

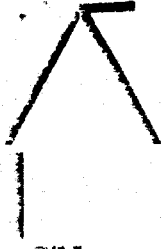
Civic League of Greater
New Brunswick v. Carter, North
Brunswick (1985) 1/11

Letter w/ additional comments

coinciding w/ Alan Mallach's memo

5 pgs

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National Committee
Against Discrimination
in Housing

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JAN 21 '85

January 16, 1985

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North Brunswick, New Jersey 08902

Re: Civic League of Greater New
Brunswick v. Borough of
Carteret

Dear Les:

Enclosed is a memorandum prepared by Alan Mallach on behalf of the Civic League of Greater New Brunswick which summarizes our position regarding North Brunswick's Draft Affordable Housing Ordinance. By way of elaboration and clarification, I also have the following additional comments regarding the draft ordinance. My comments coincide with the numbered paragraphs in Mr. Mallach's memorandum.

1. This recommendation is consistent with one that was made by Mr. Hutt during settlement negotiations and was incorporated into paragraph 12 of the Consent Order.

2(a). I believe this concern is already adequately addressed in Section VI.A. of the draft ordinance and therefore does not require any change in the definition of regional median income in Section III.

2(b). As you know, neither HUD nor the Census Bureau provides estimates of the median income for the eleven county present need region. Accordingly, estimates of the regional median income are derived by applying a multi-step

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calculation to the median income data available for several census regions in which these counties are located. In the past, the median income for the eleven county region has been approximately 94% of that for the Middlesex-Somerset-Hunterdon PMSA. Accordingly, for the sake of simplicity, most affordable housing ordinances have adopted a short-hand method for calculating regional median income by incorporating the following language into the definition of regional median income: "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."

3. I believe the point expressed in paragraph 3 is well taken and warrants having the Township reconsider its position in this regard.

5. The concern expressed in paragraph 5 can be addressed by adding to the end of Section IV.D.5. the phrase "consistent with the provisions of Section VII.B. of this Ordinance."

6. To address this concern, Section IV.D.6. should be amended to read: "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 at the time the improvements are made." In addition, Section VII.B.2. should be amended to read: "the cost of reasonable improvements to the property made by the owner as determined by the Agency."

7. This point is well taken and deserves having the Township reconsider its position in this regard.

8. To avoid any ambiguity, Section V.B. should be amended to read as follows: "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." Similarly, Section V.C. should read: "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." Another, simpler means of addressing this concern would be to add the word "respectively" at the end of each section.

VII
A.2
10. The point here is that if the developer proposes to provide standard mortgage financing for the lower income units, the terms of that financing should be used to determine the maximum sales price. If not, the developer may be asked to provide the Agency with information about the financing that is generally available locally to lower income homebuyers, but the interest rate used in calculating the maximum sales price should be the rate that the Agency determines to be generally available locally for a 90%, 30-year, fixed-rate mortgage. The first sentence of Section VII.A.5. and Section XII.B. should be modified to reflect this understanding.

VII
A.3
11. In the context of a proposed development in another jurisdiction, the Civic League and K. Hovnanian Companies worked out the following alternative method for calculating maximum sales prices, Where the developer proposes to provide financing through an adjustable rate mortgage or establishes that ARMs are generally available locally to lower income purchasers, [Under these circumstances,] the interest rate to be used for calculating the maximum sales price should be 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, whichever is greater.

12. This recommendation could be implemented by adding the following language to Sections VII.A.4. and VII.C.3:
"If the Agency determines that the ninety percent (90%) standard set forth in this section is not allowing for an adequate range of affordability among the lower income population, it may reduce the maximum price below that level, if it also determines that such a reduction can be made without impairing the financial feasibility of the development."

13. This recommendation could be implemented by amending Section VII.C.3. to read as follows: "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 be such that the average of the gross rents charged for each size unit in each income category not exceed ninety percent (90%) of the base rent for that size unit in each income category. In order to

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assure affordability to a wider range of lower income households, the Agency shall encourage landlords to set individualized rents not to exceed 30% of the tenant's actual income, provided that the average of such rents for each size unit does not exceed 90% of the base rent for that size unit in each income category."

14. To avoid any confusion, the Township should consider deleting the second sentence from Section VII.C.5. and adding it to the last sentence of Section VII.C.4. to read as follows: ["These rental changes 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."] More importantly, to be consistent with the last sentence of Section VII.B., we urge that the following language be added to Section VII.C.4: ["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."]

15. The changes proposed in paragraph 15 are consistent with the standards for household size set in Ms. Lerman's Expert Report in this case and in all the recent settlements with which we are familiar. Accordingly, we strongly urge that Section VII.D. be modified to incorporate the standards suggested by Mr. Mallach.

16. Section VIII.B. is acceptable as presently drafted, except that the Township should consider adding a provision requiring that rental units must remain rental housing for some minimum period of time, such as ten to fifteen years.

With respect to Section IX, we recommend that the Township add the following provision, which has been incorporated into a number of other affordable housing ordinances: ["In the event of foreclosure, the Agency shall attempt to identify qualified low and moderate income purchasers and shall give notice to the lender of their identity. The Agency shall undertake other efforts to ensure that low and moderate income units will not become unavailable to low and moderate income households by virtue of foreclosure. Toward this end, the Agency shall work with developers of low and moderate income housing to incorporate into deeds or covenants appropriate language providing the Agency with limited rights to intervene prior to foreclosure in order to maintain the property as a low or moderate income unit."]

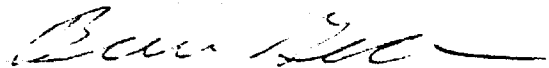
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Finally, the terms of Sections X, XI and XIII are acceptable.

If you or Tom have any questions regarding these comments or those contained in Mr. Mallach's memorandum, feel free to contact me.

Sincerely,



Bruce S. Gelber
General Counsel

BSG:vb

cc: Barbara Williams, Esq.
Stewart M. Hutt, Esq.
Douglas K. Wolfson, Esq.
Frederick S. Kessler, Esq.
Susan R. Kaplan, Esq.
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