

UL v. Carteret. General

Year unknown

CA000228F

● -NJ. Superior Court Appellate Division

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Notes: alternate suggested fair use formula

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CA000228F

Plaintiffs

DEFENDANT'S

*Judge Curran's
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FAIR SHARE ALLOCATION FORMULAS

As noted above plaintiffs are not requesting at this time that the Court impose a specific fair share formula for allocation purposes on the defendant municipalities. This appendix addresses the reservations expressed by the Court concerning the plan testified to by Mr. Erber (p-184) and provides an alternate methodology for such an allocation plan.

ERBER MODEL:

This model is grounded on an initial allocation based on the number of existing standard housing units, the number of low and moderate income families adequately housed, and the amount of vacant land available for building. This model makes the initial distribution on the basis of standard units because it anticipates and encourages the rehabilitation of substandard units in achieving fair share goals. Merely adding new units to a partially unsound stock would perpetuate decay spreading from the oldest areas of communities. This methodology is sound for the following reasons:

- 1. It allocates units as a portion of the anticipated incremental growth of population in all municipalities, covering the entire range of existing densities.

The Middlesex County Master Plan (P-40) has projected a population growth of 315,809 by 1980 and 937,408 by 2000 for the County as a whole; requiring approximately 100,000 additional housing units by 1980 and 300,000 by 2000. The Plan anticipates population increases in all 25 municipalities, including those

Plaintiffs

C-7122-73

Urban League

with the highest densities. This projection is in keeping with the demographic theory that urban growth might be compared to that of a tree which expands by the thickening of the trunk and major branches, while simultaneously spreading out with new boughs and twigs. Thus growth is projected for both New Brunswick and Cranbury; Perth Amboy and Plainsboro; Carteret and Monroe; Metuchen and Edison; Milltown and South Brunswick.

The term "developed" is relative. Communities considered "highly developed" tend to continue adding population through heightened densities while more rapid growth is taking place elsewhere on vacant land. Thus New Brunswick's 5.5 square miles was considered fully developed in 1940 when it contained 33,180 persons. Yet it has increased its population to 41,885 in 1970. The Master Plan projects 50,674 by 1980. South Amboy's 1.5 square miles contained 7,802 persons in 1940 and increased to 9,338 in 1970. Highland Park's 1.8 square miles contained 9,002 persons in 1940 and increased to 14,385 in 1970. Dunellen's 1 square mile contained 5,360 in 1940 and increased to 7,072 in 1970. Milltown's 1.6 square miles contained 3,515 persons in 1940 and increased to 6,470 in 1970. Metuchen's 2.8 square miles contained 6,557 persons in 1940 and increased to 16,031 in 1970. Other small land area communities considered "fully developed" in 1940, have shown similar population growth.

Though Perth Amboy's 8,527 persons per square mile (along with Highland Park's 7,992; New Brunswick's 7,615; Dunellen's

6,800; South Amboy's 6,440 and Metuchen's 5,829) appears highly dense compared to Plainsboro's 140 persons per square mile (or Monroe's 219, or Madison's 1,272 or East Brunswick's 1,539), Perth Amboy's density is considerably less than that of Elizabeth, Trenton, Newark, Jersey City or Hoboken.

2. It allocates units in relation to the capacity of infrastructures to absorb additional units.

Infrastructure includes all the essential physical facilities, institutions and service systems required by an urban population. These range from streets, sewers, and drainage at the local level of the project, block or neighborhood to collector roads and highways, trunk sewers and disposal plants, railroads and bus lines, elementary and high schools libraries, hospitals, clinics, shopping centers, professional service offices, houses of worship, public safety installations, and cultural, entertainment and recreational establishments at the level of the community as a whole.

When housing units are allocated relative to the existing stock of sound housing, the infrastructure which serves the latter is available to serve the additional units, with such expansion as might be required. Such infrastructural expansion is less costly per unit served than installations for entirely new settlements. Such expansion of infrastructure is also less likely to impinge upon ecologically sensitive land or that highly desirable for agriculture.

3. Its allocations distribute housing with approximate relationship to employment opportunities.

The definition of Middlesex County as a common housing market area is based on the interchangeability of residences throughout the County without interrupting access to the same job location. Likewise, the definition of Middlesex County as a common labor market area is based on the interchangeability of jobs throughout the County without residential relocation.

Inclusion in common housing and labor market areas, however, does not eliminate the factor of consumers' choice as to residential location with reference to employment. Consumers still avoid unnecessary travel between home and work to the extent that they exercise choice in trade-offs between advantages to be sought and disadvantages to be avoided. Since low and moderate income employees tend to opt for more economical journeys-to-work, more of them tend to locate closer to job opportunities than do higher income persons.

Jobs in Middlesex County are still located overwhelmingly in the northern and central portion of the County. Though the most rapid growth of employment opportunities in Middlesex County since 1960 has taken place within municipalities with large amounts of vacant land, the Master Plan projects that by 1980 some 138,582 jobs will still be located in the so-called developed municipalities (New Brunswick, Perth Amboy, Dunellen, and the conditionally dismissed defendant municipalities) as compared to 156,510 jobs in the eleven defendant municipalities which contain larger amounts of vacant land. (As of 1975, it

is estimated that jobs are about evenly divided between more developed and less developed municipalities.)

In view of the present and projected location of employment opportunities within Middlesex County, the allocation model, by using both present housing stock and available vacant land as variables, optimizes location of housing for low and moderate income families with reference to employment opportunities. It maximizes choice with reference to economies in journey-to-work balanced against environmental, educational and other possible advantages of residence at more distant locations.

4. Its allocations facilitate implementation.

An initial allocation based on number of existing sound units facilitates implementation in three ways:

A. Since each municipality has substandard units, though in varying proportions of their total stock, rehabilitation to create additional sound units permits each municipality to achieve some portion of its allocation in this manner. However, the older, more developed municipalities which have higher proportions of substandard housing are enabled to achieve, or nearly achieve, their allocations through rehabilitation, while less developed municipalities must look to new construction on vacant land to achieve their goals. Thus New Brunswick can achieve 98% of its 1975 allocation of 4,485 additional units for low and moderate income families by rehabilitation or replacement of 2,363 substandard units and through rent supplements for 2,073 households now paying more than 25% of their income for shelter.

2. revision of zoning regulations to permit higher structures and greater densities for multi-family construction on scattered sites under strict architectural design controls to protect adjoining uses and the character of the neighborhood.

3. inclusion in zoning ordinances of density bonuses provision to encourage builders to allocate a portion of their units in new or extensively rehabilitated structures to occupants of low and moderate income, facilitated by the federal rental subsidy program (Section 8, Housing and Community Development Act of 1974).

C. Implementation is also facilitated by the availability of "grafting on" of new housing development to existing community infrastructure in such proportions as to utilize it without overwhelming it. Allocating too few units to highly developed communities can result in a waste of existing infrastructure capacity. Allocating too many units to municipalities with feeble infrastructures can impose insolvable financial burdens or result in housing inadequately served by community facilities.

5. Its allocations can be balanced with imposition of units upon vacant land.

The allocation based upon number of sound housing units is only an initial allocation. An additional allocation is made on the basis of amount of vacant land available to each municipality. The proportion of units assigned on basis of existing stock and the proportion assigned on basis of vacant land need not be considered as fixed and inflexible. The ratio

between burdening on basis of existing stock can be reduced by simply allocating only $3/4$, or $2/3$, or $1/2$ of the needed units in this way and allocating the balance on the basis of vacant land.

APPENDIX A PART II
MALLACH MODEL

APPENDIX: FAIR SHARE ALLOCATION - ELEMENTS AND METHODOLOGY

A reasonable application of the principles that have been presented above can lead to the framing of a specific formula for fair share allocation of population and housing across municipal boundaries. This appendix presents, first, a discussion of the specific elements that should be contained in a fair share formula; and second, the relationship between the elements, as well as the manner in which the fair share can be calculated.

We believe that three distinct elements are essential to the framing of the fair share allocations; specifically (1) vacant and developable land available in each municipality; (2) the proximity to employment of alternative locations or municipalities; and (3) income distribution; that is, the percentage of low and moderate income households in the municipality. The application of these three factors, as described below, yields a fair share allocation for each municipality. This fair share allocation, however, is a gross figure, not divided into new or existing units, requirement for financial subsidy or for rehabilitation. It is the responsibility of the municipality, at that point, to develop a strategy based on the analysis of housing need in the county, in response to the fair share allocation. This too is discussed below.

(1) Vacant Land Availability: vacant land availability is the principal determinant of the municipality's capacity to absorb housing units, in particular new or additional units.* In addition to capacity,

*The question of infrastructure, in particular sewer and water, as an indicator of capacity, has been raised. We believe, given the level of development of infrastructure in the county that it is appropriate as a basis for determining the location (within the municipality) and the timing by which the community meets its fair share obligations, rather than as a basis for arriving at the allocation in the first place.

in the strict physical sense, it is an indicator of future growth. This is important in view of the reasonable goal that development of low and moderate income housing should be in reasonable proportion to the total pace of development in the community.

It is suggested that vacant land be given substantial weight in the fair share formula, substantially more than the proximity to employment factor; proximity to employment measures a relative tendency, rather than an absolute one, while vacant land is in many ways a basic starting point for any allocation process.*

(2) proximity to employment: the relative proximity of the housing to be developed to employment opportunities is a significant factor, although, as plaintiff's expert testified, there is no location within Middlesex County which is outside reasonable commuting distance to at least a substantial part of the County's employment base.

The most straightforward measurement of employment proximity is the employment level by municipality for the year that represents the end of the fair share time frame; e.g., if the fair share plan is designed to run from 1975 through 1980, a 1980 employment projection should be used. The measurement is the percentage of total countywide employment located in each municipality. Strictly speaking, this does not measure proximity to employment, since many potential residential locations are closer to employment in adjacent communities than in their own town. Although it would be more difficult to develop, we propose that instead proximity to employment be based on subregional groups of municipalities; e.g., each municipality's share would be based on the total employment in that municipality as well as adjacent

*It should be added that a point of some potential importance is the definition of vacant and available land. Although there is little doubt that, even if each municipality defined available as they saw fit, the amount of land remaining would be adequate to meet the need, the results would hardly be equitable. A common definition would be a necessity in the interests of equity.

municipalities, appropriately weighted (perhaps by the percentage of land in the municipality of the total subregion involved) to account for the substantial municipal disparities that exist.

(3) Income distribution: the significant maldistribution of income from one municipality to the next has been noted; as measured in percentage of municipal population low and moderate income, the variation is considerable across the county. Although in the other factors we proposed that the principal measurement used be percentage of countywide total (vacant land, employment), in this case we suggest two ratios, of municipal percentage to countywide percentage -- one for low income households, and one for moderate income households. The formula should be such to encourage redistribution within both categories independently, rather than with regard to a single 'low and moderate-income' category.

The ratio would be as follows: if, for example, a hypothetical municipality contained 8% low income families, and the countywide percentage of low income families was 11%, the ratio would be 8:11 or .727 to 1 (municipality:county). We further suggest, rather than a straight-line application of the ratio (which is a measure of disparity), it be curved; i.e., the greater the disparity from the countywide percentage, the greater the weight given to the disparity in the formula. For example, the disparity measured by a ratio of .8:1 is twice that of a ratio of .9:1 (disparity of .2, and .1); we propose that the formula adjustment for the former municipality be significantly more than twice as great as the latter. In this manner the formula will be significantly more effective in bringing about meaningful redistribution.*

*This is particularly important since the number of units or households actually redistributed as a result of a fair share plan is likely to be quite small, given (a) the large ration of existing housing to any realistic level of future construction; (b) the momentum of existing trends, which will continue to result in expensive housing generally being constructed in affluent suburbs, and so forth.

CALCULATING FAIR SHARE ELEMENTS - METHODOLOGY

The following steps are applied to the above factors in order to calculate the fair share allocation, and apply it to the individual municipalities. We are assuming here that a total need figure, encompassing both internal or existing need (families living in substandard housing, low income families in need of financial relief, etc.) as well as prospective need (families commuting from outside the county to work, new household formation, etc.) has been computed. The need figure is applied first, to employment proximity and vacant land availability; second, to income distribution criteria. The resultant allocation is finally translated into housing goals by the municipality. The steps are presented on Chart 1.

(1) Vacant land and employment proximity: a formula combining these two factors is used to generate a preliminary allocation of the housing need:

vacant land factor (V) = % of total countywide vacant and available land in each municipality

employment proximity factor (E) = % of total countywide employment as of fair share end year (1980) in each municipality*

Since, as we have noted, vacant land is the more significant element, we propose that it be given twice as much weight as employment proximity; we obtain, as a result:

$$\text{PRELIMINARY ALLOCATION} = \frac{2V + E}{3} \times \text{TOTAL HOUSING NEED}$$

For example, if the total countywide housing need is 50,000 units (households) and municipality X contains 10% of the vacant land and 6% of the projected 1980 employment in the county, the preliminary allocation (prior to adjustment

*As noted, this would be the simplest element to 'plug in' here; a preferable but more complicated one would be the subregional element discussed above.

SCHEMATIC PRESENTATION OF FAIR SHARE ALLOCATION PROCESS

STEP 1

housing need
internal and
prospective
is determined



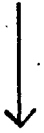
STEP 2

preliminary
allocation
made on the
basis of
(a) vacant
land avail-
ability, &
(b) employ-
ment prox-
imity.



STEP 3

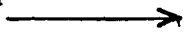
total allocation
divided into low
income households
and moderate inc-
ome households



income adjustment
factor applied
to each income
category



adjusted figures
combined to yield
fair share
allocation



STEP 4

municipality adopts
housing strategy
based on assessment
of internal needs,
rehabilitation, etc.

for income distribution) would be as follows:

$$\frac{(2 \times .10) + .06}{3} \times 50,000 = .0867 \times 50,000 = 4,333$$

It is possible, of course, to vary the preliminary allocation by changing the relative weight of the two factors. In some cases, the variation would be substantial, where the disparity between the percentage of vacant land and the percentage of employment is extreme. We believe that the relative weights proposed above are reasonable; if there is to be any variation, we believe it should be in the direction of adding weight to the vacant land factor rather than the reverse.

(2) income distribution: The total need factor is then divided into low and moderate income needs, respectively, on the basis of the countywide percentages of households in each category; if one uses the 1970 figures for households earning between 0 and \$5,999, and \$6,000 and \$9,999 respectively, one obtains a ratio of 1:2 low:moderate income households. After dividing the preliminary allocation in that manner, the adjustment factor (based on the ratio of municipal to countywide percentages) is applied independently to each.

We propose that the scale of weights to give to each degree of disparity in the ratios be as follows; the first .1 of disparity, X 1; the second .1 of disparity, X 2, the third X 3, and so forth. This would yield the following results, for varying ratios:

RATIO	DISPARITY	ADJUSTMENT
.9:1	.1	.1
.8:1	.2	.3 (.1+.2)
.7:1	.3	.6 (.1+.2+.3)
.6:1	.4	1.0 (.1+.2+.3+.4)
etc.	etc.	etc.

If we hypothesize that the municipality X has a ratio of low income households

to the countywide average of .85, and of moderate income households to the countywide average of .9, as arrived at immediately below, one would apply

(a) hypothetical countywide percentage of low income households 12.0%
municipal percentage of low income households 10.2%

municipal:county ratio = .85:1

(b) hypothetical countywide percentage moderate income households 24.0%
municipal percentage of moderate income households 21.6

municipal:county ratio = .9:1

(c) adjustment factor for low income households:

disparity = .15 adjustment factor = .2 (.1 +.5(.2))

(d) adjustment factor for moderate income households:

disparity = .1 adjustment factor = .1

these values to the preliminary allocation as follows:

PRELIMINARY ALLOCATION = 4,333

low income = 1,444 X 1.15 = 1,661

moderate income = 2,889 X 1.1 = 3,178**

TOTAL = 1,661 + 3,178 = 4,839

This total figure, then would be the municipality's fair share allocation of housing units*.

(3) application of fair share to housing goals: The final step would be to some degree within the purview of the municipality. The fair share allocation figure, clearly, does not distinguish between internal and projected need, new and existing units, etc. The municipality, however, would have available information, provided by the county or some other dispassionate source, on the number of units countywide and by municipality in various categories.

*A final adjustment would be necessary to either increase or decrease the actual numbers, since the totals (resulting from the various computations) would have come to vary somewhat from the overall need figure. The difference between the total and the need figure would simply be pro-rated among the municipalities in proportion to their fair shares.

**If the municipality had had a positive disparity, one would have divided the preliminary figure by the adjustment, rather than multiplied.

For example, the Department of Community Affairs has presented data on internal housing need for each municipality (introduced into evidence as P-38); one initial step would be for each municipality to compare its allocation with its internal housing need, both with regard to units needing rehabilitation as well as families (in sound units) in need of financial assistance.

A crude application of the formula described above to the Middlesex County municipalities (crude in that only rough approximations are available in some cases for vacant land and employment projections) determined that when applied to municipalities with little vacant land available, the fair share allocation was in almost every case smaller than the internal need. In other words, it appears extremely likely that such municipalities will be able to meet their fair share responsibilities, should they choose to do so, through (a) rehabilitating units and providing subsidies to families in existing units; and (b) modest new construction to replace existing units that are not suitable for rehabilitation. In either case, the application of this formula should not result in any increased density in already more developed municipalities, other than of a strictly voluntary nature.

APPENDIX B

Part I

This appendix provides extended discussion of the various restrictive elements found in the zoning ordinances of Cranbury, East Brunswick, Edison, Monroe, North Brunswick, Old Bridge, Piscataway, Plainsboro, Sayreville, South Brunswick and South Plainfield; the standards for the cleansing of the exclusionary zoning ordinances (with suggested incentives for low and moderate income housing) and in Part II provides detailed suggestions, by municipality, for the revision of the zoning ordinances.

The ordinances of the above eleven municipalities exhibit the following restrictive elements:

- (1) excessive minimum lot size, minimum frontage, or minimum interior floor area provisions in the most modest zone provided for single family dwellings in the municipality. Plaintiffs do not object to the presence of higher standards in some zones, as long as a zone with ample acreage allotted to it, exists in which minimum standards are not exceeded.
- (2) inadequate acreage allotted to the most modest single family housing on small lots, or to any relatively modest single family-small lot residential zones.
- (3) the total absence of any single family residential zone in which minimum requirements for lot size, frontage, and interior floor area are all within the reasonable and modest standards presented in expert testimony.
- (4) the existence of restrictive provisions other than the three discussed above applicable to all or some single family residential zones. These restrictive provisions can include but are not limited to, any of the following:

- a. requirements that houses contain full basements under all or part of the habitable area of the house.

/ The suggested revision for Old Bridge is not included because a copy of that ordinance was unavailable. The revision for Plainsboro is not included because that ordinance is undergoing revision. The suggested revisions outlined for other municipalities are applicable to Old Bridge and Plainsboro.

b. requirements that houses contain a fully enclosed garage.

c. so-called 'no-look-alike' provisions requiring often extensive facade and elevation variation between houses in the same area or development.

d. prohibition of, or restrictive provisions governing, conversion of single family into two or three family dwellings.

(5) the absence of any provision, either by right or special exception, for multifamily housing development. In some communities multifamily housing is permitted only in a Planned Unit Development or similarly constituted zone which is subject to additional restrictive provisions (discussed below).

(6) the provision of multifamily housing opportunity only through special exception procedures which are either broadly discretionary, affording excessive opportunity to local boards to act in an arbitrary manner, or governed by procedures which are onerous, expensive, and time-consuming.

(7) inadequate or minimal acreage allotted to such zones or locations in which multifamily housing is permitted, by right or by special exception.

(8) excessive parking requirements for multifamily development, including both requirements for excessive numbers of parking spaces per dwelling unit, as well as requirements that a percentage of the parking spaces be enclosed.

(9) other restrictive provisions affecting the development of multifamily housing, including but not limited to:

a. unreasonably low overall density standards, reducing the potential number of units and the economy of development.

b. so-called "zigzag" provisions requiring extensive facade and setback variation, increasing the cost of construction.

c. excessive provisions for open space or recreational area.

d. excessive provisions for enclosed storage space for each dwelling unit.

e. bedroom restrictions (limitations on the number of dwelling units containing more than one bedroom), or density provisions in which the number of units/acre varies according to the number of bedrooms/unit.

f. limitation on number of habitable floors to two in garden apartments.

g. excessive acreage requirements for construction of multifamily housing.

(10) exclusion of mobile homes, or designation of mobile homes only as non-conforming land use.

(11) provisions severely limiting or restricting use of mobile homes or development of mobile home parks.

(12) In those communities where Planned Unit Development (or similar techniques under different names) zones have been established, there are a number of additional exclusionary features specifically applicable to those zones; including but not limited to the following:

a. restrictive standards on housing development, similar to any of those described above.

b. restrictive standards governing future occupancy of developments constructed under the ordinance; e.g., restriction to senior citizens, limitations on number of children.

c. excessive requirements for dedication of open space, or provision of lavish recreational facilities such as golf courses.

d. excessive minimum acreage requirements, often over 100 acres, for developers seeking to qualify to build under PUD provisions.

e. excessive requirements for development of non-residential uses in PUD over and above requirements of present and future residents of proposed PUD.

Each of the eleven municipalities under review exhibits more than one of these exclusionary features in their zoning ordinance provisions. Each of these provisions either (a) precludes the development of a type of housing unit which can provide significant housing opportunity, such as multifamily housing or mobile homes; (b) raises the cost of the housing units that can be constructed in the community, thereby reducing the number of households that can benefit by such construction; or (c) discourages construction without explicitly excluding housing, by putting obstacles or hurdles in the way

of the developer or sponsor of housing which are unrelated to reasonable housing and planning concerns. (See attached chart.)

STANDARDS FOR THE CLEANSING OF EXCLUSIONARY ZONING ORDINANCES

The elimination of the above provisions plus the inclusion of affirmative zoning provisions is the minimum action required here. The effective utilization of Federal and State housing subsidy programs requires that affirmative elements be incorporated in the revised ordinances. Testimony was adduced at trial which showed that the act of zoning land for higher density single family uses, or for multifamily development, taken in itself and without affirmative measures can increase the cost of land. Consequently many benefits of rezoning would be lost to prospective low and moderate income home buyers or renters. Testimony from defendants' experts (e.g., Mr. Carr for Piscataway) established that the cost of land per lot in high density (typically, 10,000 - 15,000 sq. ft.) single family zones was not significantly lower than the equivalent cost in lower density (typically 1/2 to 1 acre) single family zones.

Plaintiffs therefore maintain that each municipal zoning ordinance must contain a series of features, the cumulative effect of which is to maximize housing opportunity. These features include the following:

- (1) ample provision for modest single family detached and

/ "Ample provision" means an allocation of land in the appropriate zone substantially greater than the likely immediate demand for construction of housing under the standards for that zone.

attached dwellings. Such dwellings are defined as those constructed on lots of 6,000 sq. ft. or less, with a frontage of 800-900 sq. ft. or less. Lot densities should be at least 10 dwelling units per acre and frontage requirements if any, should be no more than 25 ft. per dwelling.

It is a truism that not all land is available for construction at any point in time, even if developable, and that not all proposed developments successfully move to completion, even where the appropriate site has been acquired. If the goal, for example, is to make possible the construction of X dwelling units on Y acres, then the allocation of land under the zoning ordinance should be at least 3 times Y, to provide for flexibility.

In this zone, plaintiffs would also encourage the use of maximum standards in the ordinance; (e.g., a substantial proportion of houses may not contain more than 1000 sq. ft. of finished interior floor area). This would reduce the danger that demand for more expensive housing in a community (possibly coupled with subtle pressure from local officials), would result in development of housing in the "modest housing" zone that was, substantially more than modest housing in size and in cost. Exceptions could be made for later "add-on" by owners.

(2) Ample provision for multifamily housing under reasonable and modest standards: Such standards would include densities for low-rise apartments of no less than 15 dwelling units per acre; parking requirements of no more than 1.5 parking spaces/unit; modest interior minimum floor space require-

ments, or adoption by reference of floor space (room by room) standards of the New Jersey Housing Finance Agency. In addition, standards in such zones should be free of exclusionary elements. Amenities should not be used as exclusionary devices.

Again, the amount of land designated in the ordinance for development of multifamily housing must be well in excess of the strictly defined land consumption projected on the basis of need. Both the amount of land zoned for multifamily housing, and the location of that land, as well as the provision of sewer and water facilities to the designated sites, must be such that construction of multifamily housing is effectively and affirmatively encouraged by the zoning ordinance.

With regard to conventional market multifamily housing, plaintiffs would find acceptable a municipal ordinance which specifies that all or nearly all such development is to take place in Planned Unit Developments or similar planned communities, as long as the PUD provisions are themselves non-exclusionary.

As noted below, though PUDs can play a part in meeting the need for subsidized housing for low and moderate income families they should not be the exclusive method of providing that need.

(3) Removal of exclusionary aspects of Planned Unit Development provisions: Although the PUD approach regardless

/ e.g., 400 sq. ft. for efficiency apartments, no more than 600 sq. ft. for one bedroom apartments, and no more than 800 sq. ft. for two bedroom apartments. (The HFA standards, however, which are based on room sizes and provide for greater flexibility in design, are clearly preferable.)

of terminology is a potentially valuable means of providing housing efficiently and with a variety responsive to housing market needs and demands, PUDs are often used as a means of restricting housing development, for purposes of either social exclusion or fiscal advantage. Plaintiffs have no objection, therefore, to the use of the PUD approach by the municipalities under discussion, and do not object to their attempting to meet a substantial part of their multifamily housing obligations (with the above noted exception) through the PUD approach. In order to do so, however, onerous and burdensome restrictions affecting PUD activity must be removed. Specifically, the following considerations must be applied to the redesign of PUD and similar ordinances:

- a. PUD ordinances must provide for development of both single and multifamily housing of a modest nature, similar in standards to those discussed above and applicable to smaller scale development.
- b. PUD ordinances must not require that an unreasonably large percentage of PUD tracts be set aside for open space; they may, however, provide for density bonuses increasing permissible density on the remaining land. When such a density increase is effected a municipality can provide for open space above the limit set in the ordinance.
- c. PUD ordinances must not require any minimum amount of industrial or commercial development in any PUD, with the exception of commercial retail facilities for the use of the residents of the PUD; they may, however, permit non-residential development in PUDs, as long as it does not

become a de facto requirement through the administrative discretion of the municipality.

d. PUD ordinances must not impose restrictive and onerous burdens with regard to any of the following: (1) expensive and elaborate recreational and communal facilities; (2) excessive requirements as to the minimum size of a tract in order to qualify for PUD provisions; (3) provisions regarding timing of development not clearly related to provision of infrastructure and services, and to habitable conditions for PUD residents.

Plaintiffs maintain that no standard or provision that can be held to be exclusionary if found in the conventional portions of a zoning ordinance, can become acceptable by including it in the context of PUD specifications.

The PUD section of the zoning ordinance should, furthermore, provide for incentives for development of low and moderate income housing at least comparable to those discussed in point 6 below. Specifically, density bonus provisions for low and moderate income housing development are desirable. Requirements that minimum percentages of all development be low and moderate income housing are also desirable, but only in a context which makes explicit: (a) the reciprocal responsibilities of the developer and the municipality, e.g., provision of tax abatement, waiver of standards, etc.; (b) the manner in which application will be made for Federal and State subsidy funds; and (c) the manner in which the ordinance provision will or will not be enforced in the event that the developer is unable to secure such funding.

(4) Removal of barriers which prevent conversion of single family dwellings: It is likely that conversion of large single family dwellings to two or three family houses may be a major resource for additional housing units in the coming years. Ordinances should not restrict conversion, except insofar as it is necessary to ensure that the resulting units will meet reasonable and modest standards for habitable area and facilities. Arbitrary requirements, such as allowing conversions only to two family houses, and limiting conversion provisions to houses above a minimum square feet of interior floor area, should not be allowed.

(5) Removal of barriers which prevent use of mobile homes: Ordinance definitions which distinguish between mobile homes and single family dwellings are inherently arbitrary and should not be allowed. Testimony has clearly established that the standards used in mobile home construction are comparable to those used in the on-site construction of single family dwellings. For similar reasons, and in view of the additional housing opportunities provided thereby, reasonable provision should be made in zoning ordinances for the establishment of mobile home parks meeting appropriate and reasonable standards.

(6) Incentives for the provision of low and moderate income housing: In order to meet the affirmative test of the Mt. Laurel decision, a zoning ordinance in a developing municipality must provide for low and moderate income housing development in a manner different from that applicable to development generally. We believe that such an ordinance should contain one or both of the following types of provisions, in order to affirmatively encourage low and moderate income

housing development:

a. differential standards for single and multi-family housing built under State and Federal housing programs for low and moderate income persons / within zones that are designated for modest development of single family or multifamily development, differential standards should be imposed by the ordinance, which would provide for potential savings or cost efficiencies to developers willing to construct low or moderate income housing rather than conventional market housing.

An example of such a provision would be the establishment of a density ceiling of 12 dwelling units/acre for conventional housing and 16 dwelling units/acre for housing meeting the low and moderate income housing definition. A further provision would be the waiver of local zoning standards in favor of HFA requirements or Federal Housing Administration Minimum Property Standards.

b. special exception provisions for low and moderate income housing development: Within the parts of a municipality where multifamily development is, in any reasonable sense, an appropriate land use (but which is not zoned for multifamily development) a special exception for low and moderate income multifamily housing should be provided. The special exception provisions should enumerate the standards to be followed, the definition of low and moderate income housing for such purposes, and should state the intention of the municipality to approve any development meeting the standards and definitions set forth.

/ This could provide as well for application of such differential standards to non-subsidized housing that was to rent or sell below levels designated as moderate income ceilings.

Plaintiffs believe that this is potentially one of the most effective tools for the encouragement of housing development under State and Federal housing programs. It removes two significant weaknesses in other rezoning approaches; (1) the cost-increasing effect of rezoning for multifamily housing generally, which tends to discourage use of such land for low and moderate income housing, if not render it impossible; and (2) the inherently suspect nature of rezoning land specifically for low and moderate income housing. We would like to call the attention of the Court to the recent Consent Order issued in Hightstown-East Windsor Human Relations Council, Inc. et al. v. Township of East Windsor, (Docket No. L-24265-71PW, Superior Court, Mercer County, March 1, 1976.) in which such a special exception provision was included in the order specifying changes in the municipal zoning ordinance. (See Appendix E)

/ In order to remove the potential objection that such provisions would inundate the municipality with low and moderate income housing, the ordinance should specify that such special exception provisions would be applicable only to the number of units (during any given period) specified by the fair share allocation plan as required in the municipality.

SUMMARY OF EXCLUSIONARY ELEMENTS

IN MOST MODEST
SF ZONES

	EXCESSIVE LOT SIZE	EXCESSIVE FRONTAGE	EXCESSIVE MINIMUM INTERIOR FLOOR AREA	INADEQUATE LAND AVAILABLE IN MOST MODEST SF ZONE	NO SF ZONE CONSISTENT WITH MODEST HOUSING STANDARDS	NO PROVISION FOR MF MULTIFAMILY BY SPEC. EXCEPTION ONLY	INADEQUATE LAND IN MF ZONE(S)	RESTRICTIVE PROVISIONS IN SF ZONES	EXCESSIVE PARKING REQUIRED IN MF	OTHER RESTRICTIVE PROVISIONS IN MF	MOBILE HOMES EXCLUDED	MOBILE HOMES ALLOWED BUT RESTRICTED	EXCESSIVE LAND ZONED FOR INDUSTRIAL USES	PUD OR SIMILAR ZONE PROVIDED (YES/NO)	HOUSING PROVISIONS IN PUD RESTRICTIVE	EXCESSIVE NON-RESIDENTIAL PROVISIONS IN PUD	OTHER RESTRICTIVE PROVISION IN PUD
CRANBURY	X	X	X	X	X	X					X	X	NO				
EAST BRUNSWICK	X		X	X	X		X	X	X	X	X	X	X	NO			
EDISON			X		X		X	X			X	X	X	NO			
MONROE	X	X	X	X	X	A ¹					X	X	X	YES	X		X ²
NORTH BRUNSWICK			X	NA ³	X		NA	X	X	X	X	NA	NA	YES	X		X
OLD BRIDGE			X	X	X		NA				NA		YES	X			
PISCATAWAY				X			X	X	X	X	X			NO			
PLAINSBORO	X			X	X		A			X	X	X	X	YES	X ⁴	X	X
SAYREVILLE			X		X		A	X	X	X	X		YES	X	X	X	X
SOUTH BRUNSWICK	X		X	X	X	A		X				X	X	YES	X		
SOUTH PLAINFIELD			X	X	X	X		X			X	X	X	NO			

1. (A) = no conventional MF zones, but MF permitted in PUD zones.
2. Senior citizens only
3. NA = information not available
4. In PCD zone, not in PMUD zone

Sources: Zoning Ordinances and land use data in evidence