

Cranbury

5/28

(1985)

Draft of expert report on Cranbury Twp

Mt. Laurel II compliance program (by Alan

Mallach)

+ proposed changes in the report

12 pgs

yellow note: 1026

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EXPERT REPORT ON CRANBURY TOWNSHIP MOUNT LAUREL II  
COMPLIANCE PROGRAM

Prepared by Alan Mallach on behalf of the Civic League of  
of Greater New Brunswick

May 1985

#2  
Site units

Site 5?

INTRODUCTION AND OVERVIEW

On July 27, 1984, the Hon. Eugene D. Serpentelli, J.S.C. signed an order requiring Cranbury Township to revise its zoning ordinance and other land use regulations in order to meet its fair share of regional housing need, which number was determined to be 816 low and moderate income housing units by the year 1990. In December 1984, after an extensive series of meetings and hearings, the Township adopted a compliance program, which was referred by the Court to the court-appointed master, Philip E. Caton. Mr. Caton, after reviewing the compliance program, submitted his report to the Court in April 1985. The Court subsequently scheduled a hearing in this matter, and instructed the parties to submit such additional reports as they considered appropriate. This report represents ~~the position of the Urban League plaintiffs~~ with regard to Cranbury Township's proposed approach to compliance with Mount Laurel II.

my

It should be noted that the focus of this report throughout is on the report of the master, rather than directly on the Township's earlier submission, although we have sought to distinguish those areas where the two differ. In particular, the report deals with the major questions of site suitability and development phasing, the two major policy-related issues involved in Cranbury's compliance program. Since almost every conceivable issue is addressed in some detail, either in the Township report or the Caton report, this report will seek to be succinct, and (after a brief overview) limit its comments to specific points, to a statement either of agreement or disagreement with the Caton report or the Township report, and a short statement of the reasons for any disagreements.

This report is grounded in the same fundamental policy propositions which animate both the Township report and the Caton report. First, that the Mount Laurel II decision unequivocally requires that the provision of lower income housing be effectively integrated with sound planning and environmental principles; and second, that the objectives of historic preservation and farmland preservation are both legitimate and significant planning objectives, worthy of

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careful consideration. We further agree that Cranbury is both a clearly appropriate community in which to apply the phasing rationale of Mount Laurel II. Therefore, while there are differences expressed below with the specific conclusions of the Caton report, with regard to site suitability and phasing, they are differences of degree, and differences in the manner in which information is interpreted. The differences do not embody any fundamental difference in what planning principles are considered most appropriate to apply, or any disagreement with the proposition that, to the extent reasonably feasible, the Mount Laurel compliance process should be integrated with the ongoing efforts of the Township to maintain farmland, and to preserve the historic character of Cranbury village.

### SITE SUITABILITY

The Caton report deals with the suitability of the four plaintiffs' sites (at 29 to 34), as is done below. These are sites 1, 6, 7 and 9 as shown in the Township compliance plan. The other sites that have been offered by non-plaintiffs are not formally evaluated here, as it will remain within the Township's discretion to determine whether or not to rezone those sites, after the determination has been made with regard to the four sites submitted by plaintiffs. At issue is not only whether the sites are suitable for some amount of multifamily development, but the number of units, or density, that should be permitted on each suitable site.

#### 1. Site 1 (Garfield)

There is no disagreement among any party over the suitability of this site for multifamily development. With regard to the number of units or density to be provided, the Township has proposed, and the Caton report concurred in, a reduction in gross density from 9.2 units/acre to 7 units/acre, or from 2,000 units to 1,530 units on the site.

The appropriate density of a site, particularly one which is made up of nearly flat farmlands such as Site 1, is in the final analysis a matter of judgment, and a matter of balancing factors. The frequently-heard assertion by developers and their attorneys, that a particular high density is necessary to "make the setaside work" is rarely capable of being substantiated. In this case, there is no readily apparent argument that a development with a 20 percent setaside is not economically feasible at 7 units per

2

*Amended  
2/3  
or  
p. 8*

We hold that where a developer succeeds in the Mount Laurel litigation and proposes a project providing a substantial amount of lower income housing,<sup>37</sup> a builder's remedy should be granted unless the municipality establishes that because of environmental or other substantial planning concerns, the plaintiff's proposed project is clearly contrary to sound land use planning.

*As to the remedy  
Q2. a 10% award  
in compensation - based  
on the loss of profit*

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acre/1. [The arguments for reducing the density to that level, while based on subjective judgments, are nonetheless reasonable. We concur with the proposed designation of this site at the density of development recommended by the Township.]

1?

2. Site 6 (Zirinsky)

There is substantial disagreement with regard to this site. The developer is seeking 1152 units on 144 acres (a density of 8 units/acre) while the Township has recommended that it not be rezoned at all. The Caton report has recommended that approximately 60-70 acres of the site be rezoned at an overall density of 4 to 5 units per acre. This represents, in general terms, that part of the site between the village and the roadway proposed by the developer. While that roadway, in the developer's scheme, would be internal circulation for the development, the Caton report sees it as an opportunity of creating a "hard edge" to the village, and a buffer between the development of Site 6 and the farmland to the west.

We believe that the position of the Caton report is sound. The Township does not support its arguments that any development on this site is violative of the historic character of the village; indeed, there are many examples where new development at medium density is effectively integrated into historic settings not unlike this one. Thus, we believe that it is suitable for some multifamily development. Furthermore, the concerns raised in the Caton report, with regard both to the scale and the character of development on this site, are compelling. While a historic village can often accommodate additional development, such development must be carefully scaled and designed so that it does not distort the balance of the local environment. We believe that at the scale, and with the density gradient, proposed in the Caton report, this development can take place in a way that will strengthen rather than harm the historic character of the community.

Put as sep A

1/Reasons for needing higher density may be particularly high land costs or particularly high offsite improvement costs (relative to the number of units involved), or the absence of a market for relatively expensive market-rate multifamily units, particularly townhouses, at the site. There is no evidence that these reasons are substantially found here.

2/An important consideration, which should be briefly noted, is the actual design of this project. If this project is to be developed, it is essential not only that a highly qualified architect, with demonstrated sensitivity to historic preservation, be hired, but that Cranbury Township enact and implement an ordinance providing for thoroughgoing design review procedures in the village area, and establish a design review panel made up of highly qualified individuals.

see -  
Cranbury  
to  
lower  
density

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*In essence, specific siting of the boundary road may permit inclusion of a larger number of acres.*

On its face, the recommendation that 300 units be permitted on this site does not raise overwhelming feasibility questions. 300 units is a large development, with ample opportunity for separate clusters and reasonable economies of scale. ~~While we are not prepared to conclude that 300 units is an absolute upper limit for this site, in terms of its being developed in a manner consistent with the character of the village, we do not see at this time any compelling evidence to dictate increasing the number of units permitted beyond this level.~~

*appear to believe that the next step is for the developer to propose a project conforming to the guidelines established in the Caton report*

3. Site 7 (Toll)

Both the Township report and the Caton report found this site to be not suitable for multifamily development. We concur in this finding/3.

4. Site 9 (Cranbury Land)

Both the Township report and the Caton report found this site as well to be not suitable for multifamily development, based on certain planning considerations. In this case, however, we differ to some extent with their conclusion. Again, it is not a fundamental difference of perspective, but rather one of interpretation and assessment of the same information.

The argument, in essence, is grounded in highly judgmental concerns; namely, the extent to which development of Site 9 represents sprawl, and the extent to which, if developed, it will have a negative effect on the efforts to preserve farming in the area designated by the Township for agricultural preservation, generally the farming belt west of the village. It is our conclusion that the potential negative effects of this site, or the deficiencies of this site from a planning standpoint, are not so severe as to justify finding it to be unsuitable, although, as is discussed below, we do consider it appropriate to reduce the scale of development on this site below what is presently proposed by the developer.

In essence, the manner in which this site is evaluated is a function of the extent to which it is considered an intrusion into the farmland belt as distinct from an extension of existing development. We believe that not enough weight has been given to the Shadow Oaks development, both existing and approved for development. By the time that development is complete, the bulk of the land west of the village and south of Old Trenton Road will have been developed, as well as a substantial section north of Old Trenton Road. It has been argued, not without good reason, that the

3/It is our understanding that the developer of this site has withdrawn it from further consideration in this litigation.

*because the... appear to... believe that... the next step is for the developer to propose a project conforming to the guidelines established in the Caton report*

*omit*

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approval of Shadow Oaks was unfortunate, and inconsistent with current planning goals of the community. This is undoubtedly true, but largely irrelevant, since it exists. While there are those who would disagree, we do not consider large lot single family development such as Shadow Oaks any more compatible with farmland than a well-planned multifamily development at moderate density.

The existence of the section of Shadow Oaks north of Old Trenton Road (23 large houses) has substantially reduced the extent to which Old Trenton Road can be seen as a true boundary of Cranbury's agricultural area. Thus, from the standpoint of farmland preservation, if perhaps not from the perspective of the visual effect experienced by those driving along Old Trenton Road, the impact of extending development along the northern side of that road up to its intersection with Ancil Davison Road does not appear to be that significant<sup>4</sup>. It has also created a situation in which development in that immediate area is at least to some reasonable degree the extension of existing development, rather than intrusion into a new and undeveloped setting.

A further consideration is that of the future course of the proposed S-92, which is anticipated to pass through Cranbury, through the western part of Site 9, and cross from there into East Windsor Township<sup>5</sup>. It is hard to tell what

<sup>4</sup>It should be noted that, while the visual element of farmland preservation; i.e., the ability for others to find pleasure by driving through farming areas, may be a significant factor in generating public support for preservation activities, it is not a significant factor in whether the farming activities actually survive. Their survival is dependent, of course, on a host of economic factors, most of which are beyond the control of a single municipality. Indeed, given the relatively small area of this farming preservation area, and the extent to which its farms are leased rather than owner-operated, we fear that the prognosis, on a long-term basis, is not likely to be positive.

<sup>5</sup>The proposed developers of Site 9 have argued strenuously that the proximity of this site to East Windsor Township, and the development that has taken place on the other side of the Millstone River floodplain, is a significant consideration in supporting its development. ~~We have not, and do not, think much of this argument.~~ It should be noted, however, that depending on the precise alignment and design of S-92, its construction across the Millstone River in this location could significantly reduce the extent to which that river and its banks now act as a natural barrier between the two communities.

*This is not a persuasive argument.*

the effect of the S-92 alignment will be on the farmland area, but it is unlikely to be a positive one, particularly in the area immediately around that highway's interconnection with Old Trenton Road. That would suggest that a reasonable boundary for the farmland area could easily lie some extent to the north of Old Trenton Road. This could lead to an effort to establish the boundaries of the farming area along the northern boundaries of the development north of that road, and beyond that point, along Ancil Davison Road. Assuming that development on that part of Site 9 east of Ancil Davison Road is carefully handled, a point discussed immediately below, we see no reason why its development is incompatible with any rational program for preservation of the farmland preservation area.

As was the case with other sites, while we find it suitable for multifamily development, we believe that such development should be limited in order better to conform to the planning goals of the community, as well as better to blend into the character of the area. As was implicit in the comment above, we believe that development of this site should be limited to that part of the site east of Ancil Davison Road/6. Second, we believe that the density of development on that part of the site should be substantially reduced, in order to make possible the retention of substantial amounts of open space within the development, and the creation of appropriate transitions to the farming areas and the adjacent single family development. Development at a density of approximately 5 units per acre, resulting in approximately 300 units on the site, should be permitted.

#### PHASING OF DEVELOPMENT

Both the Township report and the Caton report recommend that Cranbury's fair share obligation be phased over a more extended period than the six-year period which has come to be seen as customary. The justification for permitting such phasing is set forth cogently in the Caton report (at 42-48), a justification which we find completely reasonable. It is hard to imagine any community in New Jersey that would be more radically transformed than Cranbury by development of the magnitude that is at least theoretically possible. We accept, therefore, the recommendation that the fair share obligation be phased over a period longer than six years.

It remains necessary to arrive at specific numbers which reflect this general principle. This includes determining first, the total fair share number to be phased; second, the period over which it is to be phased; and finally, the distribution of units between the different phases of the overall schedule. In this regard, we differ to some extent



with the specific proposal set forth in the Caton report.

The Caton report sets forth an extensive rationale for incorporating only 6/10 of the prospective need determined under the Warren methodology into any municipality's fair share obligation to be satisfied over the next six years. In essence, the rationale is that since the prospective need is based on a 10 year projection, and since the compliance period is to be six years, then it is only reasonable to require that only 6/10 of the projection be achieved during that six year period. While arguable, this has a certain logic to it.

The logic, however, in our view, tends to dissipate when put into the context of a plan which explicitly contemplates meeting the fair share need over a longer than six year period, which is what is proposed here. Since the period during which it will be carried out will indeed be longer than ten years, there is no apparent reason for reducing the percentage of prospective need to be met below the amount dictated by the Warren methodology. Thus, in our opinion, the total fair share allocation to be phased should remain at the level of 816 established by the Court.

With regard to the second question, we agree with the Caton report that a twelve year period is an appropriate one for purposes of phasing. That will provide for two target periods, one from 1985 through 1990, and the second from 1991 through 1996.

Given the two periods, we believe that the logic of phasing dictates that more units be provided in the second period than in the first, since the population and housing base for the second period will be larger than it is at present. In that manner, the growth curve, reflecting the rate of increase, will not vary too widely from one period to the other. We believe, as a rule of thumb, that a target which, if achieved, would result in 40% of the total fair share goal being achieved during the first period through 1990 is a reasonable one. That, in turn, suggests a goal of 320 to 340 lower income units through 1990.

Achievement of this goal appears possible without drastic modification of the detailed scheme set forth in the Caton report (at 51-54). With regard to the Garfield proposal, the timetable shown at 52 appears reasonable. With regard to both the Zirinsky and Cranbury Land projects, it appears reasonable to expect, assuming the sites are rezoned as recommended in this report, that both would be developed in full during the first period, through 1990. Applying these

*State RM rationale*

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propositions, and factoring in the projected contributions from rehabilitation and from development by Cranbury Housing Associates into the picture, we obtain the following phasing schedule:

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 PROPOSED PHASING OF FAIR SHARE GOAL FOR CRANBURY TOWNSHIP

|                             | LOWER INCOME<br>UNITS | MARKET RATE<br>UNITS |
|-----------------------------|-----------------------|----------------------|
| PERIOD 1: 1985-1990         |                       |                      |
| Garfield                    | 94                    | 556                  |
| Zirinsky                    | 60                    | 240                  |
| Cranbury Land               | 60                    | 240                  |
| Rehabilitation              | 21                    | 0                    |
| Cranbury Housing Associates | 100                   | 0                    |
|                             | <u>335</u>            | <u>1036</u>          |
| PERIOD 2: 1991-1996         |                       |                      |
| Garfield                    | 212                   | 668                  |
| Cranbury Housing Associates | 100/1                 | 0                    |
| Additional Sites/Projects   | 169                   | NA                   |
|                             | <u>481</u>            | <u>668+</u>          |

1/Depending on feasibility considerations, availability of subsidies, etc., this number could increase.

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 This schedule contains, of course, one major question mark; i.e., the category "additional sites/projects". It is our position that Cranbury should have the greatest possible latitude to determine the manner in which the additional units are to be provided, within the parameters set down in the Mount Laurel decision. How best to do so, of course, raises questions. While there are additional sites in the Township which are suitable for multifamily development, and could be so zoned now, such zoning could trigger more units during the first period than Cranbury may be required to see built. It is hard to imagine, on the other hand, that a rezoning that specified that the owner could not develop under that zoning until after 1990 would be appealing. If, however, Cranbury chooses not to rezone at present, and to defer such action until (for example) 1988 or 1989, they risk having the most appropriate multifamily sites developed at lower densities, and having to select less desirable sites in order to accommodate the balance of their fair share.

*Step up zoning?*

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This question does not have to be addressed at this time, since it is a legal issue as much as it is a planning question. It will, however, have to be addressed by Cranbury Township in its compliance program, at the appropriate time.

In closing, we believe that the Township report and the Caton report represent, separately and together, a highly desirable movement toward the achievement of fair share goals in Cranbury Township. With the modest adjustments recommended in this report, we believe they represent the basis for an outstanding Mount Laurel program, balancing the goal of decent housing for all with important and complex planning issues.

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5/28

Alan:

These are proposed changes in the Cranbury report. Eric and I thought it might be easier to write them out and then talk with you about them. The overall report is fine -- these are tinkering, for the most part.

Page 1: As a matter of technical form, the expert's report should be from the expert alone, rather than from you and us. At the end of the first paragraph, could you modify the last sentence accordingly?

Page 2: Introductory paragraph on site suitability. Either here or on page eight (footnote), could you note that sites 2 and 3 are also suitable. (The judge asked specifically at the case management conference that we note this point.)

Page 3 (Garfield): Omit the last two sentences and substitute: "On the other hand, the proposed density of 9.2 dwelling units per acre does not appear to be contrary to sound land use planning on environmental or other grounds. Therefore, resolution of the density question should be determined by which party bears the burden of proof under Mount Laurel II." The Judge may well agree with your view, but I would like room to submit my legal argument that the developer's proposed density prevails unless the town shows that it is unsound. I think this is the correct reading of the case; see 456 A.2d at 452.

(Zirinsky): We think your footnote 2 is an important point and could justifiably be elevated to text status (although not yet a Prince of the Church). You should also clarify or emphasize what I think you mean, that in order for Cranbury to obtain reduced density on this site, it should have to show that it has adequate design controls in place so that the preservationist objectives of reduced density will be adequately served. A formal prerequisite?

Page 4 (Zirinsky): We'd like to convince you to make a significant modification in the first paragraph at the top of the page, so that it would read as follows:

"On its face, the recommendation that 300 units be permitted on this site does not appear to raise overwhelming feasibility questions. Three hundred units is a large development, with ample opportunity for separate clusters and reasonable economies of scale. We are not prepared to conclude that 300 units is an absolute upper limit for this site, however, in terms of its being developed in a manner consistent with the character of the village. For instance, specific siting of the boundary road proposed by Mr. Caton might permit development of a larger number of acres, if the road could be moved slightly to the north and west. Because we agree that the municipality has carried its burden of demonstrating that the development as originally proposed would be contrary to sound land use planning, the developer should now be permitted to propose a project conforming to the guidelines established in the Caton report, with the modifications suggested here."

Here, as with Garfield, we'd like to argue as a matter of law that the town has the burden of showing non-suitability, while clarifying that Zirinsky should be able to come up with a more modest proposal before we take a final position.

Page 4 (Toll): Drop the footnote. The site is unsuitable whether or not they are still in the case, and we don't know for certain that they are out.

Page 5 (Cranbury Land): In footnote five, omit the sentence about not thinking much about the argument, and simply say "This is not a persuasive argument." or something mushy-mouthed like that. Your wording is a bit harsh and jars the tone of exquisite reasonableness that you have otherwise maintained.

Page 6: Where is the text for footnote six?

Page 7: I know what you mean in the first two paragraphs, from talking to you, but I don't think they read clearly. How about this as the ~~first sentence of~~ the second paragraph:

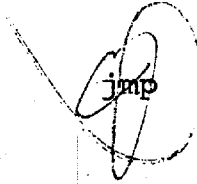
"The logic, however, dissipates if the 6/10 fair share is not achieved during a six year period. If, as Mr. Caton proposes, the 6/10 fair share is actually phased over ten years or more, there is no reason not to include in this phasing the entire 10/10ths of the fair share that should in theory be included during such a ten year period. Thus, in our opinion, the total fair share allocation to be phased should remain at the level of 816 established by the Warren methodology and ordered by the Court."

Page 7: In the last paragraph, it would help to give a brief rationale for why Zirinsky and Cranbury Land should build out during the first phase. (Our understanding is that this is to encourage the successful builder-plaintiffs as much as is economically feasible.)

Pages 8-9: It is useful to raise the question of how to zone the tracts that won't develop immediately. Why not propose,

as we've discussed, that the 2d stage tracts be zoned for agriculture use now (their present use), with an automatic provision in the ordinance that they step up to high density use in 1991. I'm prepared to argue in a supporting legal memorandum that this would be permissible under New Jersey law, and it would assure that the land remained available until 1991 without placing the burden on plaintiffs to insure that the rezoning took place at that time.

We'll give you a call after you get this. Thanks for getting it done so quickly and so well.

A handwritten signature, possibly "jnp", is enclosed within a circular scribble. The signature is written in a cursive style.

P.S. I've included Eric's marked up copy, which has some minor grammatical and typographical notes.