

CA

South Brunswick

10-21-83

Janet E. LaBella's review and response  
to South Brunswick's Land Use ordinance and  
revisions, Master Plan, zone District Maps and  
Proposed land use amendments

File

CA 002518L

# National Committee Against Disaimination

in Housing 1425 BStreet, N.W., Washington, DC 20005 • (202)783-8150

October 21, 1983

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Re: Urban League of Greater  
New Brunswick, et. al. v.  
Mayor and Council of  
Borough of Cartaret, et.  
al., No. C-4122-73

Dear Mr. Benedict:

Thank you for submitting South Brunswick's Land Use Ordinance and revisions, Master Plan, Zone District Maps and proposed land use amendments. We have reviewed these documents with a view toward determining the extent of the Township's compliance with Mount Laurel I and TL mandate. It is apparent that South Brunswick has made significant progress in streamlining land use application procedures and removing costly, unnecessary development requirements. We are particularly encouraged by the Township's inclusion of mobile home and manufactured housing zones and the proposed amendment to the PRD III zone requiring a mandatory set aside for low and moderate income housing.

It is the plaintiffs' conclusion, however, that these measures alone will not satisfy the Township's obligation to provide a "realistic" opportunity for the construction of its fair share of low and moderate income housing. Considering the present unavailability of federal housing subsidies and the high cost of mortgage financing, both a mandatory set-aside for low and moderate income housing and an adequate gross density provision are essential for the development of a significant amount of lower income housing. In this regard, the Township's proposed reduction of gross density in the PRD III zone from 7 to 5 units per acre is disturbing. Secondly, the Township's

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Land Use Ordinance continues to include several unnecessary, cost producing requirements and restrictions that discourage the development of low and moderate income housing. Finally, the ordinances fail to provide for a number of affirmative actions the Township can take to facilitate achievement of the fair share objective.

It is the plaintiffs<sup>1</sup> position that, to satisfy its Mount Laurel obligation, South Brunswick must adopt measures such as those outlined below or other resolutions or ordinances that will accomplish the same objectives.

#### Mandatory Set-asides

*as proposed*

1. the Township must enact a mandatory set-aside ordinance which requires that a certain percentage of units in each high-density residential development be set aside for occupancy by low and moderate income households. This percentage must be large enough to enable the Township to meet its fair share obligation, but not so large as to make development unfeasible. The Supreme Court in Mount Laurel II suggested that a 20% set-aside, divided proportionally between low and moderate income units based on need, would be appropriate. In return for this set-aside, developers should be allowed to develop at sufficiently high densities to permit the use of efficient construction techniques and economies of scale. We have determined that a minimum gross density range of 8 to 16 units per acre, depending on housing type, will be necessary to meet these conditions. Plaintiffs, therefore, consider even the present 7 unit per acre gross density in South Brunswick PRD III zone to be inadequate.

2. The Township's zoning ordinance may not contain any provision under which residential developments with comparable densities may be constructed without a mandatory low and moderate income set-aside. Such alternatives would obviously undermine achievement of the Township's fair share goals.

3. The ordinance must require that lower income units be phased in along with the balance of the project. This will ensure that developers do not render the mandatory requirement ineffective by building conventional units first and then renege on the obligation to develop lower income units.

4. The mandatory requirement must apply to a sufficient amount of appropriate, vacant, developable land to enable the Township to meet its fair share obligation. Based on a formula which considers factors such as total employment, amount of vacant, developable land, and net employment growth, our preliminary calculations show that South Brunswick Township's fair share of the regional need for lower income housing through 1990 is approximately 1/3 low income and 3 moderate income units.

The Township's fair share plan may be accomplished either by allowing high-density residential developments with a mandatory set-aside as a conditional use in a sufficient number of non-environmentally sensitive zones or by zoning specific tracts for this type of developments. Assuming that a 20% set-aside for low and moderate income housing is used, the amount of land zoned for high density residential development must be sufficiently ample to accommodate five times the fair share requirement since only 20% of the units will be earmarked for low and moderate income housing. In addition, as the Supreme Court noted in Mount Laurel II, it may be necessary to "overzone" for high-density development since not all property zoned for a particular use results in development of that use and a failure to set aside enough land may cause an increase in land costs and thus an increase in the overall cost of development.

5. Provisions must be enacted to ensure that units set aside for low and moderate income households will in fact be occupied by such households and that future sales or rentals will also be to low and moderate income\* families. In this regard, the Township might require the developer to use restrictive covenants for sales, formulate appropriate rent control provisions for rentals, and establish or contract with an independent agency to regulate future transfers.

Low and moderate income households will also have to be defined. The Supreme Court has defined "low income families" as households whose income does not exceed 50% of the median income of the area, with adjustments for family size, and "moderate income families" as households whose incomes fall between 50% and 80% of the median income of the area, again with adjustments for family size.

To determine what housing costs are affordable to low and moderate income families, we suggest adopting prevailing governmental and trade guidelines which provide that housing costs should not exceed 28% of family income for sales and 30% of family income for rentals. Housing costs are defined as principal, interest, taxes, insurance and association fees for purchases, and rent and utilities for rentals. Moreover, it must be demonstrated that the units are actually affordable, not only to persons at the top of each income range, but also to a reasonable cross-section within each category. Use of simplistic formulas to determine affordable costs, such as multiplying family income by 2.5 to yield sales prices, are clearly inappropriate for these purposes.

#### Elimination of cost generating features

The Township's zoning and subdivision ordinances should provide procedures that are both streamlined and free of any

cost-producing requirements and restrictions that are not necessary to protect health and safety. While we are continuing to review the Township's ordinances to determine whether they comply with Mount Laurel and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., our initial review of South Brunswick's Land Use Ordinance indicates that it contains several provisions which are inconsistent with the above objectives. These provisions include the following:

(1) South Brunswick's various high density zones provide for minimum tract sizes ranging from 50 to 100 contiguous acres. These minimum tract sizes are clearly excessive and should be removed unless it can be shown that they will not interfere with the development of potential sites suitable for multi-family projects. Indeed, the New Jersey Municipal Land Use Law requires only a 5 acre minimum. N.J.S.A. 40:55D-6.

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(2) The Planned Retirement Community zone (PRC) provides only for single family detached, semi-attached and townhouse uses. Multi-family use should be permitted, unless it can be shown that its absence will not preclude the development of a significant amount of affordable housing for the elderly.

(3) The maximum gross density for mobile homes and manufactured housing of 3 units per acre is way too low. This should be increased to at least 8 units per acre to realistically permit such development.

(4) Multi-family development should not be subject to the discretion of the municipal agency as provided in Mixed Residential Cluster Performance Standards f(a) but should be permitted according to the objective criteria of the Land Use Ordinance.

(5) Manufactured homes should not be restricted to fee simple or condominium ownership unless it can be shown that this restriction will not inhibit development of manufactured homes and occupancy by low and moderate income residents.

(6) Traffic; Circulation Impact Statements should not be required except for tracts located in areas which have been determined to have potential traffic problems. §16-42.1(f).

(7) The School Impact Statement is an unnecessary expense of dubious value, and should be deleted. §16-42.1(g).

(8) Environmental Impact Statements should not be required except for tracts located in areas which have

been determined to be environmentally sensitive, §16-42.1(h). Indeed, East Brunswick Township has already eliminated this cost-producing requirement for all PRDs.

#### Affirmative municipal action

Because of current economic conditions and reductions in federal housing subsidies, a mandatory set-aside ordinance and elimination of cost producing requirements may not be sufficient to enable a municipality to meet its entire fair share obligation, especially its distinct obligation to address low income housing need. Therefore, South Brunswick will also have to show, by resolution or ordinance, that it will offer the inducements necessary to meet this obligation full. These inducements could include making municipally owned land available for sale or long-term lease for use in development of low and moderate income housing; offering tax abatements to developers for the construction of lower income units; assuming financial responsibility for construction of roads, sewers, and other infrastructure requirements; an^eommitting a significant portion of the Township's! Community Development Block Grant funds to aiding development of such housing through acquisition, write-downs, site improvements, or the provision of subsidies to prospective lower income homebuyers. The Township must also apply for such state and federal subsidies as are available and encourage and assist developers to participate in available governmental programs.

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Finally, plaintiffs Inote that their views on settlement could be significantly influenced by the disposition of any applications for residential development that are pending before the Township or may come before the Township during these proceedings. Approval of any such applications with a provision for low and moderate income housing applied to a sufficiently large tract of land would reduce the Township's remaining fair share obligation and thus facilitate settlement of this matter.

This letter is submitted for settlement purposes only and does not purport to d^escribe the positions plaintiffs will take should South Brunswick's Mount Laurel obligation have to be relitigated. We are hopeful, of course, that further litigation will not be necessary. We are encouraged by South Brunswick's effojrts to meet its Mount Laurel obligations and are interested in reviewing additional proposals or alternatives! with you. We will welcome the opportunity to discuss wijth you..-all aspects of providing

housing to low and moderate income families and would be pleased to offer any assistance in that regard that may be helpful to you.

Sincerely,

Janet E. LaBella  
Assistant General Counsel

cc: Hon. Eugene Serpentelli, J.S.C.  
Carla Lerman  
John Payne  
Eric Neisser