

U.L. v. Carteret

7 May 1986

S. Bauswick

Letter w/ Argument in Support of a Motion
To Transfer + Affidavit
attached

Pgs 30

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May 7th, 1986

The Honorable Eugene D. Serpentelli
Assignment Judge, Superior Court
Ocean County Court House
CN 2191
Toms River, New Jersey 08754

RE: Urban League, et al v. Carteret, et al
Docket No. C 4122-73

Dear Judge Serpentelli:

Enclosed please find a copy of defendant, South Brunswick's Legal Argument in Support of Motion to Transfer as well as a copy of the Affidavit of Robert Hall and exhibits attached thereto. Since Mr. Hall, the Township Planner was not available to execute the Affidavit at this time, I will submit the original Argument and Affidavit by mail tomorrow.

Thank you for your courtesy in this regard.

Respectfully submitted,

BENEDICT AND ALTMAN

By

Joseph J. Benedict
Joseph J. Benedict

JJB:mm
Enclosures
cc: Eric Neisser, Esq.

BENEDICT AND ALTMAN
247 Livingston Avenue
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Attorneys for Defendant Township of South Brunswick

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,

Plaintiffs,

vs.

MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al.,

Defendants.

Civil Action

LEGAL ARGUMENT IN SUPPORT OF
MOTION FOR TRANSFER

On the Brief:

Joseph J. Benedict, Esq.

LEGAL ARGUMENT

In Hills Development Company v. Township of Bernards, _____ NJ _____ (1985) our Supreme Court upheld the constitutionality of the Fair Housing Act (hereinafter, "Act"), P.L. 1985, c. 222. One of the main goals of the Act was to facilitate the development of a comprehensive and consistent statewide plan for determining and discharging municipalities' Mount Laurel obligations. Opinion at 48 and 71; Act at § 2c.

The legislature realized that such an omnibus plan could not be achieved piecemeal. For this reason it centralized authority for the development of the plan in the Council on Affordable Housing (hereinafter, "Council") and provided for the resolution by the Council of all Mount Laurel cases both extant and prospective.

The Court specifically stated that each of the 12 cases before it fell within the ambit of § 16a by virtue of the fact that each case had commenced more than 60 days prior to the Act's effective date (opinion at 67). This section, as passed, reads as follows:

For those exclusionary zoning cases instituted more than 60 days before the effective date of this act any party to the litigation may file a motion with the Court to seek a transfer of the case to the Council. In determining whether or not to transfer, the Court shall consider whether or not the transfer would result in a manifest injustice to any party to the litigation.....

The Court's discussion of this section was directed at determining the appropriate definition of the words "manifest injustice". It defined this phrase to mean injustice which is "unforeseen and exceptional". Opinion at 67. Further, the Court held the section's requirement that the Court shall consider whether or not the transfer would result in a manifest injustice to be an exclusive criterion - the trial Court thus having no authority to deny a transfer application on any grounds other than manifest injustice.

The Court repeatedly emphasized the exceedingly narrow scope of the "manifest injustice" grounds. In summary the Court stated:

Our conclusion is that the Legislature intended to transfer every pending Mount Laurel action to the Council. The exception, where "manifest injustice" would occur, was based on the Legislature's concern that in some particular case, there might be a combination of circumstances, unforeseen but nevertheless possible, that rendered transfer so unjust as to overcome the Legislature's clear wish to transfer all cases. Thus, not confident of their knowledge of the specific facts of each of these cases, legislators provided that transfer could be defeated upon the showing of "manifest injustice." In our view, then, the Legislature did not contemplate any particular class of cases or any particular characteristic as preventing transfer. The essence of the "manifest injustice" standard is its exclusion of the foreseen consequences, some undoubtedly unfair, of transfer. The legislative intent was that only unforeseen and exceptional unfairness would warrant the denial of a transfer motion.

None of the consequences brought to our attention in the cases before us meets that

standard. Delay in the production of housing, loss of expected profits, loss of the builder's remedy, substantial expenditure of funds for litigation purposes, permit applications, on-site and off-site tract improvements, purchase of property or options at an inflated price, contractual commitments: all of these were no doubt foreseen by the Legislature, were the likely consequences of transfer, and were not intended to constitute "manifest injustice." And, although different in kind, the loss of various public interest groups and their counsel of a goal they have sought for many years, fought for for many years, and finally just about attained, that loss was similarly foreseen. While its personal impact is much clearer, since we can indentify the very people who are affected, its position in the hierarchy of interests falls far below that of the lower income housing that has been delayed, a delay that we have determined was not intended to constitute "manifest injustice."

There can be no doubt that the present case falls directly within the four corners of Hills, Supra. First, litigation in this case was instituted approximately 10 years before the effective date of the Act. Section 16a therefore applies to require transfer of the case to the Council on the motion of "any party" except if such transfer would result in "manifest injustice to any party." In this latter regard, movant contends that there is no factual circumstance present in this case which was not either specifically considered and rejected by the Court as constituting manifest injustice or which is more egregious than any such circumstance.

It appears that Plaintiff Urban League will argue that the transfer motion should not be granted because a consent order has been entered in this case. Given the applicability of §16a, Urban League will also be required to argue that the

abrogation of the consent order by the transfer will constitute "manifest injustice". A comparison of this case to the twelve in Hills, supra however will show that the consequences of transfer in several of those cases were much more severe than any which could result here. In the Monroe Township case for example, the matter had been tried, appealed, remanded, retried and final judgment entered. Nonetheless, the Court found no "manifest injustice".

The lack of effect of such an order is also clear from the Court's discussion of the effect to be given to judicial proceedings after transfer. The Court stated:

Where no final judgment has been entered, we believe the Council is not bound by any orders entered in the matter, all of them being provisional and subject to change, nor is it bound by any stipulations, including a municipality's stipulation that its zoning ordinances do not comply with the Mount Laurel obligation. The administrative remedies, and the administrative approach to that subject, may be significantly different from the court's. Fair share rulings by the court, provisional builder's remedies, site suitability determinations -- all of these may not be in accord with the policies and regulations of the Council. Similarly, stipulations in Mount Laurel matters were undoubtedly based on the assumption that the issues would be determined by the court in accordance with Mount Laurel II. They presumably represented the litigant's belief that what was being stipulated would be adjudicated in any event. It is not only, in a sense, unfair to the litigant to be bound by these interim adjudications and stipulations, *it would also be inconsistent with the purposes of the Act, for these determinations and stipulations may be inconsistent with the comprehensive plan of development of the state and the method of effectuating it.*

(Italics added)
Opinion at 82-83

Clearly, if orders entered before the trial court are not even to be considered by the Council after transfer, how frivolous is the argument that the entry of such an order, solely between the parties, must bar a transfer? Certainly the same rationale - facilitation of a consistent and comprehensive statewide plan - must apply with even greater force to determine when a case should be transferred.

Another issue which Urban League seems to raise relates to South Brunswick's alledged failure to adopt and file with the Council a resolution of participation within the time prescribed by §9a. The Township however has in fact adopted and filed such a resolution (See Exhibit "A").

Further, §9 does not apply to actions falling within §16a. X See Hills, supra. at 50-51. Section 9 applies only to municipalities against whom litigation is commenced later than 60 days prior to the Act's effective date. Indeed, a motion to transfer is to be regarded as a petition for substantive certification (Opinion at 50, footnote 10) - a step in the process which is already a few steps away from the adoption and filing of a resolution of participation. The only time limit which the Township is arguably bound by is that of 16a, to wit, the filing of a housing element and fair share plan within five months from the date of transfer. Of course the time for this requirement has not yet begun.

For the reasons set forth above, it is respectfully requested that Defendant South Brunswick's motion for transfer be granted.

Respectfully submitted,

BENEDICT AND ALTMAN
Attorneys for Defendant

By _____
Joseph J. Benedict

A RESOLUTION OF PARTICIPATION BEFORE THE
COUNCIL ON AFFORDABLE HOUSING

WHEREAS, the Township of South Brunswick is presently involved in litigation entitled *Urban League of Greater New Brunswick, et al. vs. Mayor and Council of the Borough of Carteret, et al.*; and

WHEREAS, the Township has applied to the trial judge for transfer of the matter to the Council on Affordable Housing ("Council") in accordance with §16 of the Fair Housing Act; and

WHEREAS, §9 of the Fair Housing Act requires a municipality to notify the Council of its intention to submit a fair share housing plan;

NOW, THEREFORE, BE IT RESOLVED on this 10th day of March, 1986, by the Township Committee of the Township of South Brunswick, County of Middlesex, State of New Jersey, that:

1. The Township of South Brunswick hereby declares its intention to submit a fair share housing plan to the Council on Affordable Housing following receipt of the order of the Court transferring the above-cited matter to the Council.

2. A copy of this Resolution shall be forwarded to the Council on Affordable Housing.

I do hereby certify that the foregoing is a true copy of a Resolution passed by the Township Committee of South Brunswick at a meeting duly held on the 10th day of March, 1986.

BENEDICT AND ALTMAN

247 LIVINGSTON AVENUE

NEW BRUNSWICK, N. J. 08901

(201) 745-9000

ATTORNEYS FOR Defendant Township of South Brunswick

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,

Plaintiffs,

vs.

MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al.,

Defendants.

Civil Action

AFFIDAVIT OF ROBERT HALL

STATE OF NEW JERSEY:

SS:

COUNTY OF MIDDLESEX:

Robert Hall, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the Town Planner for the Township of South Brunswick and, as such, am fully familiar with the facts contained herein.

2. Attached as exhibit A are three (3) charts I prepared for the Township Committee which sets forth South Brunswick's present status in regard to Affordable Housing projects as well as my recommendations for implementing the balance of the Township's Mount Laurel obligation. The first chart describes one project - Charleston Place I - which was instituted prior to the Mount Laurel II decision and five (5) other projects which have been approved since then by variance before the Zoning Board of Adjustment with the affirmative recommendation for approval by the Township Committee. These projects will contain 196 Affordable Housing units upon full development and, to date, 124 units are in use or in construction.

3. The second chart reflects intended use of an Affordable Housing Trust Fund which the Township Committee has already created and is expected to generate, through required contributions from non-Mount Laurel developers - approximately \$790,000 per year. Assuming an average rehabilitation cost of \$15,000, this fund will be used to create approximately 50 Affordable Housing units annually or 200 units by 1990.

4. The third chart represents zone changes which have been considered by the Township Committee and Planning Board. The first column shows the total potential units under the existing ordinance while the second column indicates the total potential units and Affordable Housing units under proposed ordinance 5-86 which has already been introduced by the Township Committee. The third column shows the total number of units

and Affordable Housing units I have recommended as appropriate for each site. The first four (4) sites listed are known locally as the Town Center sites and are identified in our 1982 Master Plan as appropriate for Affordable Housing units at the density indicated in the first column. The Township Committee has conceptually approved the adoption of an ordinance implementing my recommendation as to the four (4) Town Center sites and is only awaiting the recommendations of the Planning Board which is scheduled to discuss this on May 13, 1986. Rezoning of the Town Center sites will provide for the construction of 479 Affordable Housing units. Additionally, the Township Committee has conceptually approved rezoning the Monmouth Walk and Georges Road sites if additional Affordable Housing units are required once the Affordable Housing Council's formula for allocation of Affordable Housing need is known. These sites would provide for the construction of another 300 Affordable Housing units. It should further be noted that the St. Cecilia site is scheduled for review of a variance application and site plan before the Zoning Board of Adjustment later this month. The Township Committee has recommended to the Zoning Board that the variance be granted.

5. Finally, I would point out that five (5) other potential Mount Laurel sites have been identified on the chart which, if rezoned in the manner I would recommend, would provide another 601 Affordable Housing units. Under present zoning none of these sites, other than the Eckert site which could produce

32 Affordable Housing units, can reasonably be expected to apply for site plan approval. Accordingly, the Township has at least a 569 and probably 601 Affordable Housing unit reserve on available land if the Affordable Housing Council requires more of South Brunswick than we presently expect our Affordable Housing obligation to be.

6. In addition to that noted above, the Township Committee has taken other steps towards the provision of Affordable Housing in South Brunswick (Exhibit B). It has already adopted an ordinance creating a local Affordable Housing Agency and appointed its membership. That Agency has already had three (3) meetings at which it reviewed the proposed Affordable Housing ordinance and made recommendations to the Township Committee. That ordinance (Exhibit C) was also reviewed by the Planning Board, and the Township Committee having received the recommendations of the Planning Board and Affordable Housing Agency has introduced it and is expected to adopt it on June 3, 1986. The Township Committee has also developed a use regulation ordinance for the Mount Laurel sites. This ordinance will be reviewed by the Planning Board on May 13, 1986. Following that review that ordinance will also be adopted.

ROBERT HALL

Sworn and subscribed to
before me on this day
of May, 1986.

A Notary Public of New Jersey
My Commission Expires on

I.

LOW-MODERATE INCOME HOUSING PROJECTS

	<u>Acres</u>	<u>Total Potential Units</u>	<u>Low Income</u>	<u>Intermediate Income</u>	<u>Moderate Income</u>	<u>Total L-I-M</u>	<u>% L-I-M of Total</u>
<u>A. CREDIT FOR PREVIOUSLY BUILT UNITS</u>							
1. Charleston Place I	3	54	26	-0-	28	54	100%
SUBTOTAL	3	54	26	-0-	28	54	
<u>B. APPROVED PROJECTS</u>							
1. Deans Apartments I (Xebec-Black Horse Lane)	6	40	40	-0-	-0-	40	100%
2. Charleston Place II	2	30	14	-0-	16	30	100%
3. Whispering Woods/Route 522	6	39	13	13	13	39	100%
4. Princeton Walk/Route 27	6	40	40	-0-	-0-	40	100%
5. Nassau Square	34	237	11	12	24	47	20%
SUBTOTAL	54	386	118	25	53	196	

4/15/86

II.

HOUSING TRUST FUND

- A. Total Square Feet Approved 1981 - 1985 = 6,603,774 s.f.
- Annual Average of Five Year Period = 1,320,755 s.f.
- Assume \$.50/Square Foot Contribution
- Annual Fee Anticipated from Non-Residential Development = \$ 660,377
- B. Total Residential Units Receiving Permits 1982 - 1985 = 2,625 d.u.
- Annual Average of Four Year Period = 656 d.u.
- Annual Fee Anticipated from Residential Development; assume \$200/unit contribution = \$ 131,200
- C. Total Annual Trust Fund Anticipated:
 - 660,377
 - 131,200
 - \$ 791,577
- D. Assume Average Rehabilitation Cost per Unit = \$ 15,000

There is a potential of approximately 50 units created annually, or to 1990, 200 units.

4/15/86

III.	SITES	POTENTIAL		POTENTIAL		
		UNDER PRESENT ZONING (Total)	UNDER PROPOSED ORDINANCE 5-86 (Total)	(L-M Units)	@ 7 UNITS/ACRE - 20% L-M WITH CRITICAL AREAS, EXCEPT AQUIFER RECHARGE (Total)	(L-M Units)
1.	Town Center (Southridge Hills)	1160	1778	355	1170	234
2.	Town Center (Mindel)	863	1147	229	959	192
3.	Town Center (Rieder)	114	297	59	265	53
4.	Town Center (American Major)	59	84	16	59	12
5.	Municipal Complex (Monmouth Walk)	73	339	67	337	67
6.	Municipal Complex (Von Thun)	66	307	61	307	61
7.	Georges Road	354	1572	314	1165	233
8.	St. Cecilia's	6	60	12	60	12
9.	Deans/Route 130 (Wiësenfeld)	83	908	227	[705 @ 5.5/ac.	176 @ 25 $\frac{1}{2}$]
10.	Deans/Route 130 (Eckert)	-	130	32	[130 @ 5.5/ac.	32 @ 25 $\frac{1}{2}$]
11.	Culver Road - North	48	522	130	[417 @ 5.5/ac.	104 @ 25 $\frac{1}{2}$]
12.	Culver Road - South	24	261	65	[225 @ 5.5/ac.	56 @ 25 $\frac{1}{2}$]
		<u>2850</u>	<u>7405</u>	<u>1567</u>	<u>5799</u>	<u>1232</u>

ORDINANCE NO. 3-86

AN ORDINANCE AMENDING AND SUPPLEMENTING THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF SOUTH BRUNSWICK, 1975, SPECIFICALLY, CHAPTER XVI, LAND USE, §16-62.13

BE IT ORDAINED by the Township Committee of the Township of South Brunswick, County of Middlesex, State of New Jersey, that the Revised General Ordinances of the Township of South Brunswick, 1975, specifically Chapter XVI, Land Use, §16-62.13, be and are hereby amended and supplemented as follows:

1. The existing §16-62.13 be and is hereby delted in its entirety.

2. §16-62.13 Subsections a through h are reserved.

3. The following is added as §16-62.13i Affordable Housing Agency:

i. Affordable Housing Agency.

1. Creation. There is hereby created an Affordable Housing Agency ("Agency") of the Township of South Brunswick.

2. Composition. The Agency shall consist of five (5) members, all of whom shall be appointed by the Township Committee. The membership of the Agency shall consist of the following:

(a) One member shall be a member of the Township Committee.

(b) The remaining four members shall be residents of the Township.

3. Terms of Office.

(a) The Township Committee member shall serve for a term of one year.

(b) The initial terms of office of the remaining Agency members shall be one (1) for one year, one (1) for two years, and two (2) for three years, to be designated by the Township Committee in making the appointment. Their terms shall thereafter be three (3) years.

4. Chairperson. The Mayor shall designate one member, other than the Township Committee member, to serve as

chairperson for a term of two (2) years.

5. Quorum. Attendance by three (3) members shall constitute a quorum. Passage of any motion requires and affirmative vote by a majority of members present.

6. Ex Officio Members; Executive Director.

(a) The Administrator or his designee and a person recommended by the Civic League and appointed by the Township Committee shall serve as ex officio members of the Agency.

(b) The Planning Director or his designee shall serve as Executive Director of the Agency and shall be responsible for its administrative functioning.

7. Vacancies; Removal for Cause. The Township Committee 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 membership of 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.

8. Powers and Duties.

(a) To prepare and forward to the Township Committee 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, moderate or intermediate moderate income units, once constructed, shall remain affordable to, and occupied by, low, moderate or intermediate moderate income households. Such rules shall be subject to review and modification by the Township Committee and must be adopted by the Township Committee to be effective.

(b) To determine maximum sale, resale and rental charges for low, moderate or intermediate moderate income units, and to provide the Planning Board and developers with such calculations.

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

(d) To require that a covenant be recorded with each deed restricting the resale of low, moderate or intermediate moderate income units to low, moderate or intermediate moderate income households.

(e) To develop a formula for use in calculating

the maximum resale price of low, moderate and intermediate moderate income units consistent with the provisions of Section 16-62.13 d.1. (d) of this ordinance.

(f) To determine whether the cost or value of the installation of improvements or amenities within or as a part of a low, moderate or intermediate moderate income unit should be included in the calculation of the resale price or rental charge of such unit, and to establish a procedure whereby homeowners can obtain a determination in this regard prior to installing the improvement or amenity.

(g) To review and to approve or disapprove the Affirmative Marketing Plan required of all developers of low, moderate and intermediate moderate income housing.

(h) To require developers to submit proofs of publication in accordance with approve affirmative marketing plans, and to monitor the marketing practices of developers of low, moderate and intermediate moderate income units to ensure that they comply with the affirmative marketing requirements of this Chapter.

(i) To report quarterly to the Township Committee on the status of low, moderate and intermediate moderate income units.

9. Appropriation and Accountability. The Township Committee shall appropriate adequate monies for the 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 Committee for its use. The Agency shall report to the Township Committee through the Township Administrator.

The above ordinance was introduced and passed on first reading at a regular meeting of the Township Committee of the Township of South Brunswick held on January 21, 1986, and will be considered on second and final reading and final passage at a regular meeting of the Township Committee of the Township of South Brunswick to be held at the Municipal Building, Monmouth Junction, South Brunswick, New Jersey, at 8:00 P.M. on February 18, 1986, at which time and place any person having an interest therein will be given an opportunity to be heard.

KATHLEEN A. THORPE, TOWNSHIP CLERK

SOUTH BRUNSWICK TOWNSHIP ORDINANCE NO. 20-86

AN ORDINANCE AMENDING AND SUPPLEMENTING THE
REVISED GENERAL ORDINANCES OF THE TOWNSHIP
OF SOUTH BRUNSWICK, 1975, SPECIFICALLY
CHAPTER XVI, LAND USE

BE IT ORDAINED by the Township Committee of the Township of South Brunswick, County of Middlesex, State of New Jersey, that the Revised General Ordinances of the Township of South Brunswick, 1975, specifically Chapter XVI, Land Use, be and are hereby amended and supplemented as follows:

§16-2.1 Purpose. be and is hereby amended and supplemented by the addition of the following as 16-2.1q:

"q. To satisfy the Township's obligation to provide for its fair share of the regional need for lower income housing."

§16-3 Definitions. be and is hereby amended and supplemented by the deletion of the existing 16-3.29A, 16-3.67, 16-3.68 and 16-3.69, and the addition of the following:

"16-3.2A Affordable Housing Agency. Affordable Housing Agency shall mean the Agency referred to in Section 16-62.13i, or it designee.

16-3.25A Doublewide Unit. Doublewide unit shall mean a mobile home consisting of two (2) modules containing a width between twenty-two feet (22') and twenty-eight feet (28').

16-3.46A Income Ceiling. Income ceiling shall mean eighty percent (80%) of the regional median income for moderate income households, seventy percent (70%) of the regional median income for intermediate moderate income households, and fifty percent (50%) of the regional median income for low income households.

16-3.47A Intermediate Moderate Income Household. Intermediate moderate income household shall mean a household whose income is greater than fifty percent (50%) but does not exceed seventy percent (70%) of the regional median income, with adjustments for household size, as determined by the Affordable Housing Agency.

- 16-3.47B Intermediate Moderate Income Unit. Intermediate moderate income unit shall mean a dwelling unit that is subject to the price and occupancy requirements of Section 16-62.13 and whose sales price or rental charge does not exceed the maximum price or charge affordable by intermediate moderate income households.
- 16-3.61A Low Income Household. Low income household shall mean a household whose income does not exceed fifty percent (50%) of the regional median income, with adjustments for household size, as determined by the Affordable Housing Agency.
- 16-3.61B Low Income Unit. Low income unit shall mean a dwelling unit which is subject to the price and occupancy requirements of Section 16-62.13 and whose sales price or rental charge does not exceed the maximum price or charge that is affordable by low income households.
- 16-3.61C Lower Income Housing. Lower income housing shall mean the sum of all categories of housing subject to the price and occupancy requirements of Section 16-62.13, including low income, moderate income and intermediate moderate income units.
- 16-3.63A Manufactured Housing. Manufactured housing is intended to be generic and shall mean housing which is mass-produced in a factory; designed and constructed for transportation to a site for installation and use when connected to required utilities; and comprised of an independent, individual building or modules combined with other elements to form a building on the site. Manufactured housing includes any housing customarily known as modular housing.
- 16-3.63B Manufactured Housing Development. Manufactured housing development shall mean a development designed and intended for the sale of lots with, or for the placement of manufactured housing and/or mobile homes for fee simple residential occupancy.
- 16-3.67 Mobile Home. Mobile home shall mean a unit of housing which: consists of one or more transportable sections that are built on a permanent chassis; is designed to be used, when connected to utilities, as a dwelling; and is manufactured in accordance with the standards promulgated for a manufactured home by the Secretary of the United States Department of Housing and Urban Development pursuant to the National Manufactured Housing Construction and Safety Act and the standards promulgated by the Commissioner pursuant to P.L. 1975, c.217 (N.J.S.A. 52:27D-119, et seq.).
- 16-3.68 Mobile Home Park. Mobile home park shall mean any plot of land which is equipped for the installation of two or more mobile homes and is under common ownership and control, other than a cooperative, for the purpose of leasing mobile home units and/or leasing mobile home sites to owners of mobile homes for the installation of such units.

16-3.69 Mobile Home Site. Mobile home site shall mean a parcel of land designed to accommodate a mobile home and shall include the mobile home stand and the mobile home yard.

16-3.69A Mobile Home Stand. Mobile home stand shall mean that part of a mobile home site which has been reserved exclusively for the placement of a mobile home.

16-3.69B Mobile Home Yard. Mobile home yard shall mean that part of a mobile home site excluding the mobile home stand.

16-3.69C Moderate Income Household. Moderate income household shall mean a household whose income is greater than fifty percent (50%), but does not exceed eighty percent (80%), of the regional median income, with adjustments for household size, as determined by the Affordable Housing Agency.

16-3.69D Moderate Income Unit. Moderate income unit shall mean a dwelling unit which is subject to the price and occupancy requirements of Section 16-62.13 and whose sales price or rental charge does not exceed the maximum price or charge that is affordable by moderate income households.

16-3.102A Region. Region shall mean the housing need region in which South Brunswick Township is located, which consists of the following four (4) counties: Middlesex, Somerset, Warren and Hunterdon.

16-3.102B Regional Median Income. Regional median income shall mean the median income for each county in the housing need region in which South Brunswick Township is located using the most recent calculations of the United States Department of Housing and Urban Development as weighted by the number of households within each county.

16-3.113A Singlewide Unit. Singlewide unit shall mean a mobile home which consists of one (1) module containing a width of twenty-two feet (22') or less."

§16-62.13 Affordable Housing. be and is hereby amended and supplemented by the addition of the following as 16-62.13a through 16-62.13h:

" a. Purpose. The purpose of this section is to (1) promote the general welfare by providing for a variety of housing choices within the township, and (2) satisfy the township's constitutional obligation under Mt. Laurel II to provide a realistic opportunity for the development of its fair share of the regional need for lower income housing by establishing a mechanism for assuring that housing units designated for occupancy by low, moderate and intermediate moderate income households remain affordable to, and occupied by, such households.

b. General Provisions.

1. Wherever reference is made to lower income housing, or low, moderate or intermediate moderate income units in the Land Use Ordinance, the standards, definitions and procedures set forth in this section shall apply.

2. Except as otherwise expressly provided herein, no low, moderate or intermediate moderate income unit shall be offered for sale or rental except at prices that are affordable by low, moderate or intermediate moderate income households respectively.

3. Except as otherwise expressly provided herein, or as may be allowed under the Rules and Regulations of the Affordable Housing Agency, no low, moderate or intermediate moderate income unit shall be sold, resold, rented or re-rented except to a household that has been qualified as a low, moderate or intermediate moderate income household, respectively. However, nothing contained in this Chapter, or in the Rules and Regulations of the Affordable Housing Agency, shall restrict or preclude any household which was classified by the Agency as a low, moderate or intermediate moderate income household at the time it purchased a low, moderate or intermediate moderate income unit from continuing to own said unit after its income exceeds the income ceilings established by this Chapter.

4. A covenant embodying these restrictions shall be recorded with the deed for all sales of property subject to the provisions of this section. Lease agreements shall be in a form approved by the Affordable Housing Agency and shall contain a restriction prohibiting subletting without the written approval of the Affordable Housing Agency.

5. Developments containing Affordable Housing units shall provide that such units be reasonably well dispersed throughout the entire development, but in any case shall be subject to the following minimum requirements:

(a) Definitions.

A building - is any continuously enclosed structure containing one or more separate dwelling units.

A cluster - is any grouping of buildings in close physical proximity to each other, usually arranged around a common feature such as a court yard or parking area.

A section - is any building or grouping of buildings, or any cluster or grouping of clusters set apart by natural features, landscaping or buffers from other parts of the development so as to constitute an identifiably separate portion of the development. A separately named building or grouping as defined herein is presumptively a section.

6. Final site plan approval of developments containing Affordable Housing units shall be conditioned upon payment by the developer to the Urban (now Civic) League of Greater New Brunswick the sum of \$30 per lower income unit (equal to \$5 per unit for each of the six years covered by the consent order) for each of the lower income units authorized by that approval; provided, however, that such payment shall not be required for units in developments that have already received preliminary site plan approval or use variance as of January 14, 1986 or for any wholly subsidized units.

(b) Standards for Dispersal of Lower Income Units.

i. No more than twenty-four (24) lower income units may be located in any single building. No building, cluster or section shall be required to contain any lower income units. In any cluster or section that contains lower income units, no more than one-third (1/3) of the total number of units may be lower income units.

ii. The restrictions contained in subparagraph (b)(i) above shall not apply to any building, cluster or section when necessary to finance the development of the building, cluster or section through public or tax exempt funding or to any building with lower income units restricted to senior citizens, but in no event shall any one building, cluster or section developed pursuant to this paragraph contain more than one hundred fifty (150) lower income units.

iii. Lower income units must be located so as to afford comparable access to transportation, community shopping, recreation, and other amenities as is provided to other residents of the development.

iv. The landscaping and buffers used around buildings and within clusters or sections containing lower income units shall not be different from those used in other portions of the development and the landscaping and buffers used to separate such buildings, clusters and sections shall be the same as is used to separate other portions of the development.

c. Qualification of Low, Moderate and Intermediate Moderate Income Households. A prospective purchaser or renter of a low, moderate or intermediate moderate income unit must be qualified as a low, moderate or intermediate moderate income household by the Affordable Housing Agency prior to the purchase or rental of such unit. In making this determination, the Affordable Housing Agency shall apply the standards set forth in the definitions of low, moderate and intermediate moderate income household in Section 16-3 of the Revised General Ordinances of the Township of South Brunswick. The Affordable Housing Agency shall periodically recalculate the regional median income and the adjustments to household size using the most recent calculations for the United States Department of Housing and Urban Development as weighted by the number of households within each county in the region.

d. Determination of Maximum Sales Prices and Rental Charges. Prior to the sale, resale, rental or re-rental of a low, moderate or intermediate moderate income unit, the Affordable Housing Agency shall determine the maximum sales price or rental charge that may be charged for that size unit in each income category.

1. Maximum Sales Price. The following procedure

shall apply to determine maximum sales prices:

(a) 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, moderate or intermediate moderate income ceiling determined in accordance with Subsection c. above. A ten percent (10%) down payment requirement and a thirty (30) year mortgage term shall be assumed in making this calculation.

In calculating the monthly interest payment, the Affordable Housing Agency shall apply the interest rate which it determines to be reasonably available locally to low, moderate and intermediate moderate income households, and shall review any documentation provided by the developer regarding financing which it contends is available to such households. If the developer or any other entity offers to buy down the prevailing interest rate 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 above calculation to determine the monthly interest payment. 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.

If the developer proposes that an adjustable rate mortgage (ARM) be used to calculate the monthly interest payment and the Affordable Housing Agency determines that such ARMs are reasonably available locally to lower income homebuyers, the initial interest rate of that mortgage shall be used only if the maximum annual average increase does not exceed one half of one percent (0.5%). Otherwise, a rate which is the average of the initial interest rate and the highest possible rate in effect after three years or one and one half (1 1/2) points less than the best available fixed mortgage rate, whichever is greater, shall be used.

(b) In order to assure that low, moderate and intermediate moderate income units are affordable by households whose income is less than the low, moderate or intermediate moderate income ceiling, the maximum sales price that may be offered for each such unit shall be determined as a percentage of the base price for that size unit in each income category as follows:

(1) For each of the following income categories for which a development has fewer than one hundred (100) units, the following percentages shall be used in determining the maximum sales price:

- (i) Low income - 90% of the base price
- (ii) Intermediate moderate income - 85% of the base price
- (iii) Moderate income - 90% of the base price

(2) For each of the following income categories for which a development has one hundred (100) or more units, the following percentages shall be used in determining the maximum sales price:

- (i) Low income - 95% of the base price for one-half of the units, and 85% of the base price for one-half of the units
- (ii) Intermediate moderate income - 90% of the base price for one-half of the units and 80% of the base price of one-half of the units
- (iii) Moderate income - 95% of the base price for one-half of the units and 85% of the base price for one-half of the units

A unit offered at eighty-five percent (85%) of the base price shall not be offered for sale to any household whose income is greater than ninety-five percent (95%) of the low, moderate or intermediate moderate income ceiling, whichever is applicable.

(c) Prior to final approval of any development subject to this section, the Affordable Housing Agency shall determine the maximum sales prices by unit size for the low, moderate and intermediate moderate income units in the development and shall so notify the developer. These prices shall remain in effect for a period of one (1) year or until all of the low, moderate or intermediate moderate income units have been sold, whichever occurs first. The developer may request a modification of the maximum sales price by applying to the Affordable Housing Agency for recalculation of these prices based on substantial change in any of the factors used to calculate the price.

(d) Prior to the resale of any low, moderate or intermediate moderate income unit, the Affordable Housing Agency shall determine the maximum sales price for that unit in accordance with a formula developed by the Agency which takes into account increases in a generally accepted price or income index, reasonable improvements to the property as determined by the Agency, and reasonable out-of-pocket costs of the sale as determined by the Agency, and which, to the extent feasible, ensures that resale prices will be consistent with the affordability standards set forth in Subsections d.1.(a) and (b) above.

2. Maximum Rental Charges. The following procedure shall apply to determine maximum rental charges:

(a) 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, moderate or intermediate moderate income ceiling determined in accordance with Subsection c. above.

(b) In order to assure that low, moderate and intermediate moderate income units are affordable by a range of households whose income is less than the low, moderate or intermediate moderate income ceiling, the maximum gross rent

that may be charged for each unit shall be such that the average of the gross rents charged for that size unit in each income category does not exceed the following percentage of the base price for that size unit in each of the following income categories:

- (i) Low income - 90% of the base price
- (ii) Intermediate moderate income - 80% of the base price
- (iii) Moderate income - 90% of the base price

In order to assure affordability by a wider range of lower income households, the Affordable Housing Agency shall encourage landlords to set individualized rents, not to exceed thirty percent (30%) of the tenant's actual income, provided that the average of such rents for each size unit not exceed ninety percent (90%) of the base rent for that size unit in each income category.

(c) If the cost of all utilities, including heat, hot water, cooking fuel, and electricity, is not included in the monthly rental charge, an estimated monthly charge for those utilities not included in the rent shall be calculated for each unit size. This estimated charge shall be subtracted from the maximum gross rent to determine the maximum rental charge that may be charged for each low, moderate or intermediate moderate income unit.

(d) Once the maximum rental charges have been determined for the low, moderate and intermediate moderate income units, such charges shall not be increased without the prior written approval of the Affordable Housing Agency. The Agency shall establish appropriate criteria and procedures for allowing periodic rental charge increases consistent with the affordability standards set forth in Subsections d.2.(a), (b) and (c) above. No more than one (1) rental charge increase shall be allowed for any unit or group of units within any twelve (12) month period.

(e) Market units and lower income units in a development subject to the affordable housing requirements of Section 16-62.13 of this ordinance shall be exempted from municipal rent control.

(f) Nothing contained in this Chapter shall prevent the Township Committee from adopting Rules and Regulations for the Affordable Housing Agency not inconsistent with this Chapter. Rules and Regulations for the Affordable Housing Agency may be adopted which increase or decrease rents for units subject to the regulations of this Chapter based upon increases or decreases in the income level of the occupant or occupants as same shall be from time to time determined by the Affordable Housing Agency.

3. Relationship Between Household Size and Unit Size. For the purpose of determining maximum sales prices and rental charges pursuant to Subsections d.1. and 2. above, 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 bedroom	3 persons
3 bedroom	5 persons
4 bedroom	7 persons

4. Maximum Affordable Price Tables. The Affordable Housing Agency shall prepare and maintain tables of maximum affordable prices for low, moderate and intermediate moderate income households by unit size and a guide for determining maximum sales prices and rental charges for low, moderate and intermediate moderate income units.

e. Expiration of Restrictions.

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

2. Low, moderate or intermediate moderate income rental units shall remain subject to the requirements of this section indefinitely, except that the limitations set forth in Subsections e.1. above and f. below shall apply if such rental units are converted into condominiums, co-operatives, or some other form of ownership property.

f. Limitations on Restrictions in Event of Foreclosure.

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

2. In the event of foreclosure, the Affordable Housing Agency shall attempt to identify qualified low, moderate and intermediate moderate income purchasers and shall give notice to the lender of their indentity. The Affordable Housing Agency shall undertake other efforts to ensure that lower income housing will not be made unavailable to low, moderate or intermediate moderate income families by virtue of foreclosure. Toward this end, the Affordable Housing Agency shall work with developers of lower 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, moderate or intermediate moderate income unit. In the event of foreclosures, the difference, if any, between the sales price and the lender's recovery of principal, interest and costs under its mortgage shall be paid to the Affordable Housing Agency for use in increasing other affordable housing opportunities. The Agency shall have and record a second lien on all lower income properties to insure payment of such a difference in case of foreclosure.

g. Affirmative Marketing. Developers of lower income housing shall affirmatively market such housing to all

segments of the lower income population within the Mt. Laurel housing region in which the Township is located and to all qualified low, moderate or intermediate moderate income households irrespective of race, color, religion, sex or national origin. Toward that end, the developer shall formulate and submit an affirmative marketing plan acceptable to the Affordable Housing Agency, which plan shall be incorporated into any approval of the development application. At a minimum, the plan shall provide for advertisement in newspapers with general circulation in the following urban core 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, moderate or intermediate 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 four county region consisting of Middlesex, Somerset, Warren and Hunterdon Counties.

h. Income Ceiling Exceptions. Where a developer has diligently attempted to market a lower income housing unit and that unit has not been sold within six (6) months after issuance of the certificate of occupancy for that unit, the developer may seek relief under this subparagraph by submitting to the affordable Housing Agency documentation of all efforts made to sell the unit and the hardship suffered by the continued vacancy. If the Agency finds that the developer has made reasonably diligent efforts and has suffered hardship, and that it is not realistic to expect sale to a qualified household within a reasonable time if sales efforts were to continue, the Agency, in its sole discretion, may provide relief to the developer by permitting the unit to be offered for sale to a purchaser whose income level is up to fifty percent (50%) higher than the income ceiling fixed for the income category for which the unit was originally offered for sale. The unit shall, nevertheless, be sold at the maximum affordable price originally determined by the Affordable Housing Agency and a covenant embodying the restrictions of Section 16-62.13b(1-3) shall be recorded with the deed for the sale of the property subject to the restrictions of this Chapter."

The above ordinance was introduced and passed on first reading at a regular meeting of the Township Committee of the Township of South Brunswick held on May 6, 1986, and will be considered on second reading and second and final passage at a regular meeting of the Township Committee of the Township of South Brunswick to be held at the Municipal Building, Monmouth Junction, South Brunswick Township, New Jersey, at 8:00 P.M. on June 3, 1986, at which time and place any person having an interest therein will be given an opportunity to be heard.

KATHLEEN A. THORPE, TOWNSHIP CLERK