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East Brunswick

19-Su 1-84

Consent order dictating
East Brunswicks' mandatory number of housing
units, specifying contribution of rehabilitation
assistance + requiring rezoning.

pgs 15.

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SUPERIOR COURT OF N. J.
REC'D

JUL 19 1984

7-12-84
C. D. SERPENTELLI, J.C.

CP-16
JOHN M. MAYSON
CLERK

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION MIDDLESEX COUNTY

SUPERIOR COURT OF N. J.
DOCKETED

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, etc., et al.

Plaintiffs,

v.

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

Defendants..

JUL 19 1984

CP-9
JOHN M. MAYSON
CLERK

Docket No. C-4122-73

C

CONSENT ORDER

*As to Low & Moderate
Income Housing Needs, et*

This matter having been opened to the Court by the undersigned attorneys for the plaintiffs and having been remanded for trial by the Supreme Court on the issue of fair share allocation of the regional need for low and moderate income housing and on whether the Township of East Brunswick has complied with the mandate to satisfy its fair share allocation by providing a realistic opportunity for the development of such housing and it being represented to the Court that the parties agree to the following:

Whereas, the Township of East Brunswick made major revisions to its zoning, land use and subdivision ordinances, following the adoption of its Master Plan in 1976, which streamlined application procedures, rezoned more than 870 acres which previously had been planned industrial, 1/2 acre and 1/3 acre residential, neighborhood, commercial

and office zones; increased the potential number of dwelling units from approximately 5,500 to 8,350; and provided for a density bonus in the Town Green and Village Green Zones of one additional unit per acre for each unit of low and moderate income housing provided and an additional one unit per acre when the developer scatters low or moderate income units throughout the entire development.

Whereas, U.S. Homes Corporation and Hovnanian have opted for density bonuses and are in the course of constructing additional dwelling units as a result of developing lower priced housing; and

Whereas, U.S. Homes is selling 43 lower priced units starting at \$58,000 and Hovnanian is selling its homes for around \$50,000; and

Whereas, the Township of East Brunswick provided tax abatement and allocated Community Development Block Grant funds for the acquisition and rehabilitation of 12 blighted multi-family units previously known as Consolidated Apartments and now known as Victory Gardens which are being managed by a non-profit housing corporation and rented to low and moderate income persons; and

Whereas, the Township of East Brunswick provided a tax abatement to assist the development of 153 subsidized low and moderate income senior citizen units in the Lexington Village development; and

Whereas, the Township of East Brunswick utilized Community Development Block Grant funds to assist in the

development of 15 modular housing units in Colonial Oaks Village constructed under the federal section 235 program; and

Whereas, the Township of East Brunswick utilized Community Development Block Grant funds to provide home rehabilitation loans to low and moderate income persons which assisted in the rehabilitation of 50 homes, 19 after April, 1980; and

Whereas, East Brunswick has been recognized as a model community by the New Jersey Department of Community Affairs in a document entitled "The Affordable Housing Handbook"; and

Whereas, the parties desire that the Township of East Brunswick provide a realistic opportunity for the development of a sufficient number of housing units to satisfy the Township's fair share of low and moderate income housing need.

NOW, THEREFORE, it is this 12 day of July, 1984, ORDERED, AND ADJUDGED:

1. The Township of East Brunswick's fair share of low and moderate income housing need through 1990 is a range of 1472 to 1601 housing units.

2. The Township's fair share shall be met by new development of 1188 to 1317 units, rehabilitation of 100 units, and credit for 184 low and moderate income units placed into occupancy after April, 1980, and occupied by low and moderate income persons. Those units eligible for

credit are the 153 subsidized senior citizen units, 12 rehabilitated Victory Garden units and 19 individual rehabilitation units. The new construction units are identified in the schedule attached hereto as Exhibit A and in the Zoning Map attached hereto as Exhibit B and made a part hereof.

3. The Township of East Brunswick shall provide rehabilitation assistance to 100 low and moderate income owner-occupant families, as defined herein in ¶10, through the Neighborhood Preservation Program and the Community Preservation Program. A minimum of 50% of the families assisted must be low income. The rehabilitation assistance may be provided as grants, no or low interest loans, or some other form of direct subsidy. In order to be eligible for credit pursuant to this paragraph the homes to be rehabilitated must lack complete plumbing facilities for the exclusive use of the household, have severely deficient plumbing facilities, lack or have deficient central heating facilities or have severely deficient roofs. A minimum of 14 families must be assisted each year with at least 50 having received assistance by July 31, 1987.

4. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of East Brunswick shall rezone the 98 acre tract on Cranbury Road south of Helmetta Boulevard from R-1 Single Family Detached Housing with a density of one unit per acre to the Manufactured Mobile Home Zone (MMH) permitting modular/manufactured housing and mobile/manufactured housing at a gross density

of 7 units per acre. The Township of East Brunswick shall rezone the 98 acre tract bordered on the east by Cranbury Road South and on the south by Dunhams Corner Road, from R-1 to "Contingent MMH". This MMH contingency shall remain in effect until July 31, 1986, at the conclusion of which the contingency shall expire or the zone shall revert to R-1. Should the Township Planning Board receive applications for development of fewer than 25 acres in the MMH zone by July 31, 1986, the MMH zoning shall lapse and the zone shall revert to R-1. Should the MMH zoning in the primary MMH zone lapse, the contingency in the Contingent MMH zone shall automatically expire and MMH zoning shall immediately become effective. However, should the MMH zoning in the primary MMH zone not lapse, the Contingent MMH zone shall revert to R-1. Should development occur in the Contingent MMH zone during the period of contingency, and the contingency expire as provided above, the Township shall rezone a sufficient amount of additional land adjacent to this zone so that the newly effective MMH zone is composed of 98 contiguous acres.

The zoning amendment shall further provide that a minimum of 35% and a maximum of 42% of the units in the MMH zone shall be low income, a minimum of 29% and a maximum of 44% of the units shall be market priced units and a minimum of 14% and maximum of 36% of the units shall be moderate income. The number of low income and market priced units shall be correlated whereby any two percent increase in the

percentage of market priced units above 29% would require a corresponding one percent increase from 35% upward in the percentage of low income units. This ordinance amendment is attached hereto as Exhibit C and made a part hereof.

5. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of East Brunswick shall rezone the tract on Helmetta Boulevard north of the new MMH zone from Office Professional (OP-1) to Neighborhood Commercial (C-2) to enable commercial development in close proximity to the newly zoned MMH zone. This ordinance amendment is attached hereto as Exhibit D and made a part hereof.

6. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of East Brunswick shall adopt a Resolution committing the Township to include bus service to the MMH zone at such time as the tract is developed should the Township institute community bus service anywhere in the Township. This Resolution is attached hereto as Exhibit E and made a part hereof.

7. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of East Brunswick shall rezone the area know as Cranbury Road South from R-1 zoning to Village Green-II (VG-II) zoning permitting a gross density of three to six dwelling units per acre. This amendment is attached hereto as Exhibit F and made a part hereof.

8. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of East Brunswick

shall amend its zoning ordinance, Section 228.217.4 F, pertaining to the Mixed Use District Zone (MXD), known as the Weingarten-Turnpike Drive-In, to eliminate the restriction on residential use to not exceed 50% of the total allowable land coverage in an entire MXD lot so that 100% residential use is permitted. The amendment shall also provide that the density bonus provision, including the amendments providing for mandatory set asides set forth in paragraph 11 below, shall apply to the Weingarten-Turnpike Drive-In Site. These ordinance amendments are attached hereto as Exhibit G and made a part hereof.

9. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of East Brunswick shall rezone the Bonus/South River Sand Tract from Industrial Manufacturing (IM) to Village Green-II (VG-II) with gross densities of three to six dwelling units per acre, provided, however, that the zoning change will not become effective until all active mining on that tract has ceased. In no event shall the effective date of the zoning change be later than December 31, 1989. The Township shall have the responsibility of determining when active mining has ceased. This ordinance amendment is attached hereto as Exhibit H and made a part hereof.

10. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of East Brunswick shall amend its Affordable Housing Ordinance, Section 132-42.1 of the East Brunswick Code, to define low income as

less than 50% of median income with adjustments for family size and moderate income as between 50% and 80% of median income with adjustments for family size. For the purposes of this section, the region for determining median income through July 31, 1990 shall be the 11 county region set forth in the Revised Court Expert's Report dated April 2, 1984, in this case. Subsequent to July 31, 1990, the region for this purpose shall be the prospective need region contained in the Revised Court Expert's Report. The ordinance shall be further amended to provide exceptions from the resale restrictions in the case of foreclosure and resale by a lender after foreclosure. Restrictions on resale will expire 30 years from the date of the initial sale of the premises. These ordinance amendments are attached hereto as Exhibit I and made a part hereof.

11. Forthwith, but not later than 90 days after the entry of this Consent Order, the Township of East Brunswick shall enact a mandatory set aside ordinance which shall provide for a mandatory set aside for low and moderate income units of 5% of the total number of units that may be developed assuming full development at the minimum density provided by right in each zone for all developments in the VG-II and II-A, VG-III and III-A, TG, and the MXD-R zones. Should a set of two successive developments which has received preliminary subdivision approval by the Township Planning Board not meet the combined minimum total of potential low and moderate income units as set forth in Exhibit A, the mandatory set aside shall be automatically

increased to 10% for future developments. Should a subsequent set of two successive proposed developments which has received preliminary subdivision approval by the Township Planning Board not meet their combined minimum total of potential low and moderate income units, the mandatory set aside shall be automatically increased to 20% for the remainder of the developments in the affected zones. The ordinance shall require that low and moderate income units be phased in with the balance of the development. The number of units representing 5% of the total potential units that may be developed assuming full development at the minimum density provided by right in each zone, as set forth in Exhibit A, shall be added to the total number of low and moderate income units developed through use of the density bonus provisions, when the mandatory set-aside requirement is 5% or 10%. The density bonus provisions may be utilized when the mandatory set aside is 5% or 10%. The minimum density by right of each affected zone shall be increased by 1.5 units per acre if the mandatory set-aside is increased to 10%. The density by right in each affected zone shall be increased an additional 1.5 units per acre if the mandatory set aside is increased to 20%. In no event, however, may the required proportion of low and moderate income units exceed 20% of the total number of units developed.

The mandatory set aside/density bonus provisions shall require that a minimum of 1/3 of the lower income units be low income. If however, deep state or federal subsidies

become available, a goal of 50% low income units shall be instituted for all subsequent developments to more accurately reflect the actual housing need. These ordinance amendments are attached hereto as Exhibit J and made a part hereof.

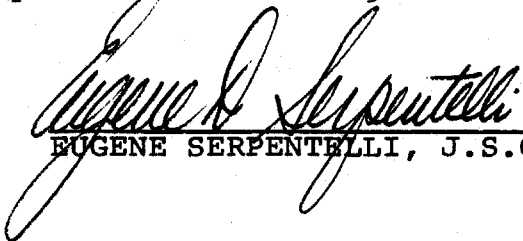
12. Forthwith, but no later than 90 days after the entry of this Consent Order, the Township of East Brunswick shall adopt a Resolution committing the Township to apply for available state and federal housing subsidy programs and to encourage and assist private developers to so apply. This Resolution is attached hereto as Exhibit K and made a part hereof.

13. Forthwith, but no later than 90 days after entry of this Consent Order, the Township of East Brunswick shall amend its land use and zoning ordinances to provide that the off-street parking requirement provided in §132-44(A)(5), providing 1.5 spaces per unit for low and moderate income housing, shall be applicable to parking space provisions in the VG-II and II-A, VG-III and III-A, TG and MXD-R zones. This ordinance amendment is attached hereto as Exhibit L and made a part hereof.

14. The Township of East Brunswick shall report in writing to the Court and to Plaintiff, Urban League or its designee, within 90 days of the entry of this Consent Order or when all ordinance amendments and resolutions have been duly enacted by the Council and Mayor of the Township,

whichever first occurs, 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.

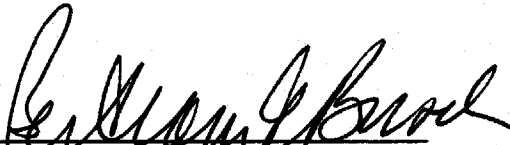
15. The Township of East Brunswick shall report in writing to Plaintiff, Urban League or its designee, immediately after each set of two successive proposed developments have received preliminary approval by the Township's Planning Board. Each report shall identify the site of the proposed development and specify the number of low and moderate income units included in the development plans. The Township shall also provide written quarterly reports commencing with June, 30, 1986, containing a summary of applications for development in the MMH zones and an itemization of the unit address, income of owner-occupant, and description of the proposed rehabilitation for all units approved for rehabilitation pursuant to this agreement.

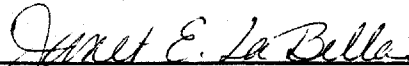

EUGENE SERPENTELLI, J.S.C.

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

Busch and Busch
Attorneys for the Council
and Mayor of the Township
of East Brunswick

The National Committee Against
Discrimination in Housing
Constitutional Law Clinic
Rutgers University Law School
Attorneys for the plaintiffs

BY: 
BERTRAM E. BUSCH

BY: 
JANET E. LABELLA
BRUCE S. GELBER
JOHN M. PAYNE
ERIC NEISSER

LIST OF EXHIBITS

- Exhibit A - Schedule Of Proposed Developments
- Exhibit B - Zoning Map
- Exhibit C - MMH Zone Ordinance Amendment
- Exhibit D - MMH Zone (C-2) Ordinance Amendment
- Exhibit E - Bus Service Resolution
- Exhibit F - Cranbury Road South Ordinance Amendment
- Exhibit G - Mixed Use District Zone Ordinance Amendment
- Exhibit H - Bonus/South River Sand Tract Ordinance Amendment
- Exhibit I - Affordable Housing Ordinance Amendment
- Exhibit J - Mandatory Set Aside Ordinance Amendment
- Exhibit K - Housing Subsidy Program Resolution
- Exhibit L - Off-Street Parking Ordinance Amendment

EXHIBIT A

I. ZONED LAND WITH POTENTIAL APPROVALS

	<u>Acres/Zone</u>	<u>Total Potential Units</u>	<u>Potential Low/Mod. Income Housing units</u>			<u>% of Low/Mod. Income Units of Total</u>
			<u>bonus</u>	<u>5% add on</u>	<u>total</u>	
Lexington Village (Hovnanian)	48.5	500	0-29	0	0-29	0-5.8
Lonczak (Bradgate)	30.2 (VG-II)	90.6-181	30	5	35	5-19.33
Hovnanian (Collins, Diocese of Metuchen)	84 (VG-III)	420-672	84	21	105	5-15.6
Leisure & Technology, Inc. (Garboski)	69 (VG-II)	207-414	69	10	79	5-19
(Kelemen)	48 (TG)	432-576	48	22	70	5-12.2
(Lapinski)	11 (VG-I) 36 (TG)	324-432	36	16	52	5-12
(Gatarz)	<u>10.4 (VG-III)</u>	<u>52-83</u>	<u>10</u>	<u>3</u>	<u>13</u>	<u>5-15.6</u>
Subtotal	337.1	2026-2858	277-306 +	77	= 354-383	

II. PLANNED LAND TO BE REZONED AS PART OF SETTLEMENT

(Bonus/South River Sand)	158 (VG-II)	474-948	158	24	182	5-19.2
Weingarten-Turnpike Drive-In	26.2 (MXD/R)	473	57	0	57	12
Cranbury Road South	<u>181 (VG-II)</u>	<u>543-1086</u>	<u>181</u>	<u>27</u>	<u>208</u>	5-19.2
Subtotal	365.2	1490-2437	396 +	51	= 447	

III. Mobile/Manufactured Housing Zone

Site	Acres	Potential Units	Potential Low Income Units	Low Income Units as % of total	Potential Moderate Income Units	Moderate Income Units as % of total
Part of Block 324, Lot 1 Cranbury Road South of Helmetta Blvd.	98	686	240-290	35-42	97-247	14-35
		<u>Potential Market Units</u>	<u>Market Units as % of Total</u>	<u>Range of Low, Moderate and Market Units by percent</u>	<u>Range of Low, Moderate and Market Units</u>	
		199-299	29-44	L 35 - 42 M 36 - 14 MK 29 - 44	LOW	MOD
or					290	97
Contingent Zone on Dunhams Corner Road and Cranbury Rd					280	127
					270	157
					260	187
					250	217
					240	247
						299
						279
						259
						239
						219
						199

SUMMARY OF NEW LOW AND MODERATE UNITS TO BE BUILT

Zoned Land with Potential Approvals	354 - 383
Planned Land	447
MMH	<u>387-487</u>
Total new units	1188 - 1317

REHABILITATION UNITS

	Potential Low/Mod Units
	100
<u>Credit for previously built units</u>	
Lexington Village	153
Victory Gardens	12
Rehabilitated Units	<u>19</u>
Total Fair Share Need	1472 - 1601