

CA - North Brunswick

3/7/86

certification of Theodore N. Mellin, worked
closely w/ Jack Malmen, personally attended
Twp Council hearings, evaluating progress
of Mt. Laurel litigation

P 8

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ATTORNEYS FOR

JACK MAILMAN and THEODORE N. MELLIN

Plaintiff

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,

vs.

Defendant

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

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX/OCEAN COUNTY

Civil No. C 4122-73
(Mount Laurel)

CIVIL ACTION

CERTIFICATION OF THEODORE
N. MELLIN

I, Theodore N. Mellin, being of full age, hereby certify as follows:

1. I am a citizen and tax payer of the Township of North Brunswick and have resided therein since 1977. I have worked closely with Jack Mailman in his efforts to ascertain the nature and progress of the Mount Laurel litigation in the Township of North Brunswick, all of which is more fully described in Jack Mailman's certification. I also personally attended both of the recent Township Council hearings regarding the efforts of the Township to meet its Mount Laurel obligations. All

persons, including myself, who sought to question or object to the draft affordable housing ordinance (Exhibit B to the Complaint) were treated in a harsh and insulting manner by certain Council members and their supporters in the audience.

2. In the process of evaluating the progress of this litigation and the Township's efforts therein, I reviewed many of the submissions to the court which were eventually made available to the public after August of 1985, though many of those documents had been generated considerably prior to that time.

3. Among the documents I have reviewed were:

(a) the report of Allan Mallach prepared for the Urban League of Greater New Brunswick in December, 1983 for the present litigation;

(b) the expert report of Thomas A. Vigna, P.P., c/o E. Eugene Cross Associates, North Brunswick's expert planner;

(c) the draft affordable housing ordinance prepared for the Township Council of North Brunswick by E. Eugene Cross Associates dated November 24, 1984, revised June 18, 1985, December 9, 1985, January 3, 1986, and January 20, 1986 (Exhibit B to the Complaint);

(d) the Consent Order entered by this Court on September 13, 1984 (Exhibit A to the Complaint);

(e) the September 1983 Master Plan Program prepared for the Township of North Brunswick Planning Board by E. Eugene Cross Associates, comprising demographic background material for North Brunswick's draft master plan;

(f) the Master Plan dated May 1984, prepared for the Township of North Brunswick Planning Board by E. Eugene Cross Associates; and

(g) the 1980 Census for the Township of North Brunswick prepared by the U.S. Census Bureau.

It is my understanding that all of these materials are part of the

record before this court in this action.

4. I have long had a considerable interest in the zoning and planning activities in the Township of North Brunswick. While I do not pretend to be an expert in the field of zoning and planning, in reviewing all of the foregoing documents, several factual errors and inaccuracies became evident to me. My attempts to voice these concerns at meetings of the Township Council during 1984, 1985 and 1986 were repeatedly ignored and rebuffed by the council, under the pretense that the entire matter was in litigation, settlement negotiations were in progress, and the case could not be discussed publicly. I wish to intervene in the present proceedings to raise these concerns and bring them to the attention of this court and/or the Council on Affordable Housing, as I have not been permitted to adequately present my concerns to our elected representatives on the Township Council. The concerns which Jack Mailman and I wish to raise now and develop further, either as intervenors before the Council on Affordable Housing or as amici curiae in the present matter, are the following:

5. The Consent Order of September 13, 1984 (subsequently enacted by the Township in an ordinance sometime during the Fall of 1985), contains "escape clauses" for all of the developer plaintiffs, with the only party irrevocably bound to all the provisions of the Consent Order being the Township of North Brunswick. No change to the provisions of the Consent Order or any ordinance enacted pursuant thereto can be requested by the Township, no matter how onerous the changed circumstances may be in the future, so long as one of the other plaintiffs chooses to veto it. On the other hand, all of the developer plaintiffs have inserted

provisions into the Consent Order permitting them to avoid most if not all of their obligations therein to develop the property according to their stated intentions.

6. Paragraph 9(c) of the September 13, 1984 Consent Order provides that K. Hovnanian Companies has the option of developing the 672,000 square feet of non-residential space essentially in any manner that it can negotiate with the parties. However, as to its residential development, no such "phase-in" requirement is included and this construction can proceed as slowly or as quickly as the developer wishes, without regard to infrastructure costs or problems which the Township might incur.

7. Paragraph 8(d) of the Consent Order states that as to the Manor Tract, a higher density with a mandatory set aside of less than 20% is justified by numerous "special circumstances", including the developer's commitment to contribute 20% of the cost of an extension of Finnegan Lane, not to exceed \$500,000. In late 1985, during Planning Board hearings on Brunswick Manor Associates' preliminary site plan application on this tract, the Finnegan Lane extension was deleted from the site plan and the developer indicated that he had never promised to commit to the extension of Finnegan Lane and no longer felt bound to allow the extension to pass through the Manor tract.

8. Paragraph #2(c) and Paragraph 9(a) of the Consent Order provide that no residential development in the Hovnanian or Manor Tract shall exceed 3 stories in height. Notwithstanding these explicit provisions, the North Brunswick Township's master plan has been altered in the most recent Master Plan to permit 50 units per acre of residential development with a height of 6 stories. This Master Plan, and the

Township's ordinance purporting to adopt the Consent Order, apparently contained this change, which change was made without any public notice or participation. These facts were represented by the Chairman of the North Brunswick Township Planning Board, Frank Puleio, Jr., during the site plan hearings on the Manor Tract property.

9. In the expert report on behalf of the Township of North Brunswick dated May 23, 1984 (prepared by Thomas Vigna), it is indicated that, in reaching the "fair share" calculations for the Township, employment growth was double-weighted due to the fact that the Township lies within the "Route 1 corridor". I have not seen any evidence to indicate that this hypothesis can be quantitatively proven since it is not made clear in the report whether that projected employment growth applied equally throughout the Route 1 corridor, or is concentrated in the Township of North Brunswick.

10. Nowhere in the Consent Order nor in any subsequent enacted or proposed ordinance, not in any public hearings, was any careful deliberation given to the problems of establishing an infrastructure for all of the development agreed to in the Consent Order. Specifically, there is no provision, nor known proposal, which protects the present or future low to moderate income residents of North Brunswick from the future costs of establishing the necessary infrastructure (roads, sewer, utilities) i.e., through any contributions thereto by the plaintiff developers. In other words, there is nothing to protect the low to moderate income people who are to be the beneficiaries of this development for possible future exorbitant or confiscatory taxation to establish the needed infrastructure to support this development. These

infrastructure costs may well have to be borne by taxation of low and moderate income people unable to pay for the same, thereby resulting in the loss of the very residences that were constructed for them.

11. As a corollary to the preceding paragraph, the draft Affordable Housing Ordinance (revised January 20, 1986) contains some protections for future low and moderate income residents limiting infrastructure costs and taxation which can be imposed on them. But this protection is given only to those low and moderate income residents residing in the properties constructed by the developer plaintiffs. These infrastructure costs or other related taxes on these properties accordingly will be borne by other members of the township population, in particular, the considerable number of low and moderate income residents not now residing in properties constructed by the developer plaintiffs (according to Census figures). These residents will be subjected to an oppressive subsidizing of those residents privileged enough to be residing in the housing constructed by the developer plaintiffs. We have considerable doubts as to the fundamental fairness of this proposal, due to the disparate impact it will have on other Township residents, especially the existing low and moderate income population.

12. The draft Affordable Housing Ordinance does not indicate whether the Affordable Housing Agency will act as the enforcer of the responsibilities of property owners under the Consent Order. Nor is it clear whether this agency would also have the power to enforce the obligations of the builders under the Consent Order. Additionally, it is not clear whether the agency is empowered to act as a combination "court" and "enforcement agency". The statutory or other authority whereby the Township could delegate such powers to an administrative body such as the Affordable Housing Agency is nowhere made clear.

14. The "Hardship Exemptions" contained on pages 14 through 16 of the draft affordable housing ordinance require only 15 days in which a "hardship exemption" permitting a low-income designated property to be sold to a non-qualified (upper income) buyer must be granted. This extremely brief period appears to be in sharp contrast to traditional procedures in which variances or exceptions may be obtained, and appears to benefit principally a nominally qualified "investor" buyer seeking to sell a qualifying unit to a non-qualifying buyer. Additionally, there is no review mechanism by the Township Council or other body to curb any abuses in the grant or denial of these hardship exemptions.

15. The Affordable Housing Agency is charged with the obligation to enact all of its operational regulations within 30 days of the adoption of the enabling ordinance. There is no mechanism contained in the ordinance whereby the agency could obtain any needed extensions of time in which to adopt a potentially very complex set of guidelines and regulations to be applied throughout the Township.

16. The draft affordable housing ordinance provides that the Township Council must approve the Affordable Housing Agency's rules and regulations in the same manner as if the Council were adopting an ordinance. However, any changes to the agency's rules and regulations need only be approved by a simple majority of voting council members rather than by the four affirmative votes otherwise required for passage of any other ordinance. There does not appear to be any policy or other justification for this disparity.

17. All of the foregoing objections and concerns are being listed here only to demonstrate those issues which we wish to present either to the Council on Affordable Housing or to this court as amici curiae. I am not suggesting that the court must find any of the foregoing issues to be legally or factually correct at this time. The Township Council has repeatedly refused to permit any of these issues to be raised before it, and has hampered our attempts to follow the progress at this litigation as public citizens. Far from opposing the construction of low and moderate income housing in North Brunswick, I am especially concerned that all tax paying residents of the Township, especially the present and future low and moderate income residents who will be affected by constructed are protected to utmost so that the efforts to construct this housing will result in the greatest benefit to everyone concerned.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

March 7, 1986

Theodore N. Mellin

THEODORE N. MELLIN