

East Brunswick 1983

12/14

Land Survey Calculation

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M E M O R A N D U M

December 14, 1983

TO: Carl E. Hintz, Director, Planning & Comm. Dev.

FROM: Roy K. DeBoer, Planning Manager

RKDB

RE: VACANT LAND SURVEY DECEMBER 1983
MOUNT LAUREL CALCULATIONS

The vacant land survey map has been updated on a print and will be transferred to a reproducible mylar immediately. The following summary of vacant lands is broken into SSMA and non-SSMA areas, which have been further subdivided according to zone (residential vs. commercial/office/industrial.)

Note: All public, semi-public lands such as schools, parkland, cemeteries, churches and lands with current site plan or subdivision approvals have been excepted out of the vacant land calculations.

Total Vacant Land in SSMA Area (Low Growth Area)

1,950.0	acres residentially zoned
6.8	acres commercially zoned
<u>1,956.8</u>	acres total SSMA vacant land

Total Privately Owned Vacant Land in Growth Areas
of the Township - 1,911.3 Acres

799.5	acres residentially zoned
<u>1,111.8</u>	acres commercially zoned
1,911.3	acres vacant land in growth area

Note: 558 acres of the commercial/industrial vacant land is a part of the Edgeboro Landfill and Coastal Waterfront Management Area.

RKDB:jr
3612B/43

From Mt Laurel II
Challenge + Delivery of Low Cost
Housing
1983

BROADER-BASE BRIDGE MECHANISMS AFFECTING MULTIPLE COMPONENTS OF HOUSING COST: IMPACT ON HOUSING AFFORDABILITY

The bridge approaches discussed thus far were by and large directed to individual housing cost components, e.g., increased density would lower land costs, tax-exempt construction loans would reduce interim financing expenses, etc. There is a further class of bridge strategies which are broader in both their effect -- they influence many housing cost components -- and intent -- they sometimes require, rather than more passively encourage, the production of lower cost housing. Two such encompassing mechanisms are examined here -- adopting inclusionary zoning and allowing manufactured housing, most notably mobile homes. Both were cited by the Mount Laurel decision as important techniques to meet its mandate of delivering affordable housing.

INCLUSIONARY REQUIREMENTS

An inclusionary program is a "process intended to set aside a portion of the total number of units in a development at below-market prices in order to expand housing available to low- and moderate-income persons."⁹⁴ While it has been applied in other contexts, inclusionary provisions typically have the objective of expanding housing* opportunity. They usually have a triggering specification (e.g., development of a particular size, type, or location). The inclusionary mandate may be either mandatory or optional on the developer; in the former case, the builder must comply, in the latter he is encouraged to do so. In either case, the inclusionary requirement is usually stated as a share of the total new housing production, usually 10 to 25 percent. To allow or encourage the developer to comply, many inclusionary programs offer a density bonus or other incentives (e.g., reducing subdivision/parking/set-back requirements, or offering lower-cost financing). To ensure that units produced under an inclusionary program remain a low/moderate-income housing resource, as opposed to providing a windfall profit to the initial occupant, most inclusionary strategies retain some type of affordability control. These commonly consist of a deed restriction capping subsequent resale or rental prices and/or monitoring of future occupancy by a local housing authority or other entity.

We can obtain a better sense of the inclusionary approach by briefly surveying its history, both nationally and in New Jersey. This is done in detail in the Technical Appendix. In brief, inclusionary programs in the United States date to the early 1970s.⁹⁶ In 1971, Fairfax County, Virginia required builders of fifty or more units to commit at least 15 per-

*In some cases, its purview has been broader. For instance, the California Coastal Commission required a hotel developer in Marina del Rey to provide a youth hostel, moderate-cost coffee shop, and special weekend discount rates for low/moderate income families.⁹⁵

cent of their production for low/moderate-income families.⁹⁷ Within a short period, a number of its neighbors followed suit, most notably Arlington County, Virginia, and Montgomery County, Maryland.⁹⁸

The inclusionary spirit soon leaped the continent, especially in California. In the early 1970s, Palo Alto and Los Angeles imposed inclusionary requirements.⁹⁹ A few years later, Orange County followed suit with an encompassing program.¹⁰⁰ It mandated that 25 percent of all newly constructed units in developments of five or more houses be made affordable to families earning below 120 percent of the county's median income. Developers could satisfy this requirement by: (1) building the one-quarter share in each project, (2) "overbuilding" (going above a 25 percent share) affordable units in one of their developments and then transferring the excess as a "credit" to another of their projects which is under quota, (3) buying "credits" from other builders who have an excess to sell, and (4) through other means, such as land donation or in-lieu cash payments to the county. To help foster compliance, the Orange County program offered developers density bonuses and other inducements (e.g., accelerated processing and tax-exempt financing).

New Jersey has a fledgling inclusionary record. A handful of municipalities -- Bridgewater, Cherry Hill, East Brunswick, East Windsor, Franklin Township (Somerset), Mount Laurel, Raritan Township, and South Brunswick -- have either voluntary or mandatory programs. Special area authorities -- for the Coastal Zone, Meadowlands, and Pinelands -- also have nominal inclusionary provisions. The Technical Appendix considers the components of both the municipal and area-wide approaches in detail. In brief, most of the New Jersey inclusionary programs are mandatory. They require that from 5 to 40 percent of new housing production be set aside for low/moderate-income families, with the latter as defined by HUD and NJHFA guidelines. Many impose the inclusionary set-aside without offering a density bonus or other inducement for compliance. This factor, plus others ranging from legal uncertainties before the Mount Laurel, Uxbridge Associates, and Egg Harbor decisions,¹⁰¹ to very stringent inclusionary requirements (e.g., 40 percent in Bridgewater), have inhibited the throughput of New Jersey's existing inclusionary program. There are some encouraging exceptions, however, most notably in Cherry Hill, East Brunswick, and South Brunswick. The experience in these communities points to the potential of the inclusionary mechanism to produce affordable housing.

The Inclusionary Mechanism as a Mount Laurel Bridge Strategy

The inclusionary approach can help satisfy the Mount Laurel decision in two ways. First, it forces production of lower-cost housing and second, if properly structured, it provides a financial means for affordable housing delivery. Our review of the national and New Jersey state-of-the-art revealed that the major financial prop offered by many inclusionary programs is a density bonus -- the permission to construct additional units. This differs from the density increase discussed earlier in this chapter

clusionary requirement. The absence of this provision has hindered the implementation of many of New Jersey's existing inclusionary programs. What should be offered? Typically, the benefit will involve a density bonus. Municipalities can also be more creative in the "give-backs" they offer to create the value which permits the developer write-down. In Orange County, California, these have ranged from lowered off-site parking requirements to reduced landscaping designs, to "one-stop" permit processing.¹⁰² Just such an encompassing package of inducements should be considered. Their specific composition and magnitude should be formulated by each community considering such variables as existing local land-use requirements, the share of affordable housing called for in the inclusionary program, and the necessary builder write-down to meet this goal given local land and other costs.

Assistance in the specification of inducement provisions is provided by an economic analysis routine formulated by Stanford University to model the effects of inclusionary scenarios in Palo Alto.¹⁰³ Work in this regard by the Real Estate Research Corporation, reported in The Princeton Housing Proposal, also deserves scrutiny.¹⁰⁴

The inducement provision can also be applied as a creative means to foster social policy. In East Brunswick, for example, a higher density bonus is offered if the affordable units are dispersed in, rather than separated from, the market housing.

3. Affordability Control/Monitoring. An important aspect of the inclusionary approach is to ensure that the low/moderate-income units remain affordable. A good discussion on this issue is found in The Princeton Housing Proposal. This study recommended a two-tier approach -- first a disposition covenant limiting the use of the unit to low/moderate-income families, and second, monitoring of this restriction by a Public Trust.¹⁰⁵

Affordability monitoring entails possible conflict with lender interests. Lenders desire unfettered appreciation of mortgaged properties so as to better protect their security. An inclusionary program cap on the future sales/rental price does not allow this. Important mortgage institutions such as FNMA and FHLMC have indicated their unease with affordability controls which cloud their interest. Both have issued regulations indicating they would not deal in mortgages that carry deed restrictions subordinated (upon foreclosure) to other designees, such as a housing authority¹⁰⁶ -- a not uncommon inclusionary program combination. This hurdle is not insurmountable as indicated by the fact that both FNMA and FHLMC have purchased mortgages issued on homes in Orange County and other jurisdictions with inclusionary programs and affordability controls. A careful structuring of these measures is needed so as to abide with the fiduciary needs of mortgage institutions.

In addition to the mechanics, there is also the question of who will administer and pay for enforcement of the affordability controls. Possible

EXHIBIT 6A-1

NEW JERSEY INCLUSIONARY PROGRAMS

AREA	I N C L U S I O N A R Y P R O G R A M						
	PLAN TYPE	APPLICATION	INCLUSIONARY PROVISION	LOW/MODERATE INCOME DEFINITION	AFFORD-ABILITY CONTROL	COMPLIANCE BONUS	PROGRESS-TO-DATE/ CHANGES
<u>MUNICIPALITIES</u>							
Bedminster Township (proposed)	Mandatory	FUP zone	20% for low/moderate-income families (this 20% must include specified percentages of senior citizen, rental, for-sale units, etc.)	50%-80% of median	To be proposed by developer	None	<u>Proposed</u> Plan
Bridgewater Township	Mandatory	In Township's multifamily zones	40% low/moderate (15% low, 25% moderate).	50%-80% of median	Yes, but not defined nor effected	15% density bonus over 8-unit per acre ceiling	No units built under provision. Township considering reduction to 25% low/moderate.
Cherry Hill	Mandatory	In specific township zones	5% "modest" priced housing (25% of these units must be 1-bedroom, 25% 2-bedroom, 25% 3-bedroom, & remainder mixed. Modest-priced housing must be "dispersed" and not have different facade treatment. For-sale units have specified minimum/maximum sizes and prices based on these sizes. Rental units are linked to Section 8 "Fair Market Rents."	Not to exceed SMSA median income adjusted by family size	Deed restriction. Sale price cannot exceed original price adjusted by CPI.	None	4 projects proposed or under construction.
East Brunswick Township	Optional	Planned Unit Residential Development and other zones	Optional inclusion of low/moderate income units	50%-80% of median	Deed restrictions. Town has first right of buy-back at set future price equal to original selling price as inflated by CPI plus improvements.	Up to 2 bonus units for every low/moderate income unit provided. A maximum density of from 8-20 units/acre permitted.	Three projects: (1) senior citizen (Section 236) (2) single family (Section 235) (3) single family
East Windsor Township	Mandatory	In Township's Planned Development District	15%-25% low and moderate	50%-80% of median	Not in ordinance, but "to be worked out with developer."	Development District's higher densities (e.g., up to 24 units per acre).	No units built under provision

EXHIBIT 6A-1

NEW JERSEY INCLUSIONARY PROGRAMS (continued)

AREA	I N C L U S I O N A R Y P R O G R A M						
	PLAN TYPE	APPLICATION	INCLUSIONARY PROVISION	LOW-MODERATE INCOME DEFINITION	AFFORD-ABILITY CONTROL	COMPLIANCE BONUS	PROGRESS-TO-DATE/ CHANGES
<u>MUNICIPALITIES</u>							
Franklin Township (Somerset)	Mandatory	In PUD and R-40 zones	5% low income, 10% moderate	50%-80% of median	None yet, but would be provided when units built	None, except that inherent in zone's higher densities	No units built under provision; however, commitment from developer of Township's first PUD.
Mount Laurel	Mandatory	In all of the Township's land use zones (only projects approved before adoption of program are exempt)	10 percent for low- and another 10 percent for moderate-income	50%-80% of median	Yes, deed restriction limiting resale to original price as adjusted by CPI	5% density bonus to projects exempt from program (see Application)	Plan recently adopted in wake of Mount Laurel decision. Numerous applications currently being considered.
Raritan Township	Voluntary	Planned Residential Development zone	Density increase if low- and moderate-income housing provided	50%-80% of median	Not specified	10% increase in number of bedrooms from zone base of 8 per acre	No units built under provision. Some developer interest with internal developer subsidy.
South Brunswick Township	Mandatory	In Township's two PRD's	20% of PRD units for low- and moderate-income	None currently. Awaiting judicial interpretation.	Yes, in deed.	Only that inherent in PRD's higher densities (e.g., up to 7 units per acre).	2 projects (64 rental and 108 condo) have been constructed. 736 moderate-income apartments plus town center development (600 units) under consideration.
Princeton Plan (Proposal)	Plan Proposed in 1973	Floating PRD zones	14% low, 20% moderate	Defined by local income distribution	Yes, deed restrictions and public trust monitoring	Yes, density bonus	Plan never adopted

EXHIBIT 6A-1

NEW JERSEY INCLUSIONARY PROGRAMS (continued)

AREA	I N C L U S I O N A R Y P R O G R A M						
	PLAN TYPE	APPLICATION	INCLUSIONARY PROVISION	LOW-MODERATE INCOME DEFINITION	AFFORD-ABILITY CONTROL	COMPLIANCE BONUS	PROGRESS-TO-DATE/ CHANGES
<u>SPECIAL DISTRICTS</u>							
Coastal Zone	Mandatory	Any project of 200 units or more. Threshold has since been lowered to 25 units.)	If housing subsidies available, 10% low and 10% moderate; if subsidies not available, low income waived, but 20% moderate.	80% and 95% of median	Deed restriction for 10 years	None	Inclusionary requirement applied to 20 projects since 1978; however, negotiations still continuing. Initial focus on Atlantic County now expanding to entire Coastal Zone.
Hackensack Meadowlands District	Mandatory	Within three Development Districts	10% low, moderate, or elderly	Not defined	None	None	No units built under provision
Pinelands	Mandatory	Communities within Pinelands have an obligation in revising their Master Plans to provide that 25% of their housing stock be available to low/moderate/middle-income families	For projects 100+ units: 10% low, 10% moderate, and 5% middle income; For projects 25-100 units: a total of 25% for all three categories	Low: less than 80% of median; Moderate: 80%-100% of median; Middle: 100% to 120% of median; families can spend 30% of income for housing	None	None	Communities in process of revising Master Plans. Some claim they already meet goal; <u>Mount Laurel II</u> decision has raised questions concerning Pinelands housing obligation.

Source:

- Bedminster Township : "An Ordinance to Amend and Supplement an Ordinance Entitled 'The Land Development Ordinance of Township of Bedminster'," 1983
- Bridgewater Township : John Madden, Township Planner
- Cherry Hill Township : Marty Keoughn, Community Developer Planner
- East Brunswick Township : Carl Hintz, Director, Housing & Community Development Department
- East Windsor Township : Michael Muller, Township Planner
- Franklin Township (Somerset): Frank Colpini, Township Planner
- Mount Laurel Township : Louis Glass, Mount Laurel Planning Consultant
- Raritan Township : Douglas Kimball, Township Planner
- South Brunswick Township : David Engel, Township Planner
- Princeton Township : "The Princeton Housing Proposal - A Strategy to Achieve Balanced Housing Without Government Subsidy," May 1977
- Coastal Zone : Joe Weingarten, Office of the Coastal Zone
- Hackensack Meadowlands : Department of Residential Planning
- Pinelands : John Stolees, Pinelands Commission

further vary depending on project size, (e.g. 25 to 99 units, 100 units or more, etc.) Finally, in all cases, except one, these ratios apply to new housing production. The exception is the Pinelands, where the ratio applies to the municipality's total housing stock. To illustrate, a community with a total of 1,000 existing units and a projected growth which will double its size has to plan for the provision of 500 affordable units -- one-quarter of the municipality's future 2,000 unit housing base. The implications of the Pinelands approach is that localities with large share of affordable housing present already are practically exempt from the inclusionary requirement, while the opposite is true for jurisdictions with few existing lower cost units.

Unlike their counterparts in other areas of the country, New Jersey's inclusionary programs are less generous in providing special density or other bonuses to facilitate compliance. In most cases, the only concession offered is that which is inherent already in the higher density of the PUD or multifamily zone where the inclusionary mandate is set. There are exceptions, however. East Brunswick, Bridgewater, and Raritan Townships all offer varying levels of density bonuses (see Exhibit 6A-1).

Many of the New Jersey inclusionary programs nominally have some provision to guarantee that the units produced will remain affordable. To illustrate, in East Brunswick there is a deed restriction giving the Township the right of first refusal to purchase the inclusionary units when they are offered for sale at an amount equal to their original selling price (inflated by the Consumer Price Index), plus improvements. In many instances, however, this aspect of the program has not been specified because most of the inclusionary approaches have had insignificant throughput. The only production of any note, is found in Cherry Hill, East Brunswick, and South Brunswick (see Exhibit 6A-1). In East Brunswick, for example, a total of roughly seventy affordable housing units were provided in three developments (see Exhibit 6A-1).

There are several reasons for the slow start of New Jersey's inclusionary program. Questions concerning the legality of the mechanisms, only resolved recently, stalled progress. The frequent absence of density or other bonuses was another problem. Very stringent inclusionary requirements, such as Bridgewater's 40 percent ratio, were still another deterrent. Problems incidental to the inclusionary requirement also arose. For instance in Franklin Township, controversy concerning the community's two PUD's -- the areas slated for the 25 percent inclusionary requirement -- has stalled any production in these developments, market as well as inclusionary, for almost a decade.

NOTES

1. See U.S. Federal Housing Administration, Underwriting Training Handbook (Washington, D.C.: U.S. Government Printing Office, series).

2. See Tom Morton, Texas Real Estate (Glenview, Illinois: Scott, Foresman & Co., 1982), p. 176.
3. Center for Urban Policy interviews with Section 8 developers in the New York Metropolitan area.
4. See Federal National Mortgage Association, Underwriting Guidelines Home Mortgages. (Washington, D.C.: FNMA, 1979).
5. Morton, Texas Real Estate, p. 177.
6. Ibid., p. 178.
7. See, for example, Federal Home Loan Mortgage Corporation, Guidelines (Washington, D.C.: FHLMC, 1982). Telephone conversation by CUPR with Linda Talloway, underwriter, Northeast Regional Office, Federal Home Loan Mortgage Corporation. See also "Figuring the Mortgage Costs A Family's Income Can Carry." The New York Times, Sunday, October 23, 1983, Section 8, p. 1.
8. Center for Urban Policy Research interviews with major New Jersey Mortgage Bankers.
9. Center for Urban Policy Research computer analysis of 1980, New Jersey Public Use Sample.
10. Mount Laurel II Decision, p. 37.
11. See U.S. Department of Housing and Urban Development, Selecting and Financing a Home (Washington, D.C.: Government Printing Office, 1978) HUD Publication 267, H-8.
12. Fairfax County, Va. code ch. 30 (1961) as amended by Amendment 156 (1971), cited in Hastings Constitutional Law Journal, Vol. 3, No.4, Fall 1976, p. 1053.
13. Arlington County, Va. Resolution on Developer Provision of Moderate-Income Housing (February 22, 1972).
14. Montgomery County Council Bill 372. Montgomery County, Md. Code 25A (1974).
15. Board of Supervisors v. DeGroff Enterprises, 214, Va 235, 198, S.E. 2d 600 (1973).
16. Fairfax County, Va. code ch. 30 (1961), as amended by Amendment 249 (1975).
17. Lakewood, Colorado Planning Commission Policy, No. 15 (1973).

18. Boulder, Colorado City Council Resolution 115 (1977).
19. California Government Code, Section 65302(c). Cited in Seymour I. Schwartz and Robert A. Johnston, "Inclusionary Housing Programs," Journal of the American Planning Association, Winter 1983, Vol. 49, No. 1, p. 20.
20. Assembly Bill 2853 (Roos, 1980), Chapter 1143 of the Statutes of 1980. Cited in Schwartz and Johnston, "Inclusionary Zoning," p. 20.
21. California Department of Housing and Community Development, Model Inclusionary Zoning Ordinance." (1978).
22. See Schwartz and Johnston, "Inclusionary Zoning."
23. Los Angeles, CA. Municipal Code §§ 12.03, 12.39, 13.04 as amended by Ordinance No. 145. 927 (1974).
24. See Barbara Taylor, "Inclusionary Zoning: A Workable Option for Affordable Housing?" Urban Land, Vol. 40, No. 3, March 1981, p. 3; Linda J. Bozung, "A Positive Response to Growth Control Plans: The Orange County Inclusionary Housing Program," Pepperdine Law Review, Vol. 9, No. 4 (1982), p. 824; Linda J. Bozung, "Inclusionary Housing Experience Under a Model Program," Zoning and Planning Law Report, Vol. 6, No. 1, January 1983: See also California Building Industry Association, Inclusionary Housing in Orange County: A Look at Preliminary Results (April 1981).
25. Schwartz and Johnston, "Inclusionary Housing Programs," p. 13.
26. This discussion is based on interviews with municipal officials and special area authorities in New Jersey having inclusionary programs, see Exhibit 6A-1.