the First Purchase Money mortgage, including the costs of foreclosure plus any second mortgages approved by the Agency in accordance with Section IV(D)(7) of this Ordinance. Surplus Funds shall also include all payments to any junior creditors out of such Surplus Funds even if such were to the exclusion of the Owner. The Agency shall be given a first priority lien, second only to the First Purchase Money Mortgagee of a Unit and any taxes or public assessments by a duly authorized governmental body, equal to the full amount of such Surplus Funds. This obligation of the Owner to pay this full amount of Surplus Funds to the Agency shall be deemed to be a personal obligation of the Owner of record at time of the Foreclosure Sale and the Agency shall be empowered to enforce the obligation of the owner in any appropriate court of law or equity as though same were a personal contractual obligation of the Owner. Neither the First Purchase Money Mortgagee nor the purchaser at the Foreclosure Sale shall be responsible or liable to the Agency for any portion of this excess. The Agency may utilize up to 30 percent of the surplus funds realized in any one calendar year, but in no event to exceed \$10,000 per calendar year, for the purpose of funding operating expenses of the Agency. Other surplus funds shall be used for increasing the opportunities for affordable housing within the Township in accordance with the provisions of this Ordinance.

#### 4. Owner's Equity.

a. Owners equity shall be determined to be the difference between the Maximum Resale Price of the Unit as calculated in accordance with Section VII(C) and the total of the First Purchase Money Mortgage, prior liens, costs of foreclosure, assessments, property taxes, and other liens which may have been attached against the unit prior to foreclosure, provided such total is less than the Maximum Resale Price.

b. If there are sums to which the Owner is properly entitled, such sums shall be turned over to the owner or placed in an escrow by the Agency for the Owner for a maximum period of 2 years. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Agency.

c. This provision is subject, however, to applicable laws of the State of New Jersey governing the distribution and payment of proceeds of foreclosure sales.

#### Section X. Affirmative Marketing Requirements

A. All developers of low and moderate income units shall affirmatively market said units to persons of low and moderate income, irrespective of race, color, sex, religion or national origin.

Towards that end, the developer shall formulate and submit an affirmative marketing plan acceptable to the Agency, which plan shall be incorporated as a condition of approval of the

development application. At a minimum, the plan shall provide for advertisement in newspapers with general circulation in the following urban areas: Jersey City, Newark, Elizabeth, Paterson, New Brunswick and Perth Amboy. The plan shall also require that developer to notify the following agencies on a regular basis of the availability of any low or moderate income units: the Civic League of Greater New Brunswick, the Housing Coalition of Middlesex County, the Middlesex County Office of Community Development, and other fair housing centers, housing referral organizations, and government Housing and community development departments located in the following eleven counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Union, Sussex and Warren, as such are identified by the Agency prior to approval of the Developer's proposed Affirmative Marketing Plan.

B. All advertisements shall conform with applicable Affirmative Action, Equal Opportunity, and non-discrimination laws of the State and Federal government.

#### Section XI. Reporting Requirements.

The Township of North Brunswick shall report quarterly in writing to the Civic League of Greater New Brunswick or its designee, commencing with December 31, 1985, providing the following information with regard to any sites requiring set asides of low and moderate income housing:

A. Itemization of all proposed developments which are subject to the provisions of this Chapter and for which applications have been filed with or approved by the Planning Board. Information shall be provided on the location of the proposed site, number of low or moderate income units, number of Market Units, calculation of maximum sales prices per Section VII, the distribution of Lower Income Units by bedroom number, the phasing schedule for completion of Lower Income Units in relation to completion of Market Units, the name of developer, and dates that Planning Board actions were taken or are anticipated to be taken.

B. A copy of the affirmative marketing plans provided for each development together with copies of advertisements and a list of newspapers and community or governmental organizations or agencies which received the advertisements.

#### Section XII. Responsibilities and Violations

##### A. Developer's Responsibilities

The responsibilities of the developer shall include, but not be limited to the following:

1. Submission of information as to financing terms readily available to low and moderate income households for use by the Agency in computing maximum sales prices.

2. Submission of an Affordable Housing Plan and an Affirmative Marketing Plan to the Agency for approval, and submission of proofs of publication to ensure compliance with said plan.

3. The marketing of all low and moderate income units in accordance with the requirements of this Chapter.

4. Submission of quarterly reports to the Agency detailing the number of low and moderate income households who have signed leases or purchase agreements, as well as the number who have taken occupancy of lower income units including household size, number of bedrooms in the unit, sales price, and monthly carrying costs, or in the case of rental units, the monthly rental charges and utilities included.

5. The developer's responsibilities hereunder shall expire automatically with respect to "for sale" Lower Income Units upon the date upon which the last Lower Income Unit within the particular development is sold by the developer. With respect to "rental" Lower Income Units, the developer's responsibilities shall be assumed by the landlord and shall be performed by the landlord so long as such unit is a "rental" Lower Income Unit and subject to the restrictions of this Ordinance.

#### B. Responsibilities of Owners

1. In the event any First Mortgagee or other creditor of an Owner of a Lower Income Unit exercises its contractual or legal remedies available in the event of default or nonpayment by the Owner of a Lower Income unit, the Owner shall notify the Agency in writing within 10 days of such exercise by the First mortgagee or creditor and no later than 10 days after service of any summons and complaint.

2. Any Owner of a Lower Income Unit shall notify the Agency within ten (10) days in writing of any default in the performance by the Owner of any obligation under either the Master Deed of the Condominium Association including the failure to pay any lawful and proper Assessment by the Condominium Association, or any mortgage, or other lien, against the Lower Income Unit which default is not cured within sixty (60) days of the date upon which the default first occurs.

3. The Owner shall not permit any lien, other than the First Purchase Money Mortgage, Agency approved second mortgages and liens of the Agency to attach and remain on the property for more than sixty (60) days.

4. The Owner of a Lower Income Unit shall keep the unit in good repair and shall not commit waste thereon.

5. The Owner shall pay all taxes and public Assessments and Assessments by the Condominium Association levied upon or

assessed against the unit, or any part thereof, as and when the same become due and before penalties accrue.

6. If a Lower Income Unit is part of a condominium association the Owner, in addition to paying any assessments required to be paid by the Master Deed of the Condominium, shall further fully comply with all of the terms, covenants or conditions of said Master Deed, as well as fully comply with all terms, conditions and restrictions of this Ordinance and the Affordable Housing Plan.

C. Violation of Ordinance or Affordable Housing Plan. The interest of any Owner may, at the option of the Agency, be subject to forfeiture in the event of substantial breach of any of the terms, restrictions and Provisions of this Ordinance or the Affordable Housing Plan which remains uncured for a period of sixty (60) days after service of a written Notice of Violation upon the Owner by the Agency.

1. The Notice of Violation shall specify the particular infraction and shall advise the Owner that his or her right to continued ownership may be subject to forfeiture if such infraction is not cured within sixty (60) days of receipt of the Notice.

2. The provisions of this paragraph may be enforced by the Agency by court action seeking a judgment which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the Lower Income Unit.

3. Such judgment shall be enforceable at the option of the Agency, by means of an execution sale by the Sheriff at which the Lower Income Unit of the violating Owner shall be sold at a sales price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the Agency including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's Sale.

4. The proceeds of the Sheriff's Sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the Lower Income Unit. The excess, if any, shall be applied to reimburse the Agency for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's Sale. In the event that the proceeds from the Sheriff's Sale are insufficient to reimburse the Agency in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the Agency in connection with collecting such deficiency. In the

event a surplus remains after satisfying all of the above, such surplus if any, shall be placed in escrow by the Agency for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the Agency for such. Failure of the Owner to claim such balance within the two year period shall automatically result in a forfeiture of such balance to the Agency. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Agency whether such balance shall be paid to the Owner or forfeited to the Agency.

5. Foreclosure by the Agency due to violation of the Ordinance and Affordable Housing Plan shall not extinguish the restrictions of the Ordinance and Affordable Housing Plan as same apply to the Lower Income Unit. Title shall be conveyed to the purchaser at the Sheriff's Sale subject to the restrictions and provisions of the Ordinance and the Affordable Housing Plan. The Owner determined to be in violation of the provisions of this Plan and from whom title and possession were taken by means of the Sheriff's Sale shall not be entitled to any right of redemption.

6. If there are no bidders at the Sheriff's Sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the Agency may acquire title to the Lower Income Unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating Owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings including legal fees and the Maximum Resales Price for which the Lower Income Unit could have been sold under the terms of this Ordinance and the Affordable Housing Plan. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

7. Failure of the Lower Income Unit to be either sold at the Sheriff's Sale or acquired by the Agency shall obligate the Owner to accept an offer to purchase from any Qualified Purchaser, which may be referred to the Owner by the Agency, with such offer to purchase being equal to the Maximum Sales Price of the Lower Income Unit as permitted by the terms and provisions of this Ordinance and the Affordable Housing Plan.

8. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of this Ordinance and the Affordable Housing Plan until such time as title is conveyed from the Owner.

#### Section XIII. Severability.

If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause

or provision so adjudged and the remainder of the ordinance shall remain in full force and effect.



**GAGLIANO, TUCCI, IADANZA AND REISNER**

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
1090 BROADWAY  
POST OFFICE BOX 67  
WEST LONG BRANCH, N.J. 07764-0067

*rec'd 1/2*

Eric Neisser, Esq.  
John Payne, Esq.  
Rutgers School of Law  
S.I. Newhouse Center for Law & Justice  
15 Washington street  
Newark, N.J. 07102