

U.L. v. Carteret, No. Brunswick 1985

5/6

- Notes on the No. Brunswick affordable Housing Ordinance  
sent to Lefkowitz

- Cover letter

Pgs. 20

CA00046/T

THE STATE UNIVERSITY OF NEW JERSEY  
**RUTGERS**  
Campus at Newark

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

May 6, 1985

Leslie Lefkowitz, Esq.  
1500 Finnegans Lane  
North Brunswick, New Jersey 08902

Re: Urban League v. Carteret (North Brunswick)

Dear Mr. Lefkowitz:

I spoke with Ron Shimanowitz on Friday regarding the status of the North Brunswick affordable housing ordinance. He indicated that it was expected that comments on the ordinance would be forwarded to you within the next two weeks.

Given the fact that this matter has remained outstanding since our last meeting in January, I would hope that the ordinance could be in a form acceptable to all parties and ready for submission to Council no later than May 31, 1985. Certainly, all of the parties will have had ample time to comment upon the draft by that time.

Upon receipt of the outstanding comments which I understand are forthcoming, I suggest that we meet one more time to iron out any remaining problems with a view to wrapping this up as soon as possible.

Very truly yours,

Barbara J. Williams

cc/Stewart Hutt, Esq.  
Frederic Kessler, Esq.  
Douglas Wolfson, Esq.

Sohn P.

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:

Agency. The Affordable Housing Agency of the Township of North Brunswick created pursuant to this Ordinance.

Gross Aggregate Family 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 shall be defined to mean all persons living as a single non-profit housekeeping unit whether or not they are related by blood, marriage or otherwise.

KAPLAN

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 family size.

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

Low and Moderate Income Units. Dwelling units which are subject to the price and occupancy requirements of this Chapter, and whose sales prices and rental charges do not exceed the maximum amounts determined to be affordable by low and moderate income households.

Moderate Income Family. A household with a gross aggregate family 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.

Regional Median Income. The median family 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.

Beuce

"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."

KAPLAN

Absent income limits for the eleven county present need region, we have no problem with defining regional median income as 94% of the median income for the PMSA where Middlesex County is located.

MUTT

2. Section III- Definition of Regional Median Income - The language contained in Gelber Letter (i.e., "94% of PMSA income) is acceptable.

utilities. Those utilities that are essential for safe and sanitary occupancy of a rental unit, including water, sanitary sewage, 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 seven members, all of whom shall be appointed by the Mayor. The membership of the Agency shall consist of the following:

a) One landlord who owns residential investment property in the Township and is also a Township resident.

b) Two single-family homeowners residing in the Township.

c) One tenant of a rental unit which is not a low or moderate income unit under the provisions of this Chapter.

d) One Township official.

e) One owner occupant of a low or moderate income unit.

f) One tenant of a low or moderate income unit.

g) Two alternate members.

Mallory  
3. Sec. IV.B. There is a serious potential problem with the composition of the affordable housing agency. By identifying membership of the agency with specific, narrow, interests, the Township is creating a serious potential of internal conflict and breakdown within the agency, well beyond the intrinsic difficulties that the agency will have in developing the ability to work together effectively; people who perceive themselves as a "landlord representative" or a "single family homeowner representative" will potentially bring a destructive perspective to the board. The only "interest", other than the overriding public interest of the Township itself, that should be represented is that of the lower income population.

Many communities which are creating, or contemplating creating, such agencies simply provide for \_\_\_ members (five should be ample) appointed by the mayor with consent of council. I strongly suggest that that be followed, with possibly one appointment reserved for a lower income representative. In that way, the members are more likely to see their interest as the Township's, rather than pertaining to a specific interest group.

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

Kaplan  
With respect to the composition of the Affordable Housing Agency, we agree that the membership guidelines may be too specific. Specifically, the membership requirement of a "landlord who owns residential investment property in the Township and is also a Township resident" (Section IV B.1.a) could create a bureaucratic snarl delaying the establishment of the Agency. For example, what constitutes "residential investment property"?

MUTT  
3. Section IV B.1.a. - The last clause of this sentence should be omitted (i.e., "and is also a Township resident"). Requiring that the Landlord also be a Township resident is too restrictive of the selection pool. Either no one will be available or the prospective members will not be landlords of substantial residential investment properties. Should a Township resident be desired, then the provision should be amended to read as follows: "One landlord who owns substantial residential investment property either within or without the Township and is also a Township resident."

2. The alternate members shall not both be from the same category of membership. Alternate members shall have all of the powers of regular members when sitting in place of a regular member.

Until such time as low or moderate income owner and renter appointments can be made, the alternate members shall function as regular members.

The Mayor shall designate one regular member to serve as chairperson.

3. Attendance by 4 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 Mayor 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 Mayor 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.

1. 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 modification by the Township Council.

*Review*  
4. Sec. IV.D.1. To provide for "review and modification by the Township Council" with no specific procedures or conditions to govern that review creates a potentially open-ended process

which could add make the effective working of the agency substantially more difficult. I see no compelling reason why the Council should have anything to do with the rules and regulations of the affordable housing agency. If, however, the Township considers a Council role in this matter essential (and, if that is the case, I believe they should explain to us why this is so) then it should be spelled out to be one or the other of the following:

a. That the rules and regulations must be adopted (as an ordinance) by Council;

b. That upon receipt of the proposed rules and regulations from the affordable housing agency, the Council has 30 days to review and modify them, any modifications to be embodied in a resolution, upon which time they become effective.

The ordinance should also provide that the agency must adopt these rules and regulations (and forward them to Council, if that provision is retained) no later than six months from their organizational meeting.

*Review*  
Prior to the adoption of the Affordable Housing Ordinance, the role of the Township Council in the operation of the Affordable Housing Agency must be determined. We propose that Section IV D1 regarding promulgation of the rules and regulations should be re-examined in conjunction with Section IV F regarding appeals to the Township Council.

The Agency should be required to promulgate its rules and regulations within 30 days. Thereafter, said rules and regulations may be forwarded to

the Township Council for its review and recommendations within 30 days. The Township Council should not be given the open-ended right to modify the proposed rules and regulations of the Agency.

2. To determine the maximum sale, resale and rental charges for low or moderate income units, and to provide the Planning Board and developers with said calculations.

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

4. To require that a covenant be recorded with each deed restricting the resale of low or moderate income units to low or moderate income households.

5. To develop a formula for use in calculating the maximum resale price of low and moderate income units

*same*  
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."

*addition*  
5. Sec. IV.D.5. The Ordinance should spell out the standards and criteria to be used in establishing the maximum resale prices of the lower income units. This is too important, and too easily subject to exercise of poor judgement in the choice of formulae and criteria, to be left completely to the administrative discretion of the agency.

6. To restrict the installation of improvements or amenities within or as a part of low or moderate income units which would unduly increase the resale price or rental charge of such units above the amounts determined by the Agency to be affordable by low or moderate income households, and to control the low or moderate income unit resale price adjustments for homeowner installed improvements.

*addition*  
6. Sec. IV.D.6. The author of the ordinance has apparently missed the point with this section. There is no compelling reason to "restrict the installation of improvements or amenities" in and of itself; the point is to make clear that only reasonable and appropriate improvements will have their value counted toward the allowable resale price. That can be facilitated by establishing a procedure whereby a homeowner who wants to make an improvement can submit it to the agency, and get a prior approval, on the basis of which he can be certain it will be credited toward the resale price (otherwise he runs the risk of having it not credited, at the time he applies for a price determination).

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."

*Replan*  
With respect to Section IV D6, we agree with the Urban League that this provision should be amended to permit the Agency 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 calculating the resale price or rental charge and to establish procedures for obtaining this determination prior to making the improvements or amenities.

7. To review and to approve or disapprove the Affirmative Marketing Plan required of all developers of low and moderate income housing.

*sketch*  
4. Section IV.D.7. This provision should be amended to read as follows: "To establish the required contents of the Affirmative Marketing Plan and to review the Affirmative Marketing Plan required of all developers of low and moderate income housing". The suggested language will require the Agency to establish the requirements of the A.M.P. so that the Developer knows precisely what information is sought by the Agency.

8. 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.

9. To report quarterly to the Township Council on the status of low and moderate income units.

E. Appropriation and Accountability.

The Township Council shall appropriate adequate monies for operation of the Agency. The Agency may employ or contract for professional services required to carry out its duties and responsibilities, subject to the amount appropriated by the Township Council for its use.

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

F. Appeal Mechanism.

Any developer subject to the requirements of this Chapter, and any family who has applied for determination as a low or moderate income family, may appeal any decision of the Agency to the Township Council.

*Alan*  
7. Sec. IV.F. The provision under which determinations by the agency, particularly those dealing with qualifications of prospective buyers or tenants, can be appealed to Township Council is very risky, and could create innumerable difficulties. The image of the Township Council re-reviewing individual household application forms, and income determinations, is very questionable. An appropriate provision would be for such determinations to be made by agency staff, with appeal (if necessary at all) to a committee or the board of the agency.



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

*Kaplan*  
The Agency should be given a specific timetable for issuing its initial determination. With respect to the appeal mechanism set forth in Section IV F, a specific timetable should be established. Any developer or household applicant may appeal a decision of the Agency within 10 days of the Agency's determination. We think that a workable compromise would be to have the review committee be comprised of three members of the Township Council selected by the Agency to hear said appeals. This committee would have a period of 20 days from the receipt of the appeal to issue its final decision.

*Scott*  
5. Section IV.F. Appeal Mechanism With regard to the comments of Mallach, the developer's right to appeal decisions of the agency to the Township Council must remain in the ordinance. However, the right to appeal of the prospective buyer or tenant is an issue to be settled between the Township and Urban League.

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 or moderate income unit shall be offered for sale or rental except at prices that are affordable by low and moderate income households.

B. Sec. V.B. This section is not properly worded; it should make clear that no low income unit shall be offered except as a

*Allen*  
North Brunswick (3)

January 7, 1985

price affordable to a low income household, and no moderate income unit except at a price affordable to a moderate income household. The present phrasing allows for a loophole (substituting moderate for low income occupancy or affordability) which is clearly not intended.

*Bruce*  
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.

C. Except as otherwise expressly provided herein, no low or moderate income unit shall be sold, resold, rented or re-rented except to a household that has been qualified as a low or moderate income household by the Agency.

However, nothing contained in this Chapter, or in the rules and regulations promulgated by the Agency, shall restrict or preclude any family which was classified as low or moderate income based upon its gross aggregate family 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 by in this Chapter.

*Auto*  
6. Section V.C. The following sentence should be added to the end of the first paragraph: "An owner of a low or moderate income unit shall not be permitted to rent said unit unless the unit is rented to a household that has been qualified as a low or moderate income household by the Agency." The addition of this language follows the intent of the original paragraph and clarifies the limitations placed upon a lower income unit owner wishing to rent.

*Kaplan*  
D. A covenant embodying these restrictions shall be recorded with the deed for all sales of property subject to the provisions of this Chapter.

With respect to Section IV D4 and Section V D, we propose that the Affordable Housing Plan which shall be recorded immediately after the Master Deed is recorded, which deed shall refer to the Affordable Housing Plan, shall constitute the requisite covenants.

#### 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 median income become available.

*Kaplan*  
We propose that an additional provision be added to Section VI A. This provision should read as follows: "The maximum sales prices shall be adjusted to reflect said recalculations of the regional median income and such recalculation shall occur in June of each year."

B. The income ceilings for low and moderate income families shall be 50% and 80% respectively of the regional median income, with adjustments for family size.

*Alan*  
9. Sec. VI.B. Change "family" to "household".

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. Maximum Sales Prices for Units Pending Approval.

1. A base 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.

7. Section VII.A.1 The following language should be added to this section: "In the event prevailing interest rates exceed 14% then the aforesaid calculation of base price shall include (in addition to taxes, insurance and homeowner association fees, if any) principal and interest payments based upon a 14% interest rate." Such a provision will permit the builder to continue to supply low and moderate income units during periods of high interest rates.

2. The developer shall, prior to final approval by the Planning Board of any development subject to this Chapter, provide the Agency with information on the financing terms which shall be made available to low and moderate income households through the developer. If no provisions are made to the contrary, the Agency shall assume a 10% downpayment and a 30 year fixed rate mortgage in calculating sales prices. The developer must provide financing terms for purchase of newly constructed low and moderate income units. The rate which the developer makes available at the time of final approval shall be utilized in determining maximum sales prices.

10. Sec. VII.A.2. There is no need to require developers to provide financing for lower income homebuyers. The only requirement should be that the developer must show that the financing, which he has used to establish his sales prices, is realistically available from representative local lending institutions. It is only if the developer proposes to set his price on the basis of an interest rate other than that generally available from local lending institutions that he must provide the financing.

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.

We strongly object to the provisions of the proposed ordinance requiring the developer to provide financing for the low and moderate income units (Section VII A2 and Section XI B). These sections should be deleted in their entirety.

8. Section VII.A.2 Developers must not be required to provide financing for lower income purchasers. This entire section should be deleted. However, pursuant to Mallach's suggestion, the following provision might be substituted:

*sketch*

"The developer shall, prior to final approval by the Planning Board of any development subject to this Chapter, provide the agency with information which demonstrates that the financing, which the developer proposes for establishing sales prices, is realistically available from representative local lending institutions."

The provision of this information by the developer must not and should not be a condition of final approval. The Planning Board will not need this information since the Agency, and not the Planning Board, has the responsibility for setting prices. The financial information shall be provided by the developer prior to issuance of Building Permits (other than Building Permits for models) and shall be submitted to the Agency.

*Rapem*

We propose that Section VII A2 and Section VII A3 be deleted and the provision discussed in paragraph 11 of Bruce Gelber's letter be substituted in lieu thereof. Said provision provides that the interest rate to be used for calculating the maximum sales price should 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. This provision was included within the Affordable Housing Plan adopted by the Township of Piscataway.

3. If the developer proposes that an adjustable rate mortgage (ARM), which is to be made available through the developer, be utilized to calculate maximum sales prices, an interest rate which is the average of the initial interest rate and the highest possible rate in effect after three years shall be utilized for calculation purposes.

*Ala*

11. Sec. VII.A.3. This provision should make clear that it does not apply to so-called "deep discount" ARMs, where the first year rate has been set artificially low as a come-on to the buyer, but only to rates with reasonable caps on annual adjustments and total adjustments.

*Bruce*

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.

4. 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.

*Alan*  
12. Sec. VII.A.4. A provision worth serious consideration would be something along the following lines: that the agency, upon a finding that the 90% standard set forth in the ordinance was not allowing for an adequate range of affordability, could reduce the maximum price below that level, after a further finding that such a reduction could be made without impairing the financial feasibility of developments subject to this ordinance.

*Bruce*  
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."

*Kaplan*  
We take issue with the amendment to Section VII A4 proposed by the Urban League (paragraphs 12 and 13 of Urban League submissions). The proposed amendment is too subjective and contains no standards for determining an "adequate range of affordability." Moreover, under the proposed amendment, the agency has been given the authority to determine the "financial feasibility" of a developer's project.

*Hurt*  
9. Section VII.A.4 The original provision is acceptable. The suggestion by Mallach to permit a reduction in maximum sales price below that set by using the 90% standard is unacceptable. Such a modification would create, for the developer, even more uncertainty and risk than that which already exists. The developer is entitled to have some idea of the lower income units sales prices. Permitting the agency to reduce maximum sales prices if it "determines that such a reduction can be made without impairing the financial feasibility of the development" has the potential for disaster. What is meant by the phrase "without impairing the financial feasibility of the development"? Does this require audits by C.P.A.'s or perhaps additional litigation?

5. The Agency shall calculate the maximum sales prices for applicable sized units in each income category in accordance with the financial terms provided by the developer, and shall notify the Planning Board and the developer of said sales prices prior to final approval by the Planning Board. 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.

We propose that Section VII A5 be amended to delete from the first sentence thereof the phrase "in accordance with the financial terms provided by the developer." In addition, we believe that some relief

May 20, 1960  
Page 3

should be afforded to developers in the event that the units cannot be sold to low and moderate income buyers. It is certainly more beneficial to have all units occupied; the existence of unsold units which are not occupied for lack of low and moderate income buyers destroys the economic viability of the project. Accordingly, we propose the following:

*Kaplan*

Provided that the developer offers for sale within 90 days prior to receipt of a certificate of occupancy, if no low income buyer has signed a contract to purchase or a lease to rent a low income unit within 60 days of the developer's receipt of the certificate of occupancy, or with respect to a resale, within 90 days after the non-developer owner notifies the Agency that the low income unit is on the market available for resale, the low income unit shall be declared to be a moderate income unit for the purposes set forth in the Affordable Housing Plan and for the duration of said plan.

Provided that the developer offers for sale within 90 days prior to receipt of a certificate of occupancy, if no moderate income buyer has signed a contract to purchase or a lease to rent a moderate income unit within 60 days of the developer's receipt of the certificate of occupancy, or with respect to a resale, within 90 days of the date upon which the non-developer owner notifies the agency that the moderate income unit is on the market available for resale, the moderate income unit shall be declared to be a market unit and released from the restrictions and provisions of the Affordable Housing Plan. The Agency shall execute and cause to be recorded a statement of reclassification of the low and moderate income units in accordance with the above provisions.

B. Maximum Resale Prices.

Prior to the resale or any low or moderate income unit, the Agency shall determine the maximum sales price for that 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 of improvements to the property made by the owner, 3) prevailing financing terms 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.

C. Maximum Rental Charges for Units Pending Approval.

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.

*Alan*  
13. Sec. VII.C.3. This section should be reworded to provide that individual rents can be either higher or lower than 90% of the base rent, as long as the average of the gross rents in any development not exceed 90% of the base rent. That way the rents can be individualized, and a wider spectrum of households reached. The provision given in (12) above, appropriately rephrased, should be considered for inclusion here as well.

*Bruce*  
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

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."

*Sheet*

10. Section VII.C.3 The original provision is acceptable. Mallach's suggestion to maintain an average gross rent of 90% of base rent is unacceptable since the developer has no guarantee that such an average can be maintained by the agency. The original provision creates some certainty of rent levels, whereas the Urban League suggestion may be unmanageable (i.e., the distribution of household which yield an average of 90% base rent may not become a reality.)

4. The Agency shall calculate the maximum rental charge for applicable sized units in each income category and

6

shall notify the Planning Board and the developer of such rental charges prior to final approval by the Planning Board. These rental charges shall remain in effect for a period of one year.

5. The Agency shall establish appropriate criteria and procedures for allowing periodic rental charge increases. However, the developer may request a modification of the maximum rental charges at any time by applying to the Agency for recalculation of these prices based on changes in any of the factors used to calculate the rental charges.

*Alan*

14. Sec. VII.C.5. This appears to be two separate points. The provision embodied in the first sentence is clear, and reasonable. The second sentence does not appear to follow logically, and it is not clear what its purpose is. This should be reworded, so as not to give the impression that rents can fluctuate in an irregular fashion (if it is made clear that rents are individualized, this problem may not necessarily arise).

*Bruce*

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."

*Sheet*

11. Section VII.C.5 The original provision is acceptable. Also, there is no objection to the contents of Paragraph 14 of Gelber's letter.



D. 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	3.5 persons*
3 bedrooms	5 persons
4 bedrooms	6.5 persons**

\* The arithmetic average of the median income for three person and four person households shall be utilized for computation purposes.

\*\* The arithmetic average of the median income of six person and seven person households shall be utilized for computation purposes.

15. Sec. VII.D. This should be changed as follows:

a. The appropriate household size for a 2 bedroom unit should be a 3 (not 3.5) person household.

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.

We agree with the Urban League that the household size bedroom unit as set forth in Section VII D should be amended to three persons.

North Brunswick (4)

January 7, 1985

b. The appropriate household size for a 4 bedroom unit (if one is ever built) should be a 6 (not 6.5) person household.

The material contained in the interpolated footnotes should be deleted.

Section VIII. Expiration of Restrictions.

A. Restrictions on the resale of low or moderate income sales units shall expire thirty (30) years from the date of the initial sale of the property.

We propose that the following provision be added to Section VIII A:

*Kaplan*  
Restrictions on the resale of low or moderate income sales units shall expire thirty (30) years from the date of the initial sale of the property or such other lesser time as may be adopted pursuant to subsequent state legislation.

B. Low or moderate income rental units shall remain subject to the requirements of this Chapter indefinitely, except that the limitations set forth in subsection VIII.A above and Section IX below shall apply if such rental units are converted into condominiums, co-operatives, or some other form of ownership property.

*But*  
12. Section VIII.B This provision is unacceptable as presently drafted. Rental units should not be subject to the Affordable Housing Ordinance indefinitely. A thirty-year restriction, as in the case of sales units, seems reasonable, as in the case of sales units, seems reasonable. We are in agreement with the suggestion contained in paragraph 16 of Mallach's memorandum; specifically, "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."

*Alan*  
16. Sec. VIII.B. This is either wrong or unclear. The clear purpose of the restrictions, as I understand them to be, in the event of conversion of rental units to cooperative or condominium occupancy, is to preserve low and moderate income occupancy and affordability across the conversion process. Thus, at a minimum, the ordinance should provide as follows: 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 (or, alternatively, for a 30 year period beginning with the date the conversion becomes effective). The ordinance should also provide that any rental units must remain rental housing for some minimum term, which should be no less than ten years (and, arguably, in view of the effect on depreciation, perhaps no more than fifteen years).

*Bruce*  
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.

*Kaplan*  
With respect to Section VIII B, the indefinite duration of time that low or moderate income rental units shall remain subject to the requirements of this Chapter may violate the Rule Against Perpetuities.

*Sheet*

The Urban League's suggestion that rental units remain rental units for some minimum period of time (e.g. ten to fifteen years) is unacceptable. Such a provision would be a control of the ownership, as opposed to use, of the property which beyond the powers granted to a municipality.

Section IX. Exceptions in the Event of Foreclosure.

Notwithstanding the restrictions on resale of low or moderate income units set forth in this Chapter, there shall be no such restriction in the event of foreclosure and resale by a lender after foreclosure.

*Buac*

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."

*Sheet*

13. Section IX. The language which Gelber has suggested as an addition to Section IX is acceptable provided that the following is added thereto: "In no event shall the language incorporated into deeds or covenants be objectionable to mortgage lending institutions."

With respect to Section IX on foreclosure, we propose that the following provision be added:

May 20, 1985  
Page 4

*Keplan*

In the event of foreclosure, the low and moderate income units shall be released from the restrictions of this Chapter and an instrument in recordable form releasing said units shall be delivered to the foreclosing lender by the Agency.

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.

Toward 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 the 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 social service and public welfare departments located in the following eleven counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Union, Sussex and Warren.

*Kaplan* With respect to the affirmative marketing requirements set forth in Section X A, we propose that the Agency be required to prepare a list of any of the "fair housing centers, housing referral organizations and governmental social service and public welfare departments" referenced therein.

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 1984, 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, 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. Developer's Responsibilities.

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

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

B. Provision of financing terms for low and moderate income units, and submission of information on said financing to the Agency for use in computing affordable sales prices.

14. Sections XII.B and XII.D As stated above the developer must not be required to provide financing for lower income units. Accordingly, this provision should be omitted.

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

D. Submission of bi-monthly reports to the Agency detailing the number of applications for financing and the number of rental applications received from low and moderate income households, as well as the status and disposition of such applications.

*Hull*  
15. Section XII.D The bi-monthly reports referred to therein require a detailing of the number, status and disposition of applications received from low and moderate income households. Since the Agency is responsible for screening the applicants, the Agency, and not the developer, would be in the best position to provide information on the status of the applications. Accordingly, this provision should be omitted.

*Kaplan*  
We object to the Section XII D requiring the developer to submit bi-monthly reports to the Agency. The information called for in this report is under the domain and within the control of the Agency, and therefore, should be included as part of its required report to the Township Council pursuant to Section IV D9.

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 be deemed valid and effective.