CA - Monroe 6/25/85

letter - report on Monroe Greens proposal and Monroe Development + Balantrae proposals

~~Report~~ review of The Mt. Laurel Compliance Program report for Monroe Twp by Higgins

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June 25, 1985

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Dear Stu,

I have reviewed the Mt. Laurel Compliance Program report for Monroe Township submitted by Hintz-Nelessen Associates. While it is basically a good report, I feel that there are some aspects of the report that require comment, particularly as they relate to the Monroe Greens proposal and the Monroe Development and Balantrae proposals.

MONROE GREENS

The report discusses the fact that sewers are available (pages 20 and 30), however it seems to pass over the very important fact that not only are they available, but they are readily available to the point where the entire development could be sewered immediately without any major improvements to either of the two pumping stations being necessary. I feel that this is a very important consideration if the court is concerned with the construction of Mt. Laurel housing in the immediate future in Monroe.

With regard to water, the report states that Monroe Greens is one of the least suitable sites with regard to water (pages 23 and 30) due to the fact that an interconnection would be necessary to properly service the site. I disagree with the conclusion for several reasons. First, based on my discussion with Mike Rogers, Executive Director of the MTMUA, last summer, an interconnection is desirable but not necessary to serve the site. His indication to me was that water was readily available to the site to serve the entire development. Even if he was mistaken, and the entire development cannot be serviced with the existing distribution system, a portion of the development could be serviced from either of the two residential developments east of the site or from Matchaponix Avenue. This would allow for a first phase of the development to be constructed immediately, while the necessary interconnector is being constructed to service the remainder of the development. Consequently, the goal of providing Mt. Laurel housing in Monroe in the immediate future would be realized.

Second, Mike Rogers also indicated to me that the construction of the subject interconnection was a high priority of the MTMUA but that existing populations in that part of the Township did not make it financially feasible. He went on to state that it would be feasible if the Monroe Greens development were to be constructed. The fact that the Monroe Greens developer is willing to contribute to the cost of constructing the interconnection makes this proposal not only suitable, but desirable, from the standpoint of water service since the necessary water will be supplied to the site and the Township will derive a significant benefit from the construction of the interconnection.

In addition, there is at least one other less expensive alternative to the two mile interconnection that would adequately service the entire development. This alternative, which would involve creating a loop between the system serving Matchaponix Avenue and the system serving the Outcalt section of the Township, would cost approximately two-thirds of what the longer interconnection would cost and be completed sooner, but would not result in the same benefits for the Township. However, either of the above interconnections are relatively inexpensive when considering the size of the project and can be done in an expeditious fashion by the developer while the first phase is being constructed.

With regard to traffic, I've reviewed the report submitted by Robert Nelson, Traffic Engineer, regarding the impact of traffic to be generated by the proposed development. The Nelson report does not support the conclusions of the Hintz-Nelessen report. Specifically, the HNA report states that the site has access to narrow roads and therefore does not have good road accessibility. According to the Nelson report the road widths are adequate to support the development and the only improvements that are necessary are those to intersections, to which the developer is willing to contribute to the cost of construction. In addition the HNA report states that the proposed development will "push" traffic through the Boroughs of Spotswood and Jamesburg. The Nelson report does not identify this as a problem.

The HNA report is accurate with regard to existing mass transit conditions. However I would like to point out that bus routes serve areas of high population concentration, and currently the population in the Outcalt section of the Township is not sufficient to justify mass transit. A development of this size is large enough to justify the creation of new bus routes or the rerouting of existing routes to service it.

I disagree with the conclusion on the environmental suitability of the site. This conclusion was apparently based on the existence of wetlands within the boundaries of the site. The report ignores the detailed design of the proposed development which significantly preserves the wetlands. It is not likely that these wetlands would be preserved if the site were developed as currently zoned. Consequently, in terms of environmental suitability, the design demonstrates that the proposed development is suitable and that the proposed development will likely have less impact than conventional development of the site.

With regard to the comment on the proximity of the site to the BFI landfill, this does not appear to be Carl Hintz's opinion since it states specifically that it is a concern of the Township Council with no supporting statement from Carl. I don't see the landfill as a problem if the water is supplied by MTMUA.

In summary, I disagree with the conclusions of the HNA report on page 30 where it states that there are planning concerns regarding the environmental sensitivity, lack of bus transportation, good road accessibility, and water supply service. The developer has addressed each of these areas and can adequately satisfy any of the concerns addressed by the HNA report. In addition, it is important to emphasize to the court that this development is in an excellent position to <u>immediately</u> provide Mt. Laurel housing to meet Monroe's need.

<u>BALANTRAE</u>

The Balantrae site has two major planning concerns that are not addressed by the HNA report. The first of these is the lack of immediately available sanitary sewer. The favorable recommendation given to this site is based on the future conversion of the existing MTMUA plant to a pumping station. The timetable for this conversion is still uncertain. The conversion of the treatment plant is not something that can happen immediately and, according to Mr. Ed Moe, a Professional Engineer retained by Monroe Greens, is a matter that is still very much uncertain. If a decision to convert the plant to a pumping station is reached once the necessary engineering studies are complete, an agreement for the sharing of costs must be entered by Balantrae, Monroe Development, Concordia, R.H. Development and others (see Hintz Report page 28). It is probable that this negotiation process will add additional delays before actual construction of Mt. Laurel housing could begin. Consequently, to include this development in any compliance package could result in significant delays in the actual construction of Mt. Laurel housing.

Second, a major portion of the site is in the agricultural area of the SDGP - either one-third or two-thirds, depending upon whose map you look at. The fact is that the site is currenlty used for agricultural purposes which leads me to believe that the two-thirds designation is more correct. Consequently, I feel that designation of this site for Mt. Laurel purposes is contrary to the intent of the SDGP and the Mt. Laurel II decision as it relates to the SDGP.

Also, this site is proposed as a retirement village. Therefore, the low and moderate housing provided would be restricted to the elderly. The 446 low and moderate units proposed by Balantrae and the 100 low and moderate units proposed for Concordia would cause almost 2/3 of Monroe's compliance package to be limited to senior citizens. Clearly, this is a disproportionate amount.

MONROE DEVELOPMENT

My comments regarding the Monroe Development site are basically the same as they are for Balantrae. Even though this is a builders remedy site, it makes little sense to propose Mt. Laurel housing on it if the sanitary sewers are not readily available, since the housing could not be built in the immediate future. With regard to that site's designation in a Growth Area, the Middlesex County map I have shows the site in the agricultural area. Again, since the site is utilized for farming purposes and surrounding land uses, particularly to the east and south, are agricultural, I would lean towards the agricultural designation of this site as being the correct one.

INFILL HOUSING

I have serious reservations regarding the feasibility of the proposed 70-150 infill housing sites. (page 34) While this approach may be feasible in a densely developed, or urban, community that has an established housing authority, I don't feel it is practical in a rural community such as Monroe for several reasons:

First, the Township has no Housing Authority at present, and whether one can be created that will function efficiently within a reasonable period of time is questionable. This is a particular concern since the Township is proposing the acquisition of between 70 and 150 separate parcels and innovative financing to provide the lower income housing.

Second, the scattering of lower income housing throughout established single family residential neighborhoods could be a serious political problem which would foster additional delays in provision of low income housing.

Third, it is questionable whether the funding mechanisms for this aspect of the compliance program can achieve the desired goal. It is obvious

that items 1, 2 and 3 (page 35) will reduce the cost of housing. It is not obvious that they will reduce the cost to within Mt. Laurel limits. Item 4, the use of Community Development Block Grant Funds (I'm assuming that is what is meant by "Community Development Revenue Sharing") is not permitted for new housing construction except as a last resort. I don't think that Mt. Laurel housing would qualify as a last resort measure. Generally, that provision is limited to providing housing for people who are displaced by other development activities.

Finally, in regard to this part of the compliance package, I want to point out that this does not appear to be a recommendation of Mr. Hintz, but rather a recommendation of the Township Council. (page 34) My professional opinion is that it is too questionable an approach to be included in a compliance package.

In closing, I see little that justifies the preference of either the Balantrae or Monroe Development sites over the Monroe Greens sites for the construction of Mt. Laurel housing. The concerns expressed in the HNA report have been adequately addressed by the developer, and the Monroe Greens proposal can result in the immediate construction of Mt. Laurel housing, something each of the other two proposals cannot do. The compliance package is also deficient in that it provides a disproportionate amount of senior citizen housing and a questionable program for infill housing. Consequently I feel that the Monroe Greens proposal makes a great deal more sense from a planning standpoint.

Very truly yours,

James W. Higgins

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(3) No minimum number of units or minimum tract size for garden apartment development.

(4) No 'aesthetic' requirements such as setback variations, specification of building materials, etc.

(5) No maximum number of units per structure.

(6) Parking and open space requirements should be the same as those set forth for townhouses. There should be no minimum open space requirement for developments of less than 25 units.

(7) Maximum site coverage permitted should be no less than 30 percent.

d. Standards for Senior Citizen Housing

As a general rule, there is no particular justification to single out zones for senior citizen occupancy. If an area is suitable for senior citizen housing, it is likely to be equally suitable for other multifamily development. Certain areas, such as those in central locations, may be particularly suitable for senior citizen development. In such cases, it is appropriate to establish separate standards for housing constructed for senior citizen occupancy.

In such areas, midrise elevator structures of up to 6 stories should be permitted for senior citizen occupancy, with the following additional provisions:

(1) Parking should not exceed 0.5 parking spaces per unit;

(2) Density should be commensurate with the greater height permitted, and should be in the area of 40 to 50 units per acre.

Other sites may be suitable for one-story senior citizen 'cottage' development. Such development should be permitted, in view of the limited space required for parking spaces, at a density of at least 18 units per acre, in order to make possible a compact development pattern consistent with the needs of senior citizens.

e. Standards for Mobile Homes

There should be no prohibition on the erection of mobile homes (manufactured housing) in residential zones, and approval for placing mobile homes on individual lots should not be limited to double-wide units.

Mobile home parks (with ownership of land separate from ownership of the unit) and mobile home subdivisions (fee simple ownership of the land with the unit) should be permitted at a density of no less than 8 units per acre with individual lot sizes of 2,800 SF for single-wide, and 4,500 SF for double-wide units. Such districts should not embody any restrictions on form of tenure; e.g., being limited to fee single or condominium ownership. Open space requirements should be the same as those set forth for townhouses.

f. Other provisions

Particular consideration should be given to facilitating the development of two family houses, through a number of approaches;

(1) Two (and three) family houses can be permitted in single family residential zones, whether small or large lot. If necessary, design standards to ensure that the visual effect of such structures is not incongruous with that of single family houses can be established.

(2) Two (and three) family houses, in which the second (and third) units are rental units can be permitted in such zones, and can also be permitted as a form of townhouse development. Allowing households to purchase a unit with an income apartment can increase homeownership opportunities for moderate income buyers. Townhouse districts should allow three story townhouses to facilitate this option.

(3) Conversion of single family houses to two family or three family occupancy, under reasonable and modest standards and conditions, should be generally permitted in residential zones.

C. EVALUATING MUNICIPAL ZONING ORDINANCES

The standards set forth above can be used to evaluate the provisions of a municipal zoning ordinance, in conjunction with other actions of the municipality to further lower income housing. Specifically, with regard to any municipality which has an indigenous lower income housing need, or an obligation to provide for its fair share of regional lower income housing needs, any of the following features will indicate that that municipality's zoning on its face fails to comply with Mt. Laurel II, whatever the extent of its housing obligation:

(1) The presence of cost-increasing standards and requirements beyond those described above (Sec. B(3)) in those zones containing significant amounts of vacant and developable land;

(2) The absence of one or more zones subject to an inclusionary ordinance, containing a mandatory set-aside provision, and governed by standards not in excess of those set forth in B(1) and B(3) above; or, in the alternative, some other provision for lower income housing that is clearly and demonstrably at least as effective as a mandatory set-aside;

(3) The absence of a full range of adopted or enunciated municipal policies and practices, as described in Section B(2) above, providing incentives in support of the provision of lower income housing.

Once the municipality has adopted an ordinance containing appropriate inclusionary provisions, and reasonable development standards, it remains necessary to review that ordinance in order to establish that it provides enough vacant developable land subject to those provisions to create a realistic opportunity to meet the municipality's indigenous need and fair share obligation.

APPENDIX A

AFFORDABILITY STANDARDS FOR LOW AND MODERATE INCOME HOUSING UNDER MT. LAUREL II

In order to determine what is meant by affordability of housing for low and moderate income households, it is necessary to determine, first, appropriate income levels for those categories; second, a percentage of income which can be anticipated such households can reasonably be expected to spend for shelter; and third, the price of houses for which the cost does not exceed that reasonable percentage.

(1) Definition of Low and Moderate Income

The New Jersey Supreme Court, in Mt. Laurel II, defined the target population as follows:

> "Moderate income families" are those whose incomes are not greater than 80% and not less than 50% of the median income of the area, with adjustments for smaller and larger families. "Low income families" are those whose incomes do not exceed 50% of the median income of the area, with adjustments for smaller and larger families.

The decision further recommends that one rely on those median income figures and household size adjustments for the appropriate SMSA issued by the United States Department of Housing & Urban Development, in this case the New

Brunswick-Perth Amboy-Sayreville SMSA. 1/ The most recent figures, adopted on March 1, 1983 are given on the following page. These numbers are based on an estimated median household income in this SMSA, equivalent to Middlesex County, in 1983 of $32,700:

LOW AND MODERATE INCOME CEILINGS FOR MIDDLESEX COUNTY BY FAMILY SIZE

	LOW	MODERATE
1 person	$11,450	$18,200
2 person	13,100	20,800
3 person	14,700	23,400
4 person	16,350	26,000
5 person	17,650	27,600
6 person	18,950	29,250
7 person	20,250	30,850

SOURCE: Newark Area Office, U.S. Department of Housing & Urban Development (3/1/83)

In the body of the analysis below, only the household incomes for households containing 1 through 5 persons will be used; the number of larger households in the population is so small that it is unrealistic to anticipate that more than an occassional unit will be occupied by a household with more than five members.

1/ The Bureau of the Census has relocated Middlesex County to a new area, to be made up of Middlesex, Somerset and Hunterdon Counties. At some point it is likely that HUD figures will be adjusted to reflect this change; the above figures will hold, however, for the indefinite future. It should be noted that both the present and future income figures for Middlesex County are, in all probability, higher than that which would apply to the fair share region as a whole. An argument can be made for an adjustment to reflect this disparity.

(2) Percentage of Income for Shelter

The standard proposed is that shelter costs (defined as the sum of mortgage payments, property taxes, insurance, and homeowners association fees) should not exceed 28 percent of gross household income. This is the standard utilized by the New Jersey Mortgage Finance Agency, the only source of tax-exempt bond mortgage financing in New Jersey, as well as major conventional lenders active in the region, such as Security Savings & Loan Association and City Federal Savings & Loan Association.

While it is recognized that some conventional lenders allow higher shares of income to be used for shelter, there are a number of arguments to justify this figure:

a. Since the mortgage interest rate is crucial to ensuring affordability to low and moderate income buyers, and since tax-exempt bond mortgage financing generates the lowest rates, it is important to design the project so that it will conform to the standards set by such financing;

b. Since the buyers are lower income households, many will not have the income flexibility, in terms of excess disposable income, to spend the amount on housing that a more affluent household may be willing to spend;

c. A lower standard for general applicability does not preclude individual households from qualifying, if their financing source is agreeable, at a higher standard, at the time the units are eventually marketed.

For these reasons, the analysis will utilize the standard that 28 percent of income will be utilized for shelter costs.

(3) Determining Sales Price

Since affordability is defined in terms of the

percentage of annual income being utilized to pay shelter costs, one arrives at the price a household can pay for a unit by working backward from the annual costs associated with that price. That price will vary significantly with the mortgage interest rate on the basis of which a family qualifies to buy the unit.

Price, annual carrying cost, and annual income, can be related through a simple algebraic procedure. Since annual carrying cost is anticipated to be not in excess of 28 percent of gross income ($C = (.28)I$), if it can be determined what percentage of the sales price of the unit is represented by the annual carrying cost, it is a simple matter to determine the relationship between income and sales price for any income level. To do so, in turn, requires that one make a series of working assumptions about the level of each component of carrying cost. For purposes of this analysis, the following assumptions were made:

a. Households would obtain a 90% mortgage (10% down payment) for a 30 year term. As is shown below, the effect of mortgage interest rates from 7% to 14% was investigated.

b. Property taxes would be, for example, at 1.75% of equalized market value (2.64% at 66.44% of market value) [2/]; this would vary, of course, from community to community.

c. Insurance was estimated at $40 per $10,000 house value; e.g., a $40,000 house would cost $160 per year for fire, theft and liability insurance;

2/ This is the current property tax rate in Cranbury. It is lower than that in most of the other defendant municipalities.

d. Homeowners' association fees were estimated to be $150 per $10,000 house value; e.g., the annual fees on a $40,000 unit would be $600, or $50 per month.

On the basis of these assumptions, the table on the following page was derived, which relates each component of carrying cost, and the total carrying cost, to the sales price of the unit. It should be noted that the percentage of sales price shown under the column headed "mortgage payment" represents 90% of the annual mortgage constant for the interest rate shown in the left hand column of this table, as a result of the down payment assumption used for this analysis.

ANNUAL CARRYING COST VARIED BY INTEREST RATE PRESENTED AS A PERCENTAGE OF TOTAL HOUSE SALES PRICE

INTEREST RATE	MORTGAGE PAYMENT	PROPERTY TAXES	INSURANCE	ASSOCIATION FEES	TOTAL
7%	.07186	.01754	.004	.015	.10840
8%	.07925	.01754	.004	.015	.11579
9%	.08960	.01754	.004	.015	.12614
10%	.09478	.01754	.004	.015	.13132
11%	.10285	.01754	.004	.015	.13939
12%	.11109	.01754	.004	.015	.14763
13%	.11947	.01754	.004	.015	.15601
14%	.12797	.01754	.004	.015	.16451

SOURCE: Analysis by Alan Mallach

Interpreting the table, one finds that, for example, if the mortgage interest rate is 11%, the annual shelter cost is 13.939%, or roughly 14% of the price of the unit. Given the relationship previously established (with P = price, and I = income) we find, using these assumptions that

$$(.13939)P = (.28)I$$

So that, if one applies, for example, the ceiling income for

a low income household of 4 ($16,350) to the hypothetical house, still based on a mortgage of 11%, one obtains:

$$\frac{(.28)\$16,350}{.13939} = P = \$32,840$$

Therefore, a family earning the ceiling income for a low income family of four (as defined by Mt. Laurel II), and obtaining a mortgage at 11%, can afford a house selling for no more than $32,840.

The table on the following page presents the ceiling price for each household size, for low and moderate income households, by interest rate from 7% to 14%. It should be readily apparent from that table that, without manipulating interest rates below current conventional levels, development of low income units is arguably not feasible without substantial subsidy.

One important point should be made. It is not adequate to develop units and mortgage financing plans at a price where they are affordable only to a household earning the maximum income for the category. If the minimum qualifying income, and the maximum income eligibility are the same, or are too close, the pool of prospective buyers will be too small. In order to create a pool of reasonable size, the price of the units must be set a substantial distance below the ceiling price, given the income ceiling and mortgage interest rate. In practice, the selling price should be no more than 75% to 85% of the ceiling price if a pool of buyers is to be created, and marketability of the low and

MAXIMUM PRICE OF UNIT, BY MORTGAGE INTEREST RATE, AFFORDABLE TO LOW AND MODERATE INCOME HOUSEHOLDS BY FAMILY SIZE

INTEREST RATE	HOUSEHOLD SIZE 1	2	3	4	5
LOW INCOME 50% OF MEDIAN ADJUSTED FOR FAMILY SIZE)					
7%	$29,580	$33,840	$37,970	$42,230	$45,600
8%	27,690	31,680	35,550	39,540	42,680
9%	25,970	29,710	33,340	37,090	40,040
10%	24,410	27,930	31,340	34,860	37,630
11%	23,000	26,310	29,530	32,840	35,450
12%	21,720	24,850	27,880	31,010	33,480
13%	20,550	23,510	26,380	29,340	31,680
14%	19,490	22,300	25,020	27,830	30,040
MODERATE INCOME (80% OF MEDIAN ADJUSTED FOR FAMILY SIZE)					
7%	$47,010	$53,730	$56,750	$67,160	$71,300
8%	44,010	50,300	53,130	62,870	66,740
9%	41,280	47,180	49,840	58,980	62,610
10%	38,810	44,350	46,850	55,440	58,850
11%	36,560	41,780	44,140	52,230	55,440
12%	34,520	39,450	41,670	49,310	52,350
13%	32,660	37,330	39,430	46,660	49,540
14%	30,980	35,400	37,400	44,250	46,980

NOTE: all numbers rounded to nearest $10. Based on Cranbury property tax rate, and must be adjusted for each different municipality.

SOURCE: Analysis by Alan Mallach

moderate income units ensured. [3/]

Given the limited assets of many lower income households, it is important to structure programs so that in developments of sales housing for lower income occupancy the opportunity is provided for a reasonable percentage of buyers to purchase units with downpayments of 5% or, through various special programs, even less.

(4) Establishing Appropriate Rent Levels

The analysis to this point has dealt exclusively with units offered for sale. Since, however, a sound low and moderate income housing program must include rental units a discussion of appropriate rent levels is dictated. The

MAXIMUM AND PROPOSED RENT LEVELS BY INCOME AND FAMILY SIZE

	HOUSEHOLD SIZE				
	1	2	3	4	5
LOW INCOME					
No. Bedrooms	1	1	2	2	3
Maximum Gross Rent	286.25	327.50	367.50	408.75	441.25
Utility Allowance	(50.00)	(50.00)	(70.00)	(70.00)	(90.00)
Maximum Net Rent	236.25	277.50	297.50	338.75	351.25
Average Rent @ 85% Maximum (rounded)	$201	$236	$253	$288	$299
MODERATE INCOME					
Maximum Gross Rent	455.00	520.00	585.00	650.00	690.00
Utility Allowance	(50.00)	(50.00)	(70.00)	(70.00)	(90.00)
Maximum Net Rent	405.00	470.00	515.00	580.00	600.00
Average Rent @ 85% Maximum	$344	$400	$438	$493	$510

[3/] This will result in the unit being affordable to households at or near the ceiling of each income range at or below the 25% of income standard set in Mount Laurel II.

basic standard for rental housing can reasonably be adopted from the U.S. Department of Housing & Urban Development; specifically, that rent, including utilities, not exceed 30 percent of household income. 4/ Since customary practice, today is to rent apartments without utilities, the effective net rent becomes the maximum of ceiling rent established as above, less a suitable allowance for utilities.

As discussed above, the actual rents (or the average rents, if they are to be adjusted to individual incomes) must be set well below the ceiling or maximum rents after adjustment for utility allowance. In the table above, a reasonable average rent level, at 85% of the ceiling rent, has been illustrated. This would assume that all or the great majority of tenants will have incomes between 70% and 100% of the ceiling income, for the applicable income and household size category.

4/ It will be recalled that in the Mt. Laurel II decision, the court defines "affordable" to mean affordable by a family spending no more than 25 percent of gross income for shelter (slip opinion at 37). The court does, however, note further that other standards are widely in use. It appears reasonable, in the context of this analysis, to use those standards that are most generally accepted at present within the industry, rather than adhere to a 25 percent standard. We strongly support, as a minimum target, that the pricing be such that a household at the ceiling of the income range can afford a unit on the basis of 25% of income for shelter.

Appendix B

REVIEW OF TOWNSHIP ORDINANCES

PISCATAWAY TOWNSHIP

Piscataway Township seeks to meet its Mount Laurel obligation principally through the establishment of planned residential development zones and the provision of a voluntary density bonus of two units per acre "in the event the Federal Government or any authorized State Agency provides housing subsidies for a minimum of fifteen percent of the total number of dwelling units for low and/or moderate income families."[1] Ordinance No. 78-28, § VII (4). See Fair Share Housing Study: Piscataway Township, New Jersey, prepared by Piscataway Township Division of Planning and Development (May 1983), at 16. In 1978, Piscataway Township amended its zoning ordinance, Ordinance No. 78-27, to establish a planned residential development (PRD) zone, and enacted a Planned Residential Development Ordinance, Ordinance No. 78-28, to regulate this use. These measures, however, on their face fail to satisfy the standards outlined above in Part II, Sections A and B, concerning municipal compliance with Mount Laurel II.

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[1] In this regard, it should be noted that the Township's present and proposed RM (multifamily residential) zones appear to be largely developed and designed to reflect existing garden apartments. In that event they would not be relevant to the satisfaction of the Township's fair share obligation. If the Township includes the RM zone as part of its fair share remedy, the provisions governing this district which contain a number of cost-generating features would have to be deleted or modified.

A. Mandatory Set-Aside

Piscataway Township's ordinances do not include a mandatory set-aside which, under current conditions, is necessary to provide a "realistic opportunity" for the development of low and moderate income housing. See Sections A and B, above. Indeed, although a density bonus has been available in Piscataway since 1978, it has not yet produced any housing that is affordable to low and moderate income households. Accordingly, the measures undertaken by Piscataway Township fail to comply with the constitutional obligation outlined in Mount Laurel II.[2]

In addition, Piscataway's ordinances do not provide for resale or rental price controls to ensure that units continue to be affordable to low or moderate income households; do not require the phasing in of low and moderate income units with the balance of the development; and do not provide sufficient flexibility in terms of residential mix, nonresidential and open space requirements and plan modifications.[3] Finally, the PRD Ordinance's

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[2] Even if the Township's density bonus provision were an effective incentive to the development of low and moderate income housing, it contains several other flaws or limitations. For example, its application depends entirely on the availability of Federal or State housing subsidies which, at the present time, are in short supply. See Mount Laurel II, 92 N.J. at 263. In addition, density bonuses are available if a PRD includes plans for either low or moderate income housing. Accordingly, the density bonus provides no assurance that the Township will be able to meet its obligation to provide for both a low and moderate income housing need. See Mount Laurel II, 92 N.J. at 217.

[3] See discussion of cost-generating features, infra.

maximum gross density of eight units per acre falls short of the maximum gross densities that are necessary for townhouses, garden apartments or other forms of multifamily residential development. See Section B(3).

B. Land Subject to Inclusionary Ordinance

According to Piscataway Township's Fair Share Housing Study, supra, at 16, only 164 acres are presently zoned for PRD development.[4] Even if this entire area were available for high density residential development and, assuming a 20% mandatory set-aside and an average gross density of 15 units per acre, this amount of vacant land could accommodate only 492 units of low and moderate income housing. This falls far short of Piscataway's fair share obligation of 3156 units. Moreover, it fails to account for the need to "over-zone" for such higher density residential development. See Section B(2), above.

C. Cost-Generating Requirements

As noted above, the Township's zoning and subdivision ordinances should provide procedures that are both streamlined and free of any cost-producing requirements and

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[4] These zones have not yet been evaluated in terms of their availability, proximity to necessary infrastructure, and suitability or appropriateness for development of high density residential use, since the Township's ordinances are clearly deficient in other respects. Such an evaluation, however, will become necessary prior to revision of the Township's zoning ordinance.

restrictions that are not necessary to protect health and safety. See Sections (B)(1) and (3). My initial review of Piscataway's PRD Ordinance indicates that it contains a number of provisions which are inconsistent with the above objectives, including the following:

(1) Sections II (A) and II (B) require that PRDs contain a minimum of 30 contiguous acres. This requirement is excessive. Indeed, the New Jersey Municipal Land Use Law requires only a 5 acre minimum. N.J.S.A. 40:55D-6.

(2) Sections II (H)-(I) and VII (15) require the installation of buffers and screens, including a 25 foot screen along the entire perimeter of the tract. While screens or buffers are appropriate to separate residential areas from industrial or commercial uses, there is no justification for requiring a screen along the entire perimeter of a PRD. This requirement constitutes an unnecessary cost-producing provision and should be deleted.

(3) Sections IV (A) (10) and XI require preparation of an Environmental Impact Assessment. Such studies should not be required except for tracts located in areas which have been determined to be environmentally sensitive.

(4) Section IV (A) (11) requires the preparation of an Educational Impact Statement. This requirement is an unnecessary expense of dubious value, and should be deleted.

(5) The limitations on modification of preliminarily approved plans imposed in Section V (2) are more restrictive than usual and should be modified to permit without extensive submissions or hearings any reasonable modifications which do not fundamentally change the character and impact of the development.

(6) Section VI (I) requires two parking spaces per unit, each measuring ten feet by twenty feet and located on bituminous macadan with shielded low intensity lights. These requirements are in excess of what is necessary or normally required for planned residential developments and should be altered to conform to the standards set forth in Section B(3) above.

(7) Section VI (J) permits the Planning Board to require additional landscaping and screening to enhance the character of a PRD. Because this requirement is not subject to any standards, it may in individual cases unnecessarily add to the cost of a development.

(8) Sections VII (5) and (6) impose limitations on the amount of multifamily housing, require a certain percentage of single family units and townhouses, and impose architectural design standards. These provisions impose cost-producing requirements and reduce the builder's flexibility to seek ways to increase efficiency and reduce cost. Moreover, they are not required for the protection of health or safety. Accordingly, they should be deleted in their entirety.

(9) Section VII (7) requires that interior roads be paved at a width of 26 feet. This requirement is excessive, especially where one-way roads are feasible.

(10) Section VII (11) provides that each unit shall have two means of egress and ingress. Unless this provision is required by applicable fire code specifications, it should be deleted.

(11) The requirements contained in Sections VII (12) and (13), relating to multifamily and townhouse construction, are unnecessary and should be eliminated.

(12) With respect to solid waste pick-up and disposal, PRDs should receive the same services available to other residential developments; to require otherwise would be to impose an additional cost on the developer or residents.

Incentives in Support or Development of Low and Moderate Income Housing

From the materials presently available to plaintiffs,[5] it does not appear that Piscataway Township has undertaken incentives in support of the development of low and moderate

[5] I have been advised that plaintiffs are presently seeking through discovery other information relating to the existence or nature of any such measures.

income housing, as discussed in Section B(2) above. In addition, Piscataway Township's zoning ordinance continues to prohibit the development of mobile home parks which may be required as an affirmative measure to meet its Mount Laurel obligation. See Mount Laurel II, 92 N.J. at 275.

EAST BRUNSWICK

East Brunswick Township seeks to meet its Mount Laurel obligation primarily through the establishment of planned unit residential developments (PURD) and the provision of voluntary density bonuses whereby the gross density of a tract may be increased by the addition of one unit per acre for each unit of low and moderate income housing provided up to maximums of 5, 8 and 12 units per acre in the various Village Green and Town Green zones. East Brunswick Code §132-141, 142. East Brunswick also rezoned approximately 870 acres which had been industrial, commercial or large lot residential to the Village Green and Town Green PURD zones. Despite these admirable efforts, only 168 units of moderate income housing have been produced since the voluntary density bonus program was adopted in 1976. These measures, therefore, clearly fail to satisfy the standards outlined in Part II, Section A and B, concerning municipal compliance with Mount Laurel II.

A. Mandatory Set-Aside

East Brunswick relies exclusively on a voluntary density bonus program to meet its Mt. Laurel obligation. Existing ordinances do not provide for resale or rental controls to ensure that units continue to be affordable to low or moderate income households and do not require the phasing in of low or moderate income units with the balance of the development.[6] The density bonuses do not require the development of low as well as moderate income housing on a proportional basis according to fair share obligations, thus no assurance is provided that the Township will meet both low and moderate income housing needs. In addition, open space requirements, large tract area, and density limitations restrict development flexibility. The maximum gross density of five and eight units per acre in the Village Green Two and Three zones falls short of the densities needed for townhouse, garden apartment or other forms of multifamily residential development. See Section B(3).

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[6] East Brunswick Township is considering the adoption of an ordinance that would provide a method of ensuring that units developed for low and moderate income households are occupied by those households. That proposed ordinance is troublesome in several respects, however. Its definition of low and moderate income households includes households with substantially higher incomes than was specified in the Mt. Laurel II decision. The ordinance does not distinguish between low and moderate households and, thus, does not ensure that low as well as moderate income housing need will be met. See Mount Laurel II, 92 N.J. at 217.

B. Land Subject to Inclusionary Zoning

Even though East Brunswick has provided for five higher density zones, only the Town Green zone, which includes minimal acreage, offers a sufficient density to realistically provide for development of low and moderate income housing, without direct government subsidy. The land zoned for the Village Green I, II, III, and III A, Town Green and Mixed Use zones appears to be only marginally adequate to meet East Brunswick's fair share requirement, if sufficient densities were permitted.[7] Moreover, this land area fails to account for the need to "over-zone" for such higher density residential development. See Section B( ) above. In addition, no areas have been zoned for new mobile home development.

C. Cost-Generating Requirements

Although cost-generating requirements have been substantially deleted from East Brunswick's ordinances, many restrictions remain that are not necessary to protect health and safety. See Sections (B)(1) and (3). My initial review of East Brunswick's land use ordinance pertaining to the PURD and mixed use zones indicates that the following provisions are unnecessary cost-generating requirements that should be deleted:

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[7] These zones have not been evaluated in terms of their availability, proximity to necessary infrastructure, and suitability for development of high density residential use. Such an evaluation will be necessary prior to revision of the Township's zoning ordinances for Mt. Laurel compliance.

(1) Section 132-40 requires that PURDs in the Village Green and Town Green Zones contain a minimum of 40 contiguous acres; except for the Village Green II A zone where a minimum of 25 contiguous acres is required. This is excessive. Indeed, the New Jersey Municipal Land Use Law requires only a 5 acre minimum. N.J.S.A. 40:550-6.

(2) Section 132-43 requires a minimum open space requirement of 25% in PURDs. This is excessive.

(3) Although Section 132-44(A)(5) provides that the off-street parking requirement may be reduced to 1.5 spaces per unit for low and moderate income housing for single family cluster development, this reduction is not applied consistently throughout the residence standards for all housing types. For example, the parking space reduction is not included in standards for single family attached, §132-44 (B)(5); patio homes, §132-44 (C)(5); townhouses, 132-44 (D)(5); apartments, 132-44 (E)(5) and (F)(2). See also 228-217.5 (K)(5), 228-217.5 (L)(4). Instead, a parking space requirement of 2.25 spaces per unit is imposed.

(4) Section 132-46(A) provides that bikeways along streets may be required by the Planning Board. This requirement should be subject to a waiver if the additional costs interfere with low and moderate income housing development.

(5) Section 132-49(A) provides that the number of dwelling units and square footage of nonresidential uses which may be constructed by the developer each year may be restricted by the Planning Board. This may yield increased costs due to inflation, higher interest rates and delay on investment return.

(6) The economic impact analysis required in Section 132-50(H)(2) for staged development is unnecessary and burdensome.

(7) The filing fee of $5,000 for PURDs is excessive. Section 132-71.

(8) The requirement that the developer pay $80.00 for shade trees of a undetermined number and type to be planted by the Township needs reasonable perameters of a maximum number per acre to eliminate the possibility of excessive costs. Section 192-25.

(9) Standards for multiple-dwelling groups or garden apartments restricting the area of the lot to be covered by buildings to less than 20% limits flexibility and is too restrictive. Section 228-154(A)(2).

(10) The requirement in Section 228-154(A)(6) that all multiple-dwellings have a brick or equivalent exterior is unnecessary and costly.

(11) Owners of multiple-dwellings should not be required to bear the cost of garbage removal; this should be provided by the Township. Section 228-154(A)(20).

(12) Provision of water lines and sewers should be in accordance with the rule of pro rata sharing of improvement costs set by the Municipal Land Use Law. Section 228-154(A)(22).

(13) Section 228-154(a)(24) is ambiguous. Improved recreation areas should be defined and should not require excessive expenditure.

(14) Mandatory air-conditioning is an unnecessary expense. Section 228-154(A)(26).

(15) Restricting residential development to 50% of the lot in the mixed use zone limits flexibility and inhibits residential development in that zone. Section 228-217.4(F).

(16) Limiting building improvements to 25% of the lot area in a mixed use development is too restrictive. Section 228-217.5(A).

(17) Requiring a minimum number of 100 townhouse units is excessive and may restrict smaller developments.

(18) The linear plane restrictions for townhouse construction contained in Section 228-217.5(K)(7) limits flexibility.

(19) Zigzag requirements for townhouse facades and rooflines are costly and unnecessary. Section 228-217.5(K)(9) and (10).

Incentives in Support or Development of Low and Moderate Income Housing

From the materials available to plaintiffs, it appears that East Brunswick has made some efforts to provide support for development of low and moderate income housing, as

discussed in Section B(2) above.[8] These efforts have centered on attempts to obtain federal subsidies and on targeting CDBG funds for housing rehabilitation; although some tax abatements have been offered, as well. These efforts, however, are inadequate to meet the Township's obligation to promote the development of lower income housing in a time of limited availability of federal subsidies.

SOUTH BRUNSWICK

South Brunswick Township seeks to meet its Mount Laurel obligation primarily through the establishment of several zones that permit multiple-family housing. In addition, the Township has permitted mobile home parks and manufactured housing in some industrial zones. Yet, the maximum gross density of 7 in the PRD III zone is clearly insufficient to encourage low and moderate income housing development.[9]

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[8] I have been advised that plaintiffs are presently seeking through discovery other information relating to the existence or nature of any such measures.

[9] The township amended its previous zoning ordinance which provided for a mobile home zone along Route 130. The amendments moved the mobile home zone to a less desirable location also along Route 130, but in industrial zones and permitted mobile homes and manufactured housing only as a conditional use in portions of those industrial zones. The Township is now considering further amendments which would require a mandatory set aside in the PRD III zone, but would reduce the maximum gross density there from 7 to 5 units per acre. Thus, the benefit to be obtained by the mandatory set aside will be more than off-set by the low density limitation.

Furthermore, numerous unnecessary cost-generating requirements have not been deleted from the Township's zoning ordinances.

A. Mandatory Set-Aside

South Brunswick relies on numerous multiple-family zones and a voluntary density bonus provision which increases the ultimate residential gross density "[w]hen development timing and least cost housing or affordable criteria has been fulfilled . . . to the satisfaction of the Planning Board" to meet its Mt. Laurel obligation. Chapter 16-62. South Brunswick's ordinances do not provide for resale or rental controls to ensure that units continue to be affordable to low and moderate income households and do not require the phasing in of low and moderate income units with the balance of the development. The density bonuses do not require the development of low as well as moderate income housing on a proportional basis according to fair share obligations, thus no assurance is provided that the Township will meet both low and moderate income housing needs, In addition, open space requirements, large tract area, and density limitations restrict development flexibility. Maximum gross densities of 4 to 7 units per acre in the PRD zones fall far short of the densities needed for townhouse, garden apartment or other forms of multi-family residential development.

B. Land Subject to Inclusionary Zoning

Although it appears that South Brunswick has zoned a sufficient area for multiple-family development to meet its fair share requirement, the low density limitations of from 3 to 7 units per acre will preclude this realization.[10] However, these higher denisty areas fail to account for the need to "over-zone" for such multiple-family development. See Section B(2) above.

C. Cost-Generating Requirements

Numerous cost-generating requirements remain in South Brunswick's zoning ordinances that are not necessary to protect health and safety. See Sections B(1) and (3). My initial review of South Brunswick's land use ordinances pertaining to multiple-family zones indicates that the following provisions are unnecessary cost-generating requirements that should be deleted:

> (1) South Brunswick's various high density zones provide for minimum tract sizes ranging from 50 to 400 contiguous acres. These minimum tract sizes are clearly excessive. Indeed, the New Jersey Municipal Land Use Law requires only a 5 acre minimum. N.J.S.A. 40:55D-6.
>
> (2) The Planned Retirement Community zone (PRC) provides only for single family detached, semi-attached and townhouse uses. Multi-family use should be permitted.
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> (3) The requirement in the PRC zone that buildings cover no more than 20% of the tract area in residential areas is restrictive and should be eliminated.

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[10] These zones have not been evaluated in terms of their availability, proximity to necessary infrastructure, and suitability for development of high density residential use. Such an evaluation will be necessary prior to revision of the Township's zoning ordinances for Mt. Laurel compliance.

(4) The maximum gross density for mobile homes and manufactured housing of 3 units per acre is way too low. This should be increased to at least 8 units per acre to realistically permit such development.

(5) Multi-family development should not be subject to the discretion of the municipal agency as provided in Mixed Residential Cluster Performance Standards ¶ (a) but should be permitted according to objective criteria which is set out in the Land Use Ordinance.

(6) Manufactured and mobile homes should not be restricted to fee simple or condominium ownership. Rental of mobile home pads in mobile home parks should also be permitted.

(7) The open space requirements of 40% of tract area in PRD zones and of 30% in higher density RM zones and in the Manufactured Housing zone are excessive and should be reduced.

(8) The off-street parking requirement of two spaces per dwelling unit is excessive and should be reduced in accordance with those outlined in Section B(4)(b)(8).

(9) The minimum tract size of 10 acres and minimum lot size of 2,000 square feet for townhouse development is excessive and should be reduced. Conversely, the 8 unit per acre density limitation and 8 townhouse grouping limitation should be increased.

(10) The requirement in the PRD III Town Center Development zone of a minimum reservation of 5% of tract area for commercial and office development is restrictive and should be eliminated.

(11) The limitations on the percentage of each housing type that may be included in each residential zone restrict development flexibility and should be eliminated.

(12) Traffic; Circulation Impact Statements should not be required except for tracts located in areas which have been determined to have potential traffic problems. § 16-42.1(f).

(13) The School Impact Statement is an unnecessary expense of dubious value, and should be deleted. §16-42.1(g).

(14) Environmental Impact Statements should not be required except for tracts located in areas which have been determined to be environmentally sensitive. §16-42.1(h).

Incentives in Support or Development of Low and Moderate Income Housing

From the materials available to plaintiffs, it appears that South Brunswick has made some efforts to provide support for development of low and moderate income housing, as discussed in Section B(2) above.[11] These efforts have centered on unsuccessful attempts to obtain federal subsidies and on targeting CDBG funds for housing rehabilitation. These efforts, however, appear to be inadequate to meet the Township's obligation to promote the development of lower income housing in a time of limited availability of federal subsidies.

PLAINSBORO TOWNSHIP

Our review of the Plainsboro Township ordinance provides no indication that any effort of any kind is being made by the Township to meet its Mt. Laurel obligations. At present, multi-family housing housing is permitted in two zones in the Township, the Planned Community Development

[11] I have been advised that plaintiffs are presently seeking through discovery other information relating to the existence or nature of any such measures.

(PCD) and the Planned Mixed Use Development (PMUD) zone.[12] The latter is insignificant, in that it permits a nominal amount of housing in what is, for all practical purposes an office/industrial development district. With regard to the PCD zone, the lack of commitment on the part of the Township to lower income housing is exemplified by the fact that the current zoning ordinance has reduced the permitted density from 11 units per acre (retained for "existing or pending development applications", Sec. 101-124) to 2.5 units per acre. The former standard may conceivably have made possible 'least cost' housing; the present standard clearly does not. No provision for low or moderate income housing, either through a mandatory set-aside or a voluntary density bonus or other approach, appears in the ordinance. The ordinance clearly fails to satisfy the standards outlined in Part II, Sections A and B, above, concerning municipal compliance with Mt. Laurel II.

A. Mandatory Set-Aside

Plainsboro Township's ordinances do not contain a mandatory set-aside, which, under current conditions, is necessary to provide a "realistic opportunity" for the development of low and moderate income housing, nor do they provide any other means of achieving the township's fair

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12 The ordinance also contains an SR zone in which multifamily housing is a permitted use. Based on our observation, this zone (limited to a single tract) is fully developed.

share allocation. Plainsboro's ordinance clearly fails to comply with the constitutional obligation set forth in Mt. Laurel II.

B. Land Subject to Inclusionary Ordinance

There is no land within the Township which is zoned under inclusionary provisions, either a mandatory set-aside, voluntary density bonus, or other incentive to provide low or moderate income housing.

C. Cost Generating Requirements

Numerous cost-generating requirements remain in Plainsboro's zoning ordinances that are not necessary to protect health and safety. See Sections B(1) and (3). The initial review of Plainsboro's land use ordinances pertaining to multiple-family zones indicates that the following provisions are unnecessary cost-generating requirements that should be deleted:

> (1) The provisions of §101-125 limit new development in the PCD zone in a number of significant ways. Multiple-dwelling units are no longer permitted (§(B)(1)), a gross density limitation of 2½ units per acre is imposed (§(D)(1)), common open space is excluded from the net density calculation (§(d)(2)), the net densities themselves have been reduced (§(D)(2)(b) and (c)), and excessive open space and recreation space requirements have been explicitly required (§(I)(1) &(2)). These standards, occurring in the only substantial multifamily zone remaining in the Township, are patently unreasonable.
>
> (2) The 50 acre minimum for planned developments in the PCD zone (§101-125(C)) is excessive. The municipal Land Use Law requires only a five-acre minimum. N.J.S.A. 40:55D-6. Similarly, the 500 acre minimum in the PMUD zone (§101-136) is clearly excessive.
>
> (3) Sections 85-59(A), (B), (D), & (E) and §§85-51(A) & (B) contain architectural and design standards which are dictated by consideration of

aesthetics rather than health or safety. These requirements limit a developer's flexibility in achieving cost-effective construction methods and should be eliminated altogether in developments including low and moderate income housing.

(4) The subdivision ordinance appears to permit the Township to impose heavier burdens on planned developments with respect to sewage and solid waste disposal than are imposed on other residents of the Township. Section 85-59(I) & (L). These provisions should be revised to make it clear that no such differential in the provision of public services is intended.

(5) The buffering requirements in §§85-20(E) & (F) are excessive and should be reduced or eliminated.

(6) The requirement that 15% of the gross area of a planned development be devoted to "useable recreation facilities" (§ 101-125(I)(1)) is clearly excessive. In addition, the detailed standards for recreation facilities (§85-62), including the apparent requirement that there be tennis courts, that each tennis court be provided with four parking spaces, and that swimming pools be provided at the rate of three square feet per resident over the age of three, are excessive.

(7) The subdivision ordinance requires that at numerous steps in the approval process, the developer pay all reasonable costs for the Townships's professional review of the application, and the nominal fee schedule on a per/unit basis is merely an escrow deposit against this ultimate charge. See e.g., §§85-8(F), 10(B), 15(A), 34(D), 35(B) (maximum of $5,000), and 39(A)(2). This mechanism does not establish the certainty in fee schedules that is contemplated by the Municipal Land Use Law (see N.J.S.A. 40:55D-8 (b)), and allows too much flexibility to the Township to generate unnecessary costs in connection with specific developments that it does not favor. A specific and uniform fee schedule should be adopted.

(8) Conversion of single-family homes to two-family use can provide an important supplement to production of new housing. While §§101-25 and 35 permit such conversions in the R-200 and R-85 zones, the requirement that any converted structure in the R-200 zone have a 35,250 square foot lot per unit is excessive and unnecessary.

Incentives in Support or Development of Low and Moderate Income Housing

From the materials available to plaintiffs, there is no indication that Plainsboro has undertaken any efforts whatsoever to provide support or incentives for development of low and moderate income housing, as discussed in Section B(2) above.[13] In addition, Plainsboro Township's ordinance makes no provision for the development of mobile home parks, which may required as an affirmative measure to meet its Mount Laurel obligations. See 92 N.J. at 275.

CRANBURY TOWNSHIP

Cranbury Township seeks to meet its Mount Laurel obligation principally through the establishment of a Planned Development - High Density (PD-HD) zone, in which a density bonus is offered for development in which "at least fifteen percent of all units shall consist of low and moderate income housing." Sec. 150-30(B)(11). This ordinance provides, generally speaking, that development by right in the PD-HD zone is 1 unit per acre through the purchase of development credits from the Township's agricultural zone. Sec. 150-30(b)(3). Provision of low and moderate income housing enables a developer to increase density to a maximum of 5 units per acre. This ordinance fails to satisfy the standards set forth above in Part II concerning municipal compliance with the Mt. Laurel II

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[13] I have been advised that plaintiffs are presently seeking through discovery other information relating to the existence or nature of any such measures.

decision.

A. Mandatory Set-Aside

Cranbury Township's ordinances do not contain a mandatory set-aside which, under current conditions, is necessary to provide a "realistic opportunity" for the development of low and moderate income housing. See Sections A and B above. Furthermore, the density bonus provided in the ordinance is conditioned on acquistion of massive numbers of development credits[14] from farmland in the Township, as well as conditional use approval. The provisions for transfer of development credits are of questionable legality, and in any event, patently burdensome as applied to the PD-HD zone. Accordingly, Cranbury's ordinance fails to comply with the constitutional obligation set forth in Mount Laurel II.

While the ordinance does contain provisions for the phasing of low and moderate income units, and resale control provisions, 150-30(B)(11), it also contains specific-cost generating provisions and limitations on the developer's flexibility to provide cost-effective housing.

B. Land Subject to Inclusionary Ordinance

According to the Cranbury Township Land Use Plan, at III-20, 530 acres are at present zoned for PD-HD development. Under current development standards, assuming maximum use of development credits and the density bonus,

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[14] It can be estimated that for each additional unit (not unit per acre, but individual unit) permitted in the PD-HD zone, the developer must buy rights to roughly 2.5 acres of farmland. Estimates of the cost of this acquistion vary widely.

the zone is physically capable of accommodating only 398 low and moderate income units (530 x 5 x .15), substantially less than Cranbury's fair share of 577 units. Furthermore, this makes no provision for 'overzoning' for higher density residential development, as discussed above. It should be stressed that the above calculation is purely theoretical, since we do not believe that even the number of units indicated above is in any way a realistic possibility.

C. Cost Generating Requirements

As noted above, the Township's zoning and subdivision ordinances should provide procedures that are both streamlined and free of any cost-producting requirments and restrictuions that are not necessary to protect health and safety. See Section (B))1) and (3). The initial review of Cranbury's PD-HD ordinance indicates that it contains a number of provisions which are inconsistent with the aove objectives, including the following:

(1) The 25 acre minimum for planned developments is excessive 150-30(B)(2). The Municipal Land Use Law requires only a five acre minimum. N.J.S.A. 40:55D-6.

(2) §150-100(D) permits the Planning Board to require an extensive Environmental Impact Statement in its discretion. Such conditions should be limited to areas that have previously been determined to be environmentally sensitive.

(3) §150-100(E) requires a detailed Community Impact Statement which should be eliminated in its entirety. The statement will entail considerable expense and is of dubious value.

(4) The Planned Development-Medium Density (PD-MD) (§150-27) and Planned Development-High Density (PD-HD)(§150-30) zones specify a mixture of housing types in which multi-family dwellings are limited to a maximum of either 30% (§27) or 40% (§30) of the total number of units. The PD-MD zone in addition requires that at least 20% of the units be single family homes.

These requirements unduly limit the developer's flexibility in achieving a mixture that will be economically feasible. In addition, by operation of §§27(4) and 30(4), they have the effect of increasing the amount of open space required in each development, further limiting cost efficiency.

(5) §150-30(B)(11) limits the low and moderate income housing incentives to the PD-HD zone. As noted above, this zone as presently mapped includes too little acreage to satisfy the overzoning criterion of Mount Laurel II.

(6) The landscaping requirements of §§150-58 and 150-60(B) appear to be in excess of what is necessary in planned residential developments.

(7) §50-76 sets out solar energy standards which are novel and which may unduly restrict design flexibility and thereby increase construction costs to achieve a relatively low level of operating savings. Compliance with these standards shoudl not be required.

(8) §150-78, which governs architectural and design standards, speaks in terms of "should" rather than "shall," but nevertheless leaves open the strong possibility that cost-generating designs dictated by consideration of aesthetics rather than health or safety could be required. Most particularly, the six-unit limitation per structure contained in §§(A) and (E) would prevent use of larger structures that are generally recognized to be more cost-effective. These aesthetic requirements should be eliminated altogether insofar as developments including lower-income units are involved.

(9) Conversion of single-family homes to two-family use can provide an important supplement to production of new housing. While §150-24 permits such conversions in the Village-Medium Density (V-MD) zone, the requirement that any converted structure have an 18,000 square foot lot is excessive and unnecessary. Conversions should also be subjecct to appropriate occupancy controls as discussed above if they are to be considered toward meeting Mount Laurel goals.

(10) The requirement that 15% of the gross area of a planned development be devoted to "active recreation facilities," §150-79(A)(2), is clearly excessive. In addition, the detailed standards for types of recreational facilities which qualify under this regulation are also excessive, such as the requirement that each tennis court be provided with four parking spaces, and the swimming pools be provided at the rate of three square feet for each resident.

Incentives in Support or Development of Low and Moderate Income Housing

From the materials presently available to plaintiffs,[15] there is no indication that Cranbury Township has undertaken any incentives whatsoever in support of the development of low and moderate income housing, as discussed in Section B(2) above. Indeed, the ordinance makes clear that the Township has subordinated this constitutional issue to its objective of agricultural preservation, a matter to which it accords clearly higher priority. In addition, Cranbury Township's zoning ordinance makes no provision for the development of mobile home parks which may be required as an affirmative measure to meet its Mount Laurel obligation. See Mount Laurel II, 92 N.J. at 275.

[15] I have been advised that plaintiffs are presently seeking through discovery other information relating to the existence or nature of any such measures.