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Expert Report on Mount Laurel II issues in Urban League of Greater New Brunswick v. Borough of Carteret, et al. (prepared by Mallach) for Ps

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EXPERT REPORT

on

MOUNT LAUREL II ISSUES

in

URBAN LEAGUE OF GREATER NEW BRUNSWICK

v.

BOROUGH OF CARERET, et al.

Prepared by
Alan Mallach
Roosevelt, New Jersey
December, 1983

Expert for Urban League plaintiffs

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REPORT ON MT. LAUREL II ISSUES ON BEHALF OF URBAN LEAGUE PLAINTIFFS IN URBAN LEAGUE OF GREATER NEW BRUNSWICK V. BOROUGH OF CARTERET ET AL.

ALAN MALLACH
DECEMBER 1983

INTRODUCTION

The purpose of this report is to present our position in the Urban League litigation with regard first, to the issues of region and fair share; and second, to the issue of ordinance compliance with the standards set forth by the New Jersey Supreme Court in the Mt. Laurel II decision. With regard to the area of region and fair share, the report is in two parts. The first presents the region and the fair share allocation plan we propose, and the second provides a review and comment on the fair share housing allocation plan prepared by Carla Lerman, the expert appointed by the court. With regard to ordinance compliance, the report sets forth standards or guidelines for the development of an ordinance in keeping with the Mt. Laurel II standards. These guidelines include both general standards for development, specific provisions to govern specific development types, and areas in which a municipality can act affirmatively in support of low and moderate income housing development.

An appendix in which the ordinance provisions of individual municipalities are discussed is added to the report. With regard to this appendix, note that Monroe and South Plainfield have not been included, since they have not

presented any ordinance revisions or proposed compliance activities to the plaintiffs. Neither the fair share analysis nor appendix contain information regarding North Brunswick or Old Bridge, the two townships which did not appeal the judgments of unconstitutionality or obtain a judgment of compliance. A supplemental report concerning these two townships will be forthcoming shortly. A further appendix deals with the issue of affordability, as it affects low and moderate income housing development consistent with Mount Laurel II.

I. FAIR SHARE HOUSING ALLOCATION

A. PROPOSED HOUSING ALLOCATION PLAN

A fair share housing allocation plan consists of four general elements: delineation of a region, determination of lower income housing need within that region, identification of allocation factors, and application of a method of using those factors to allocate that need across the municipalities having fair share housing responsibilities within the region. Each of these is discussed in turn below.

(1) Delineation of a Region

The appropriate region for fair share housing allocation to Middlesex County municipalities is the eight county region which largely represents the New Jersey portion of the larger New York metropolitan area. This is a region made up of Bergen, Essex, Hudson, Middlesex, Morris,

Passaic, Somerset and Union Counties. Below is a summary of the reasons why this region is considered appropriate: 1/

a. Consistency: A clearly stated objective in Mt. Laurel II is to arrive at a consistent regional pattern for each section of the state, and, ùltimately, for the state as a whole, in order to obviate the need to define region and regional need separately in each case (at 254-255). While the particular region we propose may not be the only region meeting this test, the standard clearly excludes any region that has been tailored to the circumstances of a particular municipality, rather than on the basis of broad regional planning criteria. A region based on a 'journey to work' radius around a particular municipality would be intrinsically in violation of this standard, and would result in 567 separate, unique, mutually exclusive, regions around the state.

b. Scale: A region must be large enough, and diverse enough to provide both that the full extent of lower income housing need is identified, and can be satisfied

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1/ Also see the discussion on region in Clarke & Caton, Mahwah Township Fair Share Housing Report, July 1983 (prepared for the court in the Mahwah litigation), and Abeles Schwartz & Associates, A Fair Share Housing Allocation for Ten Municipalities in Morris County, October, 1983 (prepared for the New Jersey Department of the Public Advocate). Both of these studies arrived at the same conclusion with regard to region as is presented here.

within the region. Such a standard requires a region in which there is a balance of counties in which needs exceed resources (Essex, Hudson, Passaic, and possibly Union), and in which resources exceed needs (Middlesex, Somerset, Morris, and Bergen). It represents an area in which the housing needs of northeastern New Jersey can potentially be solved.

c. Housing Market Area: As the court stated in Mt. Laurel II, accepting a position initially set forth in Madison, the region is the area "from which the prospective population of the municipality would substantially be drawn, in the absence of exclusionary zoning". The prospective population at issue is, in essence, the population of the core - the area in which need for lower income housing exceeds the means of providing it. All of the counties in the eight-county region relate to a common core area, or a common area generating lower income housing need. Although it is true that Mahwah and Cranbury may otherwise have little relationship to each other, they share a common relationship to the common core.

d. Regional Planning: For similar reasons, these counties have been treated as a region by regional planning agencies, and by the state. They make up the region, less its 'outer ring' defined by the Regional Plan Association; they are treated as a common Labor Market Area by the New Jersey Department of Labor; and, with the

addition of Monmouth County, [2/] are treated as a region by the former Tri-State Regional Planning Commission. All of these definitions are a reflection of a common pattern of regional relationships, which is reflected in the close inter-relationships between housing, employment, and transportation throughout the region, a region characterized by growth corridors radiating outward from a central core. It is interesting to note that the only significant

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2/ The status of Monmouth County is ambiguous. Clearly, part of the County is within the northeastern New Jersey region, and affected by the same factors that we have noted. That part, however, is arguably a modest part of the county, in contrast to the eight counties which are clearly metropolitan in full or in large part. The northwestern New Jersey regional sector of Monmouth County, under the SDGP, is limited to two corridors, along Route 9 and the Garden State Parkway. Substantial parts of the county are in an agricultural area (Western Monmouth), a limited growth area, and the shore region, which is subject to other than strictly regional pressures. These 'non-regional' elements may add up to 2/3 of the county or more. It is possible as well that small parts of Hunterdon and Warren counties are also linked to the region. In this case, however, the overwhelming majority of the land area in both counties is outside the growth area, and therefore of little or no effect on the fair share question. Finally, Mercer County, although linked in part to the region (particularly the Princeton area), is as strongly linked to the southern part of the state and to Philadelphia; when major interstate regions were delineated in the 1960's, Mercer County was placed in the Delaware Valley, rather than the Tristate region. Because clarity dictates that a region be defined by counties, rather than by municipalities or other fine-grain measures, it seems preferable to exclude rather than include these counties, as was done by the Department of Community Affairs in their Housing Allocation Report.

departure from this radial pattern, which is the development of I-287 as a major employment center since the end of the 1960's, has had the effect of linking Middlesex, Morris, and Somerset Counties into a single whole, with Bergen County likely to be added at such time as the last link of I-287 is completed.

The above is but a short summary, but is, in our judgment, compelling. It is our opinion that the proposed eight-county region is clearly the most readily supportable region for fair share housing allocation, both from the specific standpoint of Mt. Laurel II as well as on the basis of general planning and housing development criteria.

(2) Determination of Housing Needs

The proposed allocation process distinguishes between two categories of need. Present Need is that need which is present today; i.e., lower income households living in housing that is inadequate, for any of a number of reasons. This is, at least initially, the same as indigenous need, as defined in Mt. Laurel II. The terms will be distinguished in the allocation procedure, however, since at least some indigenous need in certain core communities will be reallocated to other communities. Prospective Need is that need which is triggered by the ongoing process of household formation or loss of existing housing and will come into being in the future.

Both need categories are divided in turn between low and moderate income households, as defined in the Mt. Laurel II decision. Low income households are, then, those earning between 0 and 50% of the region's median household income; and moderate income households are those earning between 50% and 80% of the region's median income. While the actual income figures vary over time, the percentage of low and moderate income households of the total population, in the absence of major economic upheaval, varies little, if at all.

a. Present Need: Present housing need represents low and moderate income households living in severely substandard housing conditions. In lieu of a single indicator of such conditions, present need has been derived from the sum of three categories measured and reported in the 1980 Census of Housing:

- Plumbing: Units lacking complete facilities for the exclusive use of the household;
- Heating: Units heated only by room heaters without flue (space heaters), or completely without heat; and
- Overcrowded: Units with more than 1.1 persons per room

A study by the Tri-state Regional Planning Commission established that 82% of the households experiencing such living conditions are low and moderate income households. 3/ With

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3/ Tristate Regional Commission, People, Dwellings, and Neighborhoods, May 1978, P. 15

little analysis, it is possible effectively to eliminate overlap from the above categories. [4/] Based on that analysis, total present housing need for the eight county region is as follows:

Deficient Plumbing	30,135
Deficient Heating	32,922
Overcrowded	56,626
ALL DEFICIENT UNITS	119,683
Low and moderate income percentage	x .82
PRESENT HOUSING NEED	98,140

It should be stressed that by defining present need as above, we are not reflecting the full scope of lower income housing needs. First, not all categories of substandard housing are included. Structural deficiencies serious enough to prevent rehabilitation may occur in buildings with complete plumbing and heating systems; unfortunately, no reliable data on such conditions are available (it is rare that units are found without plumbing or heating that do not have additional deficiencies). Thus, this is a very conservative estimate.

4/ The plumbing and overcrowding categories are presented in the Census tabulations exclusive of overlap with each other. With regard to heating, the Census provides a tabulation for the number of units lacking central heating that eliminates overlap between that category and units overcrowded or lacking plumbing (STF-3, Table XII, No. 35). This category includes room units with flues; e.g., wood or coal stoves, which may be considered adequate. A separate breakdown of heating equipment in detail (STF-3, Table X, No. 17) is provided, from which the heating-deficient units as a percentage of all units lacking central heating, can be determined. This percentage is then applied to the total from Table XII No. 35, thus providing a reliable estimate of heating-deficient units from which overlap with other deficiency categories has been eliminated.

Second, for every lower income household living in inadequate housing as defined above, roughly two are living in housing that is adequate, but for which they are spending more than 25% of their gross income. This is a need as real as the needs of households living in units with inadequate plumbing or heating. A table illustrating the extent of financial housing need is given below. It was determined, however, that this need could arguably be considered less appropriately met through construction of new units than was the case with physical housing needs; i.e., the units

TABLE I

LOW AND MODERATE INCOME REGION RENTER HOUSEHOLDS SPENDING MORE THAN 25% OF GROSS INCOME FOR RENT 1980

	LOW	MODERATE
Bergen	23,770	11,498
Essex	63,476	14,501
Hudson	49,038	8,448
Middlesex	16,173	7,641
Morris	6,200	4,628
Passaic	25,320	6,456
Somerset	3,473	2,089
Union	19,309	7,325
REGION	206,759	62,586
	269,345	

SOURCE: U.S. Census of Housing (STF-3, Table IX, No. 30). Since the income information in this table was presented in ranges ($0 to $4,999, $5,000 to $9,999, etc., etc.) the range of $0 to $9,999 was used as a equivalent of low income, and the range of $10,000 to $14,999 as the equivalent of moderate income. These closely approximate 0 to 50%, and 50% to 80% of median income in the region, as of 1980. Note also that these numbers include some overlap with housing deficiency categories discussed previously.

associated with financial need do not need replacement, but the families living in them need either increased income or less expensive housing accommodations. Since our intent is to provide for a conservative fair share allocation, and since there is at least some possibility that programs such as housing allowances will be available to meet some of the financial housing need in place, we did not include this need in calculations for allocation within the region. It does represent, however, a significant component of indigenous need.

As an indigenous need category, the number of households living in financial need, although in otherwise sound housing, should be addressed by each of the seven Middlesex County defendant municipalities. If adequate

TABLE II

LOW AND MODERATE INCOME COUNTY RENTER HOUSEHOLDS SPENDING MORE THAN 25% OF GROSS INCOME FOR RENT 1980

	LOW	MODERATE	TOTAL	TOTAL LESS POTENTIAL OVERLAP *
Cranbury	33	18	51	31
East Brunswick	255	245	500	290
Monroe	40	19	59	-0-
Piscataway	877	513	1,400	1,048
Plainsboro	246	389	635	587
South Brunswick	172	126	298	133
South Plainfield	95	82	177	33

* Potential overlap assumes all substandard units are included within total of units in which lower income households spend in excess of 25% of income for shelter.

SOURCE: See preceding table.

subsidies, from Section 8 existing housing programs, welfare programs, future housing allowance programs, etc., are available, this need may be potentially met without new construction. If, however, such subsidies are not available, this need may have to be met by development of lower income housing. However it may be met, it is a part of each municipality's responsibility to its citizens to address this problem as directly as it must address those problems for which new housing units are clearly dictated. Table II presents the relevant data for each of the seven communities.

b. Prospective Need: Prospective need is the number of units needed to provide for the increment in lower income households projected to 1990. This period was specified in Judge Serpentelli's letter of July 25, 1983. 1990 is appropriate since it is consistent with the 6 year period of 'repose' provided for by Mt. Laurel II, as well as the 6 year period for re-evaluation of municipal planning under the Municipal Land Use Law. It also represents, from a general housing perspective, a reasonable period for development to be planned and come to fruition. In order to determine prospective need, three elements must be identified, and combined:

1. The number of added households: We have applied, with regard to population projections, the average of the two 'preferred' projections issued in July 1983 by

the New Jersey Office of Demographic and Economic Analysis (ODEA). This projection indicates a pattern of substantial population decline in Essex and Hudson counties, modest decline in Bergen, Passaic and Union counties, and population growth in Middlesex, Morris and Somerset counties. Based on that projection, household increase was derived based on the assumptions that (1) the rate of decline in household size from 1980 to 1990 would be 60% of the 1970-1980 rate; i.e., a substantial levelling-off in the household size decline curve; 5/ and (2) the percentage of population in group quarters (college dormitories, military barracks, mental institutions, etc.) would remain the same from 1980 to 1990.

A table presenting the household projection by county is provided on the following page.

2. Units lost from the housing stock: Based on a comparison of 1970 and 1980 Census of Housing data, between 1970 and 1980, 3.2% of the pre-1970 housing stock was lost as a result of attrition - demolition, fires,

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5/ Based on annual data gathered under the Current Population Survey, the rate of household size decline began to slow down in 1978-1979, becoming roughly 75% of the 1970-1978 rate. We anticipate, as do most demographers, that this slowdown is a continuing pattern, and on that basis have estimated the 1980-1990 rate of change at 60% of the 1970-1980 rate.

TABLE III

PROJECTION OF HOUSEHOLD INCREASE BY COUNTY TO 1990

COUNTY	1990 POPULATION (1)	POP. IN HOUSEHOLDS (2)	HOUSEHOLD SIZE (3)	1990 HOUSEHOLDS (4)	1980 HOUSEHOLDS (5)	1980-1990 HOUSEHOLD CHANGE (6)
BERGEN	841,350	833,778	2.58	323,170	299,880	+ 23,290
ESSEX	787,400	775,589	2.66	291,575	300,782	(9,207)
HUDSON	527,450	521,648	2.56	207,003	208,062	(1,059)
MIDDLESEX	645,800	625,134	2.69	232,392	196,969	+ 35,423
MORRIS	442,950	433,205	2.83	153,076	131,777	+ 21,299
PASSAIC	442,900	436,257	2.75	158,639	153,587	+ 5,052
SOMERSET	224,250	219,317	2.72	80,631	67,383	+ 13,248
UNION	497,150	492,179	2.63	187,140	177,808	+ 9,332
						+ 88,378

(1) Average of Demographic Cohort and Demographic/Economic projections, N.J. Office of Demographic & Economic Analysis, July 1983
(2) Total population times percentage in households as given in 1980 Census of Population (total population less population in group quarters)
(3) Based on assumption that rate of decline in household size during 1980's will be 60% of measured rate during 1970's
(4) Col. 2 divided by Col. 3
(5) Data from 1980 Census of Population
(6) Col. 4 less Col. 5

conversions to nonresidential use, etc. We assumed that between 1980 and 1990 the same ratio of attrition to housing stock would prevail; i.e., that 3.2% of the pre-1980 housing stock would be lost between 1980 and 1990, and would have to be replaced.

3. Vacancy rate: A production level capable of maintaining a vacancy rate, across the entire housing stock, of 5% for rental units and 1.5% for sales units, was assumed. In order to determine the number of units needed, we assumed that 1980-1990 production would have the same owner/renter breakdown as the existing housing stock, and that the number of units needed for the vacancy rate factor was the target amount (5%/1.5%) less the actual number of 1980 vacancies. 6/

The sum of these three categories was then multiplied by .394, a figure derived from 1980 Census of Population income data which represents the percentage of low and moderate income households in the population. The actual numbers are as shown below:

Household formation to 1990	88,378
Replacement of lost units	51,040
Provision of vacancy rate	15,677
	155,095
Percentage low and moderate income	x .394
	61,107

This represents the prospective regional housing need for lower income households to 1990 to be allocated to municipalities in the region.

6/ This is a generally accepted standard, also used in the housing allocation report by Carla Lerman.

(3) Identification of Allocation Factors

Based on the discussion in Mt. Laurel II of what constituted appropriate fair share housing allocation factors, we have identified and utilized three separate factors as the basis for determining the allocation percentages for municipalities in the region:

- Vacant Developable Land: This factor is an essential control factor; i.e., it determines the realistic feasibility of developing the units called for by the fair share allocation process. The data utilized is that assembled by the Department of Community Affairs in 1978 for the DCA housing allocation study. It excludes wetlands, steep slope lands, agricultural lands, etc., as defined in the DCA study. Although less current than one might hope, it represents the most recent internally consistent source of information available.

- Total Employment: This factor reflects the base of employment in the community, and its share in the total job base of the region. The 1981 covered employment statistics, from the New Jersey Department of Labor, as published in New Jersey Covered Employment Trends 1981, the most recent available, were utilized.

- Employment Growth: This factor reflects recent trends in employment growth, and the generation of additional ratables, in each community. The increase in covered employment from 1972 to 1981, as reported in the above Department of Labor publication, was utilized.

The municipal percentage for each category was determined by establishing the regional total for that category, and dividing by the municipal total. The regional total was determined by taking the gross amount for the eight-county region, and subtracting land, employment, and employment growth associated with (a) municipalities in the region which are completely outside the 'growth area' as defined in the State Development Guide Plan, inasmuch as these municipalities are to be given no regional allocation according to Mt. Laurel II; (b) Urbanaid municipalities, in view of their disproportionately high percentage of lower income households; and (c) municipalities with less than 10 acres of vacant developable land. This last group was deleted because the absence of vacant land would make it realistically infeasible for them to produce housing to meet prospective housing needs on the timetable dictated by those needs.

The municipal allocation percentage is the sum of its percentages for each factor, divided by three. The factors for each of the seven Middlesex County municipalities is given in the table on the following page. An illustration

TABLE IV

ALLOCATION FACTORS FOR MIDDLESEX COUNTY MUNICIPALITIES

	VACANT LAND		1981 EMPLOYMENT		1972-1981 EMP. CHANGE	
	n	%	n	%	n	%
Cranbury	2,626	1.14	3,477	0.30	703	0.24
East Brunswick	2,904	1.26	14,618	1.25	4,382	1.48
Monroe	10,667	4.62	1,117	0.10	947	0.32
Piscataway	2,412	1.05	24,949	2.13	15,635	5.28
Plainsboro	2,150	0.93	2,092	0.18	1,426	0.48
South Brunswick	14,055	6.09	8,465	0.72	4,465	1.51
South Plainfield	1,534	0.66	14,728	1.25	6,666	2.25

NOTES:

Numbers are derived (a) vacant land from DCA housing allocation study; (b) employment and employment change from N.J. Department of Labor, Covered Employment statistics

Percentages are the municipal percentage of the regional total (exclusive of municipalities outside 'growth area' and with less than 10 acres of vacant land) of each category.

is given below, for East Brunswick Township:

Percentage of Vacant Developable Land	1.26%
Percentage of 1981 Employment	+ 1.25
Percentage of 1972-1981 Employment Growth	1.48
SUM OF FACTOR PERCENTAGES	3.99
	- 3
FAIR SHARE ALLOCATION PERCENTAGE	1.33

Although various arguments can be made for weighing one or another factor more or less heavily than others, there is no clear logic to support doing so. Each factor measures a different consideration relevant to the allocation procedure. We have, therefore, given each factor equal weight.

(4) Allocation Procedure

A somewhat different procedure was followed with regard to the allocation of prospective need, and the allocation of present housing need.

a. Prospective Housing Need: The allocation of prospective housing need is carried out in a series of steps:

(1) Each municipality included in the allocation process is allocated an amount of prospective need based on its allocation percentage x 61,107.

(2) Any municipality in which the allocation derived according to this formula is more than twice its total vacant acreage, has the excess re-allocated. 7/

It is appropriate here to make a point with regard to the relationship of vacant land availability to the fair share allocation. It is clear that, if an allocation clearly cannot be accommodated within the available land area of a community, it should be adjusted. That is the purpose of the above re-allocation procedure. Based on the data sources I have utilized, all of the seven Middlesex County municipalities have adequate amounts of vacant land to accommodate their fair share allocations.

There may be communities, however, where a limit on land availability may not be apparent from the statistics, but may turn out to be the case upon detailed investigation. These municipalities have the burden of establishing that

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7/ The 'development limit' of two times vacant acreage was adopted on the basis of a series of assumptions: (a) all or most of each municipality's fair share would be met through inclusionary programs; (b) the average percentage of lower income housing units in developments would be 20%; and (c) the gross density of development would not exceed 10 units per acre. Thus, if all the remaining vacant land in a community were developed at 10 units per acre, with 20% of the units as lower income housing, then the resulting number of lower income housing units would be 2 times the vacant acreage. This is considered a realistic maximum assumption, in the absence of redevelopment of already built-up land.

circumstances have changed. Any downward adjustment, therefore, of any municipality's fair share housing allocation should only take place, on the basis of an explicit finding, grounded in reliable current data, of the present land availability in these communities, at trial, or after trial under supervision of the master. 8/

(3) The total prospective need subject to re-allocation is then allocated to the remaining included municipalities within the region. The sum of the two allocations is the municipality's allocation of prospective need.

b. Present Housing Need: Present housing need is the sum of two separate categories; first, the indigenous housing need within each community, and second, any indigenous need of other communities which is re-allocated. Within the region, 6.4% of the occupied housing stock is inadequate, as defined above. In view of the clear language in Mt. Laurel II that municipalities should not be penalized for their past hospitality to the poor, I take the position

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8/ I believe that this approach is consistent in spirit with the approach recommended by the Supreme Court to deal with the growth area boundary questions affecting both Clinton and Mahwah in Mt. Laurel II. Any amount reduced from any municipality's allocation, however, must be re-allocated, either to adjacent municipalities, or across the region, among communities with ample vacant land available. It cannot simply be wiped out.

that no municipality should be made to take responsibility for indigenous housing needs in excess of 6.4% of its occupied housing stock. The balance should be reallocated to those communities with more modest indigenous housing needs.

Since the re-allocation of present housing needs is, in essence, a process of redistributing lower income households within the region, it is arguably subject to considerations other than simply region-wide re-allocation on the basis of the allocation formula, or the percentage of housing units, or the like. We propose the following scheme for allocating present needs:

(1) As noted above, each municipality is responsible for its own indigenous housing need up to 6.4% of its occupied housing stock;

(2) The indigenous need in excess of that amount, in those counties in which the countywide percentage is in excess of 6.4%, is redistributed across the entire region, on the basis of the allocation percentages;

This results in a re-allocation of 21,476 units of lower income housing need, from Essex, Hudson, and Passaic Counties. The basis for this is given in the table on the following page.

(3) Within any other county (where the countywide percentage is below 6.4%), the excess from those municipalities whose indigenous need is above the average is redistributed within that county.

This results in a re-allocation within Middlesex County of 1,023 units; from New Brunswick (489), Perth Amboy (529), and Helmetta (5).

TABLE V

DISTRIBUTION OF INDIGENOUS HOUSING NEEDS BY COUNTY AND RE-ALLOCATION OF INDIGENOUS NEEDS

COUNTY	OCCUPIED DWELLING UNITS	UNITS LACKING PLUMBING	UNITS LACKING ADEQUATE HEATING	OVER-CROWDED UNITS	TOTAL	TOTAL X 82%	% OF COUNTY HOUSING STOCK	EXCESS OVER REGIONAL AVERAGE (TO RE-ALLOCATE)
BERGEN	300,410	3,462	3,191	5,274	11,927	9,780	3.3%	-0-
ESSEX	300,303	8,292	8,589	16,018	32,899	26,977	9.0	7,758
HUDSON	207,857	7,985	8,539	12,600	29,124	23,382	11.2	10,579
MIDDLESEX	196,708	2,631	1,984	5,009	9,624	7,892	4.0	-0-
MORRIS	131,820	930	1,787	4,931	7,648	6,271	4.8	-0-
PASSAIC	153,463	3,562	5,582	6,662	15,806	12,961	8.4	3,139
SOMERSET	67,368	581	658	1,033	2,272	1,863	2.8	-0-
UNION	177,973	2,692	2,592	5,099	10,383	8,514	4.8	-0-
	1,535,902	30,135	32,922	56,626	119,683	98,140	6.4	21,476

Data from 1980 Census of Housing

The households who make up the re-allocated present need already live in a community within the region, unlike those making up prospective need, who are migrating to the region, or being created by new household formation. Thus, the former already have, to some degree, ties to specific geographic areas. This allocation procedure, therefore, is designed to result in a re-allocation that will place these households somewhat closer to their present community of residence, on the average, than would be the case if the re-allocation were done purely on the basis of regional allocation factors. 9/

The present need allocation, therefore, for each municipality is the sum of the municipality's own indigenous need, to which is added that share of other municipalities' indigenous need, which is re-allocated through the two steps given above. The total fair share allocation for each municipality is the sum of the present need allocation and the prospective need allocation, as previously described.

The fair share housing allocation presented here is for a period from 1980 through 1990, since it is grounded in 1980 Census data on present housing need, and population projections over the 1980-1990 period. It is, therefore, possible that housing activities have taken place in some municipalities prior to promulgation of a fair share goal

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9/ Note that there is no arbitrary cap on the number of present need units that can be re-allocated to any municipality. It is our position that this is inappropriate (see discussion on p. 30 of this report).

that legitimately can be counted toward achievement of that goal. While it is clearly the burden of a municipality to demonstrate that a particular housing development should be counted toward the fair share goal, it is appropriate here to indicate the standards that must be met by any development, or group of housing units, in order to be credited to the fair share goal.

- The units must have been placed in occupancy after April 1, 1980;
- The units must not only be affordable to low or moderate income households, as the case may be, but sold or rented to low or moderate income households under formal selection criteria ensuring lower income occupancy;
- The units must be subject to controls on future sale or rental adequate to ensure that the units will continue as lower income housing for an extended period. Such controls must be explicit and enforceable.
- The units must represent either net increments to the housing stock (new construction, or rehabilitation of formerly vacant or non-residential property), or if not, must represent the upgrading of severely substandard units occupied by low or moderate income households, and continued to be occupied by such households after rehabilitation.

Any unit that does not meet all four criteria is not, in our judgment, appropriate to be counted toward achievement of the municipality's fair share goal.

A table summarizing the fair share allocations for each municipality is given on the following page. We have divided the allocation of low and moderate income households separately for present and for prospective need. Based on an analysis in the Clarke & Caton report, we have divided

TABLE VI

FAIR SHARE HOUSING ALLOCATIONS FOR MIDDLESEX COUNTY MUNICIPALITIES

		INDIGENOUS	PRESENT	PROSPECTIVE	TOTAL
CRANBURY	LOW	14	124	231	369
	MOD	6	48	154	208
	TOTAL	20	172	385	577
EAST BRUNSWICK	LOW	151	294	549	994
	MOD	59	114	366	539
	TOTAL	210	408	915	1533
MONROE	LOW	83	372	694	1149
	MOD	32	144	462	638
	TOTAL	115	516	1156	1787
PISCATAWAY	LOW	253	623	1163	2039
	MOD	99	242	776	1117
	TOTAL	352	865	1939	3156
PLAINSBORO	LOW	35	117	219	371
	MOD	13	45	146	204
	TOTAL	48	162	365	575
SOUTH BRUNSWICK	LOW	119	613	1144	1876
	MOD	46	238	762	1046
	TOTAL	165	851	1906	2922
SOUTH PLAINFIELD	LOW	104	306	572	982
	MOD	40	119	382	541
	TOTAL	144	425	954	1523

present need on the basis of 72% being low income, and 28% moderate income. The prospective need, based on the total household distribution given in the 1980 Census of Population is divided between 60% low income and 40% moderate income. This distinction is consistent with common sense judgment, since all available data indicate that the lower the income, the more disproportionate the share of substandard living conditions.

B. DISCUSSION OF FAIR SHARE ALLOCATION REPORT SUBMITTED TO THE COURT

Having presented our proposed fair share allocation plan, it is now appropriate to review the plan presented by Carla Lerman, the expert appointed by the court to prepare such an analysis. It is clear that there are many differences between our plan and that submitted by Ms. Lerman. It should be noted, however, that differences that occur in this subject fall into two categories; one, where we would argue that an incorrect assumption or procedure has been applied, and a second, where differences in judgment have resulted in two different, but both legitimate, approaches. An example would be with regard to the delineation of region. It is our position that a journey to work or 'commutershed' region oriented around a specific municipality is incorrect, in that it is patently inconsistent with the approach dictated by the Mt. Laurel II decision. There can be, however, more than one arguably legitimate region that does meet the requirements of Mt. Laurel II. We consider the eight-county region preferable, but that does not necessarily make certain alternative regions invalid.

Bearing this in mind, it is our view that, over all, the Lerman fair share allocation report is a reasonable one, with regard to the region, the over-all methodology, and the specific choices made with regard to the various elements leading to a fair share allocation. As will be noted, despite the reservations that are expressed in this report, the outcome of the two studies is not so drastically different as to suggest that there are fundamental errors in data or methodology present in the Lerman report. There are flawed assumptions on procedure, however, which are noted here, and which should be addressed, perhaps in modifications that can be made to the report as it presently stands. Each of the areas in the report is discussed in turn below.

(1) Delineation of a Region

Although the choice of a region in the Lerman report may appear somewhat unusual, it represents a legitimate means of reflecting both the necessary scale of the larger region in which broad regional interactions take place, and the more limited area in which the journey-to-work patterns and direct housing market interactions are concentrated. I would argue that it may not be necessary, in a Mt. Laurel II context, to deal with the latter issues, but it would appear that as long as the overall concern of balancing the housing needs with the resources to meet those needs has been addressed, there is no bar to doing so.

Within the regional approach, however, one point should be noted. The definition of the 'core', in our judgment, is

too limited. Within the immediate core of the region, in addition to Newark and Hudson County, are to be found the communities of East Orange, Orange, and Elizabeth. These communities are contiguous to Newark/Hudson, and share the same disproportionate concentrations of poverty and poor housing that are the basis for designating Newark/Hudson the 'core' in the report. At a minimum, the core area should be expanded to include these communities. A second issue, which bears on allocation of present need more than on region, is the treatment of inner-city municipalities that are not part of this contiguous 'core' area; e.g., Paterson, Passaic, Perth Amboy or New Brunswick.

(2) Determination of Housing Needs

While the determination of housing needs in the Lerman report generally follows accepted methodology, there are certain omissions which should be noted. It is not possible, however, without a major undertaking, to compare the need figures in her report with that presented previously, in view of the difference in approach to region. It is our position, however, that certain modifications should be given serious consideration.

a. Present Need: The failure to include a category reflective of inadequate heating results in an understatement of the extent of present need. It is recognized that all of these indices, such as lack of plumbing, heating, kitchens, etc., are efforts to approximate a general definition of severely substandard

housing which is unfortunately unavailable. It is, therefore, important to use a broad group of categories. Census data provide usable information on units with deficient heating conditions, with a margin of error more than small enough to allow it to be used with considerable confidence. The concern with overlapping categories, where it is possible to make highly reliable estimates, should not prevent one's using such an important measure of housing quality.

Furthermore, we note the absence of any reference to the category of financial housing need. With the qualifications that we have noted in our discussion of this measure of housing need, we believe that it is important to incorporate this measure of need, in some fashion, into the analysis, if not into the actual regional allocation process.

b. Prospective Need: A similar omission is noted with regard to prospective need; namely, the replacement of units lost through demolition, conversion, arson, etc. A comparison of 1970 and 1980 Census data indicates that such losses are considerable. If newly created households are to be decently housed, and there is to be no attrition in the housing conditions of the existing population, a factor for replacement of lost units should be included. As noted in the first part of this report, within the eight-county region, this is estimated to require in excess of 50,000 additional units to 1990.

With regard to other aspects of prospective need, such as the choice of population projections, the assessment of trends in household size, and the like, these differences clearly fall into the category of differences in judgment. The choices made are responsible and sound. It would appear that the differences in this regard tend, nonetheless, to result in roughly similar outcomes.

(3) Identification of Allocation Factors

In both reports, three factors are used, of which two are basically the same (vacant land and employment growth). I would argue, however, that to use the growth in non-residential ratables as the third factor is less desirable, inasmuch as it is largely measuring the same thing as the employment growth factor. Indeed, a review of the data on page 35 of the report shows considerable parallelism between the two factors. While such weight is not necessarily inconsistent with the relevant Mt. Laurel II language, it is preferable in our judgment to incorporate some factor that recognizes the size of the current base of employment and/or ratables. This was the approach as well in the Clarke & Caton report, in which total non-residential ratables were used as an allocation factor. 10/

10/ We note as well that on Table 10 there appears to be an arithmetical error in calculating East Brunswick's percentage of regional growth in non-residential ratables. It appears that East Brunswick's percentage should be 2% and not 2/10 of 1% as given.

(4) Allocation Procedure

Although the differences in choice of allocation factors can be seen as another 'judgment call', it is my position that there are a number of problems associated with the manner in which the allocation takes place, particularly with regard to allocation of present need. Each of a number of issues is discussed below.

a. Inadequate re-allocation of present need: As was noted briefly above, there are a substantial number of communities in which the disproportionate concentration of poverty and poor housing is at least as serious as it is in the 'core' area. The following municipalities all fall into that category: East Orange, Orange, and Irvington (Essex); Passaic and Paterson (Passaic); New Brunswick and Perth Amboy (Middlesex); Elizabeth and Plainfield (Union). Trenton, also in this category, is within the South Metro area, although outside the eight-county region. If the same procedure were followed with regard to these municipalities, the total present need to be re-allocated would increase substantially; there do not appear to be any grounds not to do so.

b. Inappropriate re-allocation of present need: Although the fair share allocation factors are used to distribute present need between Metro North and Metro South, the only factor used to allocate re-allocated present need at the municipal level is that of the municipal 'cap'; i.e.,

the proposition that no municipality should receive an allocation in excess of the regional average of 5.7%. It is our position that this is not appropriate. Each of these municipalities is not only growing steadily, 11/ but typically has substantially lower percentage of lower income households than the regional average. There appears, therefore, no compelling justification for such a 'cap' on present need allocation. Allocating present need on the basis of the same allocation factors as used to allocate prospective need, perhaps with some adjustment such as that proposed earlier, would be preferable.

c. Burden on urban areas: Compounding the lack of reallocation from urban core cities other than Newark/Hudson, is the apparent outcome of the prospective need allocation process; namely, that these communities, such as New Brunswick or Elizabeth, also receive allocations of prospective need if they show growth on either of the two growth factors, or have any vacant developable land. Since inflation alone more or less guarantees that even core cities will show an increase in commercial and industrial ratables from 1970 to 1980 (see Table 5 in the report for Newark), they will receive a prospective need allocation

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11/ Since these municipalities are growing rapidly, their percentage of substandard housing will inevitably decline steadily in any event, in contrast to the situation in the core cities.

even if they have no employment growth or vacant land.

d. Failure to deal with limit on land availability: While the potential effect of limited land availability is addressed in the report, with regard to the implications of the fair share allocation for Piscataway and South Plainfield, it is not integrated into the allocation procedure. As a result, within the region large allocations are being made to communities with little or no vacant land, which allocations should be re-allocated to those communities with ample land resources. Although the arithmetical effort in performing a 'second round' of allocations throughout such a large region is considerable, there is no alternative; otherwise, the outcome is likely to be that a substantial part of the need will be allocated into locations where it is extremely unlikely that it can be met, therefore frustrating the objectives of the fair share plan in particular, and Mt. Laurel II generally.

We suggest that, as was the case with regard to the determination of need, consideration be given to modifications in the allocation procedure, and the report, in line with the above comments.

In conclusion, it is nonetheless the case that the Lerman report represents a responsible approach to determining a fair share housing allocation for the seven Middlesex County municipalities under consideration. In

that context, it should be noted that the proposed allocations, those we have made and those in the report under discussion, are congruent in five of the seven cases, as shown below:

	MALLACH PROPOSAL	LERMAN PROPOSAL	DIFFERENCE M/LERMAN
Cranbury	577	587	(- 1.7%)
East Brunswick 12/	1,533	1,323	+ 15.9%)
East Brunswick 13/	1,533	1,660	(- 7.7%)
Monroe	1,787	769	+132.4%)
Piscataway	3,156	3,613	(- 12.6%)
Plainsboro	575	488	+ 17.8%)
South Brunswick	2,922	1,680	+ 73.9%)
South Plainfield	1,523	1,782	(- 14.5%)

There is little question that most of the modifications proposed in the above discussion would increase the size of the allocations in the Lerman report, at least for those municipalities with ample vacant land. One reason for the apparent consistency between the two reports in the table results from the fact that the absence of these modifications is largely offset by a generally higher population projection base used, as well as the inclusion of counties such as Monmouth and Hunterdon, both of which are

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12/ As presented in Lerman report

13/ As adjusted for apparent arithmetical error in Lerman report

projected to experience considerable population growth. 14/

II. STANDARDS FOR THE PROVISION OF LOW AND MODERATE INCOME HOUSING PURSUANT TO THE NEW JERSEY SUPREME COURT MT. LAUREL II DECISION

After a statement of the basic Mt. Laurel II holdings, this section of the report discusses the standards for development in general, and for each of a number of different housing types, which should be followed in order to make lower income housing possible, and in the absence of which a municipal zoning ordinance cannot be considered to be in conformity with the Mt. Laurel II decision.

A. THE MT. LAUREL II HOLDINGS

Before beginning the detailed technical discussion, it is appropriate to summarize the key holdings of the Supreme Court in Mt. Laurel II which dictate the approach followed in this report. Other holdings, directly germane to specific parts of this report, will be discussed at the appropriate place.

14/ It can reasonably be expected in an analysis of this nature, with such a large number of variables, that when the analysis is done with reasonable objectivity (rather than with a deliberate intent to arrive at a high or a low number) which is the case with both our report and the Lerman report, the 'judgment calls' tends to balance out. An example is the distribution of low vs. moderate income households; the Lerman report uses a lower percentage of low income households in the present need, but a higher percentage for the prospective need. Thus, the final breakdown is roughly comparable, despite the differences in underlying approach.

The Court held that each municipality must provide a realistic opportunity for its fair share of low and moderate income housing to be constructed; in determining what was to be considered 'realistic,' the Court noted:

> Satisfaction of the Mt. Laurel obligation shall be determined solely on an objective basis: if the municipality has in fact provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the Mt. Laurel obligation to satisfy the constitutional requirement; if it has not, then it has failed to satisfy it. (slip opinion at 36)

In order to do so, the Court sets down a series of steps by which a municipality must meet its Mt. Laurel obligation. These steps, it should be stressed, are not alternatives, or mutually exclusive. They are cumulative, in the sense that a municipality must adopt all of them, or as many as necessary clearly to establish that it has provided the opportunity called for.

(1) A municipality must remove, to the extent necessary to meet its fair share obligations, "zoning and subdivision restrictions and exactions that are not necessary to protect health and safety" (at 97);

(2) A municipality must act affirmatively to "make the opportunity real"; i.e., to provide conditions under which builders and developers will actually construct the needed low and moderate income housing. The Court identifies two types of affirmative measures:

a. Encouraging or requiring the use of available Federal or state housing subsidies; and

b. Providing incentives for or requiring private developers to set aside a portion of their developments for lower income housing (at 102).

To the degree that subsidies are available, municipalities are obligated to seek them, or facilitate developers' efforts to do so. The Court recognizes, however, that at present subsidies are in limited supply, and turns to the subject of inclusionary zoning devices, both voluntary and mandatory.

Since this is the core of the decision, it is important to establish clearly the implications of the requirement that a municipality act affirmatively, and the underlying rationale for such a position.

A municipality cannot comply with Mt. Laurel II simply by zoning for higher densities, and eliminating exclusionary standards

The Court has recognized that the elimination of cost-generating provisions in and of itself merely makes the provision of lower income housing theoretically possible. In the absence of affirmative provisions, incentives, etc., there is no reason why a developer will not build housing as expensively as the market will permit. While there is little doubt that most housing built under non-exclusionary standards will be somewhat less expensive than most housing built under exclusionary standards, this is not the concern of the Court. The concern of the Court is to provide

housing for lower income households; in the words used frequently in the decision, housing for the poor.

Even if subsidies were widely available, which they are not, it is still unlikely that simply eliminating cost-generating provisions would enable developers and sponsors fully to take advantage of housing subsidy programs. In suburban communities, particularly those in which market housing demand is greatest, it is likely that parcels of land zoned for higher density development will be bid out of the price range of subsidized housing programs by market demand, again leading to construction only of more expensive units.

Voluntary inclusionary housing programs, referred to as 'incentive zoning' are unlikely to generate lower income housing

The Court takes notice of the existence of voluntary inclusionary programs, referred to as "incentive zoning", and notes experience that "those municipalities that relied exclusively on such programs were not very successful in actually providing lower income housing" (at 109, citing study by Fox & Davis, 3 Hastings Const. L.Q. (1015)). The Court then notes, with regard to this point, that

> a more effective inclusionary device that municipalities must use if they cannot otherwise meet their fair share obligations is the mandatory set-aside (at 110).

The evidence is nearly incontrovertible that New Jersey suburban municipalities will not be able to meet their fair share obligations otherwise, and will therefore be required

to adopt mandatory set-aside ordinances. There is an extensive literature that documents the limited reach of voluntary inclusionary ordinances, such as the Fox & Davis article cited by the Court, and the more recent major examination of the California experience by Schwartz, Johnston & Burtraw, Local Government Initiatives for Affordable Housing (Davis, CA, 1981). The New Jersey experience is fully consistent with this literature. East Brunswick, despite admirable affirmative efforts, was able only to create 168 units of Federally-assisted moderate income units over 7 years. Developers without access to Federal or other subsidies have been unwilling to utilize these voluntary density bonus programs.

It is, therefore, my conclusion that, under all but the most extraordinary circumstances, a municipal zoning ordinance must include a mandatory set-aside program in order to meet its fair share obligation under Mt. Laurel II. It is for this reason that the greater part of this report is devoted to setting forth the basic conditions and standards that must be met by such an inclusionary housing program.

(3) A municipality, unless it can show that it can meet its fair share obligations otherwise, must "provide zoning for low-cost mobile homes as an affirmative device in their zoning ordinance (at 122).

Finally, the Court deals with 'least-cost' housing. This, however, is different from the least cost housing approach, as initially pursued in the Madison decision. In essence, the position that the Mt. Laurel II court takes in this regard is that if it is demonstrated to be impossible, despite every affirmative effort, to provide housing for low and moderate income households, housing must be provided for the lowest income population for whom it is feasible to provide new housing. This point is stressed, since it should be clearly understood that 'least cost' housing, in this context is not a substitute for affirmative measures, and mandatory set-asides, but an adjustment of such measures in the light of economic realities, only upon conclusive evidence that it is not possible to provide bona fide low and moderate income units. It is my position, however, that in the great majority of cases it will be possible to produce at least some percentage of low and moderate income housing, so that the 'least cost' issue need not be addressed directly at this time.

Thus, both the scope of affirmative actions - inclusionary ordinances and other supportive municipal actions - as well as the elimination of cost-generating provisions must be addressed by a municipality seeking to comply with Mt. Laurel II. Furthermore, as the Court makes clear, the scope of the ordinance is not limited to the physical characteristics of the units that are permitted. The low and moderate income units thus provided are to be

affordable to, and occupied over an extended period by, lower income households. The ordinance, either in itself or through regulations or guidelines separately adopted, must deal with these issues as well as the classical physical issues of zoning and land use control.

B. GENERAL DEVELOPMENT STANDARDS, AND STANDARDS FOR SPECIFIC HOUSING TYPES, UNDER A MT. LAUREL II ZONING ORDINANCE

Given the principles set forth in the Mt. Laurel II decision, which have been summarized above, the next step is to translate those principles into specific development standards. These standards provide, first, a basis for evaluating existing zoning ordinances; and second, a basis for modifying ordinances to correspond to the objectives of the decision. An ordinance, therefore, that meets these standards, i.e., that contains appropriate affirmative provisions and incentives, and regulates development according to the criteria set forth herein is likely to be consistent with the Mt. Laurel II objectives. An ordinance which fails in either regard, will not be. That point is important, since the possibility that a municipality will enact a so-called inclusionary ordinance; i.e., one containing a mandatory set-aside provision, and proceed to make it unworkable by virtue of exclusionary and cost-generating standards, cannot be ignored.

Within this section, the first two subsections concern development of inclusionary housing generally: first, standards governing developments in which there is a

mandatory set-aside; and, second, a discussion of the non-zoning incentives which should be coupled with the zoning ordinance in order to further the objective of lower income housing production. The third subsection concerns appropriate development standards for specific housing types. No attempt has been made to be exhaustive; it is anticipated, however, that the thrust of the standards is clear enough so that any additional technical standard can be established without difficulty, based on the principles set forth herein.

(1) Standards for Developments subject to a Mandatory Set-Aside of Low and Moderate Income Units

The basic principle guiding the setting of standards for developments in which a mandatory set-aside is included (as distinct from the standards for the low and moderate income units themselves) is that no standard or regulation should, within the limits imposed by reasonable health and safety considerations, impede the developer's ability to provide the most cost-efficient development realistically feasible. Providing low and moderate income housing, particularly low income housing, places an inevitable strain on the economics of housing development. Imposing cost-generating requirements and other burdens on top of that constitutionally-mandated obligation cannot be justified.

It is likely that in many, if not most, cases municipalities will seek to achieve Mt. Laurel objectives within the context of a planned unit development ordinance,

however it may be characterized. On that basis, the following standards should be followed (many of these apply equally to single-housing-type zones):

a. Mandatory set-aside: The developer must be required to market a proportion of the units at prices affordable to lower income persons. Ordinarily the proportion should be 20 percent. This is the proportion endorsed by the Supreme Court (slip opinion at 129). A larger percentage ordinarily will make development economically infeasible. A smaller percentage ordinarily means that the developer is doing less than it could to meet the housing needs of lower income households.

One point must be emphasized in this context. Mt. Laurel II does not, of course, require that all housing permitted in a municipality must contribute toward meeting the municipality's fair share obligation. A municipality may have large lot zones, agricultural zones, and the like. If, however, a municipality is seeking to meet its fair share obligation through an inclusionary zoning ordinance, that municipality may not zone other parts of the community for development at standards or densities comparable to those of the inclusionary districts, but without an inclusionary requirement. To do so would clearly place anyone seeking to develop under the inclusionary provisions at a disadvantage, thereby hindering achievement of the fair share objectives of the municipality.

b. Resale Price Controls and Affirmative Marketing: There must be a workable mechanism to ensure that the unit continues to be affordable over an extended period to low or moderate income families as the unit is resold or re-rented. There must also be a workable procedure to ensure that all of the initial purchasers of sales units and all tenants of rental units are eligible as low or moderate income households.

c. Flexibility in Residential Mix: The ordinance should provide the developer with maximum flexibility to determine the mix of different housing types, sizes, and the like. Arbitrary percentages of different housing types should be avoided. Minimum percentages of detached single family units must be avoided.

d. Flexibility in Modification: Particularly in developments to be built in phases over a number of years, the developer should be allowed flexibility to modify the development mix in response to changing market conditions and requirements. Ordinances which require extensive submissions, hearings, and approvals for modifications which do not fundamentally change the character and the community impact of a development must be avoided. See N.J.S.A. 40: 550-50.

e. No Non-Residential Development Requirements: There may be no requirements that any minimum percentage of any non-residential (office, retail, industrial) uses be provided within the development.

f. No Unreasonable Minimum Tract Size Requirements: Any minimum tract size requirement must not be such as to interfere with the availability of land for development. A minimum tract size that cannot be achieved without assembly of parcels from more than one owner must be avoided. Note that the Municipal Land Use Law permits residential PUD developments on as little as five acres. N.J.S.A. 40: 550-6.

g. Reasonable Development Densities: Net densities for each housing type should be consistent with least-cost standards as given below. Gross development densities, if included in the ordinance, should be such that they do not interfere with achievement of the net densities provided. 15/

h. Reasonable Open Space Requirements: A planned development should not include excessive open space requirements, thereby unreasonably limiting the number of units that can be provided. 20% of the tract area, in all but the most unusual circumstances, is as large an open space requirement as can reasonably be justified.

15/ Within a large-scale planned development, gross density is the density of residential development as a whole within the perimeter of the entire development; i.e., the number of units divided by total acreage. Net density is the density of development on the residentially-used portion of the site; i.e., total site less common open space, collection streets, public facilities (if any) and non-residential uses (if any). In a small single-housing-type development, built on existing street frontage, there is, as a rule, no significant difference between gross and net density.

i. Reasonable Improvement Standards: Ordinances may not require excessive improvements and facilities within the development. Interior road widths should be modest, in keeping with the level of traffic reasonably anticipated; recreational facilities should be modest, and any additional facilities should be at the discretion of the developer. Developers, and by extension the residents of the development, should not be required to pay through Homeowners' Association fees for services which the other residents of the municipality obtain through their tax dollars.

j. Reasonable Off-Site Improvement Requirements: Sites for development incorporating mandatory set-aside provisions should be located, wherever possible, in close enough proximity to major infrastructure and services so that developers are not required to underwrite major improvements to the community infrastructure. If that is not feasible, the municipality should seek to reduce the cost impact to the developer to the degree feasible, including bonding for the cost of the necessary off-site improvements.

k. Phasing: Provisions must be included to ensure that the required low and moderate income units are phased simultaneously with the market rate units in the same development, with issuance of permits for the market rate units conditioned on proportionate production of lower income units, in order to prevent a developer from

constructing the market rate units, and then reneging on his/her commitment to build lower income housing.

(2) Zoning Land to Make Possible Inclusionary Objectives

The amount of land zoned to meet the inclusionary goals, based on application of the mandatory set-aside approach, must meet certain criteria, of which two are most significant:

a. It must be remembered that the only units that count toward the fair share goal are the low and moderate income units, and not the balance of the units in the PUD or other multifamily development. Thus, the zoning envelope for the district or districts subject to a mandatory set-aside must contain far more potential units than the fair share number. The number it must contain is a function of the set-aside percentage that has been adopted. If, for example, the community adopts an ordinance with a mandatory set-aside of 20% lower income housing, the capacity of the district must be at a minimum five times the fair share. Thus, if the fair share is 1,000 units, one must zone for 5,000 units (5,000 x .20 = 1,000).

b. Simply to zone as above, however, would require perfect efficiency of development throughout the zone to achieve the fair share goal. Since perfect efficiency is unlikely, both common sense and the language of the court in Madison and Mt. Laurel II dictate that overzoning be applied; i.e., that more land be zoned for the

inclusionary program than is theoretically necessary to accommodate the fair share goal. The extent of the overzoning turns on factual proofs and may vary from community to community; it is a function of land ownership patterns, infrastructure, etc. In all cases, it must be structured to ensure that the lower income housing opportunity being created is a realistic one.

Beyond questions of quantity, a point must be made with regard to quality. The land zoned to provide for the fair share goal must be attractive land, suitable for medium and high density development, and realistically likely to accommodate units that will appeal to buyers in the middle and upper income markets. If this is not the case, it is unlikely that the fair share goal will be achieved, in that it is dependent on the existence of a market for conventional housing in the same development. 16/

16/ On a related point, it should be noted that a fair share goal can be furthered by multisite development; e.g., a developer of market rate housing can build his mandatory set-aside on a separate site from that of his market housing. If that is to be allowed, however, it must be limited to lower income housing sites which are (a) of comparable quality to the market rate housing site; and (b) do not present any risk of creating concentrations of lower income population within the community.

(3) Incentives in Support of Development with Mandatory Set-Asides

Mt. Laurel II makes clear that the municipality is obligated to provide substantial support to those developers seeking to build low and moderate income housing, stressing that "satisfaction of the Mt. Laurel obligation imposes many financial obligations on municipalities, some of which are potentially substantial" (at 107). The extent of some potential obligations has been suggested above. Among the obligations that municipalities should be ready to assume, as they may be needed to facilitate production of low and moderate income housing, the following should be noted. This is not necessarily an exhaustive list, as particular circumstances will undoubtedly suggest additional actions and incentives in the future.

a. Facilitate Application for Housing Subsidies: This may range from actions as modest as adoption of a Resolution of Need, as required by the NJHFA statute, to providing technical support, front money, and the like for development proposals.

b. Provide Tax Abatement: While New Jersey law does not appear to provide any means by which tax abatement can be provided to sales housing, provisions exist for abatement of taxes on rental developments. In view of the demonstrably great difficulty in making a rental development affordable to low and moderate income households

(particularly low income), tax abatement should be provided as a matter of course to any developer undertaking such a project.

c. Utilize Community Development Block Grant Funds: Financial support of low and moderate income housing development under Mt. Laurel II should be the highest priority for use of those CDBG funds available to each municipality through the Urban County program. There are a number of means by which this can be done, including land acquisition, infrastructure provision, down payment assistance or mortgage reduction to buyers, etc.

d. Make Municipally-Owned Land Available: To the degree that municipalities have land available in their ownership which is (a) suitable for housing, and (b) not actively in any other use or urgently required for other use, it should be made available at little or no cost to developers to provide low and moderate income housing.

e. Provide Infrastructure: Growing suburban municipalities should have, and in many cases do have, ongoing programs to extend infrastructure and facilities supported by the general fund or the capital budget. Such activities should be coordinated with the development of housing under an inclusionary zoning ordinance, so that the burden on the developer is minimized.

f. Waive fees: Many municipalities impose substantial fees for approval, sewer and water hookups, engineering inspection, etc. Consideration should be given

to waiving these fees, at least with regard to the (± 20%) low and moderate income units within a larger development.

The above are all general approaches, which are likely to be applicable in a variety of circumstances. There are likely to be a variety of specific steps that will emerge out of particular needs. For example, under the County Improvement Authorities Law (N.J.S.A. 40:37A-44 et seq.) municipalities are empowered to guarantee bond issues by such a county authority, which can issue bonds to finance housing and redevelopment projects. This could be a useful source of below-market financing in some cases. In other circumstances, a municipality could make funds available to support the nonprofit corporation which is to administer the occupancy controls required for this housing. The crux of the matter is that Mt. Laurel II obligates each municipality to do what it can, within reasonable but broad parameters, to facilitate meeting its fair share obligation. Anything less is clearly inconsistent with the explicit intent of the New Jersey Supreme Court.

(4) Standards for Specific Housing Types Under A Mt. Laurel II Zoning Ordinance

The above sections have presented overall development standards and incentives appropriate for an inclusionary zoning ordinance. This section will deal, in greater detail, with standards appropriate for specific housing types that may be used by a municipality to meet its fair

share obligation. Before discussing the specific housing types, some standards should be noted which apply generally to all housing types that may be under consideration.

Cost generating provisions, as noted, that are not clearly related to health and safety requirements, have no place in an inclusionary ordinance. While some such features may be considered desirable, for reasons of community taste or preference, such considerations clearly do not supersede the constitutional mandate at issue. Such requirements tend to fall into a number of broad categories:

a. Requirements designed to enhance house value, such as:

- requiring basements rather than slabs;
- requiring excessive parking spaces, or covered parking areas and garages;
- requiring more open space dedication than bears a reasonable relationship to the needs of the occupants;
- requiring facades of certain materials, such as brick or stone;

b. Requirements designed to achieve visual or aesthetic goals, such as:

- 'zigzag' standards, requiring that setbacks of multifamily buildings vary at regular intervals;
- 'no look alike' standards, requiring that houses or townhouses show significant variation from one another in facade, elevation, roofline, etc.;
- excessive open space dedication requirements;
- excessive setback, buffer, perimeter landscaping, and similar requirements.

c. Requirements designed to displace costs onto developers, and by extension, residents of new housing, such as:

- requirements that developer provide major infrastructure or facility improvements at his expense; [17]

- requirements that developers or residents of multifamily developments on PUDS bear the cost of services (snow removal, trash removal, etc.) borne by the municipality in the balance of the community.

Third, floor area requirements unrelated either to occupancy or to minimum health and safety requirements still appear in many ordinances, despite the Supreme Court decision Home Builders League of South Jersey vs. Township of Berlin, et.al. It should be noted that such provisions are banned as a general proposition, not only in areas zoned for least cost or affordable housing.

Although there is no absolute standard of crowding to determine the smallest possible unit that is consistent with health and safety, the existence of, and the extensive experience with HUD Minimum Property Standards (MPS) makes it unnecessary. These standards have resulted in the

17/ Although most municipalities are in conformity with the rule of pro rata sharing of improvement costs set by the Municipal Land Use Law, there are still problems. One such problem is where a municipality requires a developer to bear the entire cost of an improvement, subject to future reimbursement from other developers or landowners. Another is where sites zoned for development are located remote from existing infrastructure, a practice criticized by the Court in the Madison decision.

construction of thousands of livable housing units over the past more than 40 years. They are performance standards; i.e., rather than establish a flat square footage figure for a dwelling unit, they establish requirements for specific rooms, for storage space, hallway clearances, etc., from which an architect can construct a conforming floor plan. The following floor areas are representative of successful units constructed in accordance with the MPS conditions:

1 bedroom	540 to 600 SF
2 bedroom	660 to 720 SF
3 bedroom	850 to 900 SF

In similar vein, the standards used by the Department of Housing & Urban Development as de facto maximum standards for the Section 8 program are:

1 bedroom	540 SF
2 bedroom	800 SF
3 bedroom	1050 SF

In summary, to avoid unreasonable cost-generating effects, floor area standards, if included in an ordinance, should:

- Be no greater than the MPS requirements, and be preferably related to performance standards, rather than flat area requirements;
- Be occupancy related; i.e., vary with number of bedrooms, rather than a single requirement for a zone;
- Be consistent across zones; i.e., the same standard for a unit of a given number of bedrooms should apply in all zones;
- Eliminate any requirement not clearly related to health and safety, such as differential requirements for 1 story, 1½ story, and 2 story single family dwellings.

Given the above, the discussion can now turn to the standards that are specific to each housing type.

a. Standards for Detached Single Family Houses [18]

Lot size, frontage, and front yard setback, requirements must be kept to the absolute minimum, since they relate directly to the cost of the unit. The lot must be big enough to place a modest house upon, to place a driveway for the owner's car(s), and provide some minimum flexibility of layout for privacy. Careful site planning, including utilization of techniques such as zero lot line development or housing types such as patio houses, can make possible attractive development on very small lots. Minimum standards should not exceed:

(1) Lot size no greater than 5,000 SF per unit;

(2) Frontage no greater than 50 feet at the setback line;

(3) Front yard setback no more than 25 feet.

Lot size can be further reduced where clustering is proposed, or where creative site planning and design make it feasible. Side and rear yard setbacks are less significant than front setbacks from a cost standpoint, but should in any event be modest enough so that the feasibility of

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18/ In the interest of completeness, these standards are included. Under current circumstances, it is considered unlikely that any municipality can arrive at a legitimate means of meeting Mt. Laurel II objectives in which development of single family detached housing is a major part of the program.

placing a conventional house on a 5,000 SF lot is not impaired.

b. Standards for Townhouses

The following standards should govern townhouse development:

(1) Gross residential density of at least 10 units per acre (this, and similar standards, would be used to define net density in the context of a large-scale PUD);

(2) Front yard setback no more than 20 feet;

(3) No minimum number of units or minimum tract size for townhouse development;

(4) No minimum width requirement or minimum individual lot size requirement for townhouse development; 19/

(5) No 'aesthetic' requirements such as setback variations, facade variations, etc.;

(6) If a maximum number of units per structure is considered important, it should be no smaller than 16 units;

(7) Open space dedication, if any, should not exceed 20% of the tract area. There should be no requirements for specific recreation facilities except for playgrounds and/or tot lots. There should be no minimum open space requirement for developments of less than 25 units.

8) Parking requirements should not exceed the following: 20/

19/ Many ordinances require a minimum width for individual townhouses, typically 20 or 22 feet. These are totally unnecessary. Individual townhouses can be built, meeting all reasonable standards, to widths as narrow as 12 or 14 feet.

20/ Based on a recent in-depth study of parking requirements of affordable housing developments in Southern California, an overall standard of no more than 1.55 spaces per unit (where no spaces were assigned) was recommended.

- for each 3 or more bedroom unit, 2.0 spaces
- for each 2 bedroom unit, 1.75 spaces
- for each 1 bedroom unit 1.25 spaces

In developments where the total number of spaces is 100 or more, provision should be made for 1/4 to 1/3 of the spaces to be sized for compact cars. No covered parking spaces should be required.

In the event that the development fronts on a major arterial road, or exceptionally busy and heavily trafficked street, the setback can be increased, but not in excess of 50 feet. Berms, buffers, and other similar features should be required only where it is necessary to protect the townhouse development from an adjacent noxious use, and not to protect others from townhouses.

c. Standards for Garden Apartments

The following standards should govern garden apartment developments. These standards apply equally to buildings built for rental or for condominium occupancy.

(1) Gross residential density of at least 16 units per acre if two story, 25 units per acre if three story. Three story garden apartments should be permitted except where a compelling reason exists to limit height by virtue of impact on immediate surroundings.

(2) Front yard setback no more than 25 feet, except where development fronts on major arterial or exceptionally heavily trafficked street, in which case it may be increased, but not in excess of 50 feet.

(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.

(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.