

Expert Report

Cranbury Township : Meeting it's Mt. Laurel
Obligations

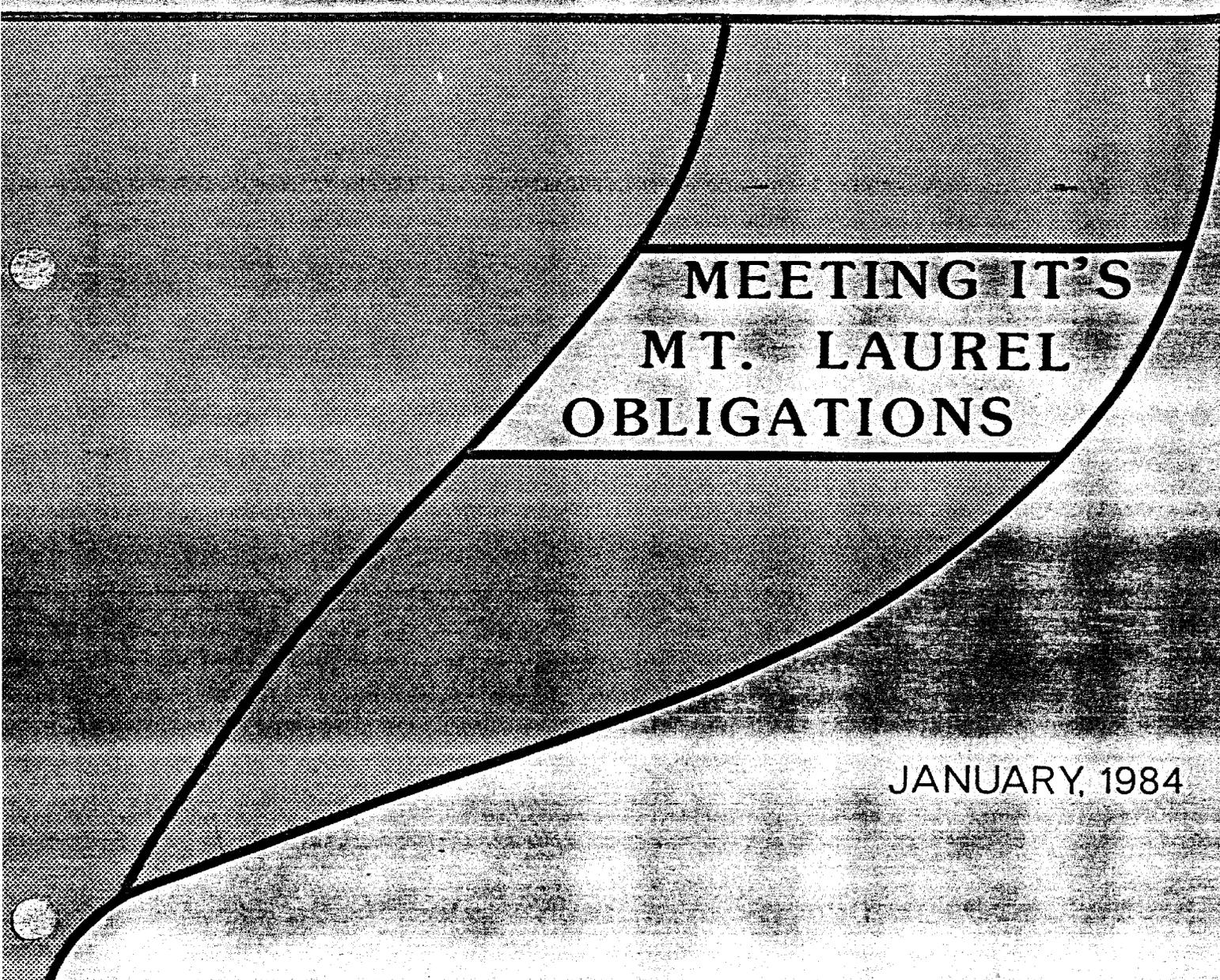
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CRANBURY TOWNSHIP

Middlesex County
New Jersey



**MEETING IT'S
MT. LAUREL
OBLIGATIONS**

JANUARY, 1984

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Princeton Junction • New Jersey

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CRANBURY TOWNSHIP
Middlesex County, New Jersey

INTRODUCTION

The subject property consists of approximately 220 acres of land situated on both sides of Half-Acre Road in the eastern portion of Cranbury Township, approximately one mile east of the Village of Cranbury proper. The subject property is located within the "PD-HD" zone, the only zone in Cranbury Township designated for high density housing in the municipality, and includes approximately one-half of the land in that zone which, in total, comprises 530 +/- acres according to the Township Master Plan. The accompanying display board, "A Portion Of Cranbury Township: Existing Land Use and Zoning", indicates the subject property, adjoining land uses, and current zoning district designations.

The subject property and the zone in which it is located are appropriately designated for high density residential development. As documented in the Township Master Plan, the "PD-HD" zone:

- Is near the Township's major residential concentration, Cranbury Village;
- Has direct access to Route 130 and Cranbury-South River Roads, the only major arterial roads in the Township;
- Is close to Exit 8A of the New Jersey Turnpike;
- Can economically be provided with sewer and water service from Cranbury Village;
- Has no significant drainage, topographic or other environmental limitations to development; and,
- Has no adjoining land uses which are incompatible with high density residential development, with the possible exception of the New Jersey Turnpike along the property's eastern boundary.

The accompanying display board, "Cranbury Township: Zoning and Development Factors", illustrates the current Township zoning and the factors described above which make the "PD-HD" zone uniquely suitable for high density residential construction. Therefore, the Township and plaintiff agree that the subject property is appropriate for high density housing, including "Mt. Laurel II" low and moderate cost units, to help satisfy Cranbury Township's housing obligations.

The remaining issue is whether or not the requirements of the Cranbury Township Zoning Ordinance make it possible for a developer to construct the low and moderate cost dwelling units on the site, and it appears that the Ordinance provisions will prevent such construction. Summarily, the Cranbury Township Zoning Ordinance presents three (3) major obstacles to the production of low and moderate cost housing on the subject property and the remainder of the "PD-HD" zone, including:

- The required purchase of development credits from lands elsewhere in the Township in order to build within the "PD-HD" zone at a density greater than $\frac{1}{2}$ dwelling unit per acre;
- The maximum density permitted within the "PD-HD" zone (5 dwelling units per acre), which is below the densities generally recommended for the construction of affordable housing; and,
- The various "cost-generating" provisions of the Zoning Ordinance which add to the ultimate cost of the housing, but which are not necessary for the health and safety of the residents (see Appendix and letter from Frank Askin, Counsel for the Urban League Plaintiffs, to the Township Attorney of Cranbury, dated October 7, 1983).

It is the specific purpose of this report to discuss the transfer of development rights concept as it has been applied in the Cranbury Township Zoning Ordinance and as it impacts upon the practical feasibility of constructing "Mt. Laurel II" low and moderate income dwelling units.

TRANSFER OF DEVELOPMENT RIGHTS

The concept of transfer of development rights, as a tool for managing municipal growth, has been under study and discussion for some years and has been implemented in several locations outside New Jersey. Within New Jersey, however, virtually no TDR programs have been implemented, although a number of municipalities have adopted TDR ordinance provisions and Burlington County is administering a regional TDR program in the Pinelands area of the State.

All development rights transfer programs involve the sale of rights (from the "sending" area) which are then transferred and applied to another property (in the "receiving" area) in order to permit more dense or intensive development than otherwise would be permitted without the purchased development rights. Development rights transfer programs may be characterized either as preservation programs or development programs, depending upon their primary purpose.

Preservation programs essentially prohibit all development in the "sending" area, and all rights for the development of land in the sending area become a commodity for sale. Preservation programs may be created to preserve historic districts, environmentally sensitive lands, agricultural areas, or open space reservations.

Development programs, on the other hand, permit some growth in all areas, i.e., moderate densities in the "sending" areas and somewhat higher densities in the "receiving" areas. In this manner, the transfer of development rights concept is utilized as an option to make it more attractive (not merely possible) to develop certain lands at relatively high densities, thereby encouraging the clustered development of certain portions of a municipality while, at the same time, relegating other portions of the municipality to develop at significantly lesser densities, specifically in a manner not requiring major infrastructural improvements. A specific model for this type of development program was formulated for the New Jersey Department of Community Affairs in 1978 and is known as "Residential Density Transfer Zoning" (see Appendix for a summary of the program).

At present, the legal authority for transfer of development rights programs in New Jersey is questionable, at best. Although TDR has been upheld by the courts in other states, New Jersey's experience has been mixed. One recent Decision (Matlack v. Board of Freeholders of Burlington County) upheld a TDR program, while another (Centex Homes v. the Mayor and Council of the Township of East Windsor) struck a TDR program down. Bills to establish statutory authority for TDR programs have been under discussion in the State legislature since the 1970s, and a TDR bill (A.591) has been introduced in the current Assembly session.

TDR IN CRANBURY TOWNSHIP

The Cranbury Township Zoning Ordinance designates an agricultural "sending zone" west of Cranbury Village which includes approximately 3500 acres of land, and two "receiving zones", including the "PD-HD" zone (Planned Development-High Density) of about 530 acres and the "PD-MD" zone (Planned Development-Medium Density) of about 135 acres.

Within the agricultural sending zone, housing may be built at a density of one (1) unit per six (6) acres. In lieu of building, however, the owner of property in the sending zone may sell his "development rights", with one (1) right attached to each two (2) acres of "developable" land (the mechanism for determining the number of rights attached to a specific property is a hypothetical sketch plat showing the number of two [2] acre lots that could be subdivided from the property). The sold development rights can then be applied in the receiving zones to increase the density by one (1) additional unit/acre for each right purchased, up to a ceiling of four (4) units per acre in the "PD-HD" zone, or five (5) units per acre if fifteen percent (15%) of the housing is low and moderate income, and up to a ceiling of three (3) units per acre in the "PD-MD" zone, with no bonus for lower cost housing.

Without transferred rights, land in the "receiving zones" can be developed at a density of only $\frac{1}{2}$ dwelling unit per acre; therefore, in order to build at the maximum density permitted in the "PD-HD" zone (five [5] units per acre), a developer must purchase 4.5 development rights for each acre to be developed. As an example, the right to develop the 220 acre subject property at 5 units per acre would require the purchase of 990 development rights; i.e., the rights to about 2,000 acres in the agricultural zone, or approximately fifty-seven percent (57%) of the total acreage in the zone.

Calculating the development potential of the receiving zones indicates that there is insufficient land in the agricultural zone to provide all of the transfer credits needed for full development:

- The 135 acres in the "PD-MD" zone can accept up to 2.5 additional dwelling units per acre, for a total of 337 dwelling unit credits, which would require rights to 675 acres in the agricultural zone.
- The 530 acres in the "PD-HD" zone can accept from 3.5 - 4.5 additional dwelling units per acre, for a total of 1,855 - 2,385 credits, which would require rights to 3,710 - 4,770 acres in the agricultural zone.

Therefore, at least 885 to 1,945 additional acres are needed in the agricultural sending zone to provide the transfer rights required for full development of the "PD-MD" and "PD-HD" receiving zones. In fact, the actual acreage would be greater, as rights cannot be sold for all land in the agricultural sending area.

IMPACT OF TDR ON LOW AND MODERATE COST HOUSING CONSTRUCTION IN CRANBURY

TDR is a potentially useful planning tool, and Cranbury Township is an appropriate place to attempt an agricultural preservation program because of its existing agricultural activity and good soils. However, when the requirements of achieving low and moderate income housing are combined with the requirements of a TDR program, it becomes highly unlikely that the housing goals can be met.

First, there is no certainty about when, if ever, the needed development rights will be available for purchase by developers seeking to build at the maximum densities permitted in the receiving zones. To operate successfully, a TDR program requires a well established market for the buying and selling of the rights; this marketplace does not yet exist in New Jersey, partly because the use of TDR has been limited and its legal authority has yet to be definitively established.

Further, the lack of experience with TDR makes it impossible to assess the costs of assembling the needed development rights and, consequently, it is difficult to project the ultimate cost for the development of "Mt. Laurel II" housing. Moreover, in addition to the cost of acquiring two (2) acres of land for each housing unit built, the development will have to absorb the administrative and legal costs of determining the number of development rights available on a given parcel and of creating the legal instruments for selling the rights.

Importantly, all of these uncertainties and additional costs must be added to the existing uncertainties relating to the use of internal subsidies (set-asides) in the private housing marketplace which are necessary to produce "Mt. Laurel II" housing.

IMPACT OF DENSITY REQUIREMENTS ON LOW AND MODERATE COST HOUSING

The "PD-HD" zone is not only the single area in Cranbury Township designated for high density residential development; it also is the only area specifically earmarked for lower cost housing construction in order to satisfy the Township's "Mt. Laurel II" housing obligations.

The maximum density permitted in the "PD-HD" zone is five (5) dwelling units per acre. Generally, as densities increase, housing can be constructed at a lower cost, for a number of reasons. For one, as densities increase, the cost per unit of land decreases. Moreover, the greater the total number of units in a development, the lower the unit cost for overhead and fixed costs, including design, engineering, administrative and legal expenses and, to some extent, the cost of site improvements such as grading, streets, utilities, recreation facilities and landscaping.

The maximum feasible density will differ for different types of housing in different locations. However, for illustrative purposes, Plate 1 presents various densities recommended by advocates of affordable housing; clearly, there is a wide range of feasible densities for any given type of housing.

The ultimate density for a development which includes both private market and subsidized (set-aside) housing will depend on the mix of housing types and the economics of subsidizing approximately twenty percent (20%) of the units. The economics of the project will depend, in turn, upon the cost of the land, housing prices in the local market, the profit margin they yield, and the level of housing demand in the local market which controls the rate of construction and the build-out period for the development.

Clearly, a density of five (5) dwelling units per acre is too low for an economical set-aside program, particularly when joined with a TDR program.

SUMMARY AND CONCLUSION

Cranbury Township's zoning ordinance makes it infeasible to construct low and moderate cost housing through private market, internally subsidized housing because of the low density permitted in the "PD-HD" zone and the TDR transfer of development rights prerequisites.

A rights-transfer program might work with Mt. Laurel housing if it permitted a reasonable minimum density as of right in the receiving zone, which could be augmented with the optional purchase of development rights in the sending zone. In Cranbury Township's existing ordinance, however, development of the high density housing zone is inseparably linked to the successful operation of the TDR program.

Plate 1

Recommended Densities for Affordable Housing

Housing Type	S O U R C E		
	<u>Affordable Housing Handbook (1)</u>	<u>Burchell Report (2)</u>	<u>Mallach Report (3)</u>
Single-family detached	1-10 du/acre	4-7 du/acre	5,000 sq.ft. lots (about 8 du/acre)
Two-family	6-20 du/acre	-	-
Townhouses	10-20 du/acre	6-12 du/acre	at least 10 du/acre
Garden apartments	15-25 du/acre	12-20 du/acre	at least 16 du/acre (2-stories), or 25 du/acre (3 stories)
Mid-rise elevator apartments	25-50 du/acre	-	40-50 du/acre
Mobile home parks	-	8 du/acre	8 du/acre

- (1) N. J. Department of Community Affairs, The Affordable Housing Handbook, p.27.
- (2) Robert Burchell, et al, Mt. Laurel II: Challenge & Delivery of Low Cost Housing, p. 328.
- (3) Allan Mallach, Expert Report on Mt. Laurel II Issues in Urban League of Greater New Brunswick v. Borough of Carteret, et al, pp. 55-59.

A P P E N D I X



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October 7, 1983

William C. Moran, Jr., Esq.
Huff, Moran & Balint
Cranbury-South River Road
Cranbury, New Jersey 08512

Re: Urban League of Greater New Brunswick v.
Carteret, et al., Docket No. C-4122-73

Dear Mr. Moran:

Thank you for submitting Cranbury Township's current Land Use Plan and the revised zoning ordinance which was enacted on July 25, 1983. We have reviewed these documents in an effort to determine the degree to which the Township has achieved compliance with the decisions of the New Jersey Supreme Court in Mount Laurel II.

The only portion of the ordinance which addresses lower income housing concerns is §150-30(B)(11), which provides a density bonus in planned residential developments (PRD's) for projects in which a certain percentage of the units are developed as low and moderate income housing under a federal or state housing subsidy program. It is plaintiffs' position, however, that this provision does not satisfy the Township's constitutional obligation to provide a "realistic" opportunity for the construction of its fair share of low and moderate income housing, and that substantial revision of the ordinance will be necessary to bring the Township into compliance with Mount Laurel II.

This conclusion is based on four principal factors. First, the density bonus mechanism in the ordinance is subordinated to the Township's interest in preserving agricultural land, as a result of the transferable development rights feature of §150-16; this order of priorities is unacceptable. Second, given the lack of federal housing subsidies and the present high cost of mortgage financing, it is clear that the voluntary nature of the incentives offered by the Township are unlikely to result in the construction of a significant amount of lower income housing and that a mandatory set-aside provision is

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therefore necessary. Third, the ordinance continues to contain a number of unnecessary cost-generating requirements and restrictions that serve as a disincentive to the construction of low-cost housing, even if such development were otherwise feasible under the ordinance. Finally, the ordinance fails to provide for a number of affirmative steps that the Township itself can take to facilitate achievement of its fair share goal. We discuss each of these concerns in turn.

Transferable development rights (TDR's). Unfortunately, the Township appears to have chosen agricultural preservation rather than provision of low and moderate income housing as the dominant theme in the land use element of its master plan. The document evaluates at length the available strategies for retaining agricultural lands but makes only one or two vague and generalized references to the need to expand housing availability. Although we recognize the Township's concerns regarding preservation of agricultural land, such concerns cannot override the constitutional mandate of Mount Laurel, as they do in the revised ordinance.

Under §150-30, any development density greater than one-half unit per acre requires acquisition of development rights from owners of farmland, and such rights are available under §150-16 only after completion of a costly hypothetical subdivision plan that can yield at very best less than one unit of higher density housing for every two acres of farmland involved. Although the TDR system is as yet unproven in Cranbury, it is inevitable that the development rights will command a significant portion of the full market value of the land from which they are severed and that the cost of these rights will effectively destroy the nominal "bonus" allowed under §150-30. The transferable development rights system offers no "realistic" inducement to the creation of lower income housing units and instead creates new obstacles that did not previously exist. It is plaintiffs' position that TDR's may not be required in any form in those portions of the Township intended to provide for low and moderate income housing.

Mandatory set-asides. As the Supreme Court noted in Mount Laurel II, density bonuses and other voluntary incentives "leave a developer free to build only upper income housing" and thus may prove to be insufficient "to achieve compliance with the constitutional mandate." East Brunswick, for instance, has had a voluntary density bonus plan in its ordinance since 1976 that has to date produced only 168 units of moderate income housing.

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It is therefore plaintiffs' position that, to satisfy its Mount Laurel obligation, Cranbury Township must adopt the following measures or other ordinances and provisions which will accomplish the same objectives:

1. The Township must adopt an ordinance which requires that a certain percentage of units in each high-density residential development be set aside for occupancy by low and moderate income households. This percentage must be large enough to enable the Township to meet its fair share obligation, but not so large as to make development infeasible. The Supreme Court in Mount Laurel II suggested that a 20% set-aside, divided proportionally between low and moderate income units based on need, would be appropriate. In return for this set-aside, developers should be allowed to develop at sufficiently high densities to permit the use of efficient construction techniques and economies of scale. We have determined that a minimum gross range of 8 to 16 units per acre, depending on housing type, will be necessary to meet these conditions.

We note that the voluntary incentive program in the present Cranbury ordinance permits a developer to claim the density bonus based on a minimum set-aside of 15% and also that the ordinance sets a maximum density of five units per acre. It is plaintiffs' position that both these figures are too small.

2. The Township's zoning ordinance may not contain any provision under which residential developments at comparable densities may be constructed without a mandatory low and moderate income set-aside. Such alternatives obviously would undermine achievement of the Township's fair share goals.

3. The ordinance must require that lower income units be phased in along with the balance of the project. This will ensure that developers do not render the mandatory requirement ineffective by building conventional units first and then renegeing on the obligation to develop lower income units. We are pleased to note that the present Cranbury ordinance provides for phased incorporation of the lower income units (§150-30(B)(11)), a feature which should be retained in the revised ordinance.

4. The mandatory requirement must apply to a sufficient amount of vacant, developable-land to enable the Township to meet its fair share obligation. Based on a formula which considers factors such as total

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employment, amount of vacant, developable land, and net employment growth, our preliminary calculations show that Cranbury Township's fair share of the regional need for lower income housing through 1990 is approximately 440 low income and 260 moderate income units.

The Township's fair share plan may be accomplished either by allowing high density residential developments with a mandatory set-aside as a conditional use in any non-environmentally sensitive zone or by zoning specific tracts for this type of development. Assuming that a 20% set-aside for low and moderate income housing is used, the amount of land zoned for high density residential development must be sufficiently ample to accommodate five times the fair share requirement since only 20% of the units will be earmarked for low and moderate income housing. In addition, as the Supreme Court noted in Mount Laurel II, it may be necessary to "overzone" for high density development since not all property zoned for a particular use results in development of that use and a failure to set aside enough land may cause an increase in land costs and thus an increase in the overall cost of development. By confining the voluntary set-aside program to only the Planned Development-High Density (PD-HD) zone as it is currently mapped, the amount of acreage made available by the current ordinance is manifestly inadequate to meet the objectives of this paragraph.

5. Provisions must be enacted to insure that units set aside for low and moderate income households will in fact be occupied by such households and that future sales or rentals will also be to low and moderate income families. In this regard, the Township might require the developer to use restrictive covenants for sales, formulate appropriate rent control provisions for rentals, and establish or contract with an independent agency to regulate future transfers. We note that §150-30(B)(11)(a) & (b) require such controls but only for a twenty year period. It is plaintiffs' position that such period should be at least thirty years, and that controls may not be terminated in any event without proof that a substitute unit of properly controlled housing has been added to the Township's inventory. It is our understanding that the Federal National Mortgage Association is currently accepting mortgages with occupancy controls of this length.

To determine what housing costs are affordable to low and moderate income families, we suggest adopting prevailing governmental and trade guidelines which provide that housing costs should not exceed 28% of

family income for sales and 30% of family income for rentals. Housing costs are defined as principal, interest, taxes, insurance and association fees for purchases, and rent and utilities for rentals. Moreover, it must be demonstrated that the units are actually affordable, not only to persons at the top of each income range, but also to a reasonable cross-section within each category. Use of simplistic formulas to determine affordable costs, such as multiplying family income by 2.5 to yield sales prices, are clearly inappropriate for these purposes.

Elimination of cost-generating features. The ordinance should provide procedures that are both streamlined and free of any cost-producing requirements and restrictions that are not necessary to protect health and safety. While we are continuing to review the ordinance to determine whether it complies both with Mount Laurel II and with the technical requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., our initial review indicates that it contains a number of provisions that are inconsistent with the above objectives. These provisions include the following:

1. The 25 acre minimum for planned developments should be removed unless it can be shown that this requirement will not interfere with the development of potential sites suitable for PRD or multi-family projects. Indeed, 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. This discretion should be limited to areas that have previously been determined to be environmentally sensitive. Indeed, East Brunswick Township has already eliminated this cost-producing requirement for all PRDs.

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. §150-76 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 should 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 considerations 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 subject 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 that swimming pools be provided at the rate of three square feet for each resident.

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11. Zoning for mobile homes should also be included as an affirmative device in Cranbury Township's ordinance. The ordinance may provide that such zoning will take effect only if the Township is otherwise unable to meet its fair share obligation.

Affirmative municipal action. Because of current economic conditions and reductions in federal housing subsidies, a mandatory set-aside ordinance alone may not be sufficient to enable a municipality to meet its entire fair share obligation, especially its distinct obligation to address low income housing need. Therefore, Cranbury Township will also have to show, by resolution or ordinance, that it will offer the inducements necessary to meet this obligation fully. These inducements could include making municipally-owned land available for sale or long-term lease for use in development of low and moderate income housing; offering tax abatements to developers for the construction of lower income units; assuming financial responsibility for the construction of roads, sewers, and other infrastructure requirements; and committing a significant portion of the Township's Community Development Block Grant funds to aiding development of such housing through acquisition, write-downs, site improvements, or the provision of subsidies to prospective lower income homebuyers. The Township must also apply for such state and federal subsidies as may be available and encourage and assist developers to participate in available governmental programs.

Finally, plaintiffs note that their views on settlement could be influenced by the disposition of any applications for residential development that are pending before the Township or may come before the Township during these proceedings. Approval of any such applications with a provision for low and moderate income housing applied to a sufficiently large tract of land would reduce the Township's remaining fair share obligation and therefore may affect the possibilities for settlement of this matter.

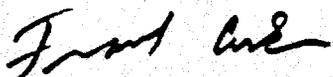
This letter is submitted for settlement purposes only and does not purport to describe the positions plaintiffs will take should Cranbury's Mount Laurel obligation have to be litigated. We are hopeful, of course, that further litigation will not be necessary. In this regard, plaintiffs remain open to discuss with you and your clients any reasonable alternatives to what we have suggested which you believe are likely to result in the construction of low and

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moderate income housing.

We look forward to your reply.

Sincerely,



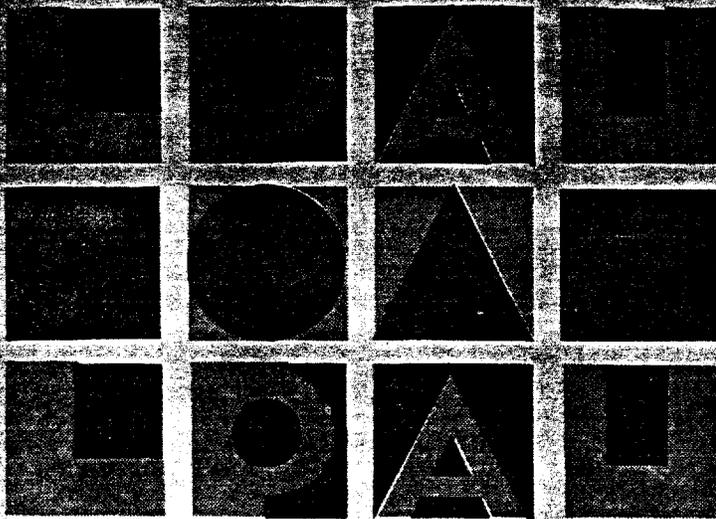
Frank Askin
Counsel for Plaintiffs

cc: Hon. Eugene Serpentelli, J.S.C.
Carla Lerman
Bruce Gelber, Esq.
Jeffrey Fogel, Esq.

SUMMARY OF RESIDENTIAL DENSITY TRANSFER ZONING

PROPOSED AND
AUTHORED BY:

GERSHEN AND COPPOLA ASSOCIATES
TRENTON, NEW JERSEY



SPONSORED BY:
N.J. DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL PLANNING ASSISTANCE UNIT

IN COOPERATION WITH
GLOUCESTER COUNTY COLLEGE

mechanism uses the TDR concept differently than the Cook College approach. The RDTZ concept encourages a transfer in densities from one land area to another, but does not restrict the use of land to agricultural uses only. Instead, every landowner has the right to develop his land as permitted by the zoning ordinance, but he can sell some of his rights to develop to another property owner. Once the transfer of densities has occurred, some lands will be permitted to develop at increased densities. While the Cook College use of the TDR concept and the Residential Density Transfer Zoning use of the TDR concept are quite different, it is possible that both could be used by a municipality at the same time.

THE OVERALL INTENT OF R.D.T.Z.

The overall intent of the Residential Density Transfer Zoning technique is to encourage the construction of a diversity of housing types at high enough densities to permit the opportunity for developers to construct housing for low- and moderate-income families with or without subsidies, in a way that benefits the general welfare. In order to accomplish this intent, the RDTZ technique provides a mechanism to greatly increase the density of development in some locations without increasing the overall number of dwelling units to be constructed in the municipality.

The Residential Density Transfer Zoning technique involves the transfer of development rights from one property to another. The purpose of transferring the rights is to concentrate population growth to those areas best equipped to absorb the growth and to minimize population growth elsewhere. The construction of necessary community facilities and services are commensurately concentrated instead of being inefficiently spread throughout the municipality. The municipality maintains its overall growth ceiling, as established in its Growth Management Plan, but designated growth areas are encouraged to develop at higher densities while other areas are encouraged to develop at lower densities than otherwise permitted.

DELINEATION OF GROWTH AREAS

Similar to a traditional master plan, one result of a growth management planning program will be the delineation of areas determined to be uniquely suitable for residential growth. However, there are two (2) specific requirements for the delineation of the growth areas when they will be used as part of the Residential Density Transfer Zoning technique.

1) The areas designated for residential growth must be similar to each other in terms of their ultimate capability to receive the intended populations. It is probable that certain lands will be more marketable for residential growth in the immediate future, while other lands will become marketable only in the distant future when necessary infrastructure improvements are constructed. Nevertheless, the RDTZ technique requires that, over the lifetime of the plan, all lands designated for residential growth and included within the transfer mechanism will be similarly well suited for development at the permitted densities.

2) The growth areas which are planned to receive the

transferred densities must be zoned for "planned unit residential development" or "planned unit development construction, as defined and permitted by the Municipal Land Use Law. A major goal of the Residential Density Transfer Zoning technique is to control the timing of development. The "planned development" provisions are a necessary ingredient because they can control the timing of development on a single tract of land.

THE DEVELOPMENT RIGHTS

Since the Residential Density Transfer Zoning technique requires that development rights be transferrable from one property to another, it is necessary to provide a mechanism for the distribution and sale of the created rights.

- 1) The RDTZ technique proposes the establishment of development rights on the basis of the number of dwelling units per acre permitted on specific land areas. As an example, if a land area is designated for the construction of one dwelling unit per acre of land, an owner of 25 acres would receive 25 development rights. No real estate appraisal studies are necessary, because all designated lands have already been determined to be similar to each other concerning their potential for development.
- 2) Once the designated number of development rights have been created, records are kept by the tax assessor and acknowledged annually. Each year, the municipal tax assessor verifies on the annual tax bill the number of development rights attributable to each property based upon its acreage and permitted density.
- 3) The sale of the development rights is left completely to the private real estate market. The municipality is not placed in the position of ensuring a market for density transfers. Since no landowner is forced to transfer his development rights in order to realize some development benefit from his property ownership, the fear that lands are being confiscated for public purposes is eliminated even if there is no immediate market for density transfers.

SAMPLE APPLICATION

The Residential Density Transfer Zoning technique may be tailored to meet the unique needs of any municipality. However, for purposes of illustration, a specific municipality is assumed:

- 1) The municipality is currently sparsely developed, but is expecting significant pressures for residential development within the immediate future.
- 2) The municipality has formulated a growth management plan which has considered all relevant planning factors and has documented the capacities and limitations of the jurisdiction to absorb residential growth.
- 3) The municipality has current sewerage facilities servicing only a small area. Therefore, as a starting point, it must designate densities for residential construction based upon the physical capacities of the land. However, sewers are currently being constructed in accordance with a phased plan that will sewer certain

density transfer will be equivalent to 3/4 dwelling units per acre.

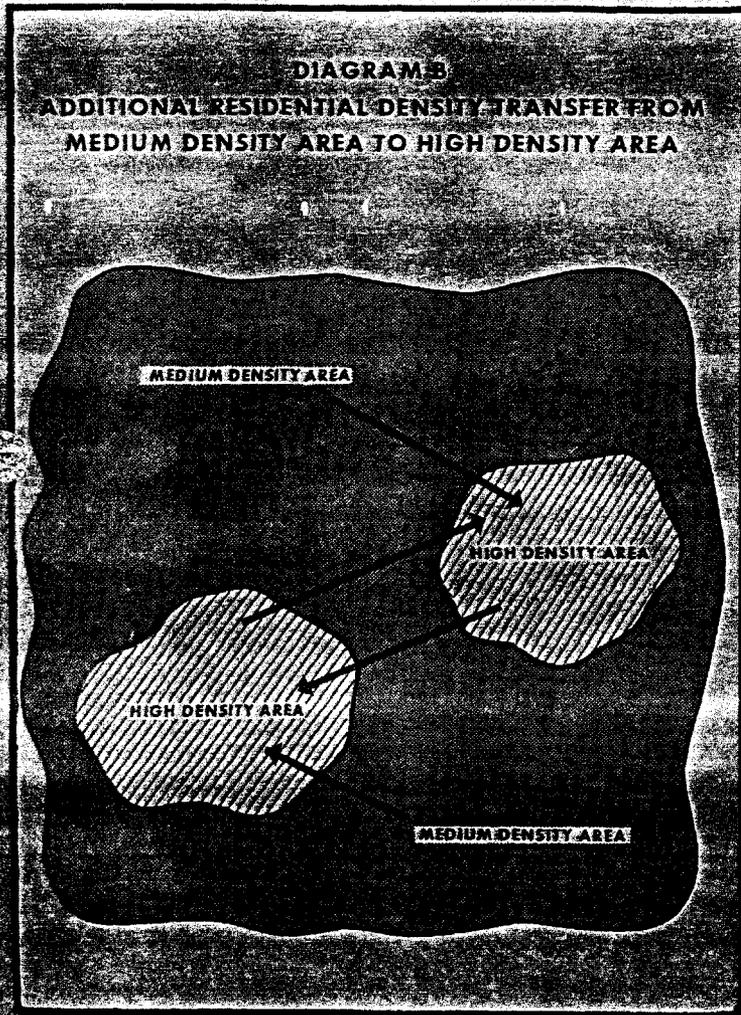
in originally designating its growth areas, our sample municipality considered the planned construction of the public sewerage system. Some areas of the municipality will be served by public sewerage facilities earlier than others. Eventually, certain areas of the municipality will be situated at the fringe of the sewer service area. The expansion of the sewer service area will not be difficult because the service lines will have already been installed. However, if the additional density permitted when public sewerage facilities were provided could be transferred, the necessity of providing public sewerage facilities in the fringe areas would be reduced or eliminated.

public services and facilities to specific growth areas; and,

- 2) Help to ensure the compatibility of the adjacent residential densities, regardless of the number of development rights which are transferred.

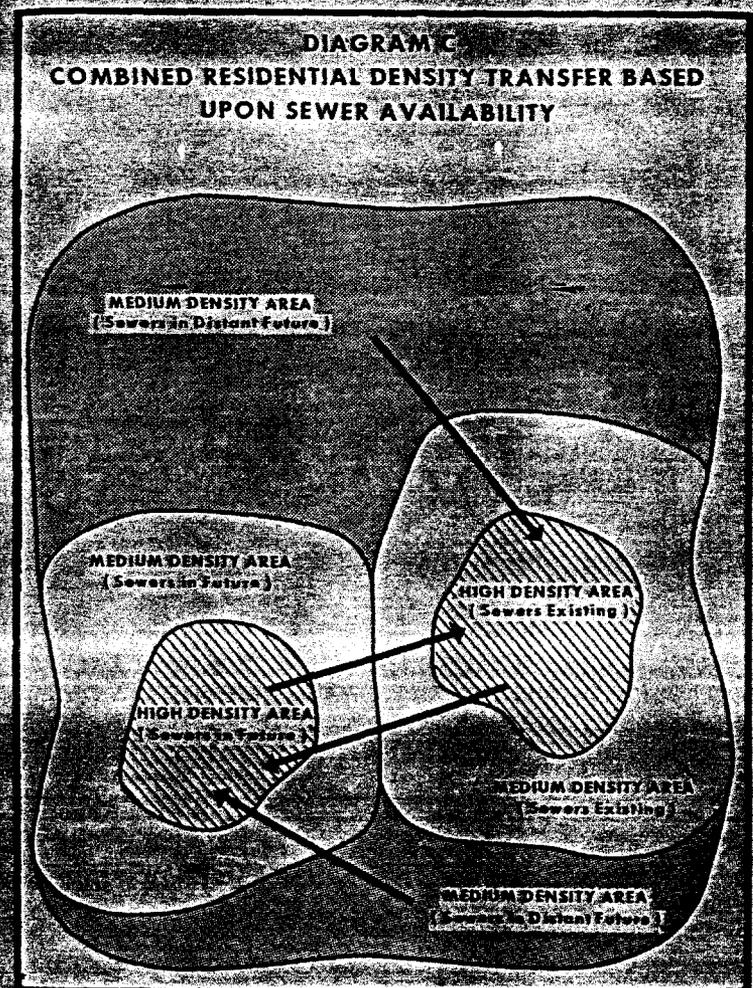
FLEXIBILITY OF USE

The proposed Residential Density Transfer Zoning technique may be used in a number of different ways. Since no two municipalities in the State are identical, this flexibility is important. As an example, a developed municipality may only have a limited number of parcels of significant acreage which are available for new development. The Residential Density Transfer Zoning technique may be used to encourage two separate property owners to cooperate to develop one piece of land at a relatively high density as opposed to



The planned availability of public sewerage facilities presents the opportunity to transfer densities in order to accomplish the most efficient growth of a municipality. Diagram "C" indicates a possible pattern for such a density transfer. As indicated, the medium density areas which either have existing sewers or will have sewerage facilities in the future are not included in the density transfer mechanism. Only those portions of the medium density areas beyond the projected sewer service area are permitted to transfer densities. This approach will:

- 1) Serve to more significantly accomplish the intent of channeling the population densities and commensurate



developing each of their parcels at lower densities. Again, the overall intent is to channel development to specific growth areas in an effort to achieve the most efficient pattern of municipal development and create the opportunity for the construction of low and moderate income housing.

An interesting potential application of the RDTZ technique concerns the construction of subsidized housing. It would be possible for a municipality to create extra development rights to be given as bonuses to a developer who plans to develop subsidized housing as governed by State and federal programs.

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