

ML - North Brunswick

Dec 3, 1985

(Memorandum)

Lerman's Review of the North Brunswick Land Use Ordinance

pp. 6

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JUDGE SERPENTELLI'S CHAMBERS

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

Dear Judge Serpentelli,

I have reviewed the two ordinances presented by the Township of North Brunswick to implement the Township's Mount Laurel compliance package: the Amended North Brunswick Land Use Ordinance and the Affordable Housing Ordinance. The North Brunswick Land Use Ordinance was reviewed specifically as it relates to properties which have been rezoned to provide Mount Laurel housing. The existing Township regulations that were not amended were not evaluated.

In general the regulations in the Land Use Ordinance are reasonable, and appear to provide a realistic opportunity for the development of housing that would include a proportion of units for low and moderate income households. I would make only a few recommendations:

1) In Section 145-45.2 General Regulations for Residential Districts, under paragraph E, it would be appropriate to refer to the North Brunswick Affordable Housing Ordinance for the particular controls to be exerted on the lower income housing component of any zoning district. Therefore, instead of describing one aspect of standards for lower income housing - in this case the affirmative marketing requirements - a reference such as that made in the section on development standards for the PUD II residential district (145-87.4) should be included that would cover all requirements of the Affordable Housing Ordinance. The following wording might be sufficiently inclusive:

"Designated lower income units shall be subject to the controls established by the Township of North Brunswick Affordable Housing Ordinance, including, but not limited to, price, rental, resale, occupancy, and affirmative marketing requirements."

2) Section 145-87.4 Development Standards for Planned Unit Development includes in subsection A 15 the requirement for 1.75 parking spaces for two bedroom units and 1.25 parking spaces for efficiency units. Although in a total development this may provide an adequate number of parking spaces, within any section it might be preferable to require one parking space for an efficiency unit, and two parking spaces for a two bedroom unit. This should not create undue expense for the developer, but might prevent the negative affect on marketing that inadequate parking can have.

3) Section 145-92.7 of the R-M Residential District requires, under Design Standards and Improvements, a minimum pavement

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width of 36 feet for any roadway that leads to a public street or highway. This is not unreasonable if one is planning for access from a highway that is not local in nature, but if the access to the mobile home park is from a local municipal street, thirty-six feet of paved street seems excessive. The concern here is in relation to the overall character of the mobile home park. If the developer must provide costly and unnecessary infrastructure, as well as a higher than usual set-aside of low and moderate income units, it is more likely that the quality of the development may be lowered in some other respect. Many communities have a negative view of mobile home parks, and it would be unfortunate to unintentionally foster that viewpoint by imposing expensive standards on the developer that do not necessarily add to the quality of the development.

The remainder of the Land Use Ordinance appears to provide sufficient opportunities for the construction of low and moderate income housing units through the requirement of a fifteen percent set-aside in all developments with densities over four units to the acre, on sites in excess of five acres.

The Affordable Housing Ordinance was originally presented in a draft dated November 21, 1984. Following review by the litigants, suggestions were made for revisions in a number of areas, and at least some of these revisions were incorporated in a second draft, dated June 18, 1985. This is the draft that has now been circulated to all parties, and the one on which my comments are based. As there are a significant number of comments, and as I have tried to evaluate the plaintiffs' comments, as well as provide my own, I will review the entire draft ordinance, by section, and indicate where possible the source of the suggestion.

- Section I. No comment.
- Section II. No comment.
- Section III. Definitions.

The definition of Agency is recommended to be expanded, by adding onto the existing definition the following: "... or any successor duly authorized by the Township Council to carry out the powers and responsibilities of the Agency." (Donald R. Daines)

Two additional definitions are recommended to be added to Section III, following the definition of Agency. These are as follows:

First Purchase Money Mortgage. The most senior mortgage lien to secure repayment of funds for the purchase of an affordable housing unit, or the holder and assigns of such most senior mortgage lien. Such mortgagee must be an institutional lender or investor, licensed or regulated by a State or Federal government or agency thereof.

to be changed
Foreclosure. Termination of all rights of the mortgagor or mortgagor's assigns or grantees in an affordable housing unit covered by a recorded mortgage through legal processes, or through a Deed in Lieu of Foreclosure which has been executed and delivered prior to a judicially regulated sale.

These two definitions are proposed by Donald Daines and might be subject to some wording modification.

The definition of Utilities is recommended to be modified to include "gas" as a utility that might be essential for the safe and sanitary occupancy of a unit.

to be changed
Section IV. Two modifications are recommended for subsection D.1.: Sixty days for the preparation of rules and regulations by the Agency should be adequate, with a subsequent thirty days for the Council's review and comment. As it is now proposed, it could be four and a half months before a developer would have specific direction, which could very possibly impact on marketing and/or financing plans.

to be changed
Subsection D.6. should be expanded with the following sentence: "The Agency shall publish guidelines and regulations setting forth the allowable capital improvements that will be considered for inclusion in the resale price of any lower income unit. These regulations will indicate examples of improvements whose value will be included, as well as guidelines for the maximum percentage by which the base price may be increased for the cost of capital improvements, for the purposes of determining the resale price."

to be changed
Subsection D.7. should have the following phrase added at the beginning of the sentence: "To establish the requirements of the Affirmative Marketing Plan, and...." (Ronald L. Shimanowitz)

to be changed
Subsection E. should have additional wording providing for an appeal. A developer operating under the controls of this ordinance should have the opportunity to appeal a decision of the Agency, assuming that the internal appeal process established by the Agency has been followed. A mechanism for taking an appeal to the Township Council should be provided, with a reasonable time limit, i.e. 15 days for the developer to act after the Agency's decision, and with a reasonable time limit for the Council to act, such as 15 days.

to be changed
Section V. An addition is recommended for subsection B of this section, as follows: "The provisions of this paragraph shall apply equally to qualified lower income owners or renters, in terms of controls on sale, resale, rental, or re-rental of any lower income unit."

Section VI. No comments.

Section VII. In reference to subsection A.2. questions were raised as to the contradictory or duplicative nature of this section with Subsection A.5. Although both steps described in the

two paragraphs may be necessary, it does appear that there is a reversal of logical order. The developer should provide to the Agency information on generally available mortgages, locally, and the Agency should utilize this information to determine maximum sales prices for different size units in each income category. These sales prices should be provided to the developer and the Planning Board prior to final Planning Board approval. If, however, more than ninety days elapse between Planning Board final approval and the issuance of the first building permit, sales prices should be reviewed by the Agency to determine need for modification. If this review is not necessary, the determined sales prices shall be in effect for a period of one year. If the developer feels that any of the factors that were used in the determination of the sales price have changed, a request may be made to the Agency for a modification in the sales price, reflecting those changes.

It is recommended that subsection B.2) be modified as follows: "the cost of improvements to the property made by the owner, as previously established to be reasonable by the Agency,..."

It is recommended that subsection C.3. be expanded as follows: "Notwithstanding these requirements, landlords shall be encouraged to set rents at thirty percent of the tenant's gross income, with the understanding that the average of the rents charged for that size unit should not exceed ninety percent of the base rent charge for that size unit. Landlords who choose to attempt this rent distribution will receive administrative assistance from the Agency, if necessary." (Urban League)

Section VIII. The first paragraph of this section is proposed to be modified as follows: "...shall expire thirty years from the date of recording of the covenant with the deed referred to in Section IV. D.4. in the case of sales units, or from the date of the certificate of occupancy in the case of rental units, or such other lesser time as may be adopted pursuant to subsequent state legislation." (Donald R. Daines, re: sales units)

The second paragraph of this section addresses the problem of maintaining an appropriate number of low and moderate income units in the case of conversion from rentals to condominiums. It does not, however, address the problem of the tenant occupying the rental unit who is unable to become a purchaser. It is recommended therefore that this paragraph be amended as follows: "At the time of conversion, tenants who are unable or unwilling to purchase their unit, or another appropriate unit, will be either given the opportunity to remain in tenancy or to be relocated to a comparable rental unit with a rental charge within the guidelines established by the Agency for the size of unit needed, size of the household, and income category."

Section IX. The title of this section is proposed to be changed to "Exceptions". This section is the appropriate place to cover various situations which will justify or require deviations from

the affordable housing standards.

Subsection A is proposed to cover Foreclosure. Considerable language has been proposed by various counsel in this case, and it is recommended that these proposals be combined, as they cover several different aspects of foreclosure. The language proposed by Donald Daines focuses on the required removal of restrictions on future sales or rentals in the case of foreclosure. It is more detailed than the nature of most of the proposed ordinance, but I suggest it be used if there are no specific legal objections.

In addition, I recommend that two provisions, in the case of foreclosure, suggested by the Urban League, be included in this section. "The Agency shall work with the developers of low and moderate income housing to incorporate into deeds or covenants appropriate language providing the Agency with limited rights to intervene prior to foreclosure in order to maintain the property as a low or moderate income unit. In the event of foreclosure the Agency shall attempt to identify qualified low and moderate income purchasers, and shall give notice to the lender of their identity. Further, in the event of foreclosure, the difference, if any, between the sales price and the lender's recovery of principal, interest and costs under its mortgage shall be paid to the Affordable Housing Agency for use in increasing other affordable housing opportunities. The Agency shall have and record a second lien on all lower income properties to insure payment of such difference in case of foreclosure."

Subsections B, C, and D, under this Section are proposed to be Exempt Transactions, Violation of Plan, and Hardship [developer's], respectively. Proposed language covering these items has been distributed to all those on the service list by Donald Daines, so it does not seem necessary to repeat it here. The Urban League had proposed language on the issue of hardship, but I believe that the times set forth in the Daines language are more realistic in terms of periods of marketing and ability of a developer or homeowner to wait for a buyer. One modification in the Daines language is proposed, however. "Before the Agency declares a unit to be available to a higher income purchaser than what was originally intended, the developer or homeowner must submit to the Agency sufficient evidence of the efforts made to market the unit to the appropriate income group to prove compliance with the guidelines of the Affirmative Marketing Plan established by the Agency. If that is accomplished, the unit may be made available to a household with a maximum income up to fifty percent higher than the income limit originally applied to that unit."

Section X. It is proposed that subsection A. be modified by the addition at the end of the second paragraph of the following phrase: "...Sussex and Warren, as identified by the Affordable Housing Agency." It is reasonable that the Agency provide a list of appropriate agencies in the eleven county region for the developer to include in a marketing plan, rather than put the burden on the developer of trying to identify public or non-profit agencies located in towns up to seventy miles away.

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Section XI. No comments.

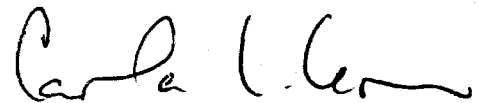
Section XII. Subsection D. of this section is proposed to be amended to include some of the specifics of the bi-monthly reports that would be expected. The sentence is recommended to be added to as follows: "...lower income units, including household size, size of unit, sales price and monthly carrying costs, or, in the case of rental units, monthly rental charges and utilities included or charged for." As this requirement only pertains to the lower income units in the development, it does not seem an onerous burden for the developer, who should have this information readily available.

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Section XIII. No Comments.

I am sorry that some miscommunication about distribution of materials, and scheduling problems have made this review so late, in reference to the court date of December 9. I will try to communicate with as many of the parties as possible before December 9, but if I am unable to reach them, or if there are significant areas of discussion, I trust we will be able to meet informally that day to resolve any questions.

Sincerely,



Carla L. Lerman, P.P.

cc: Service List
Thomas A. Vigna, P.P.

12/3/85