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Brief and appendix for Δ - Appellant, Twp of Plainsboro from 3/18/77

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Plainsboro
General

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CA001108B

March 18, 1977

Elizabeth McLaughlin
Clerk of the Appellate Division
State House Annex
Trenton, New Jersey, 08625

RE: Urban League of Greater New Brunswick, et als. v.
The Mayor and Council of the Borough of Carteret, et als.
Docket No. A-4681-75

Dear Ms. McLaughlin:

Enclosed please find original and five copies of Brief and Appendix for Defendant-Appellant, Township Committee of the Township of Plainsboro to be filed in your office. Also enclosed please find an original and five copies of Affidavit of Service in this regard.

Very truly yours,

Joseph L. Stonaker

JLS:nc
cc: Marilyn Morheuser, Esquire
Baumgart & Ben-Asher, Esquires
Martin E. Sloane, Roger C. Rosenthal and Arthur D. Wolf, Esquires
William C. Moran, Esquire
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ATTORNEY FOR Defendant-Appellant, Township Committee of the Township of Plainsboro

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-4681-75

URBAN LEAGUE OF GREATER NEW BRUNSWICK, ET ALS.,	
Plaintiff-Respondent	Civil Action
vs.	On Appeal From Judgment of the Superior Court of New Jersey, Law Division, Middlesex County
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, ET ALS.,	
Defendant-Appellant.	AFFIDAVIT OF MAILING

STATE OF NEW JERSEY)
) ss
COUNTY OF MERCER)

JOSEPH L. STONAKER, of full age, being duly sworn according to law, on his oath, deposes and says:

On March 18, 1977, I mailed two copies of Brief and Appendix for

Defendant-Appellant, Township Committee of the Township of Plainsboro

by certified mail, return receipt requested, to

MARILYN MORHEUSER
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1425 H Street, N.W.
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Attorneys for Plaintiffs-Respondents.

Joseph L. Stonaker

Sworn and subscribed to before me
this 18th day of March, 1977.

NANCY S. CONNETT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Dec. 22, 1980

IN THE

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A- 4681-75

URBAN LEAGUE OF GREATER NEW BRUNSWICK, ET ALS.,	)	Civil Action
Plaintiff-Respondent	)	On Appeal From
vs.	)	Judgment of the Superior Court of New Jersey, Law Division, Middlesex County
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, ET ALS.,	)	Sat Below: Hon. David D. Furman, J.S.C.
Defendant-Appellant.	)	

BRIEF AND APPENDIX FOR DEFENDANT-APPELLANT, TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PLAINSBORO

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CASES CITED

PROCEDURAL HISTORY

The dispute presently before this Appellate Court arrives after more than two years of litigation. The Plaintiff organizations and individuals representing low and moderate income persons brought suit on July 23, 1974, against 23 of the 25 municipalities comprising Middlesex County. New Brunswick and Perth Amboy, omitted from the list of Defendant Middlesex County municipalities, subsequently appeared in this action as Third Party Defendants. In addition, both the New Jersey State and Middlesex County Leagues of Women Voters were permitted to intervene.

One Defendant municipality was dismissed almost immediately, such dismissal being unchallenged by either side. Trial was held throughout February and March of 1976 before the Honorable David D. Furman, J.S.C. Middlesex County. The trial court's opinion was released on May 4, 1976, a Judgment Order being signed on July 9, 1976.

Of the 22 municipalities, 11 including Carteret, Helmetta, Highland Park, Jamesburg, Metuchen, Middlesex, Milltown, South Amboy, South River, Spotswood, and Woodbridge, were granted conditional dismissals upon their adoption of revised zoning ordinances. The remaining 11 municipalities, of which Plainsboro Township was one, were found by the Court to have constitutionally invalid zoning ordinances under Mount

Laurel standards. Further, the affected municipalities, being Cranbury, East Brunswick, Edison, Monroe, North Brunswick, Old Bridge, Piscataway, Plainsboro, Sayreville, South Brunswick, and South Plainsfield were directed to revise their ordinances to include zoning capable of accomodating a specific number of low and moderate income housing. Each respective municipality was ordered to absorb 1/11th of the total number of housing units needed by 1985, such number being determined by the court itself. Compliance with the Judgment Order was required within ninety (90) days, jurisdiction over each municipality being retained by the court until submission, review, and approval of an amended zoning ordinance.

Among the 11 Defendant municipalities against whom judgment was entered, all but Edison, Old Bridge and North Brunswick filed Notice of Appeal on August 19, 1976. The Plaintiffs cross appealed against these Defendant municipalities and noticed appeals as to the other 14 co-defendant municipalities on September 2, 1976.

The eight (8) appealing municipalities moved before the trial court for a Stay of Judgment pending appellate review, their motion being denied without prejudice by Judge Furman on September 24, 1976. On September 30, 1976, the eight (8) appellant municipalities moved for and were granted a Temporary Stay until such time as a full part of the Appellate Division could

consider a Motion for a Permanent Stay of Judgment, Baruch S. Seidman, J.A.D., issuing the Temporary Stay.

In order to expedite the appellate process, a Motion for Consolidation was submitted to the Court on October 27, 1976. Subsequently, the Motion for Consolidation together with the Motion for a Permanent Stay pending Appeal, were considered and granted by Order of the Appellate Division dated November 27, 1976.

The eight (8) appellant municipalities were granted an extension of time in which to file their briefs in January, 1977, the deadline for the same being moved to March 18, 1977. At this writing, a Motion searching an additional extension of the filing deadline, due to the recent decision of the New Jersey Supreme Court in Oakwood at Madison Inc., et als., v. Twp. of Madison, Supreme Court A-80-81, September Term, 1975, is pending.

STATEMENT OF FACTS

Plainsboro Township lies at the extreme southwestern edge of Middlesex County, bordered by the Delaware and Raritan Canal on the East and the Millstone River to the south. Historically a farming community, of the 7,680 acres contained within its borders, nearly 50% was found by the trial court to be in current agricultural use. A large part of Plainsboro is Class I and II Farmland, the Blueprint Commission on the future of agriculture in New Jersey having recommended that much of this land be preserved as farmland. Another 10% along the Millstone, Cranbury and Devil Brooks principally are designated Flood Plains by HUD, Millstone River itself has been classified an impacted river by the New Jersey Department of Environmental Protection and, therefore, no sewage discharge is permitted. The municipality does not maintain its own sewer facilities but contracts with South Brunswick for limited service.

Middlesex County Planning Board placed Plainsboro within Ring C of its Master Plan, projecting the least amount of development insofar as the County was concerned to occur within that Ring. The trial court itself held Plainsboro to be oriented more towards the Philadelphia Metropolitan area, Plainsboro residents working and shopping primarily in the immediate surrounding areas of Princeton, Hightstown and Trenton. (T. p. 9) Its school system reflects this orientation, Plainsboro having formed a regional school district with a Mercer County municipality, West Windsor Township.

Route 1 at the extreme westerly border of the Township runs from north to south and is the only arterially constructed road. The Plainsboro-Cranbury Road serves as the single east to west corridor in the Township, its use far exceeding its constructed capacity. Surface transportation in general depends on a system developed to serve a rural population.

Plainsboro Township is unsuitable for intense development by reasons of ecology, topography and lack of necessary infra structure, and its classification as a Ring C municipality was a recognition of this fact.

Presently developed land includes a core village of approximately 200 single family dwellings. A 600 acre planned community development, Princeton Meadows, will provide 5,100 units, including a significant number available to low and moderate income levels. Princeton University's Forrestal Project utilizes 1,600 acres and will include 600 housing units, of which 20% were required by the Township to be low to moderate income units with cluster zoning.

POINT I: DEFENDANT, PLAINSBORO TOWNSHIP, IS AND WAS COMPLYING WITH THE MANDATE OF MT. LAUREL.

The case at bar was tried after the Supreme Court decision in So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (App. dism. and cert. den. 423 U.S. 803, 1975), (Hereinafter referred to as Mt. Laurel). The Mt. Laurel decision required that developing municipalities "afford the opportunity for all types of housing to meet the needs of various categories of people." That decision was modified and clarified by the recent Supreme Court decision of Oakwood at Madison Inc., et als., v. Twp. of Madison, Supreme Court A-80-81, September Term, 1975, (hereinafter referred to as Madison Twp.) The Court in that case held, at page 15,

> " We are convinced from the record and data before us that attention by those concerned, whether courts or local governing bodies, to the substance of a zoning ordinance under challenge and to bona fide efforts toward the elimination or minimization of undue cost-generating requirements in respect of reasonable areas of a developing municipality represents the best promise for adequate productiveness without resort to formulaic estimates of specific unit 'fair shares' of lower cost housing by any of the complex and controversial allocation 'models' now coming into vogue."

Plainsboro Township has complied with these requirements.

A. Bona fide efforts.

Plainsboro Township required the first developer who made application after the Mt. Laurel decision to provide 20% of its residential units in low and moderate income housing. This requirement was mandated after

consulting with the County Planning Board. (T. 740-42, 16-25; 743, 1-13) Further, Plainsboro Township eliminated from planned community development ordinance a one and two bedroom restriction. This development, called Princeton Meadows, provides for 3104 multiple family units to be constructed. These units will have no bedroom restriction, (T. 752,7-17) and can be built at a density of eleven units per acre. (P.T.A. p.A-8). These units should be considered least cost housing. In addition, Plainsboro Township voluntarily joined a Middlesex County application for a community development block grant, which grant has funds allocated for housing of low and moderate income families. (T. 766, 10-17) Therefore, Plainsboro Township has made substantial bona fide efforts to eliminate the substantive portion of its zoning ordinance which would inhibit least cost housing, mandate such housing and cooperate with the County in funding such housing. Plainsboro Township has complied with the bona fide requirements of the Madison Twp. case.

B. Substantive Changes

The Plaintiff enumerated the alleged substantive defects in the Plainsboro Zoning Ordinance. (T. 224-228, 1-7) There is a criticism of the minimum lot and minimum frontage requirement in the R-200 zone. This provision in the ordinance has not been changed by Plainsboro Township. There is no prohibition against a municipality zoning for larger lot sizes provided there is zoning for least cost hous ing. There is also a cluster option in the R-200 zone which allows lots to be clustered and built on

15,000 square foot lots.

There is a further criticism of lot size in the R-85 zone. However, this zone requires a modest 85 foot frontage and provided for 15,000 square foot homes. Since the Township does provide for multiple family and town houses and since the older village area is lots of approximately 10,000 square feet or less, the housing built on R-85 lots would fit into a filtration process of multiple family to townhouse to R-85 housing. It should also be pointed out that the minimum habitable floor area required in the R-85 zone is 750 square feet, and in the opinion of the Plainsboro Township Planning Consultant, would provide moderate priced housing. (T.710,1-3)

The requirement in the service residential apartment zone requiring 90% one bedroom and 10% two bedroom was also criticized. However, the apartments in that zone are fully constructed and no additional land is available in the zone for further construction. It would be meaningless to change the apartment requirement in the service residential zone.

In the Planned Community Development Zone the requirement of 14 bedroom per acre was severely criticized. However, that restriction has been eliminated by a recent amendment to the Plainsboro Township ordinance (P.T.A. p.A-8) The requirement now is for eleven dwelling units per acre with no bedroom restriction.

The requirement in the Planned Community Development Zone providing for a golf course was also criticized. However, since the Township has limited sewer facilities the effluent from the package treatment plant of

the Princeton Meadows development was required by the Department of Environmental Protection to spray irrigate on the golf course. (T. 699, 8-25; T. 700, 1-2) The 500 acre requirement in both Planned Multiple Unit Development and Planned Community Development have been reduced to 250 acres by a recent amendment. (P.T.A. p A-7)

Plaintiff's expert also criticized the amount of land zoned for industrial use. It should be pointed out that the Princeton University Forrestal Campus is composed of 1600 acres which is in the process of being developed and will have office and industrial uses contained therein. It will also provide the housing in that development necessary to meet the housing demands of the industrial and office users. Moreover, as pointed out previously, Plainsboro Township contains prime agricultural land. This agricultural land is in actual, active and viable agricultural use. Land zoned for residential uses is developed sooner than land zoned and used for industrial uses. Therefore, some of the land zoned for industrial use will continue to be used for active agricultural uses for a longer period of time and hence will help preserve a vital asset dwindling in the State of New Jersey. This argument will be further developed in Point III of the within brief.

The substantive provisions of the Plainsboro Township zoning ordinance are not deficient using the standards of Madison Twp. There are over 3000 multiple family units approved for future development. There are 600 units of townhouses planned for development, of which 20% have been

mandated for low and moderate income housing use. There are 32 town-houses approved for construction. There are 60 single family homes under construction. There are 435 units of single family housing on 15,000 square foot cluster residential lots approved for construction. There is an old built-up village area on small residential lots of approximately 204 units. This provides a variety of housing types and makes possible the "filtering down" process referred to in Madison Twp..

The Court below found that Plainsboro Township had no present imbalance of housing and was held exclusionary only as to prospective housing. In fact, data from the 1970 Census, contained in Census Tract #0086, showed that of the total 369 family household units living in Plainsboro, 160, or 43.36%, earned $10,000.00 or less per year, being moderate to low income families. (Trial Ct. Opinion p. 16) The numerous and varied housing referred to above satisfies Plainsboro Township's requirement to zone for least cost housing. The Court below held Plainsboro deficient in not providing 1333 units, but as discussed later in this brief, that requirement should be closer to 500 units until the year 1990. See Statewide Housing Allocation Plan for New Jersey, Nov. 1976.

Plainsboro Township has a right to plan for orderly and balanced growth. Justice Hall supported that right in Mount Laurel.

> " There is no reason why developing municipalities like Mount Laurel, required by this opinion to afford, the opportunity for all types of housing to meet the needs of various categories of people, may not become and remain attractive, viable communities providing good living and adequate services for all their residents

in the kind of atmosphere which a democracy and free institutions demand. They can have industrial sections, commercial sections and sections for every kind of housing from low cost and multi-family to lots of more than an acre with very expensive homes. Proper planning and governmental cooperation can prevent over-intensive and too sudden development, insure against future suburban sprawl and local beauty. We do not intend that developing municipalities shall be overwhelmed by voracious land speculators and developers if they use the powers which they have intelligently and in the broad public interest. Under our holdings today, they can be better communities for all than they previously have been. (67 N.J. at 190-191).

Affirmed."

POINT II: PLAINSBORO TOWNSHIP IS NOT A DEVELOPING COMMUNITY WITHIN THE DEFINITION OF MT. LAUREL.

Justice Hall in defining "development municipalities" exempted "areas still rural and likely to continue to be so for some time yet". So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, Supra, at p. 160. He also described Mt. Laurel as a community that has substantially shed its rural characteristics and undergone great population increase since World War II. The key is to determine whether there has been a substantial population increase in the last twenty years. Judge Furman found a relatively small increase in population during this period. Urb. League New Bruns. v. Mayor & Coun. Carteret., 142 N.J.Super 11, at 25. Plainsboro Township is described as a typical rural community with a considerable amount of agricultural land. This land is presently being farmed and has been farmed for decades. There is only a minimal amount of commercial and industrial land in actual use. Therefore, Plainsboro Township still is a rural community and has not begun to "shed its rural characteristics" like Mt. Laurel. It is therefore not within the definition of a developing municipality and hence is exempt from the application of the Mt. Laurel holding.

POINT III: AGRICULTURAL LAND WHICH IS IN ACTIVE AGRICULTURAL USE SHOULD BE CONSIDERED DEVELOPED LAND.

The Court below accepted Plainsboro Township's position that it is a viable agricultural community. Judge Furman also found that over 50% of the total area of Plainsboro was in use as farmland and these farms average over 300 acres. Urb. League New Bruns. v. Mayor & Coun. Carteret, Supra, p. 33.

The Court in Mt. Laurel did not make a distinction between agricultural land which was actively and significantly being used as such and that agricultural land which was merely in a holding pattern for development. Such a distinction should be made. Land in Plainsboro Township is, as testified to by the County Agricultural Agent, some of the most prime farm land in the State of New Jersey. The County Agent further stated that the land in Plainsboro Township is being actively farmed producing valuable crops such as soybeans, potatoes, winter wheat and other vegetables. (T.154,7-10; T.755, 5-12) The production of these crops are not only important to the economy and well-being of Middlesex County and the State of New Jersey, but to the entire metropolitan region.

The record further points out that there is a large productive nursery (Princeton Nurseries) which has been in operation for a number of years, and serves the nursery needs of not only Middlesex County, but the Princeton and Trenton regions as well. (T.755,13-15)

If the Court were to consider this land as available for development it

would be contrary to the public policy of the State of New Jersey. That policy is not only spelled out in the New Jersey Constitution, Article 8, Section 1, the Farmland Assessment Act, the Report of the Blue Print Commission on the Future of New Jersey Agriculture (1973), but also in the new Land Use Act, N.J.S.A. 40:55D-2(g), "To provide sufficient space in appropriate locations for a variety of agriculture . . . to meet the needs of all New Jersey Citizens."

It should also be noted that in the Statewide Housing Allocation Plan for New Jersey vacant developable land was reduced by qualified farmland.

> " Farmland qualified for farmland assessment was included in the adjustment of vacant developable land in accordance with a general State policy to preserve farmland. However, this cannot be construed as a prohibition against the use of any farmland for housing development." A Statewide Housing Allocation Plan for New Jersey, Nov. 1976, p. 13.

As the Court may be aware, small farm operations have, in this day and age, become increasingly inviable economically. To remain solvent, farming has been forced toward larger operations requiring greater acreage in order to protect the numerous farms already in existence. Plainsboro has sought to prevent piecemeal erosion of its agricultural land and preserve acreage in which agricultural activities are given the highest priority.

Therefore, the farmland in the R-200 and industrial zone is not available for development since it is being actively and seriously used for agricultural use. To eliminate this agricultural use for the development of housing would be contrary to the public policy of the State of New Jersey and would not promote the general welfare of the citizens of the State of New Jersey.

POINT IV: MIDDLESEX COUNTY SHOULD NOT BE CONSIDERED A REGION FOR THE PURPOSES OF HOUSING ALLOCATION UNDER MT. LAUREL.

Justice Hall in the Mt. Laurel case, at p. 89, rejected the proposition that the County could be a region. "Confinement to or within a certain county appears not to be realistic, but restriction within the boundaries of the State is practical and advisable." The Court in the Madison Twp. case did not require the trial court to specify a pertinent region. Rather they defined the region as "the region referred to in 2 is that general area which constitutes, more or less, the housing area of which subject municipality is a part, and from which the prospective population of the municipality would substantially be drawn, in the absence of exclusionary zoning." Madison Twp.,p.81 They cited as examples the Miami Valley Regional Planning Commissions Study which included 5 counties, 31 municipalities; Metropolitan Washington COG Study which included 15 counties, including the District of Columbia; San Bernardino County, California, although only one county, occupies 20,000 square miles; The Metropolitan Council of the Twin Cities which covers 7 counties; and the DVRPC Study. Madison Twp., p. 74 The Court in the Madison Twp. case noted favorably that the question of region was being given attention by other branches of the government. Madison Twp., p. 69. The Department of Community Affairs in accordance with Executive Order No. 35 developed a statewide housing allocation plan for New Jersey. The preliminary draft of that plan dated November, 1976, includes Plainsboro Township and

Middlesex County in a cluster of 8 counties in the northeastern part of the State. That study provided that the allocation of housing needs for Plainsboro Township until 1990 is 494 units.

Judge Furman admitted that regions "are fuzzy at their borders."

> ". . . that Plainsboro and Cranbury and portions of South Brunswick and Monroe are in some measure part of the Philadelphia Metropolitan Region. These areas look predominantly towards Trenton, Princeton and Hightstown in Mercer County for local shopping services" Urb. League New Bruns. v. Mayor & Coun. Carteret, Supra, p. 21.

Therefore, Plainsboro Township should not be considered in any allocation which is limited to the region of Middlesex County.

Furthermore, the allocation from the region of Middlesex County was predicated on a housing need which included all the municipalities in Middlesex County. An allocation of housing needs was given to all the municipalities in Middlesex County by the Plaintiff's fair share plan, the County's fair share plan and by the Department of Community Affairs Statewide Housing Allocation Plan. However, we are now dealing with a plan which allocates all the unmet housing needs in Middlesex County to eleven of its twenty-five municipalities. The regional designation breaks down since the region does not include all the municipalities. The Court in Madison Twp. suggested in footnote 38 that the Court might be able to allocate a comprehensive plan if confronted with litigation joining all the municipalities. However, the instant case is not such a case since fourteen of the municipalities have been dismissed from the litigation. The allocation

to the remaining eleven municipalities of all the unmet housing needs in the county, both new and rehabilitation of existing units, is obviously inequitable. The eleven municipalities cannot rehabilitate existing units that do not exist. The unmet housing need would have to be translated into new units.

The Court below found that Plainsboro Township is on the southern border of Middlesex County and looks to Princeton, Trenton and Hightstown area for services. It was also conceded that regions are fuzzy at its borders. Plainsboro Township should not have been included in the Middlesex County Region and even if the region for Plainboro Township is Middlesex County the integrity of that region has been destroyed by allocating all its unmet housing needs to eleven of its twenty-five municipalities.

POINT V: THE COURT SHOULD NOT HAVE ALLOCATED THE FAIR SHARE NUMBER TO THE MUNICIPALITIES.

The Supreme Court in Madison Twp. directed the court trial not to fix the fair share housing quota. As the Court pointed out,

> " We take this occasion to make explicit what we enumerated (sic) in Mount Laurel and have intimated above- that government-sociological-economic enterprise of seeing to the provision and allocation throughout appropriate regions of adequate and suitable housing for all categories of population is much more appropriately a legislative and administrative function rather than a judicial function to be exercised in the disposition of isolated cases." Madison Twp., p. 80

The problem confronted by the judiciary is exemplified by the case at bar. The Plaintiff presented a fair share plan which was not considered by the Court. The County Planning Director gave an unmet housing need for the County. Apparently this was the figure Judge Furman used in making his fair share allocation. He merely took the unmet housing need in the County and then made an allocation to correct the present imbalance,[1] and thereafter divided the remaining units by eleven and allocated an equal number to each of the remaining defendants. However, the Plaintiff's fair share allocation plan, the County's plan and the Statewide housing allocation plan all allocated a fixed number of units to all of the municipalities in Middlesex County.

The Plaintiff's own expert, Dr. Lawrence Mann, suggested that the best way of arriving at a fair share formula would be to get together a half

[1] It should be pointed out that Plainsboro Township received no allocation since it had no present imbalance.

dozen people, try to get an agreement between them, have it presented as a consensus report with any minority reports to the Court for the final determination. (T.603,11-18) This obviously was just the problem that the Supreme Court wanted to remove from the trial court level.

If Judge Furman's allocation was based on an allocation of the housing needs as proposed by the Middlesex County Planning Board, it should be noted at the outset that he did not distinguish between rehabilitation of substandard units and construction of new units. Douglas Powell, the County Planning Director, did make that distinction. He testified that there was a need for approximately 5,145 new units in the urban county municipalities. (T.43,3-10) The urban county municipalities are all incorporated within the community development block grant application.[2] Therefore, even assuming Judge Furman's methodology, it would be a division of eleven into the 5,145 units, or approximately 500 units per municipality. The 500 units is closer to the 494 units allocated to Plainsboro by the Statewide Housing Allocation Plan.

Even under Judge Furman's methodology which does not take into consideration the normal factors that are included in a fair share allocation, Plainsboro Township would still be meeting its need for low and moderate income housing. It is defendant, Plainsboro Township's, position that it has made the substantive changes in its ordinance to provide the opportunity for the construction of that number of units.[3]

[2] Plainsboro Township is one of the twenty communities.

[3] 3,000 apartments; 690 townhouses; 435 single family houses on 15,000 square foot lots

The Court in Madison Twp. held that substantive changes were all that was required of a municipality.

> ". . . Firstly, numerical housing goals are not realistically translatable into specific substantive changes in a zoning ordinance by any technique revealed to us by our study of the data before us. There are too many imponderables between a zone change and the actual production of housing on sites as zoned, not to mention the production of a specific number of lower cost units in a given period of time. Municipalities do not themselves have the duty to build or subsidize housing." Madison Twp., p. 15

POINT VI: PLAINTIFFS LACK STANDING TO SUE

Although the New Jersey Courts are not bound by Federal law with regard to standing, the U.S. Supreme Court case of Warth v. Seldin, 422 U.S. 490 (1975) should be taken into consideration when evaluating the standing of the Plaintiffs in the instant action. In that case, an attack was made on the zoning in a Rochester suburb. Plaintiffs in that action were a variety of individual and public interest groups. However, there were no plaintiffs who were local residents. There was also no allegation in the complaint that there was a denial of a permit for a specific housing project. The majority held that the non-residents did not have the necessary standing to maintain the action. In the case at bar there is no allegation that any of the Plaintiffs are residents of Plainsboro Township, nor did they attempt to obtain housing in Plainsboro Township. There is also no proof they were denied a building permit for any specific housing project in Plainsboro Township.

The Court in the case of S. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) held that Plaintiff had standing to sue. As indicated by the Court in a footnote (3):

> " [3]Plaintiffs fall into four categories: (1) present residents of the township residing in dilapidated or substandard housing; (2) former residents who were forced to move elsewhere because of the absence of suitable housing; (3) nonresidents living in central city substandard housing in the region who desire to secure decent housing and accompanying advantages within their means elsewhere; (4) three organizations representing the

housing and other interests of racial minorities. The township originally challenged plaintiffs' standing to bring this action. The trial court properly held (119 N.J. Super at 166) that the resident plaintiffs had adequate standing to ground the entire action and found it unnecessary to pass on that of the other plaintiffs. The issue has not been raised on appeal. We merely add that both categories of nonresident individuals likewise have standing. N.J.S.A. 40:55-47.1; cf. Walker v. Borough of Stanhope, 23 N.J. 657 (1957). No opinion is expressed as to the standing of the organizations." Mt. Laurel, p. 159.

There is no evidence in the record that any of the Plaintiffs are residents of Plainsboro Township, were former residents of Plainsboro Township who were forced to move elsewhere, or non-residents who desired to move to Plainsboro Township. Therefore, the Plaintiffs are without standing to maintain this action against Plainsboro Township.

POINT VII: THE REMEDY OF THE COURT SHOULD HAVE ALLOWED THE MUNICIPALITIES THE OPPORTUNITY TO DEVELOP AND SUBMIT TO THE COURT A GROWTH MANAGEMENT PLAN WHICH PROVIDES FOR THE NUMBER OF UNITS SET FORTH IN THE STATEWIDE HOUSING ALLOCATION PLAN FOR NEW JERSEY FOR DEVELOPMENT THROUGH THE YEAR 1990 OR OTHER COMPARABLE STATEWIDE ALLOCATION BY A STATE ADMINISTRATIVE AGENCY.

If an examination of substantive provisions of the municipal zoning ordinance leads the Court to the conclusion that that ordinance should be amended because of its failure to provide an opportunity for least cost housing, the Court should take the same approach that other courts have taken in connection with unconstitutional provisions which prevent complex issues and need legislative and administrative imput to relieve the unconstitutionality.

In Brown v. Board of Education, 347 U.S. 483 (1954), the United States Supreme Court held that separate but equal educational facilities denied minority groups equal protection of the law. The Court mandated racial integration. However, due to the complexity of integrating educational systems that had been segregated for many years, the Court did not mandate immediate, overnight integration. Rather, the Court required the parties to make prompt and reasonable efforts toward achieveing the Court's requirements. Brown v. Board of Education, 349 U.S. 294, 300 (1955). The Court wrote:

> "While giving weight to these public and private considerations, the Courts will require that the defendants make a prompt and reasonable start towards full compliance with our May 17, 1954 ruling. Once such a start has been made, the Courts may find that additional

time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the Courts may consider problems related to administration, arising from the physical conditions of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially non-discriminatory school system. During this period of transition, the Courts will retain jurisdiction of these cases."

Likewise, in Robinson v. Cahill, 62 N.J. 473 (1973), our Supreme Court did not expect that the system of financing the public schools in New Jersey would be effectively changed overnight. In Robinson the Court noted:

"The present system being unconstitutional, we come to the subject of remedies. We agree with the trial court that relief must be prospective. The judiciary cannot unravel the fiscal scheme. Obligations incurred must not be impaired. And since government must go on, and some period of time will be needed to establish another statutory system, obligations hereafter incurred pursuant to existing statutes will be valid in accordance with the terms of the statutes. In other respects we desire the further views of the parties . . . (62 N.J. at 520)."

In Robinson II, the Court still noted:

"We have had the benefit of further argument. It is our view that the Court should not disturb the statutory scheme unless the Legislature fails to enact, by December 31, 1974, legislation compatible with our decision in this case and effective no later than July 1, 1975. (63 N.J. at 198)."

If there is readily discernible present imbalance by referring to a bona fide respected administrative study, the Court should then look to substantive changes that correct the present imbalance for least cost housing. Defendant, Plainsboro Township, did not have such imbalance. Thereafter it should give the municipality a reasonable time (approximately one year) to submit to the Court a growth management plan for the municipality which is for a twelve year period of time and is based on statewide administrative data. This plan would provide the opportunity for least cost housing, but allow the municipality the time to develop a capital improvement program to have the necessary infra structure for the housing.

This type of phased growth has been approved by Prof. Norman Williams in his treatise on zoning, American Land Planning Law , Volume 3, Section 73, and in the case of Golden v. Planning Board of Town of Ramapo, 30 N.Y. 2d 359, 285 N.E. 2d 291 (1972) wherein the New York Court of Appeals endorsed, by a 5 to 2 margin, "sequential" and "timing" controls whereby the town sought to regulate population growth so as to correlate to future plans for the expansion of public facilities and services to undeveloped areas zoned for residential uses. Judge Scileppi stated for the majority:

> " Perhaps even more importantly, timed growth, unlike the minimum lot requirements recently struck down by the Pennsylvania Supreme Court as exclusionary, does not impose permanent restrictions upon land use (see National Land & Inv. Co. v. Easttown Twp. Bd. of Adj., 419 Pa. 504, 215 A.2d 597, supra; Concord Twp. Appeal, 439 Pa. 466, 268 A.2d 765, supra.) Its obvious purpose is to prevent premature subdivision absent essential municipal facilities and to insure continuous development commensurate with the Town's obligation to provide such facilities. They seek, not to freeze population at present

levels but to maximize growth by the efficient use of land, and in so doing testify to this community's continuing role in population assimilation. In sum, Ramapo asks not that it be left alone, but only that it be allowed to prevent the kind of deterioration that has transformed well-ordered and thriving residential communities into blighted ghettos with attendant hazards to health, security and social stability - - a danger not without substantial basis in fact. (285 N.E. 2d at 302) "

Also, the new Municipal Land Use Act provides as one of its purposes, "to promote the establishment of appropriate population densities and concentrations that will contribute to the wellbeing of persons, neighborhoods, communities, regions and the preservation of the environment." It further mandates a periodic examination of its master plan.

"C. 40:55D-89 Periodic examination.

76. Periodic reexamination. The governing body shall, at least every 6 years, provide for a general reexamination of its master plan and development regulations by the planning board which shall prepare a report on the findings of such reexamination, a copy of which shall be sent to the county planning board and the municipal clerks of each adjoining municipality. . . ."

The growth management plan should cover at least 2 periods of master planning. This would then allow the municipality the opportunity to plan for an orderly, ecologically and fiscally sound growth, while at the same time phasing in substantive zoning changes to provide for its fair share of least cost housing. Such a plan would not radically alter the character of the community. The plan would provide for orderly and fiscally sound planning. There would be an opportunity for the municipality to provide for the necessary infra structure.

The present requirement of 90 days for rezoning is unrealistic. It

would take one year to adopt a growth management plan since basic studies such as base map, land use analysis, population characteristics, housing analysis, physical characteristics analysis, traffic circulation and transportation analysis, community facilities and services analysis, recreation facilities, capital improvements programs and regional analysis must be made. There would also be an opportunity for citizen imput so that there would be a viable plan that is accepted by the residents of the municipality.

The municipality would be developing in accordance with the views of its planning officials and not in accordance with the dictates of the judiciary. This would eliminate the proliferation of law suits attacking the municipality for not complying with Mt. Laurel's mandates. It would be a just plan since the allocation would be based on a statewide basis and is something the municipality could assimilate in an orderly way. There would be predictability for the landowner as well as the citizens who reside or want to reside in the community.

It must be emphasized again that Justice Hall supported this right in Mt. Laurel:

> " There is no reason why developing municipalities like Mount Laurel, required by this opinion to afford the opportunity for all types of housing to meet the needs of various categories of people, may not become and remain attractive, viable communities providing good living and adequate services for all their residents in the kind of atmosphere which a democracy and free institutions demand. They can have industrial sections, commercial sections and sections for every kind of housing from low cost and multi-family to lots of more than an acre with very expensive homes. Proper planning and governmental cooperation can prevent over-intensive and too sudden

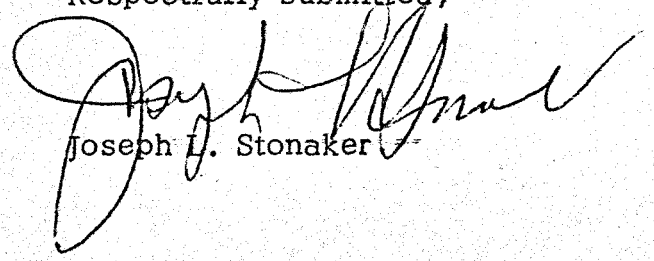
development, insure against future suburban sprawl and slums and assure the preservation of open space and local beauty. We do not intend that developing municipalities shall be overwhelmed by voracious land speculators and developers if they use the powers which they have intelligently and in the broad public interest. Under our holdings today, they can be better communities for all than they previously have been." (67 N.J. at 190-191)

10

CONCLUSION

For the reasons set forth herein the decision of the trial court should be reversed and the complaint against Plainsboro Township should be dismissed, or in the alternative, Plainsboro Township should be given the opportunity to present a growth management plan providing for least cost housing in accordance with the figure set forth in the Statewide Housing Allocation Plan for New Jersey, Nov. 1976.

Respectfully submitted,



Joseph L. Stonaker

APPENDIX

Township of Plainsboro
County of Middlesex

AN ORDINANCE AMENDING "AN ORDINANCE TO LIMIT AND RESTRICT TO SPECIFIED DISTRICTS OR ZONES, AND TO REGULATE THEREIN, BUILDINGS AND STRUCTURES ACCORDING TO THEIR CONSTRUCTION AND THE NATURE AND EXTENT OF THE USES AND LAND IN THE TOWNSHIP OF PLAINSBORO IN THE COUNTY OF MIDDLESEX" ADOPTED November 1, 1967, As Amended.

BE IT ORDAINED by the Township Committee of the Township of Plainsboro in the County of Middlesex, as follows:

The Zoning Ordinance of the Township of Plainsboro as adopted November 1, 1967, and as amended, is hereby further amended and supplemented as hereinafter stated:

Section 1: Section I, Definitions, is hereby amended as follows:

A. The following definitions, viz., "Building," "Floor Area," "Lot," "Non-Conforming Structure," "Non-Conformity Use," "Street," "Street Line," "Structure," and "Zoning Board," are deleted and the following new definitions are added:

Board of adjustment. The board of adjustment established pursuant to Article II, Section 1 of the Land Use Procedures Ordinance of the Township of Plainsboro.

Building. A combination of materials to form a construction adapted to permanent, temporary or continuous occupancy or use and having a roof.

Circulation. Systems, structures and physical improvements for the movement of people, goods, water, air, sewage or power by such means as streets, highways, railways, waterways, towers, airways, pipes and conduits, and the handling of people and goods by such means as terminals,

stations, warehouses, and other storage buildings or transshipment points.

Common open space. An open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development.

County Planning Board. Middlesex County Planning Board.

Days. Calendar days.

Developer. The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase or any other person having an enforceable proprietary interest in such land.

Development. The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structures, or of any mining, excavation or landfill, and any use or change in the use of land, for which permission may be required pursuant to this Ordinance, or the Subdivision and Site Plan Review Ordinance.

Drainage. The removal of surface water or groundwater from land by drains, grading or other means, and including control of runoff to minimize erosion and sedimentation during and after construction or development and means necessary for water supply preservation or prevention or alleviation of flooding.

Easement. A right granted to the Township or other governmental authority for the use of private land for certain public and quasi-public purposes.

Erosion. The detachment and movement of soil or rock fragments by water, wind, ice or gravity.

Flood hazard area. The relatively flat terrain adjoining a water channel which has been or may be hereafter covered by flood water of the channel.

Floor area, gross. The total area of all the stories of all the structures on a lot, measured from the outside faces of the exterior walls, or from the exterior

roof edges where a structure has no walls, and including the following, although not by way of limitation: Interior balconies and mezzanines, roofed areas such as porches and carports and basement space, but excluding rooftop, roofed or enclosed area that is used for parking spaces.

Governing body. The Township Committee of the Township of Plainsboro.

Land. Includes improvements and fixtures on, above or below the surface.

Lot. A designated parcel, tract or area of land, established by a plat or otherwise as permitted by law, to be used, developed or built upon as a unit.

Major subdivision. Any subdivision not classified as a minor subdivision.

Master plan. A composite of the mapped and written proposals recommending the physical development of the municipality which shall have been duly adopted by the Planning Board pursuant to Article 3 of the Municipal Land Use Law.

Minor subdivision. A subdivision of land that does not result in more than four lots, or involve a planned development, any new street or the extension of any off-tract improvement.

Municipality. The Township of Plainsboro.

Municipal Land Use Law. Chapter 291 of the Laws of New Jersey, 1975, as amended from time to time.

Official map. A map adopted by the governing body pursuant to Article 5 of the Municipal Land Use Law.

Open-space. Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided, that such areas may be improved with only those buildings, structures, streets and offstreet parking and other improvements that are designed to be incidental to the natural openness of the land.

Planned Development. A PMUD Planned Unit Development or a PCD Planned Unit Development.

PCD Planned Unit Development. An area that is specified on the Zoning Map as having a district classification of PCD Planned Unit Development and which is to be developed as a single entity according to a plan, containing one or more residential developments or one or more public, quasi-public, business and commercial, or office, research, industrial areas in the ranges of ratios of non-residential uses to residential uses as are specified in Section XIX of the Zoning Ordinance.

PMUD Planned Unit Development. An area that is specified on the Zoning Map as having a district classification of PMUD Planned Unit Development and which is to be developed as a single entity according to a plan, containing one or more residential developments or one or more public, quasi-public, business and commercial, office, research, industrial, or educational-research areas in the ranges of ratios of non-residential uses to residential uses as are specified in Section XXI of the Zoning Ordinance.

Planning Board. The planning board established pursuant to Article I, Section 1, of the Land Use Procedures Ordinance of the Township of Plainsboro.

Plat. The map or maps of a subdivision.

Public areas. Public parks, playgrounds, trails, paths and other recreational areas and public open spaces; scenic and historic sites; and sites for schools and other public buildings and structures.

Public drainage way. The land reserved or dedicated for the installation of storm water sewers or drainage ditches, or required along a natural stream or watercourse for preserving the channel, and providing for the flow of water to safeguard the public against flood damage, sedimentation and erosion.

Public open space. An open space area conveyed or otherwise dedicated to the municipality, a municipal agency, the regional board of education, a state or county agency, or any other public body for recreational or conservational uses.

Sedimentation. The deposit of soil that has been transported from its site of origin by water, ice, wind, gravity or other natural means as a product of erosion.

Site plan. A development plan of one or more lots on which is shown (i) the existing and proposed conditions of the lot, including but not necessary limited to topography, vegetation, drainage, flood plains, marshes and

waterways, (ii) the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, and screening devices, and (iii) any other information that may be reasonably required in order to make an informed determination as to approval of the plan by the Planning Board pursuant to the provisions of the Subdivision and Site Plan Review Ordinance.

Street. Any street, avenue, boulevard, road, parkway, viaduct, drive or other way (i) that is an existing state, county or municipal roadway, or (ii) that is shown upon a plat heretofore approved pursuant to law, or (iii) that is approved by official action as provided in the Subdivision and Site Plan Review Ordinance, or (iv) that is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a Planning Board and the grant to such Board of the power to review plats; including the land between the street lines, whether improved or unimproved, and whether or not comprising pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas.

Street line. The edge of the existing right-of-way or future street right-of-way as shown on the Master Plan or Official Map, whichever would result in the widest right-of-way, and which line forms the division between the street and lot, or if there shall be no Master Plan or Official Map, the dividing line between the lot and the street.

Structure. A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land.

Subdivision. The division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this Ordinance if no new streets are created: (i) divisions of land found by the Planning Board or Subdivision Committee thereof appointed by the Chairman to be for agricultural purposes where all resulting parcels are five acres or larger in size, (ii) divisions of property by testamentary or intestate provisions, (iii) divisions or property upon court order and (iv) conveyances so as to combine existing lots by deed or other instrument. The term "subdivision" shall also include the term "resubdivision."

B. The remaining definitions set forth in Section I, Definitions, are continued in full force and effect.

Section 2: Section II, A, Zones, is hereby amended to include the following zones:

PCD Planned Unit Development, Sec. XIX

PMUD Planned Unit Development, Sec. XXI

Section 3: Section II, B, is hereby amended to read as follows:

"(B) The zoning map which accompanies this ordinance entitled "Plainsboro Township, Middlesex County, New Jersey, 1963, amended 2-24-69, amended 12-13-76," is hereby decreed to be a part thereof."

Section 4: Section XII, (A), (B), (C), (D) and (E) and Section XIII, (A), (B), (C), (D), (E), (F), (H) and (I) are hereby repealed and deleted.

Section 5: Section XIII, (G), (b) is amended to read as follows:

"(b) $25.00 for all other applications in the event, an additional fee based on the construction value is to be determined by the Building Inspector in the same way as a building permit valuation."

Section 6: Section XXII, Site Plan Review, is hereby deleted in its entirety since it is included in the Subdivision and Site Plan Review Ordinance of the Township of Plainsboro.

Section 7: Section XIX, Planned Community Development, is hereby amended to read as follows:

SECTION XIX

PCD PLANNED UNIT DEVELOPMENT

1. District.

PCD Planned Unit Development shall be permitted in

the area specified on the Zoning Map as having a district classification of PCD Planned Unit Development.

2. Area Requirement.

The minimum land area for a PCD Planned Unit Development shall be two hundred fifty (250) contiguous acres. For the purposes of this requirement streets shall not be deemed to divide acreage.

3. Permitted Uses in PCD Planned Unit Development.

The following uses shall be permitted in a PCD Planned Unit Development:

A. Dwelling units, including single-family, two-family and multiple dwelling units.

B. Recreational and cultural facilities, including but not limited to golf courses, clubhouses and swimming pools, intended for the use and enjoyment of the residents of the PCD Planned Unit Development and their guests.

C. Retail commercial centers, limited to uses permitted in the Business (G.B.) Zone under Section IX of the Zoning Ordinance and any amendments thereto; provided, however, a motel and indoor motion picture theater shall be permitted. Not more than five percent (5%) of the land area within a PCD Planned Unit Development shall be devoted to retail commercial centers.

D. Industrial-office-research centers, limited to the uses permitted in the Industrial Zone under Section X of the Zoning Ordinance and any amendments thereto. Not more than thirty percent (30%) of the land area within a PCD Planned Unit Development shall be devoted to industrial-office-research centers.

E. Places of worship, facilities for social and civic clubs and organizations, public buildings, schools and other community facilities.

F. Agricultural uses.

G. Accessory uses, including but not limited to, facilities for administration, maintenance, and fire prevention and safety.

4. Alternative Permitted Uses.

In any area specified on the Zoning Map as having a classification of PCD Planned Unit Development, uses

permitted in the Rural (R-200) Zone under Section VII of the Zoning Ordinance shall be permitted uses irrespective of whether or not the same shall be a part of a PCD Planned Unit Development.

Subdivision for single-family dwellings on tracts of thirty-five (35) acres or larger may employ a density control lot size reduction design technique provided public water and sewage disposable facilities will be available. The resultant lots shall conform to the requirements of the R-85 Zone and the density shall be the same as the R-200 Zone. The resultant open space shall be conveyed to the Township or vested in a homeowners association for the purpose of preserving said land as permanent open space. Recreational facilities shall be permitted with the approval of the Planning Board.

In reviewing and approving a density control-lot size reduction plan, the Planning Board shall insure that said plan properly relates to any adjoining similar development or PCD Planned Unit Development.

5. Residential Density.

There shall not be more than eleven (11) dwelling units per acre of residential land. In computing the total number of acres of residential land, any land devoted to private and public roads shall be excluded; all other land devoted to residential use shall be included. In addition, any common open space and land dedicated for public buildings shall be deemed residential land.

6. Common Open Space.

Not less than twenty-five percent (25%) of the land area within a PCD Planned Unit Development shall be devoted to common open space. Any golf course, land dedicated for public use and maintenance for recreational or conservational purposes, and land subject to easements prohibiting construction thereon, shall be deemed land devoted to common open space for the purpose of satisfying this requirement and shall be deemed residential land for the purpose of Subsection 5. The location of common open space shall be consistent with the declared function of the common open space, and the requirements set forth in Section 1503 of the Subdivision and Site Plan Review Ordinance with respect to the maintenance of common open space and provision of an organization to own and maintain the open space shall be applicable to a PCD Planned Unit Development.

7. Evaluation Standards and Criteria.

In order to foster the attractiveness of a site designated as a PCD Planned Unit Development and the surrounding neighborhoods, and thereby preserve property values, and in order to provide an efficient road and utility network, insure the movement of traffic, implement comprehensive planning and better serve the public health, safety, and general welfare, the following standards and criteria shall be utilized by the Planning Board in reviewing all site plans and subdivision plats relating to a PCD Planned Unit Development. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation.

A. Open land shall be suitably landscaped, efforts shall be made to minimize tree and soil removal, and any buildings or other structures in an industrial-office-research center shall be adequately screened so as to prevent their being incongruous with neighboring properties.

B. Proposed buildings shall be related harmoniously to the terrain and to other buildings in the vicinity that have a visual relationship to the proposed buildings.

C. The distance between buildings shall be sufficient to provide adequate light and air.

D. With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the design of proposed buildings and structures and the neighboring properties.

E. Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system.

F. All permanent utility lines, pipes and conduits shall be located below ground and all other installations and appurtenances shall be adequately screened.

G. The size, location, design, color, texture, lighting and materials of all temporary and permanent signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.

H. Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.

I. Adequate provision shall be made for a sewage disposal system which shall be of sufficient size, capacity and design to collect and dispose of all sewage from all present and proposed buildings in the PCD Planned Unit Development and which shall be otherwise constructed and maintained in conformity with all applicable State, County and Municipal regulations and requirements.

J. Adequate provision shall be made for a storm drainage and surface water detention system which shall be of sufficient size, capacity and design to collect, carry off and dispose of all predictable surface water run-off within the PCD Planned Unit Development, and which shall be otherwise constructed and maintained in conformity with all applicable State, County and Municipal regulations and requirements.

K. Adequate provision shall be made for a water system which shall be of sufficient size, capacity and design to supply potable water and fire protection to each of the buildings within the PCD Planned Unit Development, and which shall be otherwise constructed and maintained in conformity with all applicable State, County and Municipal regulations and requirements.

L. Adequate provision shall be made for the collection and disposal and where possible recycling of garbage, trash and solid waste generated by the PCD Planned Unit Development, and such system shall be maintained in conformity with all applicable State, County and Municipal regulations and requirements.

M. Adequate provision shall be made for a system of interior roads sufficient to accommodate predictable vehicular traffic within the PCD Planned Unit Development and to ensure safe and efficient vehicular access, including access of fire-fighting equipment to and from each of the buildings within the PCD Planned Unit Development.

N. In the event the PCD Planned Unit Development is to be constructed in sections over a period of years, then the provisions for the sewage and garbage disposal, storm drainage and water supply and for interior roads,

specified in Subparagraphs I, J, K. L, and M of this Subsection 7, need to be adequate only in respect to the sections of development which have previously received final approval and the section of development for which final approval is being sought. The developer shall supply to the Planning Board information disclosing such adequacy and obtain the Planning Board's approval thereof.

O. Except as otherwise provided in this Subsection 7, there shall be no minimum lot area, width or frontage, no minimum building setback, no maximum percentage of lot coverage, no requirement as to front, side or rear yards, and no requirement concerning the location of accessory buildings or structures, for any land use in a PCD Planned Unit Development. However, no plan for a PCD Planned Unit Development shall be approved unless the lot areas, widths, depths, and frontages, buildings setbacks, percentages of lot coverage, front, side and rear yards and locations of accessory buildings or structures, provided for in the site plan and subdivision plan are consonant with the public health, safety and general welfare. Nor shall regulations otherwise applicable to temporary or permanent signs apply to such signs relating to uses permitted in a PCD Planned Unit Development; the standards applicable to such signs set forth in paragraph G of this Subsection 7 shall, however, be observed.

P. In the case of any single-family detached dwelling, the requirements prescribed by the Zoning Ordinance for the Rural (R-200) Zone shall apply to such residential use in a PCD Planned Unit Development.

Q. Not more than twenty-five percent (25%) of the residential land, as defined in Subsection 5, shall be covered by residential buildings.

R. The height of any residential building shall not exceed thirty-five (35) feet. The height of any other building shall not exceed fifty-five (55) feet; except that the foregoing restriction on height shall not apply to water tanks, towers and mechanical equipment, spires, church towers or steeples.

S. No building or structure, other than entrance gate houses, walls, fences, carports or signs, shall be located within fifty (50) feet of any exterior boundary line of the PCD Planned Unit Development.

T. The minimum floor area for multiple dwellings shall be as follows:

(a) One bedroom multiple dwelling units shall have a minimum of 600 square feet of habitable floor

area, and which shall not be leased, rented, demised or sold for occupancy by more than two (2) persons.

(b) Two bedroom multiple dwelling units shall have a minimum of 800 square feet of habitable floor area, and which shall not be leased, rented, demised or sold for occupancy by more than four (4) persons.

(c) Three bedroom multiple dwelling units shall have a minimum of 1,000 square feet of habitable floor area, and which shall not be leased, rented, demised or sold for occupancy by more than six (6) persons.

(d) Four bedroom multiple dwelling units shall have a minimum of 1,200 square feet of habitable floor area, and which shall not be leased, rented, demised or sold for occupancy by more than eight (8) persons.

8. Off-Street Parking.

The minimum number of parking spaces for uses permitted in a PCD Planned Unit Development shall be that set forth in Section 1202 of the Subdivision and Site Plan Review Ordinance, except that the minimum number of parking spaces for each dwelling unit in a PCD Planned Unit Development shall be 1.9 spaces.

The required number of parking spaces may, in the discretion of the Planning Board, be reduced where the Planning Board finds that provision of the required minimum number of such spaces is not necessary or desirable under the circumstances.

For the purpose of this Subsection 8, the size of a parking space shall be not less than nine (9) feet in width by twenty (20) feet in length.

9. Special Provisions.

The special provisions set forth in Section 1500 of the Subdivision and Site Plan Review Ordinance shall apply to a PCD Planned Unit Development.

Section 8: Section XXI, Planned Multiple-Use Development, is hereby amended to read as follows:

SECTION XXI

PMUD PLANNED UNIT DEVELOPMENT

1. District.

PMUD Planned Unit Development shall be permitted in the area specified on the Zoning Map as having a district classification of PMUD Planned Unit Development.

2. Area Requirements.

The minimum land area required for a PMUD Planned Unit Development shall be five hundred (500) contiguous acres. For the purpose of this requirement streets shall not be deemed to divide acreage.

3. Permitted Uses.

The following uses shall be permitted in a PMUD Planned Unit Development:

A. Office, research, industrial uses permitted in the Industrial Zone Under Section X of the Zoning Ordinance and any amendments thereto.

B. Educational-research uses permitted in the Educational-Research (E-R) Zone under Section XI of the Zoning Ordinance and any amendments thereto.

C. Business and commercial uses permitted in the Business (G.B.) Zone under Section IX of the Zoning Ordinance and any amendments thereto. An indoor motion picture theatre and a hotel or motel and related facilities, including but not limited to a conference center auxiliary to the hotel or motel use, shall be permitted as commercial uses.

D. Dwelling units in detached, semi-detached, attached, groups of attached or clustered structures, or any combination thereof.

E. Public buildings, public schools and private schools not for pecuniary profit, places of worship, facilities for social or civil clubs or organizations, hospitals and other community facilities.

F. Recreational and cultural facilities, including but not limited to golf courses, clubhouses, and swimming pools.

G. Agricultural uses.

H. Common open space.

I. Accessory uses, including but not limited to, facilities for administration, maintenance, and fire prevention and safety.

4. Ratio of Nonresidential Uses to Residential Uses.

For each acre of land devoted to residential use there shall be at least nine (9) acres devoted to nonresidential uses, excluding common open space.

5. Residential Density.

There shall be an average of not more than eight (8) dwelling units per acre of land devoted to residential use. For the purposes of this requirement, land devoted to residential use shall be deemed to include private lot areas of owners or residents of such dwelling units, parking areas, utility easements and rights-of-way, walkways, roads and alleys and any other areas serving primarily such owners or residents, and in the case of condominiums, "common elements" and "limited common elements" (as defined in Revised Statutes 46:8B-3) except any structure or part thereof which comprises a part of such "common elements" or "limited common elements"; it shall not be deemed to include common open space.

6. Common Open Space.

A. There shall be set aside for common open space not less than one (1) acre of land for every eight (8) dwelling units.

B. There shall be set aside for common open space not less than three (3) acres of land for every ten (10) acres of land devoted to office, research, industrial uses and/or educational-research uses, and/or business and commercial uses.

C. The location of the common open space shall be consistent with the declared function of the common open space, and where possible the common open space shall be planned as a contiguous area located for the maximum benefit of the area which it was designed to serve, preserving and where possible enhancing natural features.

D. The requirements set forth in Section 1503 of the Subdivision and Site Plan Review Ordinance with respect to the maintenance of common open space and provisions for

an organization to own and maintain the open space which is to be set aside as herein provided shall be applicable to a PMUD Planned Unit Development. Land dedicated for public use and maintenance for recreational or conservational purposes pursuant to Section 1503 of said Ordinance shall be deemed land devoted to common open space for the purpose of satisfying the requirements set forth in Paragraphs A and B of this Subsection 6.

7. Evaluation Standards and Criteria.

In order to foster the attractiveness of a site designated as a PMUD Planned Unit Development and the surrounding neighborhoods, and thereby preserve property values, and in order to provide an efficient road and utility network, insure the movement of traffic, implement comprehensive planning and better serve the public health, safety, and general welfare, the following standards and criteria shall be utilized by the Planning Board in reviewing all site plans and subdivision plats relating to a PMUD Planned Unit Development. These standards shall not be regarded as inflexible requirements. They are not intended to discourage creativity, invention and innovation.

A. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal.

B. Proposed buildings shall be related harmoniously to the terrain and to other buildings in the vicinity that have a visual relationship to the proposed buildings.

C. The distance between buildings shall be sufficient to provide adequate light and air.

D. With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the design of proposed buildings and structures and the neighboring properties.

E. Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system.

F. All permanent utility lines, pipes and conduits shall be located below ground and all other installations and appurtenances shall be adequately screened.

G. The size, location, design, color, texture, lighting and materials of all temporary and permanent signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.

H. Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.

I. Adequate provision shall be made for a sewage disposal system which shall be of sufficient size, capacity and design to collect and dispose of all sewage from all present and proposed buildings in the PMUD Planned Unit Development and which shall be otherwise constructed and maintained in conformity with all applicable State, County and Municipal regulations and requirements.

J. Adequate provision shall be made for a storm drainage and surface water detention system which shall be of sufficient size, capacity and design to collect, carry off and dispose of all predictable surface water run-off within the PMUD Planned Unit Development, and which shall be otherwise constructed and maintained in conformity with all applicable State, County and Municipal regulations and requirements.

K. Adequate provision shall be made for a water system which shall be of sufficient size, capacity and design to supply potable water and fire protection to each of the buildings within the PMUD Planned Unit Development, and which shall be otherwise constructed and maintained in conformity with all applicable State, County and Municipal regulations and requirements.

L. Adequate provision shall be made for the collection and disposal and where possible recycling of garbage, trash and solid waste generated by the PMUD Planned Unit Development, and such system shall be maintained in conformity with all applicable State, County and Municipal regulations and requirements.

M. Adequate provision shall be made for a system of interior road sufficient to accommodate predictable vehicular traffic within the PMUD Planned Unit Development, and to ensure safe and efficient vehicular access, including access of firefighting equipment to and from each of the buildings within the PMUD Planned Unit Development.

N. In the event that PMUD Planned Unit Development is to be constructed in sections over a period of years, then the provisions for the sewage and garbage disposal, storm drainage and water supply and for interior roads, specified in Subparagraphs I, J, K, L, and M of this Subsection 7, need to be adequate only in respect to the sections of development which have previously received final approval and the section of development for which final approval is being sought. The developer shall supply to the Planning Board information disclosing such adequacy and obtain the Planning Board's approval thereof.

O. Except as otherwise provided in this Subsection 7, there shall be no minimum lot area, width or frontage, no minimum building setback, no maximum percentage of lot coverage, no requirement as to front, side or rear yards, and no requirement concerning the location of accessory buildings or structures, for any land use in a PMUD Planned Unit Development. However, no plan for a PMUD Planned Unit Development shall be approved unless the lot areas, widths, depths, and frontages, building setbacks, percentages of lot coverage, front, side and rear yards and locations of accessory buildings or structures, provided for in the site plan and subdivision plan are consonant with the public health, safety and general welfare. Nor shall regulations otherwise applicable to temporary or permanent signs apply to such signs relating to uses permited in a PMUD Planned Unit Development; the standards applicable to such signs set forth in paragraph G of this Subsection 7 shall, however, be observed.

P. In the case of any single-family detached dwelling, the requirements prescribed by the Zoning Ordinance for the Rural (R-200) Zone shall apply to such residential use in a PMUD Planned Unit Development.

Q. The height of any residential building within a PMUD Planned Unit Development shall not exceed thirty-five (35) feet, and the height of any other building shall not exceed sixty (60) feet; except, that buildings used primarily as places of worship shall not be subject to any height limitation.

R. No building or structure, other than a fence or garden wall less than seven (7) feet in height or a sign, shall be located within a distance of fifty (50) feet of any exterior boundary line of the site designated for a PMUD Planned Unit Development, and no such building or structure other than those excepted above shall be located within a distance of fifty (50) feet of any State or County road.

8. Off-Street Parking.

The minimum required number of parking spaces for uses permitted in a PMUD Planned Unit Development shall be as follows:

Building Type	One Parking Space for Each
Academic and administrative buildings for educational institutions, other than places of public assembly	1.5 persons of rated occupancy
Auditoriums, theatres, convention centers and all other places of assembly providing seats for audiences, including places of worship	4 seats
Clubs	200 sq. ft. of gross floor area
Coin Laundries	1 washing machine
Commercial garages and gasoline stations	1/2 gasoline pump and each 400 sq. ft. of ground area devoted to repair facilities (this to be in addition to any space that may be allocated for normal storage of motor vehicles)
Dwellings	1/2 dwelling units
Elementary and Junior High Schools	1/3 classroom
Hospitals, convalescent and nursing homes	1/3 bed and each employee
Hotels, motels	1 guest unit
Hotels with restaurant	As required for either, whichever is greater
Hotels with restaurants and convention center	As required for whichever is the greatest
Industrial buildings	2 employees

Professional offices, general office and research buildings	400 sq. ft. of gross floor area
Restaurants	4 seats
Retail stores, supermarkets and shopping centers	180 sq. ft. of gross floor area
Schools with auditoriums	As required for either, whichever is greater
Senior High Schools and similar institutions	1/5 classroom

Other building types which do not fit into one of the above categories shall be referred to the Planning Board for determination of the appropriate parking space requirements.

The required number of parking spaces may, in the discretion of the Planning Board, be reduced where the Planning Board finds that application of the above standards is not required in the interest of the residents, owners, tenants and occupants of the Planned Unit Development and their employees, and that modification of the above standard is consistent with the interests of the entire Township.

For the purpose of this Subsection 8, the size of a parking space shall be not less than 9 feet in width by 20 feet in length.

9. Special Provisions.

The special provisions set forth in Section 1500 of the Subdivision and Site Plan Review Ordinance shall apply to a PMUD Planned Unit Development.

Section 9: Severability. Should any action or provision of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Section 10: Ordinances Continued. Pursuant to the provisions of Chapter 291, P.L. 1975, Section 81, the remaining provisions of the existing Zoning Ordinance which have not been changed by this ordinance are continued in full force and effect and shall be read in para materia with this ordinance. Said Ordinance is known as "The Plainsboro Township Zoning Ordinance" adopted November 1, 1967, and amendments thereto. Three copies of the text and maps of the above mentioned Ordinance are on file in the Office of the Municipal Clerk and are available for public inspection.

Section 11: Repeals. All sections of the Zoning Ordinance or any other ordinance of the Township of Plainsboro which contain provisions contrary to the provisions of this Ordinance shall be and hereby are repealed.

Section 12: Pending Applications. All applications for development filed prior to the effective date of this Ordinance may be continued, but any appeals arising out of decisions made on any such application shall be governed by the provisions of Section 1 and 2, Article IV, Land Use Procedures Ordinance of the Township of Plainsboro.

Section 13: Copy to be Filed with County Planning Board. Immediately upon adoption of this ordinance the Municipal Clerk shall file a copy of this Ordinance with the County Planning Board as required by law. The Clerk shall also file with said County Planning Board copies of all other

ordinances of the municipality relating to land use, such as the subdivision, zoning and site plan review ordinance.

Section 14: This ordinance shall take effect after final passage and publication as required by law.