

CA - North Brunswick

2/10/86

Notice of motion on short notice ^{by TTS} to enforce

litigants' rights and compel compliance of
North Brunswick

- Supporting affidavit of Eric Neisser

P 40 + exhibits

CA 002562N {OM}

ERIC NEISSER, ESQ.
BARBARA STARK, ESQ.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street
Newark, New Jersey 07102
201-648-5687
ATTORNEYS FOR URBAN LEAGUE PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

 Plaintiffs,

vs.

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

 Defendants.

Civil No. C 4122-73
(Mount Laurel)

NOTICE OF MOTION ON SHORT NOTICE
TO ENFORCE LITIGANTS' RIGHTS AND
COMPEL COMPLIANCE
(North Brunswick)

TO: Clerk of Court
All Counsel of Record
Carla Lerman, P.P.

PLEASE TAKE NOTICE that on Tuesday, February 25, 1986, at 9:00
o'clock in the morning or as soon thereafter as counsel may be
heard, the undersigned, attorneys for the Urban League plaintiffs,
shall apply to the Honorable Eugene D. Serpentelli at the
Courthouse, Toms River, New Jersey for an Order pursuant to Rule
1:10-5 enforcing litigants' rights and compelling compliance as
follows:

- 1. Requiring the Township Council of North Brunswick ("the
Council") to enact within 10 days of entry of this Order an
affordable housing ordinance in compliance with the Consent Order

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signed by this Court on September 10, 1984 and in compliance with Mount Laurel II; specifically, that the Council enact the Affordable Housing Ordinance introduced on first reading on January 20, 1986 with the deletions and additions noted in the form annexed to the proposed form of Order submitted herewith;

2. Imposing a fine in the amount of \$1000 per day on the Council, and additional fines of \$100 per day on each member of the Council individually, for each and every day that passes following the entry of this Order in which the Council fails to enact the Ordinance;

3. Restraining the Township of North Brunswick and any of its officials, agents or persons acting in concert with them from issuing any building permits whatsoever for new construction or for projects on existing structures costing more than \$1000 prior to the effective date of the Ordinance;

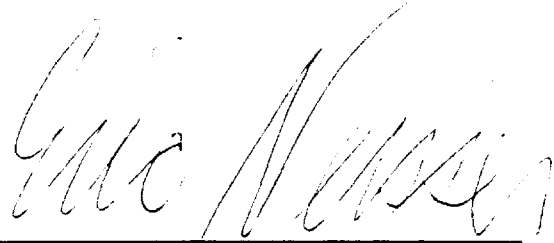
4. Awarding the Urban League plaintiffs counsel fees and costs which may be incurred in enforcing this Order, in an amount to be determined following the submission of an Affidavit of Services; and

5. Providing such further relief as the Court may deem equitable and just.

In support of this application, plaintiffs shall rely upon the Affidavit of Eric Neisser, Esq. submitted herewith.

A proposed form of Order is submitted herewith pursuant to R. 1:6-2.

Dated: February 10, 1986

A handwritten signature in cursive script, appearing to read "Eric Neisser". The signature is written in dark ink and is positioned above a horizontal line.

Eric Neisser, Esq.
Barbara Stark, Esq.
Attorneys for Urban League
Plaintiffs

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SUPERIOR COURT OF NEW JERSEY
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URBAN LEAGUE OF GREATER]	Civil No. C 4122-73
NEW BRUNSWICK, et al.,]	(<u>Mount Laurel</u>)
]	
Plaintiffs,]	
]	
vs.]	
]	
THE MAYOR AND COUNCIL OF THE]	
BOROUGH OF CARTERET, et al.,]	
]	AFFIDAVIT
Defendants.]	(North Brunswick)

ERIC NEISSER, being duly sworn, deposes and says:

1. I am an attorney at law of the State of New Jersey and co-counsel for the Urban League plaintiffs in this action. I submit this Affidavit in support of plaintiffs' Motion on Short Notice to Enforce Litigants' Rights and Compel Compliance.

2. On July 9, 1976, this Court entered a Judgment adjudicating North Brunswick's zoning ordinance and land use regulations unconstitutional and directing the Township to adopt compliance ordinances within 90 days. The Township never complied, appealed, or sought a stay or modification of that Judgment.

3. On January 26, 1984, this Court granted the Urban League plaintiffs' motion to modify and enforce the July 9, 1976

Judgment in light of Mount Laurel II.

4. On September 10, 1984, this Court entered a Consent Order as to North Brunswick, pursuant to the agreement of all parties, including the Township. A copy of the Consent Order is attached hereto and made a part hereof as Exhibit A. The Consent Order determined that North Brunswick's fair share through 1990 is 1250 lower income units and that its then current zoning ordinance and land use regulations were unconstitutional in that they failed to provide a realistic opportunity for provision of this fair share, and directed the parties to seek agreement on appropriate ordinance revisions. The parties were given 45 days from September 10, 1984 to reach agreement and thereafter any party could apply for Court-ordered compliance. The Township would have 60 days after the Court's compliance hearing to adopt compliant ordinances. Para. 17.

5. On February 4, 1985, almost five months after the Consent Order, the Township of North Brunswick adopted revisions to its zoning ordinance which all parties accepted as compliant.

6. During the subsequent year, the parties conducted extensive and intensive negotiations which finally resulted in January 1986 in agreement among all parties on an affordable housing ordinance. This draft was introduced for first reading on January 6, 1986. Based on that action, the Court scheduled its public compliance hearing for January 24, 1986.

7. On January 20, 1986, when the Affordable Housing Ordinance was to be adopted on second reading, a number of

significant amendments were adopted by the Council, on information and belief primarily at the instigation of Councilman Frank Paul. These amendments were so substantial as to cause the Township Attorney to rule that the amended ordinance should be re-introduced on first reading and re-noticed for a public hearing on second reading. A copy of the Home News article about that meeting is attached hereto and made a part hereof as Exhibit B. The changes made by the Council on January 20 included the following six significant amendments, which either had previously been rejected by the plaintiffs in negotiations or were never presented to the plaintiffs for prior consideration:

a. The Council added an absolute preference for qualified Township residents. IV(D) (4);

b. The Council deleted a provision of the ordinance permitting (but not requiring) the Affordable Housing Agency (hereafter "the Agency") to lend money to lower income families threatened with foreclosure and substituted a requirement that the Agency simply maintain a waiting list of qualified purchasers and provide that list to owners facing foreclosure. IV(D) (11);

c. The Council added a requirement that developers of lower income units pay the initial start-up costs of the Agency up to \$25,000. IV(E);

d. The Council added a requirement that developers of lower income units pay application fees, in an amount subsequently to be set by the Agency and reviewed by the Council, to cover the the Agency's costs of professional services for reviewing developer submissions related to affordability standards. IV(E);

e. The Council added a requirement that the developer or the subsequent lower income owner pay fees, in an amount to be set later by the Agency and reviewed by the Council, to cover the Agency's costs of issuing statements of exemption for exempt transactions and hardship exemptions. IV(E);

f. The Council added a requirement that the Agency first utilize any surplus funds obtained through foreclosures on lower income units (units which are thereupon released from all further price controls) to fund the operating expenses of the Agency, and authorized use of funds for increasing the opportunities for affordable housing only to the extent that there was a surplus remaining after the Agency's operating expenses had been paid. IX(E) (4).

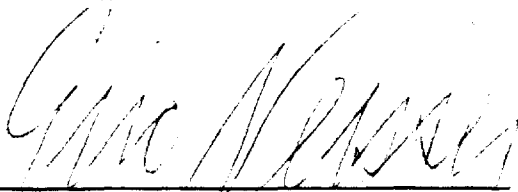
8. On Friday, January 24, 1986, this Court held the scheduled compliance hearing. At that time the Urban League plaintiffs submitted a three-page letter dated January 23 outlining our major objections to the January 20 modifications. A copy of that letter is attached hereto and made a part hereof as Exhibit C. At that hearing all the plaintiffs asked the Court to rule immediately on those objections and determine whether the January 20 ordinance was in compliance with the Consent Order of September 10, 1984 and with Mount Laurel II. The Court, however, acceded to the request of the Township Attorney for an adjournment for one last opportunity to seek agreement and directed the parties to attempt to reach settlement of the remaining issues.

9. Further intensive negotiations occurred. In the interest of concluding the matter, the plaintiffs agreed to compromise positions on all the disputed points. Among these was a compromise concerning the definition of Gross Aggregate Household Income, which is used to determine household eligibility for lower income units. On Tuesday, January 28, Thomas Vigna, the Township's Planning Consultant, informed me that at the executive caucus the prior evening the Township Council had agreed to accept the compromise version worked out by the parties and that the matter would be adopted at the public hearing on February 3.


10. On February 4, Mr. Lefkowitz, the Township Attorney, informed me that the Council had the previous evening voted 3-2 in favor of adopting the amended, agreed-upon ordinance, but that under the Township's form of government, four favorable votes were required for adoption. He explained to me that Councilman Frank Paul, who had previously voted in favor of the Consent Order and the zoning and affordable housing ordinances as agreed to by the parties, had switched his vote. He also informed me that the Council defeated by a vote of 3-2 a motion by Councilman Paul to seek transfer of the North Brunswick litigation to the Council on Affordable Housing. A copy of the Home News articles of February 4 and 5 concerning the February 3 meeting is attached hereto and made a part hereof as Exhibit D.

11. On information and belief, Mr. Paul was the instigating force behind the amendments introduced on January 20 and primarily responsible for the compromise positions worked out

subsequent to this Court's adjournment of the compliance hearing. On information and belief, Mr. Paul voted against the ordinance, after obtaining the revisions he sought, because he believed that "the judge will order them into effect anyway."


ERIC NEISSER

Sworn to before me this
10th day of February 1986.


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An Attorney at Law of the
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SEP 13 '84

ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF NEW
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URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et. al.,

Plaintiffs,

vs.

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

Defendants.

Civil Action C 4122-73

CONSENT ORDER

This matter having been opened to the Court by plaintiff Urban League (now Civic League) of Greater New Brunswick's motion to modify and enforce the judgment in this action against the Township of North Brunswick in light of Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II); the Urban League plaintiffs, plaintiff Brunswick Manor Associates, defendant Township of North Brunswick, and counsel for K. Hovnanian Companies and KAST, Inc. having agreed to

EXHIBIT A

the terms of this Consent Order; the Court having heard counsel for the parties; and for good cause shown,

IT IS ON THIS 10th DAY OF ^{September} AUGUST, 1984,

ORDERED and ADJUDGED:

1. Application of the fair share methodology set forth in the Fair Share Report of Carla L. Lerman, P.P., the Court-appointed expert, dated April 2, 1984, yields a fair share number for North Brunswick Township through 1990 of 1615 housing units. Application of the fair share methodology contained in the Expert Report on Mount Laurel II Issues prepared by Alan Mallach, the Urban League plaintiffs' retained expert, and dated December 1983, as modified by Mr. Mallach's memorandum in this case dated May 11, 1984, yields a fair share number for North Brunswick Township through 1990 of 1508 housing units inclusive of financial need, and 1041 housing units exclusive of financial need. Application of the methodology set forth in the Expert Report, prepared by Thomas A. Vigna, P.P., North Brunswick Township's retained expert, and dated May 23, 1984, produces a fair share number for North Brunswick Township through 1990 of 862 housing units.

2. The Township of North Brunswick's fair share of the regional need for low and moderate income housing through 1990 is 1250 housing units, which include 182 units of indigenous need, 111 units of reallocated present housing need, and 957 units of prospective housing need.

3. The Township of North Brunswick is entitled to credit towards its fair share obligation of 1250 units for

the following housing units built or rehabilitated since 1980: 205 units at the Jack Pincus Memorial Senior Citizen Housing project which are occupied by low or moderate income persons and are subsidized under the Section 8 New Construction Housing Assistance Payments program; 38 units which are occupied by moderate income households and have been rehabilitated and are subsidized under the Section 8 Moderate Rehabilitation Housing Assistance Payments program; and 21 community residence units which are operated by the Serve Centers Corporation and other non-profit corporations, are occupied by low or moderate income persons, and are subsidized under a state program for the developmentally disabled.

4. The Township of North Brunswick's existing zoning ordinance and land use regulations are not in compliance with the constitutional obligation set forth in Mount Laurel II. The Land Use Ordinance of the Township of North Brunswick does not provide a realistic opportunity for the development of the Township's fair share of the regional need for low and moderate income housing. The Township's zoning ordinance contains various cost-generating requirements which are not necessary for the protection of health and safety and which render unfeasible the development of housing affordable to low and moderate income households.

5. The Township of North Brunswick's fair share obligation through 1990 of 1250 housing units shall be satisfied through a combination of credit for and development of the following units:

(a) Credit for the 264 units of existing housing identified in paragraph 3 above. These units include 205 units of low income housing for senior citizens, 21 units of low income housing for the developmentally disabled, and 38 units of moderate income housing rehabilitated under the Section 8 Moderate Rehabilitation Housing Program.

(b) Construction of 100 units of low income housing in a subsidized, senior citizen housing project as set forth in paragraph 6 below.

(c) Construction of 90 units in a 40 acre mobile home/manufactured housing development as set forth in paragraph 7 below. These include 45 units affordable to low income households and 45 units affordable to moderate income households.

(d) Construction of 520 units on a portion of the 404 acre Manor Realty Tract as set forth in paragraph 8 below. These include 173 units affordable to low income households and 347 units affordable to moderate income households.

(e) Construction of 200 units on 100 acres of the Hamelsky (Hovnanian) Tract as set forth in paragraph 9 below. These include 67 units affordable to low income households and 133 units affordable to moderate income households.

(f) Construction of 76 units on 38 acres of the Johnson & Johnson (KAST) Tract as set forth in paragraph 10 below. These include 25 units affordable to low income households and 51 units affordable to moderate income

households.

If fully developed as described in the ensuing paragraphs, these projects will provide 636 units of low income housing and 614 units of moderate income housing, for a combined total of 1,250 units of lower income housing.

6. The Township shall rezone a portion of the municipally owned nine acre site, located on Hermann Road across from the Municipal Building and designated as Lots 7 & 8, Block 213, to allow development of a 100 unit subsidized senior citizen housing project as a part of a new municipal building complex. If necessary to make development of this site for senior citizen housing reasonably feasible, the Township of North Brunswick shall undertake affirmative measures to support efforts to develop the project, such as contributing the land. In the event that the efforts of private limited dividend sponsors to develop the project are unsuccessful, the Township of North Brunswick shall explore the creation of a local development corporation to finance construction of the project through its bonding powers.

7. The Township shall rezone a tract of approximately 40 acres, located off southbound U.S. Route 130 adjacent to the existing Deerbrook Mobile Home Park and designated as Lots 114.1, 114.2, Block 148, to RM (Mobile Home) to permit development of mobile home/manufactured housing at a gross density of 8 units per acre with a mandatory set aside of low and moderate income housing. The zoning ordinance shall permit development on this tract of at least 320 units of

mobile home/manufactured housing with a mandatory set aside requiring that at least 14% of the total number of units that may be developed, assuming full development at maximum density, shall be low income units and at least 14% of the total number of units that may be developed, assuming full development at maximum density, shall be moderate income units, for a total of 90 low and moderate income units. The Township of North Brunswick shall also revise its zoning regulations regarding the RM (Mobile Home) zone so as to remove cost-generating requirements which are not necessary for the protection of health and safety, such as, but not limited to, permitting zero lot-line placement of the units, removing the requirement that 25% of the units be occupied by senior citizens, and reducing the sidewalk and road width requirements.

8. The Township shall rezone the 404 acre tract known as the Manor Realty Tract, located off southbound U.S. Route 130 and designated as Lot 111.01, Block 148, for mixed use residential and nonresidential development with a mandatory set aside of low and moderate income housing on the residential portion of the tract, subject to the following conditions and commitments:

(a) 220 acres shall be zoned as a mixed use residential Planned Unit Development permitting the development of a total of 2950 units, for a gross density of approximately 13.4 units per acre.

(b) All residential development on the Manor Realty Tract shall be subject to a mandatory set aside of

low and moderate income units, requiring that a total of 520 housing units to be developed on the tract shall be affordable to low or moderate income households. One-third of the set aside units in the development shall be affordable to low income households and two-thirds of the units shall be affordable to moderate income households. No residential development in the Manor Realty Tract shall be more than three stories in height.

(c) In the event that Brunswick Manor Associates, or any subsequent owner or developer of the Manor Realty Tract, shall fail to meet the following production schedule for construction of the set aside units, any party or the Court on its own Motion may move for entry of an Order both removing the owner or developer's right to develop the Manor Realty Tract for high density residential development and requiring the Township of North Brunswick to rezone one or more alternate tracts for Planned Unit Development to permit the development of 520 units of low and moderate income housing, minus the number of low and moderate income units already constructed or under construction on the Manor Realty Tract.

Number of low and moderate income units which must be completed or under construction by end of year indicated, beginning on date of final approval of the first section of the residential development

<u>End of Year:</u>	<u>Number of Units:</u>	
	<u>Additional</u>	<u>(Cumulative)</u>
1	0	(0)
2	40	(40)
3	50	(90)
4	50	(140)
5	60	(200)
6	60	(260)
7	60	(320)
8	60	(380)
9	50	(430)
10	40	(470)
11	30	(500)
12	20	(520)

Nothing in this paragraph shall affect or waive the additional phasing obligations set forth in paragraph 15 below.

(d) Development of the residential portion of the Manor Realty Tract at a density in excess of 13 units per acre and with a mandatory set aside of less than 20% is justified in light of the following special circumstances: the size of the development; the commitment on the part of the developer to contribute 20% of the cost of the Finnegan Lane extension, not to exceed \$500,000.00; and the agreement of the developer to develop the remainder of the Manor

Realty Tract for nonresidential development subject to the construction schedule set forth in subparagraph (e) below.

(e) 184 acres of the Manor Realty Tract shall be zoned for nonresidential uses other than warehousing except as an accessory use. Brunswick Manor Associates agrees to adhere to the following production schedule for the development of nonresidential floor space on this portion of the Manor Realty Tract:

<u>Certificates of Occupancy Issued</u>		<u>Square footage of nonresidential space to be completed or under construction</u>	
Additional	(Cumulative)	Additional	(Cumulative)
500	(500)	100,000	(100,000)
500	(1000)	250,000	(350,000)
500	(1500)	250,000	(600,000)
500	(2000)	300,000	(900,000)
500	(2500)	300,000	(1,200,000)
500	(3000)	300,000	(1,500,000)
End of 15 years		2.25 million	
end of 20 years		3.0 million	

(f) The initial application for preliminary approval of the residential project shall be filed within nine months after the applicable zoning ordinances are in effect. Applications for the nonresidential portion of the project shall be filed with due diligence.

9. The Township shall rezone 100 acres of the tract known as the Hamelsky (Hovnanian) Tract, which is designated as Lots 47, 75.01, 105, 106, 107, 119, Block 4.05, is located off southbound U.S. Route 1 south of Cozzens Lane

and is under contract to K. Hovnanian Companies, for mixed use residential development at a gross density of 10 units per acre, permitting development of a total of 1000 units with a mandatory set aside of low and moderate income units subject to the following conditions.

(a) All residential development on the Hamelsky (Hovnanian) Tract shall be subject to a mandatory set aside provision requiring that 20% of the total number of units that may be developed on the site, assuming full development at maximum density, shall be affordable to low or moderate income households, for a total of 200 low and moderate income units. One-third of the set aside units in the development shall be affordable to low income households and two-thirds of the units shall be affordable to moderate income households. No residential development in the Hamelsky (Hovnanian) Tract shall be more than three stories in height.

(b) In the event that K. Hovnanian Companies, or any subsequent owner or developer of the Hamelsky (Hovnanian) Tract shall fail to meet the following production schedule for construction of the set aside units, any party or the Court on its own Motion may move for entry of an Order both removing the owner or developer's right to develop the Hamelsky (Hovnanian) Tract for high density residential development and requiring the Township of North Brunswick to rezone one or more alternate tracts for Planned

Unit Development to permit the development of 200 units of low and moderate income housing, minus the number of low and moderate income units already constructed or under construction on the Hamelsky (Hovnanian) Tract.

Number of low or moderate income units which must be completed or under construction by end of year indicated, beginning on date of final approval of the first section of the residential development

<u>End of Year:</u>	<u>Number of Units:</u>	
	<u>Additional</u>	<u>(Cumulative)</u>
1	0	(0)
2	40	(40)
3	50	(90)
4	50	(140)
5	60	(200)

Nothing in this paragraph shall affect or waive the additional phasing obligations set forth in paragraph 15 below.

(c) K. Hovnanian Companies agrees (i) to construct a road, at its own expense, that will run parallel to U.S. Route 1 between the residential and nonresidential portions of the Hamelsky (Hovnanian) Tract; and (ii) to develop 672,000 square feet of nonresidential space to be phased in over twenty (20) years in accordance with a schedule to be negotiated and agreed upon by the parties at a later time.

(10) The Township shall rezone 38 acres of the tract known as the Johnson & Johnson (KAST) Tract, which is located off southbound U.S. Route 1, between Aaron Road and

382
D.W.
P.P.

Finnegans Lane, is designated as Lots 25, 26, 27, 28, 31.01, 31.02, 1.01, 1.02, Block 74, and is owned by Johnson & Johnson and under ~~option~~^{contract} to KAST, Inc., for mixed use residential development at a gross density of 10 units per acre, permitting development of a total of 380 units with a mandatory set aside of low and moderate income units subject to the following conditions. The remaining 7 acres of the Johnson & Johnson (KAST) Tract shall be zoned for nonresidential.

(a) All residential development on the Johnson & Johnson (KAST) Tract shall be subject to a mandatory set aside provision requiring that 20% of the total number of units that may be developed on the site, assuming full development at maximum density, shall be affordable to low or moderate income households, for a total of 76 low or moderate income units. One-third of the set aside units in the development shall be affordable to low income households and two-thirds of the units shall be affordable to moderate income households. No residential development in the Johnson & Johnson (KAST) Tract shall be more than three stories in height.

(b) In the event that KAST, Inc., or any subsequent owner or developer of the Johnson & Johnson (KAST) Tract, shall fail to meet the following production schedule for construction of the set aside units, any party or the Court on its own Motion may move for entry of an Order both removing the owner or developer's right to develop the Johnson & Johnson (KAST) Tract for high density

residential development and requiring the Township of North Brunswick to rezone one or more alternate tracts for Planned Unit Development to permit the development of 76 units of low and moderate income housing, minus the number of low and moderate income units already constructed or under construction on the Johnson & Johnson (KAST) Tract.

Number of low and moderate income units which must be completed or under construction by end of year indicated, beginning on date of final approval of the first section of the residential development

<u>End of Year:</u>	<u>Number of Units:</u>	
	<u>Additional</u>	<u>(Cumulative)</u>
1	0	(0)
2	25	(25)
3	25	(50)
4	26	(76)

Nothing in this paragraph shall affect or waive the additional phasing obligations set forth in paragraph 15 below.

11. To create a realistic opportunity for the development of the Township's fair share of the regional need for low and moderate income housing, the Township's Land Use Ordinance shall be amended to eliminate unnecessary cost generating requirements applicable to the PUD zone.

12. The Township of North Brunswick shall adopt an Affordable Housing Ordinance which shall provide that units designated as low or moderate income units shall be sold, rented, resold or re-rented only to families who qualify as

low or moderate income families. The ordinance shall further provide that such units shall be affordable to low or moderate income families. To be affordable, the monthly expenses of a sales unit for principal, interest, taxes, insurance, and condominium fees 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, 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 Court-appointed Expert's Report dated April 2, 1984, in this case. *property owner affected by the Affordable Housing Ordinance or any party* Any ~~party~~, upon good cause shown, may apply to the Court for modification of the standards set forth in this paragraph based on a modification of such standards by a court of competent jurisdiction, a state statute, or an administrative ruling of a state agency acting under statutory authority. Restrictions on resale will expire 30 years from the date of the initial sale of the premises. The ordinance shall provide a mechanism to assure that only qualifying families own or rent such units and otherwise to administer these provisions. For this purpose, the Township may establish a municipal agency or may contract with a suitable non-profit organization or other public agency for the purpose of administering the requirements set forth

herein. Wherever used herein, the term "family" shall mean "household."

13. The Township of North Brunswick shall enact an ordinance providing that no tracts, other than those rezoned as part of this Order, may be zoned at gross densities greater than 4 units per acre unless those zones are subject to a mandatory set aside provision requiring that at least 15% of the total number of units be set aside for low and moderate income households, provided, however, that any such tract zoned at a gross density of 7 or more units per acre shall be subject to a mandatory set aside provision requiring that at least 20% of the total number of units be set aside for low and moderate income households.

14. The Township shall adopt provisions to require that the set aside units in all multifamily developments containing set aside units shall contain an appropriate bedroom mix.

15. The Township shall adopt appropriate provisions to require that in all developments for which a set aside of low and moderate income units is provided, (a) the low income units and the moderate income units shall each be continuously phased in with the construction of the market units, on a schedule to be determined pursuant to the procedures set forth in paragraph 17 and, (b) the low and moderate income units shall be sufficiently integrated within the development so as to avoid undue concentration and physical isolation of said units and to ensure that said units are reasonably accessible to any common open space,

public facilities, public transportation and shopping facilities available to the rest of the development. Toward that end, no more than 75 low and moderate income units shall be located in any one building or cluster of contiguous buildings, provided, however, that said units can be, but need not be, contained in structures commonly referred to as garden apartments or stacked condominiums at the option of the developer.

16. The Township shall amend its Land Use Ordinance to require that all developers of low and moderate income units shall affirmatively market those units to persons of low and moderate income, irrespective of race, color, sex, religion 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-appointed Expert's Report dated April 2, 1984. The Township shall also require the developer to notify local fair housing centers, housing advocacy organizations, Urban Leagues, and governmental social service and welfare departments located within the 11-county region of the availability of low and moderate income units. The Township shall also require that all marketing practices comply with applicable federal and state laws against discrimination.

17. The parties shall seek to reach an agreement as to the ordinance revisions required by this Order and shall submit the proposed revisions so agreed upon to the Court within 45 days of the date of the entry of this Order. K.

*See
docket*
BJ
Hovnanian Companies and KAST, Inc., or their assigns, shall have the right to participate ^{fully} in the ordinance revision process. If agreement is reached as to the ordinance revisions by plaintiffs and defendant, the Court shall appoint Ms. Lerman as the Court's expert to review the proposals and advise whether they are consistent with the Order and the Township's obligation under Mount Laurel II.

K. Hovnanian Companies and KAST, Inc., or their assigns, shall have the right to submit objections to any such agreement. If no agreement is reached within 45 days of the date of the entry of this Order, any party may seek appointment of, and the Court shall appoint, a master to assist North Brunswick Township in the revision of its ordinances to achieve compliance with the Order and its obligation under Mount Laurel II. The proposed ordinance revisions and the master's report with respect to the proposed revisions shall be submitted to the Court within 45 days of the appointment of the master. The Court shall schedule a hearing to hear any objections to the proposed ordinance revisions or the recommendations of the master. K. Hovnanian Companies and KAST, Inc., or their assigns, shall be given notice of and shall be given the opportunity to participate fully in any hearing held pursuant to this paragraph. The Township shall have 60 days to complete formal enactment of the ordinance revisions after entry of a final Order of the Court regarding said revisions.

18. The Township of North Brunswick shall report in writing to the Court and to plaintiff Civic League or its

designee when all ordinance amendments and resolutions have been duly enacted by the Township Council as specified in paragraph 17 above, 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. Pending completion of the ordinance revision process called for by this Order, no additional claims to a builder's remedy under Mount Laurel II may be asserted against North Brunswick Township.

20. The Township of North Brunswick shall report quarterly in writing to the Civic League of Greater New Brunswick or its designee, commencing with December 31, 1984, providing the following information with regard to any sites requiring set asides of low and moderate income housing:

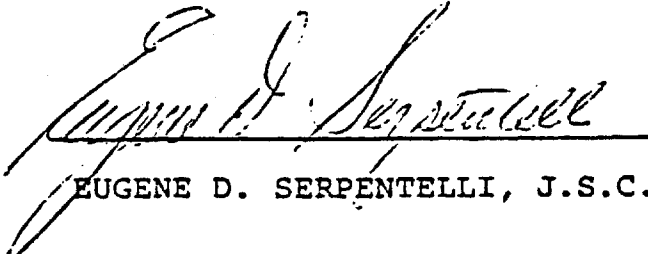
(a) Itemization of all proposed developments for which applications have been filed with the Township's Planning Board, and for which preliminary or final approval has been given by the Planning Board; including the location of the proposed site, number of low or moderate income units, name of developer, 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.

The Civic League, or its designee, shall have the right to inspect all proposed development applications.

21. The time periods set forth in this Order may be extended by mutual written consent of the parties.

22. Failure on the part of the Township to comply with this Order subsequent to entry of the Order of Compliance, by rezoning in contravention hereof or by failing to enforce the other provisions hereof, shall constitute a violation of this Order, which may be enforced upon motion of the plaintiffs or of the Court sua sponte, by appropriate remedies as provided by law.


EUGENE D. SERPENTELLI, J.S.C.

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

National Committee Against
Discrimination in Housing
Rutgers School of Law
Constitutional Litigation
Clinic
Attorneys for Plaintiffs
Urban League of Greater
New Brunswick, et. al.

By: Bruce S. Gelber
BRUCE S. GELBER

Date: August 24 1984

Hutt, Berkow, Hollander &
Jankowski
Attorneys for Plaintiff
Brunswick Manor Associates

By: Stewart M. Hutt
STEWART M. HUTT

Date:

Clapp & Eisenberg, P.C.
Attorneys for KAST, Inc.

By: Frederic S. Kessler
FREDERIC S. KESSLER

Date: Sept. 7, 1984

Lefkowitz, Rockoff &
Zublatt
Attorneys for Defendant
Township of North
Brunswick

By: Leslie Lefkowitz
LESLIE LEFKOWITZ

Date: Sept 10 1984

Greenbaum, Greenbaum,
Rowe, Smith, Bergstein,
Yohalen & Bruck
Attorneys for K.
Hovnanian Companies

By: Douglas K. Wolfson
DOUGLAS K. WOLFSON

Date: 9/10/84

No. Bruns. revises affordable-housing law at last minute

By JOHN MC KEEGAN
Home News staff writer

1/22/86

NORTH BRUNSWICK — Township Council members yesterday expressed anger and frustration about a last-minute compromise reached early yesterday over the Affordable Housing Ordinance — the township's last hurdle before final Mount Laurel Housing approval.

After an hour-long private meeting before Monday night's public Council meeting, two hours of public hearing on the ordinance and more than 2½ hours of private haggling over amendments, the Council took no formal vote on the ordinance but introduced substantial revisions when it reconvened around 1 a.m. Public hearing on the revisions will be heard at the council's next public meeting Feb. 3.

The ordinance is subject to review by Superior Court Judge Eugene Serpentelli, one of three justices overseeing Mount Laurel cases, and the township's Mount Laurel litigants — developers Kevork Hovnanian, Michael Kaplan and Ralph Rieder and the Urban League of Greater New Brunswick, now known as the Civic League.

The township's Mount Laurel settlement calls for 4,580 homes — 986 for low- and moderate-income families to be built during the next 20 years. The settlement also provides for developers to build 4 million-

help preserve the low- and moderate-income units, could hurt the township's position as it approaches a compliance hearing Friday before Judge Eugene Serpentelli. If the township's settlement is approved at the hearing, it will be granted repose from further builder's remedy suits for six years.

Of the six members of the council, Louis Cohen excuses himself from votes on Mount Laurel issues because his law practice includes work for Mount Laurel developer Kaplan, and Sal Paladino votes no because of his general opposition to the court-ordered Mount Laurel housing.

To pass any matter dealing with Mount Laurel issues, the remaining council members — Joan Dambach, Sal Liguori, Nita and Paul — must vote yes. Paul reportedly refused to accept the ordinance if the loan provision remained.

Foreclosure terms

Under the terms of the ordinance heard Monday, low- and moderate-income housing units faced with possible foreclosure would be resold at market value, though the unit would still be credited as a lower-income unit. Council members said the provision for excluding homes faced with foreclosure was included to protect mortgage companies.

After the mortgage company had recovered its money, the agency would take much of the surplus

THE STATE UNIVERSITY OF NEW JERSEY
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School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102-3192 • 201/648-5687

January 23, 1986

Judge Eugene D. Serpentelli, A.J.S.C.
Ocean County Court House
CN 2191
Toms River, N.J. 08754

RE: Urban League v. Carteret
No. C-4122-73
(North Brunswick)

Dear Judge Serpentelli,

I write with respect to the North Brunswick Affordable Housing Ordinance, which was introduced on first reading by the North Brunswick Township Council on January 20, 1986, as part of its compliance with this Court's Consent Order of September 10, 1984. The ordinance is to be considered by this Court at the North Brunswick compliance hearing on January 24, 1986. Unfortunately, the Ordinance as introduced on first reading departs in four instances from the text of the ordinance agreed to by the Urban League after extensive negotiations between the parties and we object to those four provisions. I should note that two of these changes were never discussed in any manner prior to their unilateral insertion by the Council, and that the other two had been clearly rejected during the process of negotiation.

1) The Council seeks to insert a provision in IV(D)(4) on page 6 of the Ordinance providing: "Preference shall be given to qualified Township residents." The entire theory of Mount Laurel is that towns through a housing region must not only meet their indigenous need for affordable housing but also their fair share of the entire region's need. This was reflected in Paragraph 2 of this Court's Consent Order which specified that of North Brunswick's fair share of 1250 housing units, only 182 were indigenous need. Naturally, we have no objection to giving preference to residents in need. We too would have no objection to the current language if at the end was added: "who currently

EXHIBIT C

live in substandard housing." Giving preference to residents already in adequate housing would simply lead to hopscotching in which lower income families would move out of uncontrolled units into controlled units, thus diminishing rather than expanding the pool of affordable housing.

2) The Council wants to impose in IV(E) on page 8 a fee for the Affordable Housing Agency to review developer calculations of lower income unit prices and information concerning mortgage financing. These are the responsibilities of the Township. In most towns, waiver of all municipal fees as to lower income units is a standard part of settlement. We note, moreover, that in his State of the Township Message on January 6, 1986, Mayor Matacera explained that one of the benefits of the Mount Laurel settlement to the Township was that "we... obtained commitments for 4,000,000 sq. ft. in non-residential development to add to our ratable base to help pay the bill." (Emphasis added) (copy attached). The Township shouldn't be able both to gain the benefit and not pay the bill.

More importantly, the Urban League is concerned lest any fee be needlessly cost-generating, thus inhibiting construction of lower income housing. If the Court felt any fee were appropriate, we would suggest a maximum of \$100 for review of any development application.

3) In the same vein, the Township seeks to add a fee for hardship exemptions and exempt transactions in the very next paragraph. This proposal is aggravated by applying it not simply to developers but also to "subsequent owners" meaning lower income families. We oppose the application of that fee to "subsequent owners" who will be seeking exemptions because of difficulty in selling the unit to another lower income family or because of a death or divorce in the family.

4) Finally, we object, as we clearly informed the Township Attorney and Planner in advance of the Council meeting, to the sentence in IX(E) (3) on page 18 which directs that: "The Agency shall first utilize surplus funds for the purpose of funding operating expenses of the Agency." Not only are the Agency expenses properly Township obligations, which it has taken care of through development of commercial ratables, but the surplus funds at issue only arise upon default and foreclosure by a lower income family. In such case, the foreclosed unit is decontrolled forever. The funds, derived from selling at the then market price, should be used to create, through rent subsidies or otherwise, a new unit to replace the lost one. They should not be used to ease the minimal administrative burdens on the Township.

We submit that the Court should find the North Brunswick Affordable Housing Ordinance compliant except for these four provisions and should condition its compliance order upon appropriate amendment within 30 days of these four provisions. We note that the period of repose is 6 years from July 2, 1985 pursuant to Section 22 of the Fair Housing Act, for cases such as this settled prior to its effective date.

Respectfully submitted,



Eric Neisser
Urban League Co-Counsel

cc: North Brunswick Service List

January 6, 1986

Mayor Matacera gave his third annual State of the Township Message.

This is the third opportunity I have had, as Mayor under our new form of government, to speak to the State-of-the-Township - to take a brief look back at 1985 to highlight our accomplishments as well as our frustrations, and to look ahead to the new year - to outline our priorities as I see them and to set goals for ourselves in the public interest.

It is a pleasant chore. I enjoy it. I am now at mid-term as Mayor and, as I reviewed my two earlier Annual Messages in preparation for these remarks, I noted with pleasure that we have been able to keep virtually all the promises we have made. The only exceptions were those areas where we must depend upon other levels of government, as in the case of the re-alignment of the Route 1-130 traffic circle, where progress depends upon the prioritization and the bureaucracy of the state and federal governments.

I should point out that, though we would prefer that this essential project would have been completed "yesterday" with that terrible traffic safety and congestic problem finally solved, progress is being made. We have seen the DOT's tentative plans, impact studies are underway now and, although we have seen no definite construction timetable, we expect the construction work to get underway after the second quarter of 1987.

We have learned that one of the major responsibilities as well as one of the significant frustrations of local government is to open and maintain channels of communication with elected and appointed officials at the state and county levels. Indeed, in at least three major areas I will describe in a moment, we will be working closely with them. We will, in fact, become lobbyists. We will grind our ax and agitate for our point of view in the Court House and in the State House. All of us-your seven elected officials as well as the appointed leaders of our local government accept as a major part of our responsibilities the need to carry our message effectively outside the walls of our local municipal building.

Last year at this time, I spoke about the so-called Mt. Laurel "horror story" its potential impact upon us and the settlement we achieved ending the several lawsuits against us. I proudly commended that settlement as being in the best interests of the Township under the circumstances.

Since that time, many of our sister communities have suffered the fate of no-win litigation, of the builders remedy and the absence of negotiations. Also since that time, the legislature and governor have created the Fair Housing Council and the Supreme Court has agreed to hear the appeals of several communities desiring to get out of court and in front of the Council.

These developments have prompted some to believe we should re-open our case, cast aside our settlement and take our chances, once again, in the courts. It simply is not possible for me to disagree more strenuously with this point of view.

It is essential that we recall several basic facts:

...not alone with its Mt. Laurel dilemma. More than

Affordable-housing law voted down by No. Bruns. council

2/4/86 Page B1, col 5

By **JOHN MC KEEGAN**
Home News staff writer

NORTH BRUNSWICK — The Township Council last night voted down the affordable housing ordinance which would have put an end to the township's present Mount Laurel litigation.

After approving four minor amendments sought by the township's Mount Laurel litigants, Councilman Frank Paul asked for an amendment to the ordinance to stay the township's Mount Laurel agreement and have it transferred to the state Affordable Housing Council. He said in a prepared statement that options to the township had changed radically since the agreement was negotiated in 1984 with the developers.

"At this time, I feel that there are more options available to us than were available when we were dealing with the three developers' suits that were brought against us," Paul said in his statement.

When Paul's amendment was voted down, he voted against the ordinance.

Of the six members of the council, only five vote on matters dealing with Mount Laurel litigation. Councilman Lou Cohen, an attorney, excuses himself from votes because his practice includes work for one of the township's Mount Laurel litigants, Michael Kaplan.

Councilman Sal Paladino votes against all Mount Laurel issues because he feels the agreement will bring added taxation to township residents to pay for the necessary municipal improvements.

The remaining four members of the council, Joan Dambach, Sal Liguori, Joe Nita, and Paul, must all vote yes for a measure to pass.

Dambach, Liguori and Nita voted for the ordinance, but Paladino joined Paul in voting against it.

Councilmen Paul and Paladino "have put the township in considerable risk with their actions this evening," said Mayor Paul Matarera

last night following the meeting. "I think we are going to lose too much with losing this ordinance."

The amendments introduced before the public hearing on the ordinance involved clarification of areas sought by the township's litigants including preferential treatment of North Brunswick citizens and costs to developers.

As read by township planning consultant Tom Vigna, the amendments would:

- Exempt interest on the first \$25,000 of holdings by senior citizens and require that interest income from the sale of a previous home be included in the formation of the eligibility of a prospective homeowner.

- Give preferential treatment to current North Brunswick residents or employees for 40 percent of homes in each phase of construction.

- Require developers to pay \$15,000 for the start up of the affordable housing agency created by the ordinance.

Developers would pay a fee of \$10 to the agency per lower-income unit during each phase of construction.

In addition, the agency would have been permitted to use up to 30 percent of surplus funds from foreclosures to pay for operating expenses in a single year not to exceed \$10,000 in a year.

After passage of the ordinance, the Civic League of New Brunswick and the township had expected to give their consent to the plan which would then have been given final approval by Superior Court Judge Eugene Serpentelli presiding in Toms River.

Township attorney Les Lefkowitz said he would notify the litigants — the Civic League of New Brunswick and developers Kevork Hovnanian, Michael Kaplan and Ralph Rieder — today. He speculated that a compliance hearing will be scheduled before Serpentelli, where the township will be found not in compliance because it lacks an affordable housing ordinance, and the court will impose an ordinance on the township.

Housing plan defeat in No. Bruns. called 'Russian Roulette'

By JOHN MC KEEGAN
Home-News staff writer

2/5/86

NORTH BRUNSWICK — Township officials see the defeat of North Brunswick's affordable housing ordinance as a dangerous step backward in the settlement of the township's Mount Laurel housing conflict.

The ordinance was defeated Monday night when it failed to get the approval of two-thirds of the council. The ordinance would have created a township-affordable housing agency to govern the 986 low- and moderate-income homes to be built as part of the township's Mount Laurel agreement.

Mayor Paul Matarera called the council's actions "a crap shoot" and a "Don Quixote-style crusade against reality." The action, he said, "places in jeopardy many of the advantages to the township we had suc-

Eric Neisser, attorney for the Civic League of Greater New Brunswick, said yesterday the group was "disappointed and surprised" by the council's action.

"We think that it now requires resolution by the judge," Neisser said.

The township and the litigants had hoped to negotiate the ordinance to avoid a court confrontation.

The negotiated ordinance was to be presented to Superior Court Judge Eugene Serpentelli for final approval of the township's Mount

"We think that it now requires resolution by the judge."

— Eric Neisser —

stay of the ordinance and that the township's Mount Laurel case be transferred to the state Affordable Housing Council.

Debate among the council members over Paul's proposed stay amendment was heated.

"We have an ordinance before us that deals with the mechanics of the consent order we approved over a year ago," said Council president Joe Nita at the meeting. The consent order dealt with the specific breakdown of housing between the developers. "I don't like to play Russian roulette with facts," Nita said.

Councilman Sal Liguori emphasized that the amendment could be viewed as a delaying tactic by the court.

"We have a negotiated settlement that is a lot different from the original numbers held out as North Brunswick's responsibility for low- and moderate-income housing," Liguori said.