

U.L. v. Carteret

? 1984

S. Brunswick.

Consent Order, ordering zoning amendments  
to meet fair share

Pgs 72

CA0005640

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION MIDDLESEX COUNTY

URBAN LEAGUE OF GREATER NEW )  
BRUNSWICK, etc., et al. )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE MAYOR AND COUNCIL OF THE )  
BOROUGH OF CARTERET, et al. )  
 )  
Defendants. )  
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Docket No. C-4122-73

CONSENT ORDER

This matter having been opened to the Court by the undersigned attorneys for the plaintiffs and having been remanded for trial by the Supreme Court on the issue of fair share allocation of the regional need for low and moderate income housing and on whether the Township of South Brunswick has complied with the mandate to satisfy its fair share allocation by providing a realistic opportunity for the development of such housing and it being represented to the Court that the parties agree to the following:

Whereas, the Township of South Brunswick made major revisions to its zoning, land use and subdivision ordinances which streamlined land development review procedures, rezoned more than 2600 acres which previously had been zoned industrial to residential and rezoned 2495 acres from single family residential to higher density mixed residential housing types; and

Whereas, the Township of South Brunswick granted a use variance to Xebec Corporation to construct 40 rental units for low income families on a five acre parcel on Blackhorse Lane; and

Whereas, the Township of South Brunswick required rent controls on 516 one bedroom and 220 two bedroom apartments in the Royal Oaks development, now under construction, so that the initial rents will be \$440 for one bedroom units and \$550 for two bedroom units; and

Whereas, the Township of South Brunswick required price controls on 57 one bedroom condominiums in the Whispering Woods development, now under construction, so that initial sales prices will be set at \$47,000; and

Whereas, the Township of South Brunswick required price controls on 64 senior citizen condominium units in the Dayton Center development so that initial sales prices will be set at \$44,999; and

Whereas, the Township of South Brunswick assisted in the acquisition of federal subsidies for 54 low and moderate income senior citizen rental units in the Charleston Place development constructed in 1979 and for an additional 30 similar units soon to be developed; and

Whereas, the Township of South Brunswick utilized Community Development Block Grant funds to provide home rehabilitation loans to numerous low and moderate income persons which assisted in the rehabilitation of their homes; and

Whereas, the parties desire that the Township of South

Brunswick provide a realistic opportunity for the development of a sufficient number of housing units to satisfy the Township's fair share of low and moderate housing need.

Now, THEREFORE, it is this \_\_\_\_ day of \_\_\_\_\_, 1984,  
ORDERED AND ADJUDGED:

1. The Township of South Brunswick's fair share of low and moderate income housing need through 1990 is 2063 housing units.

2. The Township's fair share shall be met by new development of 2009 units of which specific sites for 1909 units have been determined and are presented herein and which will include an additional 100 units which shall be encouraged by the Township as provided in paragraph 8 below and credit for the 54 low and moderate income, subsidized senior citizen units at Charleston Place which were placed into occupancy after April, 1980, and are occupied by low and moderate income persons. The new construction units are identified in the schedule attached hereto as Exhibit A and in the Zoning Map attached hereto as Exhibit B and made a part hereof.

3. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of South Brunswick shall rezone the 80 acre tract south of Deans-Rhodehall Road and west of Route 130 from part R-R Rural Residential with a density of .5 units per acre and part LI-3 Light Industrial to the Manufactured Mobile Home Zone (MH) permitting modular/manufactured housing and mobile/manufactured housing

at a gross density of seven units per acre. The Township of South Brunswick shall amend at the same time the existing MH zoning pertaining to the 107 acre tract bordered on the north by Broadway Road and on the east by Route 130, to increase the gross density from three units per acre to seven units per acre and shall make mobile and manufactured housing a permitted use.

These zoning amendments shall further provide that 35% of the units in the MH zones shall be low income and 20% of the units shall be moderate income. These ordinance amendments are attached hereto as Exhibit C and made a part hereof.

4. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of South Brunswick shall rezone the following tracts to Planned Residential Development III (PRD III) zoning permitting a gross density of seven dwelling units per acre and permitting multi-family development:

a) Block 93, Lot 41 known as St. Augustine's, located north of Beekman Road and east of Route 27,

b) Block 41, 92.07, Lot 14.01 and 14.02 known as the Municipal Complex, located south of Monmouth Junction Road, and

c) Block 31, Lot 10.01 and 12 known as Georges Road, located north of Georges Road and between the PSE&G easement and Jamesburg Road.

This amendment is attached hereto as Exhibit D and made a part hereof.

5. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of South Brunswick shall enact a mandatory set aside ordinance which shall provide for a mandatory set aside for low and moderate income units of 20% of the total number of units that may be developed assuming full development at the gross density of seven units per acre provided by right in each zone for all developments in the PRD III zones. No other zones may be zoned at densities greater than 4 units per acre unless they are subject to a mandatory set aside provision, reasonably proportionate to those contained herein, but in no event less than 15% of the total number of units to be developed. Any additional zones, other than those specified herein, zoned at gross densities of seven units per acre or greater shall be subject to a minimum requirement of a 20% set aside for low and moderate income development.

The mandatory set aside provisions shall require that a minimum of 1/4 of the lower income units be low income and a minimum of 1/4 be intermediate moderate income, as defined in paragraph 6 below. These ordinance amendments are attached hereto as Exhibit E and made a part hereof.

6. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of South Brunswick shall adopt an Affordable Housing Ordinance which shall provide that units designated as low, intermediate moderate or moderate income units shall be sold or rented to families who qualify as low, intermediate moderate or moderate income families. The ordinance shall further provide that such

units shall be re-rented or re-sold only to qualifying families and that such units are affordable to low or moderate income families. To be affordable, the monthly expenses of a sales unit 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, intermediate moderate income shall be defined as between 60% and 70% 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 Revised Court Expert's Report dated April 2, 1984, in this case. The ordinance shall further provide exceptions from the resale restrictions in the case of foreclosure and resale by a lender after foreclosure. Restrictions on resale will expire 30 years from the date of the initial sale of the premises. The ordinance shall provide for enforcement of the provisions contained herein by either establishing a municipal agency or contracting with a non-profit organization or other public agency which has the capacity of administering the requirements set forth herein. This ordinance amendment is attached hereto as Exhibit F and made a part hereof.

7. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of South Brunswick

shall rezone a tract of at least six acres located off Route 27 to permit a subsidized 40 unit Farmers Home Administration development. This ordinance amendment is attached hereto as Exhibit G and made a part hereof.

8. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of South Brunswick shall adopt a Resolution committing the Township to apply for available state and federal housing subsidy programs and to encourage and assist private developers to so apply. The Township shall encourage the development of a minimum of 200 subsidized units by December 31, 1990. The Township shall rezone, if necessary, suitable sites for the development of these subsidized units. A number representing one half of the subsidized units developed by December 31, 1990, other than those identified in Exhibit A, Subpart B, shall be credited toward the Township's staged present need obligation for the period from 1990 to 1996. This Resolution is attached hereto as Exhibit H and made a part hereof. A letter from Xebec Corporation indicating its desire to develop subsidized units in South Brunswick is attached hereto as Exhibit I and made a part hereof.

9. Forthwith, but not later than 90 days after entry of this Consent Order, the Township of South Brunswick shall amend its land use and zoning ordinances to provide that the minimum tract requirements for the PRD III Zones and MH Zones subject to this Consent Order shall be no greater than 50 acres or the aggregate acreage of parcels held by one owner, whichever is less. This ordinance amendment is

attached hereto as Exhibit J and made a part hereof.

10. Forthwith, but not later than 90 days after entry of this Consent Order, the Township of South Brunswick shall amend its zoning ordinance pertaining to PRD III Zones so that multi-family development is permitted by right and the open space requirements are reduced to 25% of tract area. This ordinance amendment is attached hereto as Exhibit K and made a part hereof.

11. Forthwith, but not later than 90 days after entry of this Consent Order, the Township of South Brunswick shall amend its zoning ordinance so that the minimum lot size for townhouse development is reduced to 2000 square feet and the net density for townhouses is increased to 12 units per acre. This ordinance amendment is attached hereto as Exhibit L and made a part hereof.

12. Forthwith, but not later than 90 days after entry of this Consent Order, the Township of South Brunswick shall amend its zoning ordinance so that the minimum mandatory reservation of 5% of tract area for commercial and office development in PRD III Zones is eliminated. This ordinance amendment is attached hereto as Exhibit M and made part hereof.

13. Forthwith, but not later than 90 days after entry of this Consent Order, the Township of South Brunswick shall amend its zoning ordinance to eliminate the restrictions on the proportion of each housing type that may be included in the PRD III Zones. This ordinance amendment is attached hereto as Exhibit N and made a part hereof.

14. Forthwith, but not later than 90 days after entry of this Consent Order, the Township of South Brunswick shall amend its zoning ordinance to eliminate the requirements for a Traffic Circulation Impact Statement and Environmental Impact Statement except for tracts located in areas which have been determined in the Master Plan to have potential traffic problems or which have been determined to be environmentally sensitive. This ordinance amendment is attached hereto as Exhibit O and made a part hereof.

15. Forthwith, but not later than 90 days after entry of this Consent Order, the Township of South Brunswick shall amend its zoning ordinance to eliminate the requirement for a School Impact Statement. This ordinance amendment is attached hereto as Exhibit P and made a part hereof.

16. Forthwith, but not later than 90 days after entry of this Consent Order, the Township of South Brunswick shall amend its zoning ordinances so that developers of low and moderate income units in the PRD III and MH Zones are required to affirmatively market those units to persons of low and moderate income, irrespective of race, color, sex, 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 Expert's Revised Report dated April 2, 1984. The Township shall also require the developer to advertise the low and moderate income units with local fair housing centers, housing advocacy organizations, Urban Leagues, and governmental social

service and welfare departments located within the 11 county region. This ordinance amendment is attached hereto as Exhibit Q and made a part hereof.

17. The Township of South Brunswick shall report in writing to the Court and to Plaintiff, Urban League or its designee, within 90 days of the entry of this Consent Order or when all ordinance amendments and resolutions have been duly enacted by the Council and Mayor of the Township, whichever first occurs, 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. The Township of South Brunswick shall report quarterly in writing to Plaintiff, Urban League or its designee, commencing with July 30, 1984, providing the following information:

(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 and 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.

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EUGENE SERPENTELLI, J.S.C.

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

Benedict and Altman  
Attorneys for the Council  
and Mayor of the Township  
of South Brunswick

The National Committee Against  
Discrimination in Housing  
Constitutional Law Clinic of  
the Rutgers University Law  
School  
Attorneys for the plaintiffs

BY: \_\_\_\_\_  
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BY: \_\_\_\_\_  
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LIST OF EXHIBITS

- A Schedule of Low and Moderate Income Developments
- B Zoning Map
- C Mobile Manufactured Housing Zone Ordinance Amendments
- D PRD III Zone Ordinance Amendments
- E Mandatory Set Aside Ordinance
- F Affordable Housing Ordinance
- G Farmers Home Zoning Ordinance Amendment
- H Housing Subsidy Resolution
- I Letter from Xebec Corporation
- J Minimum Tract Size Ordinance Amendment
- K Multi-family Permitted Use and Open Space Ordinance  
Amendment
- L Townhouse Ordinance Amendment
- M Commercial and Office Reservation Ordinance Amendment
- N Housing Type Restrictions Ordinance Amendments
- O Traffic and Environmental Impact Statement Ordinance  
Amendments
- P School Impact Statement Ordinance Amendment
- Q Affirmative Marketing Ordinance Amendment

	<u>Acres/Zone</u>	<u>Total Potential Units</u>	<u>Low Income Units</u>	<u>Intermediate Income Units</u>	<u>Moderate Income Units</u>	<u>Total Low/Mod. Units</u>	<u>%Low/Mod. Income Units of Total</u>
St. Augustines	33/PRD-III	230	12	11	23	46	20%
Town Center	471/PRD-III	3300	165	165	330	660	20%
Municipal Complex	86/PRD-III	600	30	30	60	120	20%
Georges Road	181/PRD-III	<u>1265</u>	<u>63</u>	<u>63</u>	<u>127</u>	<u>253</u>	20%
Subtotal		5395	270	269	540	1079	
<u>SUBSIDIZED HOUSING PROJECTS</u>							
Charleston Place	/MF	30	14		16	30	100%
Nobec/Rt. 27	6+/ 5/	40	40			40	100%
Nobec/Blackhorse		<u>40</u>	<u>40</u>			<u>40</u>	100%
Subtotal		110	94		16	110	
<u>ADDITIONAL SUBSIDIZED UNITS</u>							
		100	50		50	100	100%
<u>MOBILE/MANUFACTURED HOUSING</u>							
Broadway	107/MH	749	262		150	412	55%
Deans-Rhodehall Road	80/MH	<u>560</u>	<u>196</u>		<u>112</u>	<u>308</u>	55%
Subtotal		1309	458		262	720	
<u>CREDIT FOR PREVIOUSLY BUILT UNITS</u>							
Charleston Place		<u>54</u>	<u>26</u>		<u>28</u>	<u>54</u>	100%
Grand Total		6968	898	269	896	2063	

DRAFT OF MANDATORY SET-ASIDE ORDINANCE

1. This section shall be applicable to all development plan approvals in the PRD III zones, as more particularly set forth herein.

2. Each application for development subject to this section shall clearly state the number of low and moderate income housing units, as defined in \_\_\_\_\_, and the number of such units subject to age restrictions that are proposed for inclusion within the development, and each resolution of approval shall clearly state the number of lower income units and the number of lower income units subject to age restrictions that are approved as part of the development.

3. Each approved development shall contain lower-income housing units, as defined in \_\_\_\_\_, in a minimum proportion of twenty percent of the total number of units that may be developed, assuming full development at the maximum density of seven units per acre provided by right in each zone.

4. A maximum of thirty percent of the total number of lower income units that may be developed, assuming full development at maximum density of the tracts identified in Table A attached hereto and made a part hereof, may have occupancy restrictions based on the age of the household members.

5. Any approval of a development application subject to this section shall require that the lower income units included within the development be phased into the

development in accordance with the following table:

<u>Number of units completed as % of total number of approved units</u>		<u>Number of lower income units Completed as % of total number of approved lower income units</u>
not more than	25%	at least 25%
	50%	50%
	75%	75%
	100%	100%

No certificate of occupancy shall be issued for any dwelling unit in a development subject to this section unless the phasing requirement of this table shall have been satisfied.

6. In any development approved pursuant to this section, no less than one-fourth of the total number of lower income units shall be affordable by persons of low income as defined in \_\_\_\_\_, and no less than one-fourth of the total number of lower income units shall be affordable by persons of intermediate moderate income as defined in \_\_\_\_\_. In any approved development, the units affordable by persons of low income, the units affordable by persons of intermediate moderate income, and the units affordable by persons of moderate income shall be available with different numbers of bedrooms comparable to the bedroom mixture available in the remaining units in the project.

7. No tracts other than those specified in Table A attached hereto and made a part hereof may be zoned at gross densities greater than four units per acre unless those zones are subject to a mandatory set aside provision, reasonably proportionate to those contained herein, but in

no event may fewer than 15% of the total number of units that may be developed be subject to a set aside requirement for lower income housing. Any tracts, other than those specified in Table A, which are zoned at gross densities of seven or more units per acre shall be subject to a minimum requirement of 20% set aside for low and moderate income housing development.

Proposed revisions to Affordable Housing Ordinance

B. Definitions.

(4) "Income ceiling" means 80% of regional median income for moderate income, 70% of regional median income for intermediate moderate and 50% of regional median income for low income.

C.(2) Qualifications. Prospective purchasers or renters of Low or Moderately Priced Dwelling Units must be qualified prior to purchase or rental as a Family of Low, Intermediate Moderate or Moderate Income. A low income family is a family with income less than 50% of regional median income, with adjustments for family size, an intermediate moderate family is a family with income between 60% and 70% of regional median income, with adjustments for family size, and a moderate income family is a family with income between 50% and 80% of median income, with adjustments for family size. Regional median income is defined as 94% of the median income of the PMSA in which Middlesex County is located. Regional median income shall be recalculated at least once annually if official adjustments have been made in the PMSA median income.

(3) Affordable sales price. The following procedure shall apply to determine affordable sales prices:

(a) A preliminary sales price shall be calculated such that the sum of the monthly payments for principal, interest, taxes, fire, theft and liability insurance and

homeowner association fees shall not exceed 28% of the low, intermediate moderate, or moderate income ceiling determined in accordance with section C(2) above. A ten percent down payment requirement and a thirty year mortgage term shall be assumed in making this calculation.

In calculating the monthly interest payment, the interest rate provided by the developer as being available to the subject development shall be utilized. If the developer or any other entity offers to buy down the prevailing rate of interest for a minimum of three years commencing at the time of purchase, and the terms of the buydown provide that the increase in interest rate charged does not exceed one half of one percent (0.5%) per year during the period of the buydown, the interest rate for the first year of the buydown period shall be used in the calculation above to determine affordability. If the increase in the interest rate exceeds one half of one percent (0.5%) per year, the average interest rate for the period of the buydown shall be used.

(b) The final sales price shall be determined as a percentage of the preliminary sales price, in order to assure that the unit is affordable by families whose income is less than the low or moderate income ceiling.

(1) If the proposed development includes fewer than one hundred low income units, fewer than 100 intermediate moderate income units, or fewer than one hundred moderate income units, the final sales price shall be ninety percent (90%) of the preliminary sales price for

each category of low or moderate income units calculated pursuant to subsection (a) above.

(2) If the proposed development includes one hundred or greater low income units, one hundred or greater intermediate moderate income units or one hundred or greater moderate income units, the final sales price for one half of each category of low, intermediate moderate or moderate income units shall be set at 95% of the preliminary sales price calculated pursuant to subsection (a) above, and one half of each category of low, intermediate moderate or moderate income units shall be set at 85% of the preliminary sales price calculated pursuant to subsection (a) above. A unit priced at 85% of the preliminary sales price shall not be offered for sale to any family with an income greater than 95% of the low, intermediate moderate or moderate income ceiling, whichever is applicable.

(4) Affordable rental charges. The following procedure shall apply to determine affordable rental charges.

(a) A preliminary rental charge shall be calculated such that the sum of the monthly rental payment, including utilities, does not exceed 30% of the low, intermediate moderate or moderate income ceiling, determined in accordance with section (c)(2) above.

If the cost of utilities is not included in the monthly rental charge, an estimated monthly cost for utilities shall be calculated, using estimating techniques generally accepted by the housing industry, provided that an estimate of utilities costs established by the developer shall be

used if consistent with such generally accepted techniques. Utilities shall include the cost of providing heat, water, hot water and electricity.

(b) a final rental charge shall be calculated as a percentage of the preliminary rental charge, in order to assure that the unit is affordable by families whose income is less than the low, intermediate moderate or moderate income ceiling, whichever is applicable.

(1) If the proposed development includes fewer than one hundred low income units, fewer than one hundred intermediate moderate or fewer than one hundred moderate income units, the final rental charge shall be ninety percent (90%) of the preliminary rental charge for each category of low, intermediate moderate or moderate income units calculated pursuant to subsection (a) above.

(2) If the proposed development includes one hundred or greater low income units, one hundred or greater intermediate moderate units, or one hundred or greater moderate income units, the final rental charge for one half of each category of low, intermediate moderate or moderate income units shall be set at 95% of the preliminary rental charge calculated pursuant to subsection (a) above, and one half of each category of low, intermediate moderate or moderate income units shall be set at 85% of the preliminary rental charge calculated pursuant to subsection (a) above. A unit priced at 85% of the preliminary rental charge shall not be offered for sale to any family with an income greater than 95% of the low, intermediate moderate or moderate

income ceiling, whichever is applicable.

(5) For the purpose of determining sales prices and rental charges, the following table shall provide the unit size based on family size:

efficiency	1 person
1 bedroom	2 persons
2 bedrooms	3.5 persons
3 bedrooms	4.5 persons
4 bedrooms	5 persons.

(6) Table I below contains the maximum affordable sales prices for condominium ownership, Table II contains the maximum affordable sales prices for fee simple ownership, and Table III contains the affordable rental charges for low and moderate income families, calculated using the median income data effective as of April 30, 1984. These tables shall be updated at least once annually to reflect changes in the median income and shall be used by the Agency as a guide for determining affordable sales prices and rental charges.

The following assumptions were made in preparing the sales tables:

- (a) a ten percent downpayment and a mortgage with the thirty year term;
- (b) the property tax rate in effect in South Brunswick as of April 30, 1984;
- (c) fire, theft and liability insurance was estimated to be \$40 per \$10,000 house value; and
- (d) homeowners' association fees were estimated to be \$150 annually per \$10,000 house value.

AFFORDABLE RENT LEVELS FOR LOW AND MODERATE INCOME HOUSEHOLDS  
 IN MIDDLESEX COUNTY (BASED ON 1983 MEDIAN INCOMES FOR 11-COUNTY  
 REGION)

UNIT TYPE	STUDIO	1 BR	2 BR	3 BR
HOUSEHOLD SIZE	1	2	3.5	4.5

MODERATE INCOME HOUSEHOLDS

1	MEDIAN INCOME	\$17200	\$19650	\$23375 <sup>1</sup>	\$25350 <sup>2</sup>
2	x .30 <sup>3</sup>	\$ 5160	\$ 5895	\$ 7013	\$ 7605
3	x .90 <sup>4</sup>	\$ 4644	\$ 5305	\$ 6311	\$ 6844
4	MONTHLY GROSS RENT AFFORDABLE (Row 3 ÷ 12)	\$ 387	\$ 442	\$ 526	\$ 570
5	LESS ESTIMATED <sup>5</sup> UTILITIES	( 40)	( 50)	( 70)	( 90)
6	MONTHLY NET RENT AFFORDABLE	\$ 347	\$ 392	\$ 456	\$ 480

LOW INCOME HOUSEHOLDS

1	MEDIAN INCOME	\$10750	\$12300	\$14600 <sup>1</sup>	\$15975 <sup>2</sup>
2	x .30 <sup>3</sup>	\$ 3225	\$ 3690	\$ 4380	\$ 4793
3	x .90 <sup>4</sup>	\$ 2902	\$ 3321	\$ 3942	\$ 4313
4	MONTHLY GROSS RENT	\$ 242	\$ 277	\$ 328	\$ 359
5	LESS UTILITIES <sup>5</sup>	( 40)	( 50)	( 70)	( 90)
6	MONTHLY NET RENT AFFORDABLE	\$ 202	\$ 227	\$ 258	\$ 269

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 NOTES:

- (1) Average of median income for 3 person and 4 person households
- (2) Average of median income for 4 person and 5 person household
- (3) 30% of gross income. This row represents the maximum that a household at the ceiling of the income category can afford to spend for rent including utilities.
- (4) Maximum rent should not exceed rent that a family earning 90% of the income ceiling can afford to pay.
- (5) Based on general estimates for utility costs for units of varying size; where more precise information is available, it should be applied rather than these estimates.