

~~W.A. v. [unclear] & [unclear] S. Plainfield~~ (1985)

Letter w/ order to show cause + verified complaint attached

~~57 pgs~~

57 pgs

- builders remedy scit

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McDONOUGH, MURRAY & KORN

A PROFESSIONAL CORPORATION

COUNSELORS AT LAW

555 WESTFIELD AVENUE

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IN REPLY REFER TO FILE NO 7407

ROBERT P. McDONOUGH
JOSEPH E. MURRAY
PETER L. KORN
JAY SCOTT MacNEILL
STEPHEN J. TAFARO
ROBERT J. LOGAN
R. SCOTT EICHHORN
SUSAN McCARTHY MORYAN
JAMES R. KORN
STEPHANIE JORDAN BRIDY
JONATHAN E. DRILL
BLANCHE DEL DEO VILADE

July 31, 1985

Honorable Eugene D. Serpentelli
Judge, Superior Court of New Jersey
Ocean County Court House
Toms River, New Jersey 08754

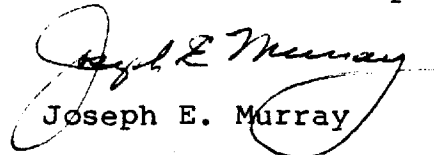
Re: DiGian & Son Construction Co., Inc. vs.
The Borough of South Plainfield, et al.

Dear Judge Serpentelli:

With respect to the above matter which is to be presented to the Court on Friday, August 2, 1985, I enclose a copy of the proposed Order to Show Cause and Verified Complaint. We will be primarily seeking mandamus relief with respect to the ordinances referred to in the complaint.

Very truly yours,

McDONOUGH, MURRAY & KORN
A Professional Corporation


Joseph E. Murray

JEM:bp
Enclosures

cc: DiGian & Son Construction Co., Inc.
Barbara J. Williams, Esquire
Frank Santoro, Esquire

McDONOUGH, MURRAY & KORN
A Professional Corporation
515 Westfield Avenue
Post Office Box "O"
Westfield, New Jersey 07091
Attorneys for Plaintiff DiGian & Son
Construction Co., Inc.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX/OCEAN COUNTY
DOCKET NO.

DIGIAN & SON CONSTRUCTION CO., INC., a New Jersey Corporation	:	CIVIL ACTION
Plaintiff,	:	ORDER TO SHOW CAUSE
vs.	:	
THE BOROUGH OF SOUTH PLAINFIELD, a Municipal Corporation of the State of New Jersey; Michael P. English, Ferdinand A. Thiel, Bernard J. Conlon, Daniel J. Gallagher, Michael Woskey, Donald Acrin and Addie Levine, Individually and as the Mayor and Council of the Borough of South Plainfield,	:	
Defendants.	:	

THIS MATTER having been presented to the Court upon the application of McDonough, Murray & Korn, P. A., (Joseph E. Murray, Esquire, appearing), attorney for the plaintiffs, and the Court having reviewed the Verified Complaint filed herein together with the exhibits attached thereto and for good cause shown thereby;

IT IS on this day of August, 1985, ORDERED that the defendants show cause before the Superior Court of New Jersey, Law

Division (Honorable Eugene D. Serpentelli), at the Ocean County Court House, Toms River, New Jersey, on the _____ day of August, 1985, at _____ o'clock in the _____ noon or as soon thereafter as counsel can be heard, why a mandatory injunction should not be issued compelling the defendants to forthwith adopt ordinances set forth in the Verified Complaint filed herein as Ordinances 1009 and 1010; and

IT IS FURTHER ORDERED that service of certified copies of this order and Verified Complaint upon Frank Santoro, Esquire, as attorney for the Borough of South Plainfield and upon each individually named defendant, personally, shall constitute service of process upon the defendants who are required to serve upon the attorney for the plaintiff, whose name and office address appear above, an answer to the annexed complaint within _____ days after the service of this order and attached complaint upon them, exclusive of the day of service. If defendants fail to answer, judgment by default may be rendered against defendants for the relief demanded in the complaint. Defendants shall promptly file their answers and proofs of service thereof in duplicate with the Clerk of the Superior Court, CN-971, Trenton, New Jersey 08625, in accordance with the rules of civil practice and procedure.

EUGENE D. SERPENTELLI, J.S.C.

McDONOUGH, MURRAY & KORN
A Professional Corporation
515 Westfield Avenue
Post Office Box "O"
Westfield, New Jersey 07091
Attorneys for Plaintiff DiGian & Son
Construction Co., Inc.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX/OCEAN COUNTY
DOCKET NO.

DIGIAN & SON CONSTRUCTION CO., INC., a New Jersey Corporation	:	CIVIL ACTION
Plaintiff,	:	VERIFIED COMPLAINT IN LIEU OF PREROGATIVE WRIT (MT. LAUREL II)
vs.	:	
THE BOROUGH OF SOUTH PLAINFIELD, a Municipal Corporation of the State of New Jersey; Michael P. English, Ferdinand A. Thiel, Bernard J. Conlon, Daniel J. Gallagher, Michael Woskey, Donald Acrin and Addie Levine, Individually and as the Mayor and Council of the Borough of South Plainfield	:	
Defendant.	:	

Plaintiff, DiGian & Son Construction Co., a New Jersey corporation having its principal place of business at 6 Barone Avenue, in the Borough of South Plainfield, Middlesex County, New Jersey, by way of this complaint against the defendants, says:

1. Plaintiff is a New Jersey Corporation primarily engaged in the acquisition and development of real estate for the construction and sale of single family residential homes.

2. Plaintiff is the owner of certain vacant lands located in the Borough of South Plainfield known and designated as Lots 2.02, 2.03, 2.04, 2.05, 2.06, 2.07 and 2.08 in Block 386 as set forth on a subdivision map dated March 21, 1985 which map received preliminary and final major subdivision approval by the Planning Board of the Borough of South Plainfield on or about April 12, 1985.

3. Pursuant to the aforesaid major subdivision approvals the plaintiff, in accordance with the provisions of N.J.S.A. 40:55D-49, became vested with certain rights for a 3-year period from the date of such approval including the right to apply for and obtain a building permit for the construction of a single family residence on each of the lots receiving such subdivision approval.

4. By Judgment of the Superior Court of New Jersey entered on May 22, 1984 in the matter of Urban League of Greater New Brunswick, et al. vs. The Borough of South Plainfield, et als., (herein referred to as Urban League) (Docket No. C4122-73) the defendant, Borough of South Plainfield was ordered to amend its zoning ordinance within 120 days from the date of May 22, 1984 in order to comply with its constitutional obligations as set forth in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mt. Laurel II). (A copy of said Judgment is annexed hereto as Exhibit A).

5. As of July 3, 1985 the Borough of South Plainfield had prepared amendments to its zoning ordinance for the purpose of complying with the Judgment of May 22, 1984 but had failed to take appropriate legislative steps to adopt the same.

6. By Order of the Superior Court of New Jersey entered in the aforesaid Urban League matter on July 3, 1985 the Borough of South Plainfield was directed to introduce the aforesaid zoning ordinance amendments, on first reading, no later than Friday, July 5, 1985 and to adopt the aforesaid ordinances, on second reading no later than July 30, 1985. (A copy of said Order is annexed hereto as Exhibit B).

7. The aforesaid Order of July 3, 1985 contained further restraints against the Borough of South Plainfield including the following:

Pending further Order of this Court, defendants are enjoined from issuing building permits for any purpose in the Borough of South Plainfield, without the prior consent of the plaintiff, Urban League.

8. Subsequent to July 3, 1985 the plaintiff submitted an application to the Building Inspector of the Borough of South Plainfield for a building permit to construct a single family house on each of its lots referred to in paragraph 2 hereof except Lot 2.08 and was refused such permits because of the existence of the Court Order of July 3, 1985.

9. On or about July 10, 1985 the plaintiff requested consent of the Urban League for exemption from the restraints as set forth in paragraph 7 above and was denied the same.

10. At a special public hearing held by the Borough of South Plainfield convened for the purpose of adopting the zoning ordinances required for compliance with the Court Order of July 3, 1985 the Borough of South Plainfield failed and refused

to adopt the same with the vote thereon being to table the ordinances by virtue of the affirmative vote of the individual defendants, Bernard J. Conlon, Michael Woskey, Ferdinand A. Thiel and Donald Acrin. (A copy of said ordinances being annexed hereto as Exhibits C and D).

11. The ordinances referred to in the preceding paragraph constituted proposed legislation that would have complied with the Order of the Court dated July 3, 1985.

12. The defendants, as to such ordinances, were not undertaking a discretionary act with respect to the adoption thereof but were under a mandate of law to do so no later than July 30, 1985.

13. The defendant Michael P. English is the Mayor of the Borough of South Plainfield and Ferdinand A. Thiel, Bernard J. Conlon, Daniel J. Gallagher, Michael Woskey, Donald Acrin and Addie Levine, constitute the remaining Council members of the governing body of the Borough of South Plainfield each of whom are governed by the Constitution and laws to State of New Jersey including the provisions of N.J.S.A. 40:88-1 et seq.

14. As members of the Borough Council of the Borough of South Plainfield each of the defendants recited in the preceding paragraph are fiduciaries and trustees of the public interest and have the non-discretionary affirmative duty to uphold the Constitution of the State of New Jersey and to comply with all laws of this State including the aforesaid orders of the Superior Court of New Jersey dated May 22, 1984 and July 3, 1985.

15. The defendant, Borough of South Plainfield and the aforesaid Mayor and Council members, in not adopting the ordinances as stated in paragraph 10 hereof, failed to comply with the aforesaid obligations of the Order of July 3, 1985.

16. The aforesaid conduct of the individual members of the Borough Council of the Borough of South Plainfield who failed and refused to vote for adoption of the aforesaid ordinances was willful and undertaken in bad faith.

17. The aforesaid conduct of the defendant, Borough of South Plainfield and the individual defendants, Bernard J. Conlon, Michael Woskey, Ferdinand A. Thiel, and Donald Acrin constitutes a violation of the plaintiff's rights guaranteed to it as a "legal person" under the Fourteenth Amendment of the Constitution of the United States and, as such, plaintiff has been and will continue to be deprived of the property rights guaranteed therein and protected by 42 U.S.C.A. Sec. 1983.

WHEREFORE, plaintiff demands judgment:

(a) Compelling the individual members of the Borough Council of the Borough of South Plainfield to forthwith undertake all steps necessary to adopt Ordinances 1009 and 1010.

(b) Damages against the Borough of South Plainfield pursuant to rights enforceable by the plaintiff under the Civil Rights Act (42 U.S.C.A. sec. 1983).

(c) Damages against the individual defendants, Ferdinand A. Thiel, Bernard J. Conlon, Michael Woskey, and Donald Acrin pursuant to rights enforceable by the plaintiff under 42 U.S.C.A. sec. 1983.

(d) Counsel fees under the Civil Rights Attorneys' fees Awards Act of 1976 (42. U.S.C.A. sec. 1988).

(e) Costs.

(f) Such other relief as the Court deems advisable.

McDONOUGH, MURRAY & KORN
A Professional Corporation

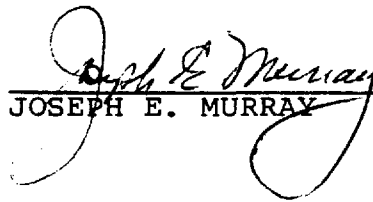
By: 

JOSEPH E. MURRAY

DATED: July 31, 1985

CERTIFICATION OF ATTORNEY REGARDING OTHER ACTIONS

I certify that I am aware that the zoning matter in controversy as set forth herein is the subject of another action pending in the Superior Court of New Jersey in the matter of Urban League of Greater New Brunswick et als. v. The Mayor and Council of the Borough of Carteret, et al., Docket No. C4122-73 and Elderlodge, Inc. v. The Borough of South Plainfield, Docket No. 56349-81 each of which cases, by consolidation, are docketed and pending before Honorable Eugene D. Serpentelli at the Ocean County Court House, Toms River, New Jersey. No other pending matters in Court or through arbitration administration proceedings are known.


JOSEPH E. MURRAY

AFFIDAVIT OF VERIFICATION

STATE OF NEW JERSEY :
: ss.
COUNTY OF MIDDLESEX/OCEAN:

Donald DiGiandomenico, of full age, being duly sworn according to law, upon his oath deposes and says:


1. I currently reside at 6 Barone Avenue, P. O. Box 181, South Plainfield, New Jersey 07080.

2. I have read the foregoing complaint and on my own personal knowledge I know that the facts set forth therein are true and they are incorporated in this affidavit by reference.



DONALD DIGIANDOMENICO

Sworn to and subscribed before
me this 31st day of July, 1985.



JOSEPH E. MURRAY
Attorney at Law of the State of New Jersey

ERIC NEISSER, ESQ.
JOHN M. PAYNE, ESQ.
Constitutional Litigation Clinic
Rutgers Law School
15 Washington Street
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201/648-5687

FILED S-22-84
S. D. SERPENTELLI, J.S.C.

BRUCE S. GELBER, ESQ.
JANET LA BELLA, ESQ.
National Committee Against
Discrimination in Housing
733 Fifteenth St., NW, Suite 1026
Washington, D.C. 20005
202/783-8150

ATTORNEYS FOR PLAINTIFFS

URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.,

Plaintiffs,

vs.

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

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MIDDLESEX
COUNTY

Docket No. C 4122-73

Civil Action

JUDGMENT AS TO SOUTH PLAINFIELD

Plaintiffs having moved for summary judgment based upon the Stipulation between plaintiffs and the Borough of South Plainfield, and the Court having reviewed the Stipulation and referred it to the Court-appointed expert to report whether the terms of the Stipulation, including the fair share allocation, the designation of sites for multi-family development, and the procedures for insuring appropriate marketing and affordability controls are reasonable, and having heard counsel for both parties,

It is, therefore, this 22 day of May, 1984,

ORDERED and ADJUDGED:

1. The Borough of South Plainfield's fair share of the regional low and moderate income housing need through 1990 is 900 housing units, allocated as 280 units of present need and 620 units of prospective need.

2. The Borough of South Plainfield's existing zoning ordinance is not in compliance with the constitutional obligation set forth in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II), and the Borough is not entitled to any credit towards its fair share for any housing built since 1980.

3. Forthwith, but not later than 120 days after the entry of this Judgment, the Borough of South Plainfield shall amend its zoning ordinance to incorporate the following provisions:

A. The Borough shall rezone the 84.8 acre Harris Steel site on New Brunswick Avenue, designated as Block 459 Lot 1, Block 460 Lot 1, Block 461 Lots 1-3, Block 462 Lot 2, Block 465 Lot 1, Block 466 Lot 1, Block 467 Lots 1, 3, 4, 5 and 21, exclusively for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

B. The Borough shall rezone the 27 acre site on New Durham Road, known as the Coppola farm and designated as Block 528 Lot 43, exclusively for multi-family development at a density of 12 units

per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

C. The Borough shall rezone the municipally owned site of approximately 25 acres at the northern tip of Kennedy Road, known as the Pomponio Avenue site and designated as Block 448 Lots 2.01 and 4.01 and Block 427 Lot 1.01, exclusively for multi-family development at a density of 15 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units, except that the rezoning may provide for a commercial development buffer no more than 200 feet deep on the westernmost portion of the site facing Clinton Avenue.

D. The Borough shall rezone the Universal Avenue site, designated as Block 255 Lots 14, 33 and 34, exclusively for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units.

E. The Borough shall rezone the municipally owned site of approximately 8 acres and the adjoining privately owned parcels totalling approximately 4½ acres on either side of Frederick Avenue to the north of Sylvania Place, known as the Frederick Avenue site and designated as Block 308 Lot 34, Block 310 Lots 1.01, 4.01, 5-7, 9, 11, 13-15, 17 and 18, and Block 311 Lots 16-36, exclusively for multi-family development at a density of 12 units per acre with a mandatory set aside of 10 percent low income and 10 percent moderate income units.

F. The Borough shall rezone the municipally owned site of 6.15 acres on Morris Avenue, known as the Morris Avenue site and designated as Block 111 Lots 1-4, Block 112 Lots 1, 2.01, Block 113 Lots 1.01, 2, 4, 5.01 and Block 115 Lots 1, 2, 2.01 and 3, exclusively for development as a senior citizens housing project with a total of 100-150 units of which at least 50 percent will be affordable by low income households with the balance affordable by moderate income households. See ¶ 4 infra.

G. The Borough shall rezone the 7½ acre site south of Tompkins Avenue designated as Block 12 Lots 9, 16 and 17, and currently owned by the Archdiocese of Metuchen for multi-family development at a density of 12 units per acre with a mandatory set-aside of 10 percent low income and 10 percent moderate income units. To the extent that the existing land use ordinance may permit use of the site for cemetery purposes, such ordinance provision may continue in effect for a period of two years from the date of the entry of the Order of Compliance for South Plainfield in this action but shall thereafter expire automatically.

H. The Borough shall rezone the 1.46 acre site on Hamilton Boulevard, known as the Elderlodge site and designated as Block 259 Lots 5, 6.01, 6.02, 7, and 12, which is the property at issue in Elderlodge, Inc. v. South Plainfield Board of Adjustment, No. L-56349-8 (Law Div., Middlesex County), exclusively for a 100-unit multi-family development, with a mandatory set-aside of 10 percent low income and 10 percent moderate income units, subject to reasonable

conditions to be imposed by the Board of Adjustment.

I. The Borough shall expressly provide in its zoning ordinance that modular or manufactured housing meeting state building code requirements and other appropriate zoning ordinance requirements shall be permitted in residential zones throughout the Borough.

J. The Borough shall permit, as a conditional use on any site of 3 acres or more in any residential zone, where appropriate multi-family development at a higher density than otherwise permitted by the applicable zoning with a mandatory set-aside of 10 percent low income and 10 percent moderate income housing, subject to such additional appropriate conditions as the Borough may wish to incorporate in the zoning ordinance. Through 1990 the Borough shall not permit on a site 3 acres or larger any use substantially similar to that permitted under this section unless it is subject to the same mandatory set-aside.

K. The Borough shall adopt appropriate provisions to require that the low and moderate income housing units to be constructed pursuant to any mandatory set-aside provision shall be phased in proportionately during the construction of the entire project so that certificates of occupancy for more than 25 percent of the market units shall not be granted until 25 percent of the low and moderate income units are completed, certificates of occupancy for more than 50 percent of the market units shall not be granted until 50 percent of the low and moderate income units are completed, and certificates of

occupancy for more than 85 percent of the market units shall not be granted until 85 percent of the low and moderate income units are completed.

L. The Borough shall adopt appropriate provisions to require that all multi-family developments provided for herein shall contain a bedroom mix reflecting the distribution of housing needs by household size in the 11-county region set forth in the Report of the Court-appointed expert in this action dated April 2, 1986 and to limit the granting of construction permits, pursuant to the formula set forth in subparagraph 3(K) above, to insure that each segment of a project contains an appropriate bedroom mix, unless the size of the project makes this infeasible.

4. In order to facilitate development of the Morris Avenue site, after rezoning as set forth in ¶ 3(F) supra, the Borough of South Plainfield shall contribute the land at that site and shall provide the necessary financial support for the project, including necessary seed money and tax abatements.

5. Forthwith, but not later than 120 days after the entry of this Judgment, the Borough of South Plainfield shall adopt an Affordable Housing Ordinance which shall provide that units designated as low or moderate income units shall be sold or rented only to families who qualify as low or moderate income families. The ordinance shall further provide that such units shall be re-rented or re-sold only to qualifying families and that such units are 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. The average price of moderate income units in any development provided for herein shall not exceed the level affordable by households earning 90 percent of the ceiling income for moderate income households, and the average price of low income units in any development provided for herein shall not exceed the level affordable by households earning 90 percent of the ceiling income for low income households. 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 to administer otherwise these provisions. For this purpose, the Borough 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.

6. Forthwith, but no later than 120 days after the entry of this Judgment, the Borough of South Plainfield shall adopt a

resolution committing the Borough to apply for all federal, state and county funds that become available between the present and 1990 for rehabilitation of existing deficient housing units and for all such funding that becomes available between the present and 1990 for subsidization of the construction or rent of new housing units, and to encourage and assist private developers to so apply.

7. Forthwith, but not later than 120 days after entry of this Judgment, the Borough of South Plainfield shall amend its zoning ordinances so that all developers of low and moderate income units are required to affirmatively market those units to persons of low and moderate income, irrespective of race, color, sex, 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 Borough shall also require the developer to advertise the low and moderate income units with local fair housing centers, housing advocacy organizations, Urban Leagues, and governmental social service and welfare departments located within the 11-county region. The Borough shall also require that all marketing practices comply with applicable federal and state laws against discrimination.

8. The Borough of South Plainfield shall report in writing to the Court and to plaintiff Urban League or its designee, within 120 days of the entry of this Consent Order or when all ordinance amendments and resolutions have been duly enacted by the Borough

Council, 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.

9. The Borough of South Plainfield shall report quarterly in writing to plaintiff, Urban League or its designee, commencing with September 30, 1984, providing the following information:

(a) itemization of all proposed developments covered by this Judgment for which applications have been filed with the Borough'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 and moderate income units, name of developer, and dates that Planning Board actions were taken or are anticipated to be taken;

(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; and

(c) applications for government funds for low and moderate income housing and the result thereof.

10. Failure on the part of the Borough to comply with this

Judgment subsequent to entry of the Order of Compliance, by rezoning in contravention hereof or by failing to enforce the other provisions hereof, may constitute contempt of Court enforceable, upon motion of the plaintiffs or of the Court sua sponte, by appropriate remedies as provided by law.

11. The Court-appointed expert shall report to the Court no later than June 1, 1984. This Judgment shall become final and the time for taking the actions set forth in this Judgment shall begin to run five days after the Court-appointed expert shall report to the Court.

12. The time periods set forth in this Judgment may be extended by mutual written consent of parties or upon written application to the Court.



EUGENE D. SERPENTELLI, J.S.C.

RECEIVED

JUN 27 1985

JUDGE SERPENTELLI'S CHAMBERS

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BARBARA J. WILLIAMS, ESQ.
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201-648-5687
ATTORNEYS FOR URBAN LEAGUE PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY

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

vs.

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

ELDERLODGE, INC., a New Jersey
Corporation,
Plaintiff,

vs.

SOUTH PLAINFIELD BOARD OF ADJUSTMENT
BY ITS MAJORITY MEMBERS (Ronald
Hepburn, Chairman; Carl Abbruzzese;
Robert Horne; Carl La Ferrara;
Cynthia GaNun, First Alternate);
BOROUGH OF SOUTH PLAINFIELD BY ITS
MAYOR AND COUNCIL; JOHN GRAF, BUILDING
INSPECTOR OF THE BOROUGH OF SOUTH
PLAINFIELD; and PLANNING BOARD OF THE
BOROUGH OF SOUTH PLAINFIELD,
Defendants.

CHANCERY DIVISION
MIDDLESEX COUNTY
No. C-4122-73

LAW DIVISION
MIDDLESEX COUNTY
No. 56349-81

ORDER

EXHIBIT "B"

Urban League plaintiffs having opened this matter to the Court by a motion to hold South Plainfield in contempt and for temporary restraints against any subdivision or site plan approvals, variances or issuance of any building permits with regard to property subject to rezoning for Mount Laurel compliance under this Court's Judgment of May 22, 1984, and against sale by the Borough of specified lots subject to rezoning under the Judgment, and Urban League plaintiffs having filed in support thereof Affidavits of Eric Neisser, Esq. and Barbara Williams, Esq., a Memorandum of Law in Support, and a proposed Order, and having served all parties and affected property owners or contract-purchasers in person on June 21, 1985, and Frank Santoro, Esq., having served and filed on June 24, a Certification In Opposition on behalf of the Borough of South Plainfield, and the Court having heard oral argument in open court on June 24, 1985 from Eric Neisser, Esq., for Urban League plaintiffs, Frank Santoro, Esq., for defendant Borough of South Plainfield, William Lane, Esq., for the South Plainfield Board of Adjustment, and John George, Esq., for Larry Massaro, a contract-purchaser,

It is hereby O R D E R E D this 3 day of July, 1985 that:

1. If the South Plainfield Planning Board has already passed upon the final versions of the zoning and affordable housing ordinances required by the Judgment As To South Plainfield, the South Plainfield Borough Council shall reintroduce those

ordinances, if need be, on first reading, no later than Friday, July 5, 1985, and shall adopt the ordinances on second reading no later than Monday, July 22, 1985. If the Planning Board has not yet passed upon the final versions of the ordinances, then the Planning Board shall meet and make its recommendations no later than Friday, July 5, 1985, the Borough Council shall reintroduce the ordinances, if need be, on first reading, no later than Monday, July 15, 1985 and shall adopt the ordinances on second reading no later than Tuesday, July 30, 1985. If the ordinances need not be reintroduced on first reading, then the dates for first reading stated in the preceding sentences shall be the deadlines for final adoption by the Borough Council.

2. Should the Council not take any one of the appropriate actions by the date specified in Paragraph 1 above, the Court, on request of the plaintiffs, will appoint a Master to submit forthwith a proposed compliance plan for South Plainfield for the Court's immediate consideration.

3. Pending further Order of this Court, defendants are enjoined from issuing building permits for any purpose in the Borough of South Plainfield, without the prior consent of the plaintiff, Urban League.

4. Pending further Order of this Court, defendant Borough of South Plainfield is enjoined from making any land sales or consummating any existing land sale contracts.

5. The other relief requested by plaintiffs in their motion is denied without prejudice as premature.


EUGENE D. SERPENTELLI, A.J.S.C.

AN ORDINANCE AMENDING ORDINANCE #801 ENTITLED "ZONING
ORDINANCE OF THE BOROUGH OF SOUTH PLAINFIELD, 1978"

Be It Ordained, by the Municipal Council of the Borough of South Plainfield that the Zoning Ordinance of the Borough of South Plainfield, 1978, be amended as follows:

Section 1

Article II, Definitions, is amended to add the following:

32A. Apartments: A building, not more than 3 stories and forty (40') feet in height, on one lot, containing three (3) or more separate dwelling units, and sharing joint utility services and facilities.

32B. Gross Density: Gross density shall be the total number of dwelling units divided by the acreage of the entire planned residential development including dedicated areas, common areas, and open space.

46A. Manufactured Housing: A mass produced building manufactured off site and assembled on site for long term residential use. It is modular housing and is constructed in more than one section for combination on the site. Manufactured Housing must meet State Construction Code Standards and does not include trailer home or mobile homes.

46B. Mobile Home: A unit constructed off site for residential use which is equipped with wheels or some device used for the purpose of transporting such unit from place to place whether by motor vehicle or other means; or any factory built unit, equipped with wheels, used for living or sleeping purposes, whether the same is on blocks, posts, or any other type of foundation. Mobile Home shall be synonymous with Trailer Home.

47A. Multi-Family Residential: A building used or designed as a residence for three (3) or more separate dwelling units, sharing joint utility services and facilities. This does not include motels, hotels, or rooming houses.

68A. Townhouses: More than two (2) single family dwelling units which are attached by a common wall to each other, together with individual rear and front entrances. A townhouse unit may have a front and/or rear yard design as an integral part of each unit or all townhouse units in a development may share common outside facilities in conformance with an approved site plan. A townhouse has its own separate storage area and heating system and is considered to be an independent operating unit.

Section 2

Article II, Definitions is amended to read as follows:

24. Family: One (1) or more persons living as a single, non-profit housekeeping unit.

Section 3

Article IV, paragraph 401 shall be amended to add the following at the end of the paragraph.

PRD-1 Planned Residential Development
PRD-2 Planned Residential Development
MF-1 Multi-family Residential
SC-1 Senior Citizens Residential

Section 4

Article IV, paragraph 402 shall be amended to include zoning changes as shown on the attached map prepared by Robert E. Rosa Associates dated January 8, 1985.

Section 5

Article V, General Regulations shall be amended by adding the following paragraphs at the end of this article.

516 General Regulations for all Planned Residential Development, Multi-Family, and Senior Citizen Residential Zones (PRD-1, PRD-2, MF-1, SC-1).

516.1 The purpose of these special regulations is to satisfy a May 22, 1984 Judgement of the Superior Court of New Jersey in Urban League of Greater New Brunswick, et.al. v. Mayor and Council of the Borough of Carteret, et.al. including the Borough of South Plainfield.

- a. Each application for development shall comply with all provisions of the "Affordable Housing Ordinance of the Borough of South Plainfield, 1985".
- b. Each application for development subject to these provisions shall clearly state the number of low and moderate income units, as defined in the Affordable Housing Ordinance and each resolution of approval shall clearly state the number of low and moderate income units that are approved as part of the development.

- c. Each approved development subject to these provisions shall contain moderate income units, in a minimum proportion of ten percent (10%) of the total number of units that may be developed, assuming full development at the maximum gross density allowed by right in the zone, and low income units in a minimum proportion of ten percent (10%) of the total number of units that may be developed, assuming full development at the maximum gross density allowed by right in the zone.
- d. Any approval of a development application subject to these provisions shall require that construction of the low and moderate income units be phased in with the balance of the development in accordance with the following standard:

Number of market units completed as a % of total number of units approved	Number of low or moderate income units
Not more than 25%	At least 25%
50%	60%
75%	85%
90%	100%

To implement this requirement, certificates of occupancy shall not be issued for more than 25% of the total number of market units until certificates of occupancy have been issued for at least 25% of the total number of low or moderate income units; certificates of occupancy shall not be issued for more than 50% of the total number of market units until certificates of occupancy have been issued for at least 60% of the total number of low or moderate income units; certificates of occupancy shall not be issued for more than 75% of the total number of market units until certificates of occupancy have been issued for at least 85% of the total number of low or moderate income units; and certificates of occupancy shall not be issued for more than 90% of the total number of market units until certificates of occupancy have been issued for 100% of the low or moderate income units. Where construction of low or moderate income units is being phased in with the balance of a development, each phase shall include a mixture of low and moderate income units reasonably consistent with the percentage distribution of each category within the development as a whole.

- e. No more than fifty percent (50%) of the low or moderate income units in any development subject to these provisions shall be one (1) bedroom units or efficiency units. In developments containing one hundred (100) or more low or moderate income units, at least twenty percent (20%) of these units shall be three (3) bedroom units or larger, except for units in the SC-1 Zone. Construction of the various-sized units shall be phased proportionately according to the standard set forth in 516.1(d).

- f. No more than twenty percent (20%) of the total number of low or moderate income units that may be developed in any development subject to these provisions may have occupancy restrictions based on the age of household members, except in the MF-1 and SC-1 Zones if Senior Citizen projects are proposed. Where such age restrictions are permissible, occupancy shall be restricted to persons aged sixty-two (62) or over. The Borough may not require a developer of low or moderate income housing to impose any age-based occupancy restrictions with respect to such units as a condition of approval, waiver or assistance.
- g. The Borough shall permit, as a conditional use on any site of three (3) acres or more in any residential zone, where appropriate, multi-family development at a higher density than otherwise permitted by the applicable zoning subject to a mandatory set-aside of ten percent (10%) low income units and ten percent (10%) moderate income units, as set forth in this Section.
- h. Through 1990 no sites of three (3) acres or more may be zoned at gross densities greater than four (4) units per acre unless those sites are subject to a mandatory set-aside provision requiring that at least fifteen percent (15%) of the total number of units that may be developed on the site shall be low or moderate income units. Any site that is zoned at a gross density of eight (8) units per acre or greater shall be subject to a mandatory set-aside provision requiring that a minimum of ten percent (10%) of the total number of units that may be developed on the site shall be low income units and a minimum of ten percent (10%) of such units shall be moderate income units.

517 Manufactured or Modular Housing

517.1 Manufactured housing, including modular, is permitted in all residential zones.

Section 6

Article VI, Off-Street Parking and Loading Facilities, shall be amended to add the following:

603.20 Townhouse - At least one and half (1.5) spaces per one (1) bedroom unit and two (2) spaces per two (2) bedroom unit and above.

603.21 Multi-family - At least one and a half (1.5) spaces per efficiency and one (1) bedroom unit and one and three quarters spaces per two (2) bedroom unit and above.

603.22 Apartments - At least one and a half (1.5) spaces per efficiency and one (1) bedroom unit and one and three quarters spaces per two (2) bedroom unit and above.

603.23 Senior Citizens Community - At least one half (.5) space per unit.

Section 7

Article VII shall be amended to add the following paragraphs:

711 PRD-1 Planned Residential Development

711.1 PERMITTED USES

A building may be erected, altered, or used, and a lot or premises may be occupied and used for any of the following purposes:

a. Principal Uses

- (1) Apartment dwellings subject to all requirements of this Section.
- (2) Townhouses subject to all requirements of this Section.

b. Accessory Buildings and Uses Including:

- (1) Swimming pools and tennis courts, but not public swim or tennis clubs.
- (2) Signs subject to the special conditions of Article VIII.
- (3) Fences and hedges subject to the provisions of this Article.
- (4) Other customary accessory uses and structures which are clearly incidental to the principal structure and use.

711.2 DEVELOPMENT STANDARDS

The PRD-1 Residential Zone specified herewith shall be occupied only as indicated in the Schedule of this Ordinance and as follows:

- a. The gross density shall be twelve (12) units per acre for the entire parcel but may consist of any percentage combination of apartments and townhouses. The net density of any section of a site devoted to townhouses shall not exceed ten (10) units per acre.

b. Special requirements for apartments are as follows:

(1) Principal Buildings

- (a) Minimum front setback (measured from the proposed street R.O.W. line) - 35 ft.
- (b) Minimum setback from interior private road - 20 ft.; or parking lots - 15 ft.
- (c) Minimum side and rear yard setbacks - 35 ft.
 - Two stories - 25 ft.
 - Three stories - 35 ft.
- (d) Maximum lot coverage - 20%
- (e) Maximum building height - 3 stories or 40 ft., whichever is less.
- (f) Each principal building shall:
 - (1) Not be designed for or occupied by more than 8 families per floor, nor more than three hundred (300') feet in length in its longest dimension, without terminating or providing a ninety (90) degree angle, nor exceed eighty (80') feet without a change in facade architecture, including at least twenty-five (25%) percent change in, setback, facade color, texture, design, etc., to bring about a varied composition.
 - (2) Not allow or contain outside television antenna. All television antenna equipment shall be built into the building to eliminate individual antennas from being erected on the roof. Not more than one common antenna may be used for each building.
 - (3) Provide not less than seven hundred (700) cubic feet of storage for each apartment unit in the building, exclusive of closets except those units reserved for low and moderate income units shall have not less than three hundred and fifty (350) cubic feet of storage.

- (4) Not fail to provide, in an enclosed area, laundry facilities of not less than one washer and dryer for each ten (10) dwelling units for the exclusive use of the occupants of the development, unless provided within each unit. No outside clothes lines or clothes hanging facilities or devices shall be provided or allowed.
- (5) Provide a recreation area to serve the needs of the anticipated apartment portion of the development and shall consist of at least the following:
 - (a) A fenced-off playlot including play equipment such as swings, seesaws, etc., shall be provided. The fenced-off area shall be not less than one hundred fifty (150) sq. ft. per dwelling unit for active recreation area with a minimum size of twenty thousand (20,000) sq. ft. for active and passive area combined.
- (6) Minimum space between buildings - there shall be a minimum open space of at least fifty (50') feet between the rears of any two buildings, or thirty-five (35') feet between any other combination of facades.

If buildings are overlapped, the overlapped sides may not contain any windows. Architectural connections are permitted between overlap portions separated from adjacent structures by at least fifteen (15') feet.
- (7) There shall be a trash area completely surrounded by a six (6') foot high solid architectural fence with front solid gates. All outside trash shall be stored in this area and shall not be in public view over the fence height. All similar accessory appurtenances such as propane tanks shall be similarly enclosed.
- (8) There shall be no window air conditioners.

(2) Accessory Buildings and Uses

- (a) Accessory buildings shall conform to at least the height and front setback requirements of the principal building. The side and rear yard setbacks shall be ten (10') feet.

Those swimming pools less than four (4') feet high shall be enclosed by a permanent fence not less than four (4') feet high with a locked gate. Building permits shall be required for all swimming pools, above or below ground, with a water surface area of two hundred and fifty (250) sq.ft. or over.

- (b) No truck or commercial vehicle, licensed for over 8,000 lbs. gross weight shall be stored or parked on any lot or portion of a lot.
- (c) Accessory building attached to a principal building shall comply with the setbacks of the principal building.

c. Special requirements for townhouses are as follows:

(1) Principal Buildings

- (a) Minimum front setback (measured from the proposed public street R.O.W. line) - 35 ft.
- (b) Minimum setback from pavement of interior private road or parking area - 20 ft.
- (c) Minimum each side and rear yard setbacks - 25 ft.
- (d) Maximum lot coverage - 20%
- (e) Maximum building height - 2 stories or 35 ft., whichever is less.
- (f) Each principal building shall not:
- (1) Be designed for more than ten (10) nor less than three (3) attached units.
 - (2) Exceed one hundred and seventy-five (175) feet in length.

- (3) Exceed two townhouse units on one facade without providing a variation in setback equal to five (5') feet or greater.
- (4) Exceed two townhouse units without a change in facade architecture, including at least twenty-five (25%) percent of facade color, texture, design, etc., to bring about a varied composition.
- (5) Provide less than two (2) exterior exposures for each unit which shall be properly windowed so as to provide through-ventilation or cross-ventilation for each unit.
- (6) Allow or contain outside television antennas. All television antenna equipment shall be built into the building to eliminate individual antenna towers from being erected on the roof. One common antenna tower may be used for each building.
- (7) Provide, less than seven hundred (700) cubic feet of storage for each unit in the building, exclusive of closets, except those units reserved for low and moderate income units shall have not less than three hundred and fifty (350) cubic feet.
- (8) Provide less than a minimum open space of at least fifty (50') feet between the rears of any two buildings, or thirty-five (35') feet between any other combination of facades. If buildings are overlapped, the overlapped sides may not contain any windows. Architectural connections are permitted.
- (9) Provide a townhouse unit of less than twenty (20') feet in width, except for low and moderate income units which shall be no less than sixteen (16') feet.

(11) Provide individual lots for sale of less than two thousand (2,000) sq.ft. if lots are sold except that for low and moderate income units the lots shall be no less than 1,200 sq.ft. Land may be kept in common ownership.

(2) Accessory Buildings and Uses.

Accessory building and uses shall conform to the same requirements as specified in 711.2(2) for apartments.

(3) Ownership and Maintenance of Common Areas

Common areas of any tract utilized for a townhouse development which are not accepted by the Township shall be deeded to a corporation, association, individuals or other legal entity consisting of a majority of the property owners within the development for their use, control, management and maintenance.

711.3 Off-street parking is required subject to the special conditions of Article VI.

711.4 LANDSCAPING

a. General Regulations

(1) Landscape Area

All areas in a development not used for construction of buildings, roads, accessways, parking or sidewalks shall be fully landscaped in accordance with these regulations.

(2) Site Considerations

Natural site features such as: existing trees, streams, rock outcropping, etc. shall be preserved wherever possible. Whenever such natural features are absent or insufficient or have been destroyed during the development of the site, additional new plantings of a sufficient size as determined by the Municipal Agency shall be established to provide environmental protection to beautify the buildings and grounds, and to provide privacy, shade and the screening out of objectionable features created on the site.

(3) Design

Landscape plans shall be required, except for single and two-family homes, where no plan is required.

(4) Labeling

All landscape plans shall have a schedule of the Latin and common name, the quantity, the size, spacing, and method of planting of each plant material.

b. Additional Regulations

- (1) A minimum landscaped area five (5') feet wide shall be provided along all property lines including public streets.
- (2) All buffers and landscaped areas shall be protected from adjacent parking areas by curbs, or concrete, metal or wood bumpers at least six (6") inches in height and securely anchored into the ground. Buffer areas are included within setbacks.
- (3) Service areas, parking areas, transformer compounds, and other strictly utilitarian improvements, shall be screened as fully as practicable. In general, it is intended that possible objectionable or unsightly features within a given development shall be screened from passing traffic or abutting residential properties.
- (4) In the case of a repetition of building designs, as in apartment house development, care shall be exercised to avoid monotony in the planting design by introducing sufficient variety in the planting layout to lend interest and aesthetic appeal. By the same token, excessive variety shall be avoided, and all shall be represented as a balanced design with proper accent in the right places.
- (5) All street trees and on-site deciduous shade trees shall not be less than two and one-half (2 1/2") inch diameter measured one (1') foot above the root crown.
- (6) A satisfactory amount of evergreen plant material shall be included in the planting, this to be judged on an individual basis by the Municipality.

- (7) Areas required for buffers shall not be cleared or graded prior to development approval.
- (8) Retaining walls shall not be permitted within buffer areas unless approved as part of site plan approval.
- (9) Where the non-single-family zone line abuts a single-family residential zone, a buffer of twenty-five (25') feet shall be established, except where a public street intervenes.
- (10) Within the twenty-five (25') feet buffer to a residential zone line no improvements can be made, and the property shall be either left in its natural state, supplemented with evergreen screening plant materials, or both as determined by the Municipal Agency for each site.
- (11) In all zones where a commercial zone line abuts a multi-family residential use, a twenty-five (25') feet buffer must be established and maintained unless such a buffer is already established and maintained along the common boundary of that zone.

c. Landscaped Area Required

In calculating landscaped areas, the areas of plazas, open pedestrian shopping malls, sitting areas, pools and fountains shall be included. Landscaped areas within and between parking areas shall also be included.

- (1) A minimum of twenty (20%) percent of the site shall be devoted to landscaped areas in addition to all required buffers, but shall include required recreation areas referred to in Section 711.2 c(1)(f)(5). The Municipal Agency shall have the authority to determine its distribution, but all front yards shall have a minimum of fifteen (15%) percent landscaped areas.

711.5 FENCES AND HEDGES

a. Intersections

At the intersection of two (2) or more streets, no wall, fence, hedge or other structure shall be erected to a height in excess of three (3') feet above curb level, nor any other obstruction to vision shall be permitted within the triangular area formed by the nearest intersecting right-of-way street lines at points which are twenty-five (25') feet distant from the point of intersection, measured along said right-of-way street line. Trees whose branches are trimmed away to a height of at least ten (10') feet above curb level shall be permitted.

b. Height

On any lot in any residence district, no wall, fence, or hedge shall be erected or altered so that said wall or fence shall be over four (4') feet in height in the front yard nor be over six (6') feet in height in the side or rear yards, except that tennis court fences may have maximum height of twelve (12') feet. Tennis courts and front yard fences shall be restricted to open mesh or other open material as approved by the Construction Official.

c. Dangerous

No fence shall be erected of barbed wire, or electrified, or topped with metal spikes or constructed of any material or in any manner which may be dangerous to persons or animals.

d. Type

Solid architectural fences shall be required along all lot lines except the street line where said property lines abut single family residential zoning district lines. Such architectural fences may be made of any material which is aesthetically pleasing and prevents the dissemination of odors, noise, debris, and sight across the residential zoning boundary. Fences used for this purpose shall be six (6') feet in height. Nothing in this Section prevents the use of plant materials along any lot line in addition to the fence requirement, but plant materials cannot be substituted for the fence. Open chain link and chain link with plastic or aluminum slats shall not be considered to be an architecturally solid fence. A wall or fence which restricts the natural flow of drainage or causes stagnant water conditions shall not be permitted. Said wall or fence shall be ordered removed or corrected by the Owner upon direction of the Construction Official. The Municipal Agency shall have the authority to waive this requirement if a buffer area is landscaped to their requirements.

e. Maintenance

Walls or fences erected shall be maintained in an aesthetically pleasing manner and any failure to do so shall be subject to the Construction Official's order to repair or replace the wall or fence in order to meet the requirements of this Ordinance.

f. Swimming Pools

There shall be a fence, not less than four (4') feet high completely enclosing any below-ground swimming pool and any other swimming pool of one hundred (100) sq.ft. of surface water area or more and which is less than four (4') feet above the ground. Each gate in a pool fence shall be capable of being locked when not in use.

g. Finished Side

The finished side of all fences shall be on the outside facing away from the lot on which it is erected. The intent of this provision is for safety purposes to prevent easy access from neighboring property.

712 PRD-2 Planned Residential Development

712.1 PERMITTED USES

A building may be erected, altered, or used, and a lot or premises may be occupied and used for any of the following purposes:

a. Principal Uses

- (1) Apartment dwellings subject to all requirements of this Section.
- (2) Townhouses subject to all requirements of this Section.

b. Accessory Buildings and Uses Including:

- (1) Swimming pools and tennis courts, but not public swim or tennis clubs.
- (2) Signs subject to the special conditions of Article VIII.
- (3) Fences and hedges subject to the provisions of this Article.
- (4) Other customary accessory uses and structures which are clearly incidental to the principal structure and use.

712.2 DEVELOPMENT STANDARDS

The PRD-2 Residential Zone specified herewith shall be occupied only as in the Schedule of this Ordinance and as follows:

- a. The gross density shall be fifteen(15) units per acre for the entire parcel but may consist of any combination of apartments and townhouses. The net density of any section of a site devoted to townhouses shall not exceed ten (10) units per acre.
- b. All other provisions and requirements of the PRD-1 Zone shall apply to the PRD-2 Zone.

713 MF-1 Multi-Family Residential

713.1 PERMITTED USES

A building may be erected, altered, or used and a lot or premises may be occupied and used for the following uses:

- a. Principal Uses
 - (1) Multi-family Apartments
- b. Accessory Buildings and Uses
 - (1) Swimming pools and tennis courts, but not public swim or tennis clubs.
 - (2) Signs subject to the special conditions of Article VIII.
 - (3) Fences and hedges subject to the provisions of this Article.
 - (4) Other customary accessory uses and structures which are clearly incidental to the principal structure and use.

713.2 DEVELOPMENT STANDARDS

The MF-1 Residential Zone specified herewith shall be occupied only as indicated in the Schedule of this Ordinance and as follows:

- a. The entire parcel shall be utilized for multi-family apartments with the number of units to be one hundred (100) units. If the parcel is utilized for senior citizen units the standards of the SC-1 Zone shall apply in lieu of the following:
- b. Special Requirements for Multi-Family Apartments.
 - (1) Principal Buildings
 - (a) Minimum front setback - (measured from proposed street R.O.W. line) - 60 ft.

- (b) Minimum side yard setback - 30 ft.
- (c) Minimum rear yard setback - 40 ft.
- (d) Maximum lot coverage - 20%
- (e) Maximum building height - 6 stories or 60 ft. whichever is less.
- (f) Minimum landscaping - 15%
- (g) Each principal building shall:
 - (1) Not allow or contain outside television antenna. All television antenna equipment shall be built into the building to eliminate individual antennas from being erected on the roof. Not more than one common antenna may be used for each building.
 - (2) Provide not less than seven hundred (700) cubic feet of storage for each apartment unit in the building exclusive of closets, except those units reserved for low and moderate income units shall have not less than three hundred and fifty (350) cubic feet.
 - (3) Not fail to provide, in an enclosed area, laundry facilities of not less than one washer and dryer for each ten (10) dwelling units for the exclusive use of the occupants of the building, unless provided within each unit. No outside clothes lines or clothes hanging facilities or devices shall be provided or allowed.
 - (4) There shall be a trash area completely surrounded by a six (6') foot high solid architectural fence with front solid gates. All outside trash shall be stored in this area and shall not be in public view over the fence height. All accessory appurtenances such as propane tanks shall be similarly enclosed.

(2) Accessory Buildings and Uses

- (a) Accessory buildings shall conform to at least the height and front setback requirements of the principal building. The side and rear yard setbacks shall be ten (10') feet.

Those swimming pools less than four (4') feet high shall be enclosed by a permanent fence not less than four (4') feet high with a locked gate. Building permits shall be required for all swimming pools, above or below ground, with a water surface area of two hundred and fifty (250) sq.ft. or over.

- (b) No truck or commercial vehicle, licensed to transport more than 8,000 lbs. gross weight shall be stored or parked on any lot or portion of a lot.
- (c) Accessory buildings attached to a principal building shall comply with the setbacks of the principal building.

713.3 Off-street parking is required subject to the special condition of Article VI.

713.4 Landscaping in accordance with paragraph 711.4 of this ordinance.

714 SC-1 Multi-Family Residential

714.1 PERMITTED USES

A building may be erected, altered, or used, and a lot or premises may be occupied and used for any of the following purposes:

a. Principal Use

- (1) Senior Citizen Housing

b. Accessory Buildings and Uses

- (1) Swimming pools and tennis courts, but not public swim or tennis clubs.
- (2) Signs subject to the special conditions of Article VIII.

- (3) Fences and hedges subject to the provisions of this Article.
- (4) Other customary accessory uses and structures which are clearly incidental to the principal structure and use.

714.2 DEVELOPMENT STANDARDS

The SC-1 Residential Zone specified herewith shall be occupied only as indicated in the Schedule of this Ordinance and as follows:

- a. The entire parcel shall be utilized for Senior Citizen apartments with the number of units to be between one hundred (100) and one hundred and fifty (150) units.
- b. Special requirements for Senior Citizens Apartments:

(1) Principal Buildings

- (a) Minimum front setback - (measured from the proposed street R.O.W. line) - 50 ft.
- (b) Minimum setback from interior private road - 20 ft.
- (c) Minimum side and rear yard setbacks - 35 ft.
- (d) Maximum lot coverage - 20%
- (e) Maximum building height - 5 stories or 50 ft., whichever is less.
- (f) Each principal building shall:
 - (1) Not allow or contain outside television antenna. All television antenna equipment shall be built into the building to eliminate individual antennas from being erected on the roof. Not more than one common antenna may be used for each building.
 - (2) Provide, in an enclosed basement area, not less than four hundred (400) cubic feet of storage for each apartment unit in the building.

(3) Not fail to provide, in an enclosed area, laundry facilities of not less than one washer and dryer for each ten (10) dwelling units for the exclusive use of the occupants of the building, unless provided within each unit. No outside clothes lines or clothes hanging facilities or devices shall be provided or allowed.

(4) There shall be a trash area completely surrounded by a six (6') foot high solid architectural fence with front solid gates. All outside trash shall be stored in this area and shall not be in public view over the fence height. All accessory appurtenances such as propane tanks shall be similarly enclosed.

(2) Accessory Buildings and Uses

(a) Accessory buildings shall conform to at least the height and front setback requirements of the principal building. The side and rear yard setbacks shall be ten (10') feet.

Those swimming pools less than four (4') feet high shall be enclosed by a permanent fence not less than four (4') feet high with a locked gate. Building permits shall be required for all swimming pools, above or below ground, with a water surface area of two hundred and fifty (250) sq.ft. or over.

(b) No truck or commercial vehicle, licensed for over 8,000 lbs. gross weight shall be stored or parked on any lot or portion of a lot.

(c) Accessory buildings attached to a principal building shall comply with the setbacks of the principal building.

714.3 Off-street parking is required subject to the special conditions of Article VI.

714.4 Landscaping is required subject to paragraph 711.4 of this ordinance.

Section 8

Article VIII, Signs, is amended to add the following:

801.1 e. One (1) sign shall be permitted for the purpose of identifying a multi-family, townhouse, garden apartment or any combination thereof, but shall not exceed twenty (20) sq.ft. aggregate on both sides. Said signs shall not be allowed to project above the ground by more than five (5') feet. Signs may be illuminated as long as the glare from the lights shines directly on the sign and does not permit light to emanate beyond the property lines of the subject site. All signs shall be setback not less than fifteen (15') feet from each street right-of-way.

Section 9

"Schedule of General Requirements" is ammended to add the following at the bottom of the schedule.

Zone	Area Sq. Feet	Minimum Lot Requirements		Front	Rear	Each Side	Accessory		Percent Maximum Lot Coverage	Maximum Height (whichever is less
		Width	Depth				Rear	Side		
PRD-1	300,000	none		35/40	35/40	35/40	10	10	20	3 stories or 40'
PRD-2	800,000	none		35/40	35/40	35/40	10	10	20	3 stories or 40'
MF-1	60,000	none		60	40	30	10	10	20	6 stories or 60'
SC-1	250,000	none		50	35	35	10	10	20	5 stories or 50'

Section 10

This Ordinance shall become effective upon passage according to law.

January 8, 1985

ORDINANCE # 1010

Affordable Housing Ordinance of the Borough of South
Plainfield

An Ordinance to Amend the Code of The Borough of South Plainfield, New Jersey creating an Affordable Housing Agency and fixing procedures for providing low and moderate income housing in the Borough of South Plainfield.

Be It Ordained by the Governing Body of the Borough of South Plainfield, in the County of Middlesex and the State of New Jersey as follows:

ARTICLE I-TITLE

100 Short Title

This Ordinance shall be known and may be cited as: The Affordable Housing Ordinance of the Borough of South Plainfield.

ARTICLE II - PURPOSE

200 Purpose

The purpose of this Section is to:

- (a) Comply with the May 22, 1984 Judgement of the Superior Court of New Jersey in Urban League of Greater New Brunswick, et. al. v. Mayor and Council of the Borough of Carteret, et.al., by establishing a mechanism for assuring that housing units designated for occupancy by low and moderate income households remain affordable to, and occupied by, low and moderate income households.

ARTICLE III - DEFINITIONS

300 Definitions

The following terms wherever used or referred to in this section shall have the following meanings unless a different meaning clearly appears from the context:

- (a) "Affordable Housing Agency" shall mean the Agency referred to in Article X of this Ordinance or its designee.
- (b) "Income Ceiling" shall mean 80% of the regional median income for moderate income households and 50% of the regional median income for low income households.
- (c) "Low Income Household" shall mean a household whose income does not exceed 50% of the regional median income, with adjustments for household size as determined by the Affordable Housing Agency.
- (d) "Low Income Unit" shall mean a dwelling unit which is subject to the price and occupancy requirements of this section and whose sales price or rental charge does not exceed the maximum price or charge that is affordable by low income households.
- (e) "Moderate Income Household" shall mean a household whose income is greater than 50%, but does not exceed 80%, of the regional median income, with adjustments for household size, as determined by the Affordable Housing Agency.
- (f) "Moderate Income Unit" shall mean a dwelling unit which is subject to the price and occupancy requirements of this section and whose sales price or rental charge does not exceed the maximum price or charge that is affordable by moderate income households.
- (g) "Regional Median Income" shall mean the median income for the present housing need region identified in the opinion of the Superior Court in AMG Realty Company v. Township of Warren, dated July 16, 1984. For ease of calculation, regional median income shall be deemed to mean 94% of the median income of the Primary Metropolitan Statistical Area (PMSA) in which Middlesex County is located.

ARTICLE IV - GENERAL PROVISIONS

400 General Provisions

- 401 Wherever reference is made to low or moderate income units in the Zoning Ordinance, the standards, qualifications, definitions, and procedures set forth in this section shall apply.

402 Except as otherwise expressly provided herein, no low or moderate income unit shall be offered for sale or rental except at prices that are affordable to low or moderate income households.

403 Except as otherwise expressly provided herein, no low or moderate income unit shall be sold, resold, rented or, re-rented except to a household that has been qualified as a low or moderate income household.

404 A covenant embodying these restrictions shall be recorded with the deed for all sales of property subject to the provisions of this section.

ARTICLE V - QUALIFIED HOUSEHOLDS

500 Qualification of Low and Moderate Income Households.

A prospective purchaser or renter of a low or moderate income unit must be qualified as a low or moderate income household by the Affordable Housing Agency prior to the purchase or sale of such unit. In making this determination, the Affordable Housing Agency shall apply the standards contained in the definitions of low and moderate income households set forth in Section 300 of this Ordinance. The Affordable Housing Agency shall periodically recalculate the regional median income and determine adjustments for household size based on changes in the official estimates of the median income for the Primary Metropolitan Statistical Area (PMSA) in which the Borough is located.

ARTICLE VI - MAXIMUM SALES PRICES AND RENTALS

600 Determination of Maximum Sales Prices and Rental Charges.

Prior to the sale, resale, rental, or re-rental of a low or moderate income unit, the Affordable Housing Agency shall determine the maximum sales price or rental charge that may be charged for that size unit in each income category.

601 Maximum Sales Price

The following procedure shall apply to determine maximum sales price:

- (a) A base price shall be calculated such that the sum of the monthly payments for principal, interest, taxes, fire, theft and liability insurance, and homeowner association fees, if any, shall not exceed 28% of the low or moderate income ceiling determined in accordance with section 500. A ten percent (10%) down payment requirement and a thirty (30) year mortgage term shall be assumed in making this calculation.

In calculating the monthly interest payment, the interest rate provided by the developer as being available to the subject development shall be utilized if the Affordable Housing Agency determines that it is in fact reasonably available to low or moderate income households. If the developer or any other entity offers to buy down the prevailing interest rate for a minimum of three years commencing at the time of purchase, and the terms of the buydown provide that the increase in interest rate charged does not exceed one half of one percent (0.5%) per year during the period of the buydown, the interest rate for the first year of the buydown period shall be used in the above calculation to determine monthly interest payment. If the increase in the interest rate exceeds one half of one percent (0.5%) per year, the average interest rate for the period of the buydown shall be used.

If the developer proposes that an adjustable rate Mortgage (ARM) be used to calculate the monthly interest rate payment, the initial interest rate of that mortgage shall be used only if the maximum annual average increase does not exceed one half of one percent (0.5%). Otherwise, a rate which is the average of the initial interest rate and the highest possible rate in effect after three years shall be used.

- (b) In order to assure that low and moderate income units are affordable by households whose income is less than the low or moderate income ceiling, the maximum sales price that may be offered for each such unit shall not exceed ninety percent (90%) of the base price for that size unit in each category of low or moderate income housing.
- (c) Prior to final approval of any development subject to these provisions, the Affordable Housing Agency shall determine the maximum sales prices by unit size for the low and moderate income units in the development and shall so notify the developer. These prices shall remain in effect for a period of one year or until all of the low and moderate income units have been sold, whichever occurs first. The developer may request a modification of the maximum sales prices at any time by applying to the Affordable Housing Agency for recalculation of these prices based on changes in any of the factors used to calculate these prices.
- (d) Prior to the resale of any low or moderate income unit, the Affordable Housing Agency shall determine the maximum sales price for that unit in accordance with a formula developed by the Agency which takes into account increases in a generally accepted price or income index, reasonable improvements to the property as determined by the Agency, and reasonable out-of-pocket costs of the sale as determined by the Agency, and which, to the extent feasible, ensures that the sales price will be

consistent with the affordability standards set forth in subsections (a) and (b) above.

602 Maximum Rental Charges.

The following procedure shall apply to determine maximum rental charges.

- (a) A base rent shall be calculated such that the sum of the monthly rental payment, including utilities, does not exceed thirty percent (30%) of the low or moderate income ceiling, determined in accordance with subsection 601(d) above.
- (b) In order to assure that low and moderate income units are affordable by households whose income is less than the low or moderate income ceiling, the maximum gross rent that may be charged for any such unit shall not exceed ninety percent (90%) of the base rent for that size unit in each category of low or moderate income housing.
- (c) If the cost of all utilities, including heat, hot water, cooking fuel, and electricity, is not included in the monthly rental charge, an estimated monthly charge for those utilities not included in the rent shall be calculated for each unit size. This estimated charge shall be subtracted from the maximum gross rent to determine the maximum rental charge that may be imposed for each low and moderate income unit.
- (d) Once the maximum rental charges have been determined for a development subject to the provisions of this section, such charges shall not be increased without the prior written approval of the Affordable Housing Agency. The Agency shall establish appropriate criteria and procedures for allowing periodic rental charge increases consistent with the affordability standards set forth in subsections (a) and (b) above. No more than one rental charge increase shall be allowed for any unit or group of units within any twelve (12) month period.

603 Relationship Between Household Size and Unit Size.

For the purpose of determining maximum sales prices and rental charges pursuant to Subsections 601 and 602 of this Ordinance, the ceiling incomes of the following household sizes shall be used to determine the maximum prices for each of the following unit sizes:

efficiency	1 person
1 bedroom	2 persons
2 bedrooms	3 persons
3 bedrooms	5 persons
4 bedrooms	6 persons

604 Affordable Price Tables.

The Affordable Housing Agency shall prepare and maintain tables of maximum affordable prices for low and moderate income households by unit size as a guide for determining maximum sales prices and rental charges for low and moderate income units.

Table I of this Ordinance contains the maximum affordable sales prices for condominium ownership, Table II contains the maximum affordable sales prices for fee simple ownership, and Table III contains the maximum affordable rental charges for low and moderate income households, calculated using the median income data available as of April 30, 1984. The following assumptions were made in preparing the sales tables:

- (a) A ten percent (10%) down payment and a mortgage with a thirty (30) year term.
- (b) The property tax rate in effect in South Plainfield as of April 30, 1984.
- (c) Fire, theft and liability insurance was estimated to be \$40 per \$10,000 house value.
- (d) Homeowners' association fees were estimated to be \$150 annually per \$10,000 house value.

ARTICLE VII - RESTRICTIONS

700 Expiration of Restrictions.

- 701 Restrictions on the resale of low or moderate income sales units shall expire thirty (30) years from the date of the initial sale of the property.
- 702 Low or moderate income rental units shall remain subject to the requirements of this section indefinitely, except that the limitations set forth in Sections 701 and 800 shall apply if such rental units are converted into condominiums, co-operatives, or some other form of ownership property.

ARTICLE VIII - MARKETING

900 Affirmative Marketing

Developers of low or moderate income units shall affirmatively market those units to all segments of the lower income population within the Mount Laurel housing region in which the Borough is located and to all qualified low or moderate income households irrespective of race, color, religion, sex or national origin. Toward that end, the developer shall formulate and submit an affirmative marketing plan acceptable to the Affordable Housing Agency, which plan shall be incorporated into any approval of the development application. At a minimum, the plan shall provide for advertisement in newspapers with general circulation in the following urban areas: Jersey City, Newark, Elizabeth, Paterson, New Brunswick and Perth Amboy. The plan shall also require the developer to notify the following agencies on a regular basis of the availability of any low or moderate income units: The Civic League of Greater New Brunswick, the Housing Coalition of Middlesex County, the Middlesex County Office of Community Development, and other fair housing centers, housing referral organizations, and government social service and public welfare departments located in the eleven-county present housing need region identified in the opinion of the Superior Court in AMG Realty Company v. Township of Warren, dated July 16, 1984.

ARTICLE IX - AGENCY

1000 Affordable Housing Agency

1001 Creation and Purpose.

There is hereby created an Affordable Housing Agency ("Agency") whose purpose and responsibilities shall be as follows:

- (a) To create a body of rules and regulations to implement the policies and goals of this section, specifically; to ensure that housing units designated as low or moderate income units, once constructed, shall remain affordable to, and be occupied by, low or moderate income households;
- (b) To ensure the continued availability of low or moderate income units by: (1) reviewing the qualifications of prospective purchasers and tenants to ensure that they qualify as low or moderate income households; (2) determining the maximum sale, resale, and rental charges for low and moderate income units to ensure that the units are affordable to low or moderate income households; (3) requiring that a covenant be recorded with each deed restricting the resale of low or moderate income units to low or moderate income households; and (4) where appropriate, maintaining a waiting list of persons who have been qualified as low or moderate income households and are eligible to rent or purchase a low or moderate income unit;
- (c) To restrict the installation of improvements or amenities within or as a part of low or moderate income units which would unduly increase the resale price or rental charge of such units above the amounts considered by the Agency to be affordable by low or moderate income households, and to control the low or moderate income unit resale price adjustments for homeowner installed improvements;
- (d) To undertake efforts to ensure that units designated as low or moderate income units do not thereafter become unavailable to low or moderate income households by virtue of foreclosure; and
- (e) To monitor the marketing practices of developers of low and moderate income units to ensure that they comply with the affirmative marketing requirements set forth in Section 900 above.

1002 Composition

- (a) The Agency shall consist of seven (7) regular members and two (2) alternate members. Five (5) members shall constitute a quorum.
- (b) The Mayor shall appoint two (2) regular members of the Agency and one (1) alternate. The Municipal Council shall appoint five (5) members of the Agency and one (1) alternate.
- (c) Alternate members shall be designated at the time of appointment and the Mayor shall designate his/her alternate as "Alternate No. 1" and the Council shall designate their alternate as "Alternate No. 2".

- (d) The initial terms of the Mayor's appointments shall be one (1) year and four (4) years for the regular members and two (2) years for the alternate member. The terms of the Council's appointments shall be one (1) year, two (2) years, two (2) three (3) year terms and one (1) four (4) year term and two (2) years for the alternate member. Thereafter, the term of each regular member shall be four (4) years; and the term of each alternate member shall be two (2) years.
- (e) No member may hold any elective office or position under the municipality. No member of the Agency shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest. A member may, after public hearing if he requests it, be removed by the governing body for cause. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only.
- (f) The Agency shall elect a chairman and vice-chairman from its members and select a secretary who may or may not be a member of the Agency.
- (g) Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.
- (h) All members must be residents of South Plainfield.

1003 Powers

- 1003.1 The Agency is hereby granted and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this Ordinance, including but not limited to the following:
- (a) To prepare and forward to the Borough Council such rules and regulations as it deems necessary or appropriate to implement the purposes of this Ordinance. Said rules and regulations shall be filed with the Clerk and shall be subject to review and modification by the Borough Council;
 - (b) To supply information to developers and low or moderate income households to help them comply with the provisions of this Ordinance; and
 - (c) To review applications upon due notice and adjudicate applications of individuals or families who believe themselves to be low or moderate income households.

1003.2 The Affordable Housing Agency shall give ten (10) days written notice of any hearing to all parties involved, and shall give all interested persons an opportunity to be heard.

ARTICLE XI - TABLES

1100 Table I

PRICING OF SALES UNITS AFFORDABLE TO LOW AND MODERATE INCOME HOUSEHOLDS IN SOUTH PLAINFIELD

	EFFICIENCY	ONE BR	TWO BR	THREE BR
<u>LOW INCOME</u>				
Household Size	1	2	3	5
Ceiling Income	\$10,750	\$12,300	\$13,850	\$16,600
28% of Income	\$ 3,010	\$ 3,444	\$ 3,878	\$ 4,648
INTEREST RATE:	MAXIMUM AFFORDABLE PRICE - CONDOMINIUM UNITS (See Note 1)			
9%	\$20,900	\$23,900	\$26,900	\$32,200
10	19,700	22,500	25,300	30,400
11	18,600	21,300	23,900	28,700
12	17,600	20,100	22,600	27,100
13	16,700	19,100	21,500	25,700
14	15,800	18,100	20,400	24,500
	MAXIMUM AFFORDABLE PRICE - FEE SIMPLE UNITS (See Note 2)			
9%	\$23,600	\$27,000	\$30,400	\$36,400
10	22,100	25,200	28,400	34,100
11	20,700	23,700	26,700	32,000
12	19,500	22,300	25,100	30,100
13	18,400	21,000	23,700	28,400
14	17,400	19,900	22,400	26,800

Notes 1 & 2 - see notes on 'moderate income' pricing table

all numbers rounded to nearest \$100

1101 Table II

PRICING OF SALES UNITS AFFORDABLE TO LOW AND MODERATE
INCOME HOUSEHOLDS IN SOUTH PLAINFIELD

PRICING SHOULD NOT EXCEED AFFORDABILITY TO HOUSEHOLD
EARNING 90% OF CEILING INCOME FOR CATEGORY SPENDING 28%
MORTGAGE, TAXES, INSURANCE, AND HOMEOWNERS ASSOCIATION FEES

	EFFICIENCY	ONE BR	TWO BR	THREE BR
<u>MODERATE INCOME</u>				
Household Size	1	2	3	5
Ceiling Income	\$17,200	\$19,650	\$22,150	\$26,100
28% of Income	\$ 4,816	\$ 5,502	\$ 6,202	\$ 7,308
INTEREST RATE:	MAXIMUM AFFORDABLE PRICE - CONDOMINIUM UNITS (See Note 1)			
9%	\$33,400	\$38,100	\$43,000	\$50,600
10	31,500	35,900	40,500	47,700
11	29,700	34,000	38,300	45,100
12	28,100	32,100	36,200	42,700
13	26,700	30,500	34,300	40,500
14	25,300	29,000	32,600	38,500
	MAXIMUM AFFORDABLE PRICE - FEE SIMPLE UNITS (See Note 2)			
9%	\$37,700	\$43,100	\$48,600	\$57,200
10	35,300	40,300	45,500	53,600
11	33,100	37,900	42,700	50,300
12	31,200	35,600	40,100	47,300
13	29,400	33,400	37,800	44,600
14	27,800	31,700	35,600	42,200

Note 1 - shelter costs for condominium units include homeowners association fee @ estimated \$150 per \$10,000 house value; e.g., \$50/month for a \$40,000 unit. If fees are to be waived for a lower income unit, affordability can be calculated on the basis of the 'fee simple' table, with further adjustment if hazard insurance is included within the (waived) homeowners association fee.

Note 2 - shelter costs include mortgage payment, taxes @ 2.4% market value, and insurance @ \$40 per \$10,000 house value.

1103 Table III

AFFORDABLE RENT LEVELS FOR LOW AND MODERATE INCOME HOUSEHOLDS IN MIDDLESEX COUNTY (BASED ON 1983 MEDIAN INCOMES FOR 11-COUNTY REGION)

UNIT TYPE	STUDIO	1 BR	2 BR	3 BR
HOUSEHOLD SIZE	1	2	3	5
<u>MODERATE INCOME HOUSEHOLDS</u>				
1. MEDIAN INCOME	\$17,200	\$19,650	\$22,150	\$26,100
2. x .30 (Note 1)	5,160	5,895	6,645	7,830
3. x .90 (Note 2)	4,644	5,305	5,981	7,047
4. MONTHLY GROSS RENT AFFORDABLE (Row 3 ÷ 12)	387	442	498	587
5. LESS ESTIMATED (See Note 3) UTILITIES	(40)	(50)	(70)	(90)
6. MONTHLY NET RENT AFFORDABLE	\$ 347	\$ 392	\$ 428	\$ 497
<u>LOW INCOME HOUSEHOLDS</u>				
1. MEDIAN INCOME	\$10,750	\$12,300	\$13,850	\$16,600
2. x .30 (See Note 1)	3,225	3,690	4,155	4,980
3. x .90 (See Note 2)	2,902	3,321	3,740	4,482
4. MONTHLY GROSS RENT	242	277	312	374
5. LESS UTILITIES (See Note 3)	(40)	(50)	(70)	(90)

6. MONTHLY NET RENT
AFFORDABLE \$ 202 \$ 227 \$ 242 \$ 284

NOTES:

- (1) 30% of gross income. This row represents the maximum that a household at the ceiling of the income category can afford to spend for rent including utilities.
- (2) Maximum rent should not exceed rent that a family earning 90% of the income ceiling can afford to pay.
- (3) Based on general estimates for utility costs for units of varying size; where more precise information is available, it should be applied rather than these estimates.

ARTICLE XII - EFFECTIVE DATE

1200 This Ordinance shall become effective upon passage according to law.