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"MT Level II Fair Share Computations"
by Chadwick, Coppola & Moskowitz

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MEMORANDUM January 30, 1983

TO: Honorable Eugene D. Serpentelli, J.S.C.

FROM: John Chadwick IV, Richard T. Coppola and Harvey S. Moskowitz

SUBJECT: "Mt. Laurel II" Fair Share Computations:
- ° Identification of Housing Region
- ° Determination of Present and Prospective Housing Need
- ° Municipal Allocation of Housing Need

I. PREFACE

This memorandum was prepared at the request of the Court and sets forth our thinking with respect to regions and fair share methodology. It was prepared after extensive discussions with the Court, with the attorneys associated with the AMG Realty and Timber Properties v. Township of Warren consolidated cases, and among ourselves.

In addition to the "Mt. Laurel II" decision, we also considered the following expert analyses, either prior to the Court hearing or during the proceedings:

- ° Branchburg Township Fair Share Housing Report, prepared by Clarke & Caton, dated November 1983.
- ° Fair Share Allocation Report (Urban League of Greater New Brunswick v. Borough of Carteret), prepared by Carla Lerman, dated November 1983.
- ° Mount Laurel II: Challenge & Delivery Of Low-Cost Housing, prepared by Center For Urban Policy Research, Rutgers University, dated 1983.
- ° A Fair Share Housing Allocation For Ten Municipalities In Morris County, prepared by Abeles Schwartz Associates, Inc., dated October 1983.
- ° Mahwah Township Fair Share Housing Housing Report, prepared by Clarke & Caton, dated July 1983.
- ° State Development Guide Plan, prepared by the New Jersey Department of Community Affairs, dated May 1980.
- ° Individual "fair share" analyses prepared by Harvey Moskowitz, John Chadwick and Richard T. Coppola, respectively, for Timber Properties, Warren Township and AMG Realty & Skytop Land Corporation.

II. REGION

A. Introduction

As a basis for the conclusions and recommendations offered herein regarding the identification of an appropriate housing region for the necessary "fair share" computations, the following observations are noted:

1. The "Mt. Laurel II" Decision (p. 92) reiterates the Supreme Court's previous concurrence with Judge Furman's definition of region (slightly modified) in the Oakwood v. Madison case: i.e., "that general area which constitutes, more or less, the housing market area of which the subject municipality is a part, and from which the prospective population of the municipality would be drawn, in the absence of exclusionary zoning."

2. The "Mt. Laurel II" Decision (p. 92) also states that a trial court can vary this definition premised upon special circumstances, and, furthermore, suggested that the trial court consider the area factors for regional definition mentioned by Judge Pashman in his concurring opinion in "Mt. Laurel I":

    - the area included in the interdependent residential housing market;
    - the area encompassed by significant patterns of commutation;
    - the area served by major public services and facilities; and,
    - the area in which the housing problem can be solved.

3. There is a practical difficulty of formulating one (1) region which reflects all of the stated objectives, since a region formulated to satisfy the place of employment/place of residence housing market criteria may not include a spectrum of urban/suburban/exurban areas; and since a relatively large "metropolitan" region, including a spectrum of built-up vs. undeveloped areas, may not satisfy the place of employment/place of residence housing market criteria for a particular municipality.

4. There are two (2) fundamental types of regions which have been formulated by the various experts who have submitted reports to the Court:

    - "commutersheds", i.e. a geographic area specific to a given municipality that links the place of residence with the place of employment.

    - relatively large "metropolitan areas" that include older and built-up urban areas, suburban areas, and exurban areas.

    As evidenced by those reports utilizing a metropolitan region, the experts have experienced difficulty in justifying the large land areas in the context of commuting patterns, particularly for those municipalities near the perimeter of the mapped land area. A striking example of the difficulty is evidenced by comparing Mr. Caton's report for Mahwah

Township versus his report for Branchburg Township; the former's 8-county region being expanded to a 9-county region on the basis of Branchburg's particular commutershed.

5. We acknowledge the fact that the "Mt. Laurel II" Decision suggested that once a region is established, that region would hold (in terms of fair share allocations) for all municipalities within the region, with the possible exception of those municipalities near the perimeter. However, in analyzing the problem, we suggest that the very nature of prospective need, i.e., being keyed to jobs within a community, precludes the possibility of such a precise regional definition for more than one municipality at a time. However, a precise regional definition can be determined for the purpose of computing and allocating present need.

6. Regarding present need, the "Mt. Laurel II" Decision (pg. 72) states that:

> "all municipalities' land use regulations will be required to provide a realistic opportunity for the construction of their fair share of the region's present lower income housing generated by present dilapidated or overcrowded lower income units, including their own. Municipalities located in "growth areas" may, of course, have an obligation to meet the present need of the region that goes far beyond that generated in the municipality itself; there may be some municipalities, however, in growth areas where the portion of the region's present need generated by that municipality far exceeds the municipality's fair share. The portion of the region's present need that must be addressed by municipalities in growth areas will depend, then, on conventional fair share analysis, some municipality's fair share being more than the present need generated within the municipality and in some cases less.

The idea of rectifying current imbalances within the region of dilapidated and/or overcrowded lower income units, possibly the result of past exclusionary zoning provisions in some portions of the State, is further stated in the "Mt. Laurel II" Decision as follows:

> In other words, each muncipality must provide a realistic opportunity for decent housing for its indigenous poor, except where they represent a disproportionately large segment of the population as compared with the rest of the region. This is the case in many of our urban areas. (92 NJ 158 at 215)

7. For the purpose of computing and allocating the "surplus" present need within the State, a commutershed region may not be broad enough to contain both the muncipalities with a disproportionate share of the lower income units and the muncipalities with sufficient vacant developable land to accomodate the allocated units. Instead, a fixed region is

approprite, since it is possible to pinpoint the current imbalances and formulate an area wherein the housing problem can be solved.

B. Recommendations

Based upon the foregoing observations, it is recommended that two (2) independent housing regions be utilized for the computation of regional fair share housing obligation:

1. For prospective housing, a commutershed is appropriate, based upon the U.S. Census data regarding the travel time to work by the employed residents of most New Jersey municipalities.

   - it is suggested that the communting region be drawn on a map from a point in the the approximate center of the subject municipality, assuming different speeds for different types of roads, as follows:

     Interstate Highways - 50 mph
     State and Federal Numbered Highways - 40 mph
     County Roads - 30 mph

   - while it appears that those in the labor force desire and, for the most part, achieve work trips of a distance requiring 30 minutes or less of travel time one-way, it is also evident that many travel more than 30 minutes; i.e., travel time to work for employed residents in Warren Township in 1980 was:

Under 30 minutes	-	59.5%
30-44 minutes	-	24.5%
45-59 minutes	-	6.7%
60 minutes or more	-	9.3%
		100.0%

     Therefore, 84% of the employed residents in Warren Township spent less than 45 minutes traveling between home and work.

   - since the travel time to work statistics for most New Jersey Municipalities reflect similar percentages, a 45 minute commutershed appears reasonable for purposes of calculating a municipality's prospective housing need.

2. For present housing need calculations, a metropolitan region is appropriate, considering the "Mt. Laurel II" requirement that municipalities located within "growth" areas may be obligated to provide housing units, in addition to their indigenous need, in order to satisfy the present housing need in the region that cannot fairly be satisfied within those cities and areas currently overburdened by a disproportionate number of dilapidated and overcrowded units.

° it is suggested that six (6) metropolitan regions are reasonable and workable, including:

I	Sussex and Warren
II	Passaic, Bergen, Morris, Essex, Hudson, Hunterdon, Somerset, Union and Middlesex.
III	Mercer and Burlington.
IV	Monmouth and Ocean.
V	Camden, Gloucester and Salem.
VI	Atlantic, Cumberland and Cape May.

° each of the regions contain both relatively built-up urban areas and municpalities with sufficient vacant land to accomodate the allocated "surplus" present need units.

° it should be noted that Region II coincides with the 9-county region propounded by Caton in his Branchburg report, and Region IV coincides with Region 4 propounded by the Center For Urban Policy Research. Moreover, Region II contains approximately 61% of the State's population (1980 Census); approximately 50% of the State's total land area; approximately 2/3rds of the State's Urban Aid Municipalities; and approximately 49.5% of the "growth" area designated on the State Development Guide Plan (Guide Plan, p. 170).

C. Comments

1. The most obvious question regarding the use of a commutershed to determine and allocate prospective housing need is whether or not there is an overlap and double counting when a fair share analysis is prepared for a second municipality within the same commutershed as the original municipality for which the analysis was first prepared. The question of duplication is a real one until one realizes that the singular goal of the analysis is to conclude a prospective fair share allocation for a given municipality. The determination of the region's total prospective fair share, therefore, is only an intermediate step in formulating the municipality's fair share allocation. Once the given municipality's fair share has been determined, the regional figure is no longer needed, and a new calculation must be undertaken for each other municipality based upon the commutershed principle.

We liken the use of the commutershed prospective need methodology to the scaffolding that one would erect in order to construct a house; once the house in completed, the scaffolding is dismantled, but may be

used again to construct another house. Similarly, the commutershed egion is operative only for the municipality around which it is mapped, although the commutershed methodology can be used again for other municipalities.

2. It is important to note that municipal land use regulations will allow the housing construction to meet the "Mt. Laurel II" mandate; regions do not adopt such regulations. Consequently, it is our opinion that the inability to formulate a single region for prospective fair share housing computations and allocations is of little import, given the solid legal, planning and historical basis for the use of the commutershed methodology (see Southern Burlington County NAACP v. The Township of Mount Laurel, 67 NJ 151, 336A.2d 713, Appeal Dismissed and Cert. Denied, 423 U.S. 808 [1975] [Mt. Laurel I] and Oakwood at Madison, Inc. v. Township of Madison, 117 NJ Super).

III. FAIR SHARE COMPUTATIONS

A. Indigneous Housing Need

The "Mt. Laurel II" Decision states that every municipality in New Jersey is responsible for meeting its indigenous housing need. The language of the Court specifically references two (2) components of indigenous need, including dilapidated housing and overcrowded housing units.

1. The minimum level of indegenous housing need is based on the amount of dilapidated housing in the municipality. The Court states: "Every municipality's land use regulations should provide a realistic opportunity for decent housing for at least some part of its resident poor who now occupy dilapidated housing." (pg. 26) A number of statistical approaches have been used by various consultants, all utilizing 1980 Census data, sometimes with a percentage factor for "overlap" counting. Bath deficiencies, kitchen deficiencies, plumbing deficiencies, and heating deficiencies have all been used.

2. In another reference, the Court includes overcrowded housing in defining indigenous housing need: "...all municipalities' land use regulations will be required to provide a realistic opportunity for the construction of the region's present lower income housing need generated by present dilapidated or overcrowded lower income units, including their own." (pg.72) The number of overcrowded units within a municipality also is categorized in the 1980 Census.

3. In addition to dilapidated and overcrowded units, some planners, including Messrs. Moskowitz and Chadwick, but not including Mr. Coppola, have suggested that indigenous need for "growth" municipalies also include a financial component. Specifically, the Court's discussion of Mt. Laurel Township's own housing suit refers to the inclusion of a "financial" component in the method used by that municipality to calculate its indigenous need. Additionally, Mr. Moskowitz points out that

footnote number 8 of the "Mt. Laurel II" Decision states that lower income families should not have to spend more than twenty-five percent (25%) of their income for housing. Therefore, Mr. Moskowitz suggests that indigenous need also should include the lower income families in the municipality who make less than eighty percent (80%) of the local median family income but who pay more than twenty-five percent (25%) of their income for housing.

Mr. Coppola, however, feels that the so-called "financial" component is not explicitly set forth in the "Mt. Laurel II" Decision and can only be inferred. Moreover, any financial component represents a need which may more appropriately and effectively be met with subsidies for housing expenditures, rather than construction of new housing and displacement of families from suitably constructed dwelling units. Moreover, utilizing a financial need component does not account for the choice of particular households to expend relatively large portions of their disposable income for their household costs; including, for example, "empty nesters", retirees, widows, and widowers. In addition, the number of low income households reported in the Census is probably an inflated figure, as people tend to under-report income to official sources. Moreover, there is a double-counting between overcrowded and physically substandard dwelling units versus low income households paying more than twenty-five percent (25%) of income for housing. Additionally, it must be remembered that the financial data in the Census is already four (4) years old; household income and household costs may have changed significantly in the interim and some of the households may no longer reside in the municipality. Finally, the financial need calculation tends to increase the housing obligations of those municipalities already housing a substantial number of relatively poor households.

B. Prospective Housing Need - Calculation

At the outset, the three experts agree that there is not a singularly appropriate formula for computing the total prospective housing need in a defined region. To word it positively, there are a number of acceptable methods by which the total prospective housing need can be determined for the specific prospective region (the 45-minute commutershed).

1. There are four (4) basic methods which have been utilized by various experts to determine the total prospective housing need, including:

   - Population Projections (Department of Labor & Industry 1990 Projections: Model 1 - Economic/Demographic Base and/or Model 2: Age Cohort/Demographic Base), divided by the estimated future household size;

   - Employment Projections (projected from 1972-81 employment growth, because 1981 is the most recent year for which data is available

and 1972 is the earliest year in which the definition of covered jobs is consistant with current years), correlated with the current ratio of households per jobs (0.759);

- Age Cohort Projections correlated with household formation rates through the use of standard tables; and,

- Household Formation Projections

2. While each of the above listed methods has its own advantages and drawbacks, we jointly agree that the projection of population (with a conversion to number of households by dividing the projected population by probable future household size), increases the possibility of significant deviation in the estimate of prospective housing need, because:

   - the differences between the population projections published by the Department of Labor and Industry (Model 1: Economic/Demographic vs. Model 2: Demographic/Cohort) are significant, i.e., Model 1 projects a 21.5% population increase for Somerset County between 1980 and 1990, while Model 2 projects a decrease of 0.7% during the same time period;

   - in any case, the projected population figure for a defined region will be a very large number, making it is statistically vulnerable to generating significantly different results if divided, for example, by small numbers only slightly higher or lower from each other; and,

   - in addition to projecting the population figure, one must convert the number of projected people to the number of projected households, entailing another projection into the future; specifically, what the average household size will be at the projected date. Clearly, since the projected population figure will be a very large number, any difference in the projected household size (Caton @ 2.59 persons/household vs. Abeles @ 2.71 persons/household) can have a significant effect on the overall projected need for housing units within the defined region and, in turn, a significant effect on the allocated number to a particular municipality within the region.

3. The experts also agree that the use of employment projections as a basis for determining prospective housing need is more finite than utilizing population projections and, moreover, the conversion of jobs to households does not involve a second major projection (i.e., the ratio of households to jobs is more predictable than the projection of household size). Additionally, the use of employment projections is specifically related to an overall theme of the "Mt. Laurel II" Decision, i.e., to

relate future places of residence with future places of employment, and the necessary computations are easily accomplished:

- employment growth can be projected within the 45-minute commutershed prospective need region by projecting the employment growth between the years 1972 and 1981 on a straight-line basis to 1990, a reasonable time period for planning and producing housing. Therefore, job growth is projected with the assumption that the regional average annual job growth from 1972 to 1981 will continue during the period 1982-1990. Although a simplifaction, this method is statistically sound as it reflects a broad data base, years of expansion and contraction in the State's economy, and avoids the need for complex economic analysis;

- once the employment growth is ascertained, the number of anticipated new jobs is converted into the number of total new housing units within the prospective need region using the statewide ratio of household growth to job growth between 1970 and 1980. During that ten (10) year period, private sector covered jobs increased in the State by 434,758 and households increased by 330,043, resulting in a conversion factor of 0.759 (i.e., for every private new sector job, 0.759 new households were created);

- utilizing the current job/household ratio results in more housing units than may actually be needed, since the trend is for more employed people per household;

- once the housing demand to 1990 is projected, an additional number of units (usually four percent [4%]) is added to account for vacant housing and housing losses through demolition, fire, etc.; and,

- the proportion of the total number of projected housing units in the 45-minute commutershed region considered to be "low" and "moderate" is equal to 39.5%, since, according to the 1980 Census, 39.5% of all households in the State of New Jersey had annual incomes of eighty percent (80%) or less of the statewide average.

C. Prospective Housing Need - Allocation

Again, the three experts agree that the various factors used to allocate prospective housing need each have their pros and cons; what is most important is that an appropriate package of factors be utilized.

1. The major factors utilized by various experts to allocate the prospective housing need include:

   - the "growth" area in a municipality as a percent of the "growth" area throughout the region;

- the covered employment in a municipality, 1981, as a percent of the total covered employment in the region;

- the covered employment growth in a municipality between the years 1972-81 (or between the years 1975-81), as a percent of the total employment growth within the region;

- the commercial and industrial ratables in a municipality, 1980, as a percent of the total ratables within the region;

- the vacant developable land throughout those municipalities designated all or in part "growth" (not the vacant developable land in "growth areas" only), as a percent of such vacant developable land within the region; and/or,

- the vacant developable land within "growth" portions only of those municipalities designated all or in part "growth", as a percent of such vacant developable land within the region.

2. While each of the above listed allocation factors has its own advantages and disadvantages, we agree as follows:

- the consideration of vacant developable land throughout a municipality (not only within designated "growth" areas) is flawed, because the end result is a locational allocation which can be a significant departure from the State Development Guide Plan;

- the consideration of "growth" area in a municipality as a percent of the "growth" area throughout the region is flawed, because it skews the housing allocation to certain of the already developed municipalities within the State;

- any allocation formula should include the municipality's present percentage of existing employment in the region as well as the municipality's percentage of covered employment growth during recent past years, i.e., 1972-81; the 'existing' percentage as an indication of existing infrastructural improvements and the "growth" percentage as an indication of the developing nature of the municipality; and,

- in addition to the municipality's percentage of existing employment and recent employment growth, a third allocation factor should be the municipality's share of the vacant developable land within the region's designated "growth" areas; however, the current acreage tabulations in the State Development Guide Plan are based upon 1972 aerial photographs and are out of date.

D. Present Housing Need - Calculation and Allocation

1. The experts support a variation of the method suggested by Carla Lerman to determine present need, although other methods are equally as valid. The Lerman method requires the determination of the overcrowded and dilapidated housing within the appropriate region and, thereafter, calculating an overall percentage of the total number of such deficient housing units compared to the total number of occupied units within the region. The resulting percentage becomes the 'key' statistic in the prescribed methodology; if a "growth" municipality has less than that percentage of deficient housing versus total housing, the number of units required to bring that municipality's share up to the regional percentage is allocated to the subject municipality. Municipalities in the urban core, where the percentage of deficient housing is in excess of the region's percentage, do not have to provide any present need as set forth in "Mt. Laurel II".

2. Mr. Caton, on the other hand, applies his prospective need allocation model (percentage of vacant developable land, plus employment growth, plus non-residential ratable growth) to the present need figure and reallocates the "surplus" accordingly. Mr. Caton also tests the municipality's ability to accept the reallocation by multiplying vacant land by four (4) dwelling units per acre; if a municipality's vacant land is insufficient to accommodate the assigned "surplus" units, then the surplus is further reallocated (the experts liked the "test" feature, but recommend omitting the vacant developable land figure until it becomes more current; additionally, we observe that employment growth and non-residential ratable growth measure the same thing).

IV. DETERMINATION OF MEDIAN INCOME

The three experts agree that the following methodolgy be utilized to determine the median income figure (and thereby the low and moderate income limits) within the defined prospective housing need region:

A. The median income figures for each member municipality of the 45-minute commutershed region should be tabulated from U. S. Census data;

B. Either "household" or "family" median income figures can be used. Mr. Moskowitz prefers household income figures because they include all persons living together as a unit under one roof, as opposed to family income figures which include only two or more persons either married or blood related. Mr. Chadwick prefers the family income figures and observes that the term 'family' is specifically used within the "Mt. Laurel II" Decision. Mr. Coppola is somewhat ambivalent at this time regarding the use of household versus family income figures, agreeing with Mr. Moskowitz that it does not make sense to eliminate one-person housholds (since such households may be a significant proportion of the prospective

housing need; i.e., the elderly, young professionals, etc.), but also feels that the higher family median income figures may be more sensible as the benchmark dollar amount for implementing the "Mt. Laurel II" goals.

C. Once the median income figures for each member municipality have been tabulated, they should be "weighted" to reflect the relative number of dwelling units (either households or families, as the chosen method dictates) within the various municipalities; thereby rectifying prevailing density imbalances within the region. The weighted dollar amounts are then averaged to reflect the median income figure for the region.

D. Since the 1980 Census is the most recent data source for median income figures, and since the 1980 Census reports 1979 dollar amounts, it is necessary to adjust the median income figures to current dollar values in accordance with an agreed upon percentage increase model.

E. Basically, two (2) percentage increase models can be utilized to adjust the 1979 median income dollar amounts to current dollar values; i.e., a Consumer Price Index (CPI) model (either at 100% or a lesser percentage thereof), or a per capita income increase model. Advocates of the CPI adjustment model argue that the Consumer Price Index is appropriate because it measures a household's ability to pay for consumer goods, including shelter, and is regularly updated. On the other hand, the Consumer Price Index is tabulated only for an 8-County northern area of New Jersey and a 3-County southern area; therefore, the CPI model is not universally applicable throughout the State. A difficulty with the per capita increase model is that the information is not as current as the CPI; 1982 per capita income figures are the most recent available at this time. By way of comparison, the CPI increased by 29.3% in the 8-County area between 1979 and 1982 and by 30.6% in the 3-County area, while per capita income increased by 33.7% throughout the entire State during the same time period.

F. All three experts agree that the requirement for low vs. moderate income housing units should be evenly split, 50% low and 50% moderate, as opposed to the 60% low and 40% moderate income split currently prevailing in the State. Additionally, the experts agree that the proportion of household income permitted to be spent on housing should be 30% (possibly 28% for rental units and 30% for sales housing), as opposed to the 25% maximum referenced in the "Mt. Laurel II" Decision; in other words, the percentage maximums should reflect prevailing HUD standards for subsidized housing.