

Civic League v. Cartwright, North Brunswick 5/24  
(1985)

Brunswick Mayor Associates' position  
regarding N. Brunswick's Draft Affordable  
Housing Ordinance + definitions

5 pgs

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 May 24, 1985*

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Re: Civic League v. Borough of Carteret  
 Brunswick Manor Associates v.  
 Township of North Brunswick

Dear Mr. Lefkowitz:

The following has been prepared on behalf of Brunswick Manor Associates and represents our position regarding North Brunswick's Draft Affordable Housing Ordinance. Please note that certain of the following comments refer to the memorandum of Allan Mallaçh and letter of Bruce Gelber, dated January 7, 1985 and January 16, 1985, respectively.

1. Section III, Definition . We concur with the suggestions of Mallach and Gelber that the word "household" should replace "family" throughout.
2. Section III- Definition of Regional Median Income - The language contained in Gelber Letter (i.e., "94% of PMSA income) is acceptable.
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."

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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.

*good point*

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.

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.

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.

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:

"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."

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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.

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?

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 unmanagable (i.e., the distribution of household which yield an average of 90% base rent may not become a reality.)

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.

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."

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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.

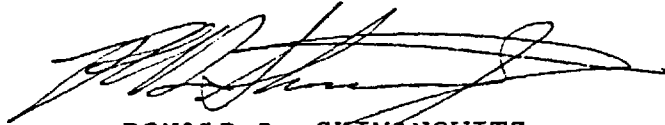
13. Section IX. The language which Gelber has suggested as an addition to Section IX is acceptable provided that the following is added thereto: "In no event shall the language incorporated into deeds or covenants be objectionable to mortgage lending institutions."

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.

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.

Should you have any questions regarding the above please do not hesitate to call.

Very truly yours,



RONALD L. SHIMANOWITZ  
For the Firm

RLS:al

cc: Barbara Williams, Esq.  
Frederick Kessler, Esq.  
Susan R. Kaplan, Esq.  
Mike Kaplan  
Allan Mallach

1.07 FIRST PURCHASE MONEY MORTGAGE: ~~Shall mean and refer to~~ the most senior mortgage lien to secure repayment of funds for the purchase of an Affordable <sup>123, 456</sup> Condominium or the holder and assigns of such most senior mortgage holder. Such mortgagee must be an institutional lender or investor, licensed or regulated by a State or Federal government or an agency thereof.

1.08 FORECLOSURE: ~~Shall mean and refer to~~ a termination of all rights of the mortgagor or the mortgagor's assigns or grantees in an Affordable Condominium 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. Foreclosure shall not take place before the exhaustion of remedies as set forth in this Declaration.

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*add to section  
III Definitions*