

U.L. v. Carteret

30 July '84

N. Brunswick

Consent Order.

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SUPERIOR COURT OF NEW
JERSEY
CHANCERY DIVISION/
MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER]
NEW BRUNSWICK, et. al.,]
Plaintiffs,]
vs.]
THE MAYOR AND COUNCIL OF THE]
BOROUGH OF CARTERET, et. al.,]
Defendants.]

Civil Action C 4122-73

CONSENT ORDER

This matter having been opened to the Court by plaintiff Urban League (now Civic League) of Greater New Brunswick's motion to modify and enforce the judgment in this action against the Township of North Brunswick in light of Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II); the Urban League plaintiffs, plaintiff Brunswick Manor Associates, defendant Township of North Brunswick, and counsel for K. Hovnanian Companies and the Reider Company having agreed to

the terms of this Consent Order; the Court having heard counsel for the parties; and for good cause shown,

IT IS ON THIS _____ DAY OF AUGUST, 1984,

ORDERED and ADJUDGED:

1. Application of the fair share methodology set forth in the Fair Share Report of Carla L. Lerman, P.P., the Court-appointed expert, dated April 2, 1984, yields a fair share number for North Brunswick Township through 1990 of 1615 housing units. Application of the fair share methodology contained in the Expert Report on Mount Laurel II Issues prepared by Alan Mallach, the Urban League plaintiffs' retained expert, and dated December 1983, as modified by Mr. Mallach's memorandum in this case dated May 11, 1984, yields a fair share number for North Brunswick Township through 1990 of 1508 housing units inclusive of financial need, and 1041 housing units exclusive of financial need. Application of the methodology set forth in the Expert Report, prepared by Thomas A. Vigna, P.P., North Brunswick Township's retained expert, and dated May 23, 1984, produces a fair share number for North Brunswick Township through 1990 of 862 housing units.

2. The Township of North Brunswick's fair share of the regional need for low and moderate income housing through 1990 is 1250 housing units, which include 182 units of indigenous need, 111 units of reallocated present housing need, and 957 units of prospective housing need.

3. The Township of North Brunswick is entitled to credit towards its fair share obligation of 1250 units for

the following housing units built or rehabilitated since 1980: 205 units at the Jack Pincus Memorial Senior Citizen Housing project which are occupied by low or moderate income persons and are subsidized under the Section 8 New Construction Housing Assistance Payments program; 38 units which are occupied by moderate income households and have been rehabilitated and are subsidized under the Section 8 Moderate Rehabilitation Housing Assistance Payments program; and 21 community residence units which are operated by the Serve Centers Corporation and other non-profit corporations, are occupied by low or moderate income persons, and are subsidized under a state program for the developmentally disabled.

4. The Township of North Brunswick's existing zoning ordinance and land use regulations are not in compliance with the constitutional obligation set forth in Mount Laurel II. The Land Use Ordinance of the Township of North Brunswick does not provide a realistic opportunity for the development of the Township's fair share of the regional need for low and moderate income housing. The Township's zoning ordinance contains various cost-generating requirements which are not necessary for the protection of health and safety and which render unfeasible the development of housing affordable to low and moderate income households.

5. The Township of North Brunswick's fair share obligation through 1990 of 1250 housing units shall be satisfied through a combination of credit for and development of the following units:

(a) Credit for the 264 units of existing housing identified in paragraph 3 above. These units include 205 units of low income housing for senior citizens, 21 units of low income housing for the developmentally disabled, and 38 units of moderate income housing rehabilitated under the Section 8 Moderate Rehabilitation Housing Program.

(b) Construction of 100 units of low income housing in a subsidized, senior citizen housing project as set forth in paragraph 6 below.

(c) Construction of 90 units in a 40 acre mobile home/manufactured housing development as set forth in paragraph 7 below. These include 45 units affordable to low income households and 45 units affordable to moderate income households.

(d) Construction of 520 units on a portion of the 404 acre Manor Realty Tract as set forth in paragraph 8 below. These include 173 units affordable to low income households and 347 units affordable to moderate income households.

(e) Construction of 200 units on 100 acres of the Hamelsky (Hovnanian) Tract as set forth in paragraph 9 below. These include 67 units affordable to low income households and 133 units affordable to moderate income households.

(f) Construction of 76 units on 38 acres of the Johnson & Johnson (Reider) Tract as set forth in paragraph 10 below. These include 25 units affordable to low income households and 51 units affordable to moderate income

households.

If fully developed as described in the ensuing paragraphs, these projects will provide 636 units of low income housing and 614 units of moderate income housing, for a combined total of 1,250 units of lower income housing.

6. The Township shall rezone a portion of the municipally owned nine acre site, located on Hermann Road across from the Municipal Building and designated as Lots 7 & 8, Block 213, to allow development of a 100 unit subsidized senior citizen housing project as a part of a new municipal building complex. If necessary to make development of this site for senior citizen housing reasonably feasible, the Township of North Brunswick shall undertake affirmative measures to support efforts to develop the project, such as contributing the land. In the event that the efforts of private limited dividend sponsors to develop the project are unsuccessful, the Township of North Brunswick shall explore the creation of a local development corporation to finance construction of the project through its bonding powers.

7. The Township shall rezone a tract of approximately 40 acres, located off southbound U.S. Route 130 adjacent to the existing Deerbrook Mobile Home Park and designated as Lots 114.1, 114.2, Block 148, to RM (Mobile Home) to permit development of mobile home/manufactured housing at a gross density of 8 units per acre with a mandatory set aside of low and moderate income housing. The zoning ordinance shall permit development on this tract of at least 320 units of

mobile home/manufactured housing with a mandatory set aside requiring that at least 14% of the total number of units that may be developed, assuming full development at maximum density, shall be low income units and at least 14% of the total number of units that may be developed, assuming full development at maximum density, shall be moderate income units, for a total of 90 low and moderate income units. The Township of North Brunswick shall also revise its zoning regulations regarding the RM (Mobile Home) zone so as to remove cost-generating requirements which are not necessary for the protection of health and safety, such as, but not limited to, permitting zero lot-line placement of the units, removing the requirement that 25% of the units be occupied by senior citizens, and reducing the sidewalk and road width requirements.

8. The Township shall rezone the 404 acre tract known as the Manor Realty Tract, located off southbound U.S. Route 130 and designated as Lot 111.01, Block 148, for mixed use residential and nonresidential development with a mandatory set aside of low and moderate income housing on the residential portion of the tract, subject to the following conditions and commitments:

(a) 220 acres shall be zoned as a mixed use residential Planned Unit Development permitting the development of a total of 2950 units, for a gross density of approximately 13.4 units per acre.

(b) All residential development on the Manor Realty Tract shall be subject to a mandatory set aside of

low and moderate income units, requiring that a total of 520 housing units to be developed on the tract shall be affordable to low or moderate income households. One-third of the set aside units in the development shall be affordable to low income households and two-thirds of the units shall be affordable to moderate income households. The set aside units shall be subject to price and occupancy controls, phasing, and affirmative marketing requirements as determined by agreement of the parties or order of the Court. The set aside units shall be scattered throughout the development in a manner acceptable to the Civic League of Greater New Brunswick, whose approval shall not unreasonably be withheld. No residential development in the Manor Realty Tract shall be more than three stories in height.

(c) In the event that Brunswick Manor Associates, or any subsequent owner or developer of the Manor Realty Tract, shall fail to meet the following production schedule for construction of the set aside units, any party or the Court on its own Motion may move for entry of an Order both removing the owner or developer's right to develop the Manor Realty Tract for high density residential development and requiring the Township of North Brunswick to rezone one or more alternate tracts for Planned Unit Development to permit the development of 520 units of low and moderate income housing, minus the number of low and moderate income units already constructed or under construction on the Manor Realty Tract.

Number of low and moderate income units which must be completed or under construction by end of year indicated, beginning on date of final approval of the first section of the residential development

<u>End of Year:</u>	<u>Number of Units:</u>	
	<u>Additional</u>	<u>(Cumulative)</u>
1	0	(0)
2	40	(40)
3	50	(90)
4	50	(140)
5	60	(200)
6	60	(260)
7	60	(320)
8	60	(380)
9	50	(430)
10	40	(470)
11	30	(500)
12	20	(520)

Nothing in this paragraph shall affect or waive the additional phasing obligations set forth in paragraph 15 below.

(d) Development of the residential portion of the Manor Realty Tract at a density in excess of 13 units per acre and with a mandatory set aside of less than 20% is justified in light of the following special circumstances: the size of the development; the commitment on the part of the developer to contribute 20% of the cost of the Finnegan Lane extension, not to exceed \$500,000.00; and the agreement of the developer to develop the remainder of the Manor

Realty Tract for nonresidential development subject to the construction schedule set forth in subparagraph (e) below.

(e) 184 acres of the Manor Realty Tract shall be zoned for nonresidential uses other than warehousing except as an accessory use. Brunswick Manor Associates agrees to adhere to the following production schedule for the development of nonresidential floor space on this portion of the Manor Realty Tract:

Certificates of Occupancy Issued		Square footage of nonresidential space to be completed or under construction	
Additional	(Cumulative)	Additional	(Cumulative)
500	(500)	100,000	(100,000)
500	(1000)	250,000	(350,000)
500	(1500)	250,000	(600,000)
500	(2000)	300,000	(900,000)
500	(2500)	300,000	(1,200,000)
500	(3000)	300,000	(1,500,000)
End of 15 years		2.25 million	
end of 20 years		3.0 million	

(f) The initial application for preliminary approval of the residential project shall be filed within nine months after the applicable zoning ordinances are in effect. Applications for the nonresidential portion of the project shall be filed with due diligence.

9. The Township shall rezone 100 acres of the tract known as the Hamelsky (Hovnanian) Tract, which is designated as Lots 106, 107, 109, 119, Block 4.5, is located off southbound U.S. Route 1 south of Cozzins Lane and is under

contract to K. Hovnanian Companies, for mixed use residential development at a gross density of 10 units per acre, permitting development of a total of 1000 units with a mandatory set aside of low and moderate income units subject to the following conditions.

(a) All residential development on the Hamelsky (Hovnanian) Tract shall be subject to a mandatory set aside provision requiring that 20% of the total number of units that may be developed on the site, assuming full development at maximum density, shall be affordable to low or moderate income households, for a total of 200 low and moderate income units. One-third of the set aside units in the development shall be affordable to low income households and two-thirds of the units shall be affordable to moderate income households. The set aside units shall be subject to price and occupancy controls, phasing, and affirmative marketing requirements as determined by agreement of the parties or order of the Court. The set aside units shall be scattered throughout the development in a manner acceptable to the Civic League of Greater New Brunswick, whose approval shall not unreasonably be withheld. No residential development in the Manor Realty Tract shall be more than three stories in height.

(b) In the event that K. Hovnanian Companies, or any subsequent owner or developer of the Hamelsky (Hovnanian) Tract shall fail to meet the following production schedule for construction of the set aside units, any party or the Court on its own Motion may move for entry

of an Order both removing the owner or developer's right to develop the Hamelsky (Hovnanian) Tract for high density residential development and requiring the Township of North Brunswick to rezone one or more alternate tracts for planned Unit Development to permit the development of 200 units of low and moderate income housing, minus the number of low and moderate income units already constructed or under construction on the Hamelsky (Hovnanian) Tract.

Number of low or moderate income units which must be completed or under construction by end of year indicated, beginning on date of final approval of the first section of the residential development

<u>End of Year:</u>	<u>Number of Units:</u>	
	<u>Additional</u>	<u>(Cumulative)</u>
1	0	(0)
2	40	(40)
3	50	(90)
4	50	(140)
5	60	(200)

Nothing in this paragraph shall affect or waive the additional phasing obligations set forth in paragraph 15 below.

(c) K. Hovnanian Companies agrees (i) to construct a road, at its own expense, that will run parallel to U.S. Route 1 between the residential and nonresidential portions of the Hamelsky (Hovnanian) Tract; and (ii) to develop 672,000 square feet of nonresidential space to be phased in over twenty (20) years in accordance with a schedule to be negotiated and agreed upon by the parties at a later time.

(10) The Township shall rezone 38 acres of the tract known as the Johnson & Johnson (Reider) Tract, which is located off southbound U.S. Route 1, between Aaron Road and Finnegans Lane, is designated as Lots 25, 26, 27, 28, 30, 31.1, 31.2, 1-1, 1-2, Block 74, and is owned by Johnson & Johnson and under option to the Reider Company, for mixed use residential development at a gross density of 10 units per acre, permitting development of a total of 380 units with a mandatory set aside of low and moderate income units subject to the following conditions.

(a) All residential development on the Johnson & Johnson (Reider) Tract shall be subject to a mandatory set aside provision requiring that 20% of the total number of units that may be developed on the site, assuming full development at maximum density, shall be affordable to low or moderate income households, for a total of 76 low or moderate income units. One-third of the set aside units in the development shall be affordable to low income households and two-thirds of the units shall be affordable to moderate income households. The set aside units shall be subject to price and occupancy controls, phasing, and affirmative marketing requirements as determined by agreement of the parties or order of the Court. The set aside units shall be scattered throughout the development in a manner acceptable to the Civic League of Greater New Brunswick, whose approval shall not unreasonably be withheld. No residential development in the Manor Realty Tract shall be more than three stories in height.

(b) In the event that the Reider Company, or any subsequent owner or developer of the Johnson & Johnson (Reider) Tract, shall fail to meet the following production schedule for construction of the set aside units, any party or the Court on its own Motion may move for entry of an Order both removing the owner or developer's right to develop the Johnson & Johnson (Reider) Tract for high density residential development and requiring the Township of North Brunswick to rezone one or more alternate tracts for Planned Unit Development to permit the development of 76 units of low and moderate income housing, minus the number of low and moderate income units already constructed or under construction on the Johnson & Johnson (Reider) Tract.

Number of low and moderate income units which must be completed or under construction by end of year indicated, beginning on date of final approval of the first section of the residential development

<u>End of Year:</u>	<u>Number of Units:</u>	
	<u>Additional</u>	<u>(Cumulative)</u>
1	0	(0)
2	40	(40)
3	36	(76)

Nothing in this paragraph shall affect or waive the additional phasing obligations set forth in paragraph 15 below.

11. To create a realistic opportunity for the development of the Township's fair share of the regional need for low and moderate income housing, the Township's Lane Use Ordinance shall be amended to eliminate unnecessary cost generating requirements applicable to the PUD zone.

12. The Township of North Brunswick shall adopt an Affordable Housing Ordinance which shall provide that units designated as low or moderate income units shall be sold, rented, resold or re-rented only to families who qualify as low or moderate income families. The ordinance shall further provide that such units shall be affordable to low or moderate income families. To be affordable, the monthly expenses of a sales unit for principal, interest, taxes, insurance, and condominium fees shall not exceed 28% of family income, while the monthly rental charge, including utilities, shall not exceed 30% of family income. Low income shall be defined as less than 50% of median regional income with adjustments for family size, and moderate income shall be defined as between 50% and 80% of median regional income, with adjustments for family size. For the purposes of this section, the region for determining median income shall be the 11-county region set forth in the Court-appointed Expert's Report dated April 2, 1984, in this case. Any party, upon good cause shown, may apply to the Court for modification of the standards set forth in this paragraph based on a modification of such standards by a court of competent jurisdiction, a state statute, or an administrative ruling of a state agency acting under statutory authority. Restrictions on resale will expire 30 years from the date of the initial sale of the premises. The ordinance shall provide a mechanism to assure that only qualifying families own or rent such units and otherwise to administer these provisions. For this purpose, the Township

may establish a municipal agency or may contract with a suitable non-profit organization or other public agency for the purpose of administering the requirements set forth herein.

13. The Township of North Brunswick shall enact an ordinance providing that no tracts, other than those rezoned as part of this Order, may be zoned at gross densities greater than 4 units per acre unless those zones are subject to a mandatory set aside provision requiring that at least 15% of the total number of units be set aside for low and moderate income households, provided, however, that any such tract zoned at a gross density of 7 or more units per acre shall be subject to a mandatory set aside provision requiring that at least 20% of the total number of units be set aside for low and moderate income households.

14. The Township shall adopt provisions to require that all multifamily developments provided for herein shall contain an appropriate bedroom mix as determined by agreement of the parties or further order of the Court.

15. The Township shall adopt appropriate provisions to require that in all developments for which a set aside of low and moderate income units is provided, the low income units and the moderate income units shall each be continuously phased in with the construction of the market units, on a schedule to be determined by agreement of the parties or further order of the Court.

16. The Township shall amend its Land Use Ordinance to require that all developers of low and moderate income units

proposed revisions shall be submitted to the Court within 45 days of the appointment of the master. The Township shall have 60 days to complete formal enactment of the ordinance revisions after the submission to the Court of the expert's or master's report.

18. The Township of North Brunswick shall report in writing to the Court and to plaintiff Civic League or its designee when all ordinance amendments and resolutions have been duly enacted by the Township Council as specified in paragraph 17 above, certifying that all ordinance amendments and resolutions have been enacted or providing an explanation as to why they have not been enacted. Upon certification that all required amendments and resolutions have been enacted the Court will enter an Order of Compliance which will be valid and binding for six years from the date of receipt of said certification. If all ordinance amendments and resolutions required herein have not been enacted, the Court shall set this case for trial.

19. Pending completion of the ordinance revision process called for by this Order, no additional claims to a builder's remedy under Mount Laurel II may be asserted against North Brunswick Township.

20. 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, 1984, providing the following information with regard to any sites requiring set asides of low and moderate income housing:

shall affirmatively market those units to persons of low and moderate income, irrespective of race, color, sex, religion or national origin. Such affirmative marketing shall include advertisement in newspapers with general circulation in the urban core areas located in the 11-county present need region identified in the Court-appointed Expert's Report dated April 2, 1984. The Township shall also require the developer to notify local fair housing centers, housing advocacy organizations, Urban Leagues, and governmental social service and welfare departments located within the 11-county region of the availability of low and moderate income units. The Township shall also require that all marketing practices comply with applicable federal and state laws against discrimination.

17. The parties shall seek to reach an agreement as to the ordinance revisions required by this Order and shall submit the proposed revisions to the Court within 45 days of the date of the entry of this Order. When submitted, the Court shall appoint Ms. Lerman as the Court's expert to review the proposals and advise whether they are consistent with the Order and the Township's obligation under Mount Laurel II. If no agreement is reached within 45 days of the date of the entry of this Order, any party may seek appointment of, and the Court shall appoint, a master to assist North Brunswick Township in the revision of its ordinances to achieve compliance with the Order and its obligation under Mount Laurel II. The proposed ordinance revisions and the master's report with respect to the

(a) Itemization of all proposed developments for which applications have been filed with the Township's Planning Board, and for which preliminary or final approval has been given by the Planning Board; including the location of the proposed site, number of low or moderate income units, name of developer, and dates that Planning Board actions were taken or are anticipated to be taken; and

(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.

The Civic League, or its designee, shall have the right to inspect all proposed development applications.

21. The time periods set forth in this Order may be extended by mutual written consent of the parties.

22. Failure on the part of the Township to comply with this Order subsequent to entry of the Order of Compliance, by rezoning in contravention hereof or by failing to enforce the other provisions hereof, shall constitute a violation of this Order, which may be enforced upon motion of the plaintiffs or of the Court sua sponte, by appropriate remedies as provided by law.

EUGENE D. SERPENTELLI, J.S.C.

The undersigned hereby consent to the form, substance and entry of this Consent Order.

National Committee Against
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Rutgers School of Law
Constitutional Litigation
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Urban League of Greater
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By: _____
LESLIE LEFKOWITZ

By: *Bruce S. Gelber*
BRUCE S. GELBER

Date: _____

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