

CA - North Brunswick  
Old Bridge

11-May-84

- Mallach's expert report re: his adjusted fair share  
allocation for North Brunswick and Old Bridge

- ~~COVER~~ <sup>Cover</sup> letter forwarding report to N. Brunswick attorney

pgs. ~~#~~ 15

Notes: expert report

CA 002333 E

**Alan Mallach 15 Pine Drive Roosevelt New Jersey 08555**

May 11, 1984

Eric Neisser, Esq.  
 Constitutional Litigation Clinic  
 Rutgers University School of Law  
 15 Washington Street  
 Newark, New Jersey 07102

RE: Fair Share Housing Allocation  
 North Brunswick and Old Bridge  
 Townships

Dear Eric:

As you requested, I have modified the fair share housing allocation figures for North Brunswick and Old Bridge Townships from those given you in my letter of December 21, 1983, on the basis of the following elements:

(1) I have substituted the indigenous need figures given in Ms. Carla Lerman's letter to Judge Serpentelli of March 27, 1984. As you will recall, it is my conclusion that her numbers are technically preferable to those I used previously, for reasons which I gave in trial testimony last week.

(2) I have added an adjustment for median income, utilizing as the regional median the 11-county figure given in Ms. Lerman's letter. The adjustment factor for North Brunswick is 1.04 (the ratio of local to regional median income) and for Old Bridge is .96, so the effect of the factor is not great.

(3) I have tabulated the number of low and moderate income renter households in each community spending more than 35% of gross income for shelter. Since the consensus report recommends a standard of 30% as reasonable, consistent with current HUD policy, and since the Census data provides break points of 25% and 35% only, I felt that use of the latter cutoff point would be more conservative.

The adjusted fair share housing allocation figures, with and without the addition of net financial housing need (financial housing need less other indigenous need; i.e., based on an assumption of 100% overlap) are as follows:

	North Brunswick	Old Bridge
Previous Categories	1041	2645
With financial need	1508	3538

**609 · 448 · 5474**

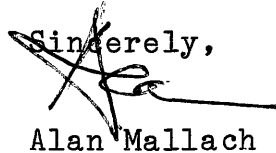
Eric Neisser, Esq. (2)

May 11, 1984

The attached table provides more detail, and a breakdown by category.

I hope you will find this useful. Please let me know if you have any questions or need more information.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Mallach", written over the word "Sincerely,".

Alan Mallach

AM:ms

enc.

cc: B.Gelber, Esq.

ADJUSTED FAIR SHARE HOUSING ALLOCATION FOR NORTH BRUNSWICK AND  
 OLD BRIDGE TOWNSHIPS

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NORTH BRUNSWICK	PREVIOUS ALLOCATION	ADJUSTED ALLOCATION
Indigenous Need	167	182
Present Need	255 x 1.04 <sup>1</sup>	265
Prospective Need	<u>571</u> x 1.04	<u>594</u>
Allocation	993	1041
Net Financial Need		(649 - 182) <sup>2</sup> <u>467</u>
Allocation including financial need		1508
OLD BRIDGE		
Indigenous Need	409	476
Present Need	697 x 0.96 <sup>1</sup>	669
Prospective Need	<u>1563</u> x 0.96	<u>1500</u>
Allocation	2669	2645
Net Financial Need		(1369 - 476) <sup>2</sup> <u>893</u>
Allocation including financial need		3538

<sup>1</sup> adjustment for median income factor

<sup>2</sup> total financial need (low and moderate income renters spending more than 35% for shelter) less indigenous need (households lacking plumbing or heating, or overcrowded) equals net financial need

AM  
 5/84

Alan Mallach  
15 Pine Drive  
Roosevelt NJ 08555

December 21, 1983

Bruce Gelber, Esq.  
General Counsel  
National Committee against  
Discrimination in Housing  
1425 H Street, N.W.  
Washington, D.C. 20005

Prof. Eric Neisser  
Constitutional Litigation Clinic  
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15 Washington Street  
Newark, N.J. 07102


Dear Bruce & Eric:

Based on the same methodology and data base used in my October 1983 expert report, I have calculated the fair share allocations of low and moderate income housing to the year 1990 for North Brunswick and for Old Bridge Township. These allocations are as follows:

		INDIGENOUS	PRESENT	PROSPECTIVE	TOTAL
NORTH	LOW	120	184	343	647
BRUNSWICK	MODERATE	47	71	228	346
	TOTAL	167	255	571	993
OLD	LOW	294	502	938	1734
BRIDGE	MODERATE	115	195	625	935
	TOTAL	409	697	1563	2669

I hope you find this useful.

Sincerely,



Alan Mallach

AM:ms

NORTH BRUNSWICK TOWNSHIP

**Alan Mallach  
15 Pine Drive  
Roosevelt NJ 08555**

Our review of the North Brunswick Township Land Use Ordinance provides no indication that any effort is being made by the Township to meet its Mt. Laurel obligations, nor is there any indication that the Township complied with the judgement of the trial court in Urban League of Greater New Brunswick v. Borough of Carteret et al handed down in 1976. North Brunswick does, however, provide for a number of different multifamily uses in various zones. With a single solitary exception, the R-7 zone for nonprofit development of senior citizens housing (which is now fully developed) none of these multifamily zones provide any realistic opportunity for the meeting of low and moderate income housing needs as required in the Mt. Laurel II decision. As will be described below, not only does the ordinance contain no provisions for a mandatory setaside, or any incentives for low and moderate income housing development (with the sole exception of senior citizens housing), but it continues to contain egregiously exclusionary provisions such as floor area minimum requirements, and bedroom mix requirements, which have long since been found illegal. The ordinance patently fails to satisfy the standards outlined in my October 1983 expert report concerning municipal compliance with Mt. Laurel II.

A. Mandatory Set-Aside

North Brunswick Township's ordinance does not contain a mandatory set-aside, which, under current conditions, is necessary to provide a "realistic opportunity" for the development of low and moderate income housing, nor do they provide any other means of achieving the Township's fair share obligation. North Brunswick's ordinance clearly

## NORTH BRUNSWICK (2)

fails to comply with the constitutional obligation set forth in Mt. Laurel II.

### B. Land Subject to Inclusionary Ordinance

There is no vacant land within the Township which is zoned under inclusionary provisions, either a mandatory set-aside, a voluntary density bonus, or other incentive to provide low or moderate income housing. The only land that can be considered to have been so zoned was a single site for senior citizen housing, now developed.

### C. Cost Generating Requirements and Exclusionary Provisions

As noted above, the North Brunswick ordinance remains rife with exclusionary and cost-generating provisions, many of a type rarely seen in New Jersey municipal zoning ordinances today. We will attempt to present here only a selective list of such provisions, as they apply to each of the multifamily zones. In addition, there are a number of general exclusionary provisions, including

- (1) A definition of 'family' that excludes more than three nonrelated individuals from being considered a 'family', in violation of State law (145-7)
- (2) Prohibition on mobile homes in all zones with the sole exception of the R-M mobile home park zone (145-40(c))
- (3) Egregious exclusionary provisions in all residential zones, including minimum floor area standards unrelated to occupancy and/or health and safety, in violation of State law.

The following discussion will be presented for each multifamily zone. As noted, it is not meant to be exhaustive, but representative.

#### (1) With regard to the R-5 Garden Apartment zone:

- a) excessive minimum lot requirement (145-56(A)1)
- b) excessive setback requirements((A)4 and 5)
- c) inadequate maximum coverage standard ((A)6)
- d) inadequate density of 10 DU/acre ((A)8)
- e) limitation on number of dwelling units per building (145-56(B)1)
- f) 'zigzag' or variation in facade setback requirement ((B)3)

NORTH BRUNSWICK (3)

- g) requirement for brick or stone construction ((B)4)
- h) requirement that each unit have two means of access and egress (145-56(C)1)
- i) requirement that at least 80% of the units be one bedroom or efficiency units((C)6)
- j) minimum floor area requirements of 750 SF for 1 bedroom and 1000 SF for 2 bedroom units, both in excess of health and safety requirements ((C)7)
- k) requirement of average 150 SF per bedroom, unrelated to health and safety requirements ((C)8)
- l) prohibition on units of 3 or more bedrooms ((C)9)
- m) height limit of two stories ((C)10)
- n) excessive requirement of two parking spaces per unit (145-56(E)1)
- o) requirement that internal streets have 36' wide paved roadway ((E)12)
- p) requirement that units have 100' buffer zone (145-56(F)1)
- q) requirement that full-time superintendant be provided (F)10)

(2) With regard to the ERD zone:

- a) 25% of all units must be single family houses under clearly exclusionary provisions, including 30,000 SF lot and 1600 SF floor area (145-59(A)1 and 9)
- b) Balance of units may be garden apartments subject to all R-5 standards (see (1) above) except for open space (145-60(D)2)

(3) As noted, the R-7 senior citizen housing zone was a single site, which is now developed.

(4) With regard to the PUD zone:

- a) A minimum of 10% of the area of a PUD must be developed for nonresidential uses (145-86(B))
- b) Inadequate gross density of 7 DU/acre and net density of 10 DU/acre (145-87(A))
- c) Prohibition of townhouse units larger than 3 bedrooms (B)
- d) requirement that no more than 50% of townhouses may contain 3 bedrooms (same)
- e) requirement that 80% of any garden apartment units be one bedroom or efficiency units (C)
- f) 100' setback requirement (145-87(G)3)
- g) discretionary buffer requirement ((G)8)

(5) With regard to the R-T-D townhouse/duplex zone:

- a) Inadequate gross density for duplex units of 7 DU/acre (145-92.3(A)2)
- b) excessive setback requirement for duplex units ((A)3)
- c) inadequate coverage standard for duplex units ((A)7)



NORTH BRUNSWICK (4)

- d) minimum 800 SF floor area requirement for duplex units ((A)8)
- e) buffering requirement for duplex units (145-92.3(B)1)
- f) inadequate gross density for townhouses of 7 DU/acre (145-92.4(A)2)
- g) excessive setback for townhouses ((A)3)
- h) inadequate coverage for townhouses ((A)4)
- i) 20' minimum width requirement for townhouses ((A)5)
- j) 800 SF minimum floor area requirement for townhouses ((A)6)
- k) limit of 8 DU per townhouse structure ((A)8)
- l) buffering requirement (145-92.4(B)1)

(6) With regard to the R-M mobile home park zone, which has an acceptable gross density standard.

- a) inappropriate requirement that 25% of occupants be senior citizens (145-92.7(D))
- b) requirement for 36' wide roadways (H)
- c) excessive setback requirements (E)3 and 4
- d) excessive sidewalk construction requirement (I)
- e) excessive parking requirement of two spaces per unit (J)

Incentives in Support of Development of Low and Moderate Income Housing

From the materials available to plaintiffs, there is no evidence that North Brunswick has undertaken any efforts to provide support or incentives for development of low and moderate income housing, with the sole exception of a senior citizen housing development, completed some years ago. It appears, in contrast, that the objectives of the Township lie more in the area of maximizing rateables, through extensive zoning of industrial and related areas, and the imposition of fiscally-related conditions on residential development.

## OLD BRIDGE TOWNSHIP

Our review of the Old Bridge Township Land Development Ordinance provides no indication that any effort is being made by the Township to meet its Mt. Laurel obligations. A density bonus provision, as will be discussed below, is patently inconsistent with both the letter and spirit of Mt. Laurel II. Furthermore, there is no indication that the Township has complied with the judgement of the trial court in Urban League of Greater New Brunswick v. Borough of Carteret et al. handed down in 1976. Multifamily development is permitted in a number of zones within the Township, including the following:

- A-F Multifamily housing (termed 'multiplex' in the ordinance) apparently largely or fully developed
- A-R multifamily housing for senior citizen occupancy
- TH townhouse development
- TCD town center, in which one section permits a variety of multifamily uses
- PD I duplex, triplex, quadruplex and townhouse, as well as single family housing
- PD II all types of multifamily and single family housing (except mid- or highrise)

The density bonus provision applies only within the two PD zones, and is, in our judgement, utterly inadequate to achieve low and moderate income housing objectives. A variety of cost-generating provisions as well as other standards inimical to achievement of fair share objectives are present. This ordinance fails to satisfy the standards outlined in my October 1983 expert report concerning municipal compliance with Mt. Laurel II.

### A. Mandatory Set-Aside

Old Bridge Township's ordinance does not contain a mandatory set-aside, which, under current conditions, is necessary to provide

OLD BRIDGE (2)

a 'realistic opportunity' for the development of low and moderate income housing. The ordinance does provide, in the PUD zones, a density bonus for 'affordable' housing (Sec.9-5:2.1.3) which enables a developer to obtain a density increase of 0.2 DU/acre if 10% of the units in the PD are provided through some combination of:

- a) construction of units whose annual carrying cost will not exceed 30% of the annual income of a family earning 120% of the median income in the New Brunswick-Perth Amboy-Sayreville SMSA for a family of four; or
- b) conveying land to nonprofit or limited-dividend sponsors for development of housing meeting the criterion of (a) above 1/

This is inadequate, for a number of reasons:

- (1) The standard of affordability is totally inconsistent with that set forth in Mt. Laurel II, and allows units to be affordable to families earning over \$40,000;
- (2) No provisions are made for occupancy, resale, or re-rental controls;
- (3) the 'bonus' is so limited as to raise questions regarding the intent of the municipality.

The table below indicates the effect of the 'bonus' on a developer building on the minimum acreage in the PD II zone (300 acres). As can be seen, the use of the 'bonus' results in a loss of 48 conventional units. In view of these considerations, this provision

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EFFECTIVE OF DENSITY "BONUS" ON PD II DEVELOPMENT

	ACREAGE	DENSITY	UNITS		
			TOTAL	CONVENTIONAL	AFFORDABLE
BY RIGHT	300 A	3.4	1020	1020	0
WITH BONUS	300 A	3.6	1080	972	108

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cannot be considered a legitimate means of meeting fair share goals, and it is apparent that the ordinance clearly fails to comply with the constitutional obligation set forth in Mt. Laurel II.

OLD BRIDGE (3)

B. Land Subject to Inclusionary Ordinance

It is our understanding that substantial acreage is zoned under the PD category, which contains the density 'bonus' for affordable housing discussed above. This is not considered, however, a bona fide inclusionary ordinance in the usage of Mt. Laurel II.

C. Cost Generating Requirements

There are a variety of cost-generating requirements or exclusionary requirements unrelated to health and safety which hinder development of low and moderate income housing in multi-family zones in Old Bridge Township. In view of the complexity and level of detail of the ordinance, the review below will be limited to areas of major concern, as they affect the various multifamily zones.

(1) All residential densities are lower than is appropriate, including 6 DU/acre gross density for townhouses and multiplex units in the Town Center, and 6 DU/acre for the townhouse zone (Sec.4-4:1.3.2 and 4-4:4.1). Gross densities (without bonus) in PD I is 2.2 units/acre and PD II 3.4 DU/acre (Sec.9-5:1).

(2) The PD application procedure includes an unnecessary 'third stage' application, which is inconsistent with the Land Use Law, and is unnecessarily cost-generating (Sec. 7-7:L)

(3) The Mobile Home Park district is subject to a variety of exclusionary standards, including (Sec. 4-4:11):

- a) maximum density of 5 DU/acre
- b) minimum tract size of 20 acres
- c) excessive minimum lot size of 4000 square feet
- d) excessive setback requirements
- e) requirement for 300 SF patio on all units
- f) excessive sidewalk requirement

(4) An extensive Environmental Impact Assessment is required for all subdivision and site plan applications (Sec. 7-3:6)

(5) Townhouse and maisonette (back-to-back townhouses) developments are subject to excessive standards, including

OLD BRIDGE (4)

- a) excessive minimum width requirements
- b) maximum number of units per structure
- c) 'zigzag' or facade setback variation requirement (Sec. 9-7)

(6) Parking requirements for multifamily housing are excessive (Sec. 12-3)

(7) A variety of exclusionary or cost-generating provisions affect development in the PD zones, including (in addition to those governing multifamily development or application procedure noted above)

- a) excessive minimum tract sizes, being 25 acres for PD I and 300 acres for PD II (Sec.9-4)
- b) no multiplex or maisonette units, or development at net densities higher than 6 DU/acre in PD I
- c) required mix of housing types including required percentage of single family units in both PD I and PD II (Sec.9-6:1)
- d) Broadly discretionary 'aesthetic' provisions (Sec. 9-6:1.1 and 9-7:9.1)
- e) minimum requirement of 10% nonresidential development (office, industrial or commercial) in PD II (may be higher under certain circumstances) (Sec. 9-4:2 and 9-6:2.2)
- f) nonresidential development must be phased in prior to most residential development (Sec.9-10:2)
- g) Buffering requirement (Sec. 9-7:7)
- h) Requirement for construction of arterial highways in PD developments ((-9:1)

With regard to the PD zones, it should be noted that the density bonus for 'affordable' housing is further undermined by the offer of density bonuses for groundwater recharge augmentation, energy conservation (insulation), and in PD I, provision of nonresidential development. This last, for which a substantial bonus is offered, is indicative of the priorities of the Township. The ordinance is further replete with provisions of a largely 'aesthetic' nature, including an extended section (Sec.14) dealing with landscaping of developments.

Incentives in Support of Development of Low and Moderate Income Housing

From the materials available to plaintiffs, there is no indication that Old Bridge has undertaken any efforts whatsoever to

provide support or incentives for development of low and moderate income housing, as discussed in the expert report. What is notable, rather, is that the ordinance under review is dated April 21, 1983 and was apparently not formally adopted until May 16, 1983, nearly four months after the date of the Mt. Laurel II decision. A question arises whether the Township and its legal and professional advisors were unaware of the implications of that decision, failed to understand them, or chose to disregard them.

<sup>1/</sup>It may appear on the surface that option (b) might provide a simple means for a developer to obtain this bonus. This is not the case, because the provision for simultaneous phasing of the 'affordable' and conventional units clearly places the onus on the developer of the PD, as is appropriate.

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

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May 17, 1984

Leslie S. Lefkowitz, Esq.  
Township of North Brunswick Attorney  
711 Hermann Road  
PO Box 182  
North Brunswick, New Jersey 08902

Re: Urban League vs. Carteret, et al.  
No. C 4122-73

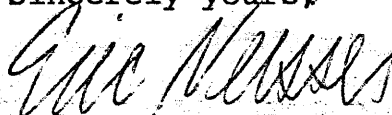
Dear Mr. Lefkowitz:

In response to your letter of May 11, 1984, and in compliance with the schedule in the Court's letter-Order of March 19, 1984, which we agreed by phone last week to extend to May 18 for submission of expert reports and interrogatory answers, enclosed please find a copy of a letter and chart from Alan Mallach, plaintiffs' expert in this action concerning his adjusted fair share allocation for North Brunswick and Old Bridge. These calculations reflect the fair share methodology set forth in his December 1983 Report, which you have, as modified by his testimony in court during the recent trial in this action with regard to the first seven defendants. These calculations do not, however, include the use of the linear regression analysis of employment growth figures, which Mr. Mallach testified are preferable to his original method of calculating employment growth because he did not have the necessary data at the time he made the calculations. He anticipates having the necessary data to do that calculation within the next ten days, and I will, of course, forward it to you then. I should note, however, that that adjustment will probably have a very minor impact on the existing allocations.

Although Mr. Mallach's analysis of the North Brunswick and Old Bridge ordinances, which constitutes the remainder of his expert report for these two defendants, was attached to the Motion to Modify and Enforce the Judgment, served upon you on December 18, 1983, I enclose another copy,

for your convenience. If you do not have Ms. Lerman's final report of April 2, 1984, or any of her earlier reports, I suggest you contact Ms. Lerman or the Judge's chambers.

Sincerely yours,



Eric Neisser

encls

cc/Jerome Convery, Esq.  
Thomas Norman, Esq.  
Henry Hill, Esq.