[redacted] Old Bridge 1983 (date unclear)

— me re Old Bridge Ordinance + its defects
— Memo re examination of Old Bridge Ordinance

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no p.i. ML000148D

[redacted]

To: Urban League Team
Fr: John Grele
Re; Old Bridge ordinance

Old bridge adopted this ordinance in April of 1983 so we can assume that they were aware of the Mount Laurel decision.

The most glaring defect in their ordinance is the section designed to meet the Mount Laurel II requirements entitled "Affordable Housing", 9-5:2.1.3. This section permits a developer to apply for a density bonus if that developer makes some adjustments in the development plans: 10% of the total planned development units must be declared available as affordable; the housing cost cannot exceed 30% of the annual family income of a "least cost" family; and such a family is one with four or more members and earns 20% or less of the current median family income for the New Brunswick SMSA. In contrast, we have consistantly maintained that in order to comply with the Mount Laurel II decision, 20%, divided equally between low and moderate income families, of the housing must be reserved for those families. Furthermore, the figure of 20% of the median family income is too high. We have stated that the maximum should be 80%.

The section itself is only optional; it is one of four such density bonuses that a developer may chose to use or not. This type of voluntary plan is exactly the kind of scheme that the court disfavored and that we objected to. Also, the maximum benefit allowed under this section is only .2 per acre (.2/A). The maximum benefit allowed from all four bonuses totals 1.2/A for a Planned Development I (PD1) and .6/A for a PD 2.

The ordinance also contains excessive fees and duplicative application proceedures. Section 2 explains the fees. A fee is required for every stage of the development and for the inspection of the development. That fees is tied to the number of units being constructed so that a developer with a large number must pay a larger fee. The requirement that a PD have a much more extensive application proceedure is not itself too burdensome. Yet Old Bridge's requirements are duplicative and unnecessary. An example of the former are the three times a developer must explain in detail the densities of the development. 7-7:1.2.1(a), 7-7:2.1.1 (j), and 7-7:3.3.1. This may not be too much to ask of the developer since under 9-5:2 the density bonuses can be added to the project at a later date. An example of the latter is the requirement that the fiscal impact of the development be assessed twice. 7-7:1.2(j) and 7-7:3.3.2. In the letter to Cranbury we state that this provision should be removed unless a showing of need can be met. The ordinance also requires a three-step proceedure (General Development Plan, Preliminary Plan, and Fianl Plan) whereas the Municipal Land Use Law only requires a two-step proceedure. N.J.S.A. 40:55D-46 and 50.

The maximum allowable densities themselves are too small. The base allowable denstiy of a PD1 (exclusively residential) is 2.2/A and with bonuses the maximum can only be increased to 3.4/A. PD2 requires at least 10% of the units be commercial of industrial and the corresponding figures are 3.4/A and 4/A. 9-5:1. In our letter to Cranbury we suggest that anywhere from 8 to 16/A is sufficient.

In order to achieve a "variety of residential densities" the ordinance outlines a mixture of density-types and uses according to parcels. 9-6:1. A parcel is that portion of the land that is actually being used. The types of uses are placed into four catagories which range from low to high density. The two highest catagories are the only two which contain Multiplex housing, the housing type most likely to be used to house low or moderate income families. 9-6:1 charts these out. The problem is that no Medium or Medium-High parcel densities are allowed in PD2. Pd1 remains free of any of the housing types or parcel densities likely to further the towm's Mount Laurel obligation.

Within a Planned Deyelopment, there are a numerous uses allowed. In fact, almost every use is allowed in a Planned Development. 4-3. This encourages developers to ignore their Mount Laurel obligation and to build nonresidential or low density residential developments. The fact that a density bonus is given to a developer for building 5 to 10% of the gross project area in a PD1 as commercial or office development only futher encourages this tendency. Furthermore, there are underlying uses for Planned Developments. These are both low density residential and nonresidential uses. Low density single family detached development is even an alternative to PD in a Planned Development zone. 4-4:2.3.

The Planned Development minimum and maximum total allowable ares restrict the developer in such a way as to discourage low and moderate inclome development. A PD1 must be between 25 and 300 acres. 9-4:1. A PD2 must be at least 300 acres. These arbitrary minimums were discussed in the letter to Cranbury and there it was noted that there is a much lower minimum in the New Jersey Municipal Land Use Law. Also the minimum lot size for a high density residential development (R-7) that is not in a Planned Development (although it is a permitted use) is too low. It is 7,500 square feet. 4-5. Our expert has suggested that 5,000 is a better figure. The minimum maximum allowable lot coverage is only 20% which seems low..

Amoung the amenities that would produce an unnecessary burden upon the developer are the following:

- -9-7:6 requires a 100 square foot patio area for each unit in a PD.
- 9-8:1(b) states that at least 23% of the total Pd area be open space.
- -11-1:4 requires a service road alongside any arterial with an 8 foot wide divided between the road and the arterial.
- -9-9:1 requires two access roads for every PD. In a PD1 one or both of these can be a minor arterial. In a PD2 both must be major arterials. This essentially requires two service roads in eac PD.

-12-1:5 requires acceleration and deceleration lanes for off-street parking lots.

-12-2:1 requires parking islands every 10 parking spaces.

-12-3 outlines the number of parking spaces required per dwelling unit. For every two bedroom unit, two spaces are required. .25 spaces are required for every bedroom after that.

-Section 14 Landscaping appears to have many restrictrive measures. Amoung them are the requirements that plants have a minimum size and that shrubs be at least two feet tall. 14-4:3, and that street trees be planted at minimum intervals of 50 to 70 feet for large trees and 40 to 50 feet for small ones, 14-5:2. Also, off-street parkign areas of 20 or more spaces must be at least 20% landscaped in a PB zone.

-15-6:1 requires that all existing above-ground utility lines be removed and replaced with undergrould components.

-17-2 states the design standards for lighting but does not take into account the possibility of the lighting from one area beign enough to light another, adjacent area.

-4-4:11 outlines the requirements for Mobile Home Parks and amoung the problems are 4-4:11.5 (300 square foot patios for each unit), 4-4:11.3 maximum homes per acre is five (our expert suggests 7), MINIMUM PARK SIZE OF ACRES, MINIMUM HOME SIZEof 4,000 square feet (Mallach says2,800), and the spacign requirements appear to be inflated.

-4-4:4.2.1 states that the maximum density of a townhouse zone is 6/A whereas Mallach suggests 10.

There are a few good features of the ordinance. Amoung these is the stagign requirement for the development of affordable housing. The yard sizes appear to be rational although I don't know much about these requirements. And, the town's concern for preservation of its storm drainage and watershed areas appeasr to be warranted by their proximity to both the Raritan River and the Atlantic Ocean.

One further note: The ordinance does not contain any affirmative steps as discussed in the settlement letters. These are necessary in order to prevent a developer and the town from totally ignoring their Mount Laurel obligations.

To; Urban League Team
FRom: John GRelé
Re: Old Bridge township

What follows is an examination of Old Bridge's ordinance with the standards set forth in the Malloch report. There are some sections which are redundant. One should also consult the report I completed on Old Bridge earlier.

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

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

It is likely that in many, if not most, cases municipalities will seek to achieve Mt. Laurel objectives within the context of a planned unit development ordinance, however it may be characterized. On that basis, the following standards should be followed (many of these apply equally to single-housing-type zones):

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

The Old Bridge Land Development Ordinance contains no Set-Aside provisions. Under 9-5:2, Optional Residential Density Benefits, there is a provision for an "Affordable Housing" benefit, 9-5:2.1.3, which allows a greater planned development dwelling unit density if an applicant for development commits 10% of the total dwelling units available as "affordable housing."

b. Resale price controls and affirmative marketing: There must be a workable mechanism to ensure that the unit continues to be affordable to low or moderate income families if the unit is resold or rerented. There must also be a workable procedure to ensure that the initial purchasers of sales units and all tenants of rental units are eligible as low or moderate income households.

The Old Bridge ordinance contains no price controls or marketing provisions.

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

The ordinance contains a Permitted Land Uses section, 9-6. Under this section a planned development must conform to the Schedule of Permitted Uses, 4-3, which says that a class I Planned Development may not contain either Maisonettes or Multiplex household units, the units with the highest dwelling unit densities per structure.

9-6 also contains Residential Land Density Categories, 9-6:1 which are designed to encourage a mixture of density-types. There are four categories, each with a density range, average parcel density and permitted housing types. Low Density or LD (9-5:3.1) allows a density range of one to four dwelling units per gross project area (DU/AC) with an average of 3 DU/AC and permits the three lowest density housing types (single family detached, single family detached cluster, and patio home). Low Medium Density or LMD (9-5:3.2) allows higher numbers (3-9 DU/AC) and more types but neither Maisonettes nor Multiplex units are permitted. Medium Density or MD (9-5:3.3) has even higher numbers (6-15 DU/AC and 10 DU/AC average) and permits the seven highest density types. Finally, Medium High Density or MHD (9-5:3.4) has the highest density range (15-25 DU/AC with a 20 DU/AC average) and permits only the five highest density housing types.

Under 9-6:1 these four categories are given maximum and minimum percentages for both PD1 and PD2. A PD1 must have at least thirty percent (30%) low density development - LD, and the remainder must be low medium density - LMD. Essentially, this forces 30% of a PD1 to be of the single family detached housing type and 50-70% of the remainder includes neither Maisonette or Multiplex housing, the two highest density housing types. A PD2 must have at least fifteen percent (15%) of its housing in low density (LD), 20-35% in LMD, 25-35% in MD and 10-20% in MHD. PD2, therefore, is the zone most likely to supply Mount Laurel housing, however small this percentage will be.

One further note: the Old Bridge ordinance contains a zone labeled Apartment-Family (A-F) and a zone labeled Apartment-Retired (A-R). A-F is designed for multiplex development "where this pattern has been firmly established," and A-R allows both townhouse and multiplex development under the same criterea, 4-1. Under 4-3, Schedule of Permitted Uses, both these zones have all the housing types listed except for single family detached and duplex as permitted primary uses so really any use but those two would be permitted. There are no further provisions for these zones as there are for PD1 and PD2 and neither of them appears significantly on the zoning map.

As far as allowing a "residential mix," Old Bridge is in fact encouraging a mix that does not facilitate lower income housing. Under 4-4:2 a developer can substitute low density single family detached housing for planned development in a PD zone and under 4-4:3 a substitution of higher density single family detached housing can be made on

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

The ordinance does not contain any provisions for modification of a development while that development is proceeding. 7-7:1.4(b), however, does state that no changes in the number and type of dwelling units will be permitted. Density benefits are an exception though. 9-5:2 allows a developer to state his commitment without satisfying any of the required standards and then receive these benefits.

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

A PD2 must have at least 10% of the Gross Project Area acreage as commercial, office or industrial land uses, 9-4:2.1. Furthermore, such nonresidential uses are encouraged by a density bonus if the developer commits five or ten percent of the Gross Project Area to these uses, 9-5:2.1.4.

f. No Unreasonable Minimum Tract Size Requirement: Any minimum tract size requirement must not be such as to interfere with the availability of land for development. A minimum tract size that cannot be achieved without assembly of parcels from more than one owne must be avoided.

The Old Bridge ordinance specifies various minimum lot sizes in 4-5 and 9-7 (for PDs) which will be discussed below. There are no programs whereby parcels are assembled from more than one owner.

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

The Old Bridge ordinance contains numerous density limits. The maximum allowable densities for PD1 and PD2 are too small. The base allowable density of a PD1 is 2.2 DU/AC and the maximum allowable including benefits is 3.4 DU/AC, 9-5:1.1. The figures for a PD2 are 3.4 and 4.0 respectively, 9-5:1.2. We have maintained that anywhere from 8 to 16 DU/AC is sufficient (see Cranbury letter).

h. Reasonable Open Space Requirements: A planned development should not include excessive open space requirements, thereby unreasonably limiting the number of units that can be provided. 20% of the tract area, and under unusual circumstances 25%, is as large an open space requirement as can reasonably be justified.

The open space requirement for a planned development in the Old Bridge ordinance is 23%, 9-8:1(b). Additionally, 9-8:1(c) requires that a Homeowner's Association maintain the space.

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

The Old Bridge ordinance requires a service road with an eight foot wide divider between the road and any arterial, 11-1:4. Also, 9-9:1 requires two access roads for every PD. A PD1 must have at least one major arterial road while a PD2 must have two. This essentially requires two service roads in every PD.

9-7:5, Off-Street Parking, refers to the parking requirements in Section 12. This in turn requires acceleration and deceleration lanes for each lot (12-1:5), parking islands every ten parking spaces (12-2:1), and two spaces for every two bedroom unit with .25 spaces for each additional bedroom. These requirements may be excessive.

Section 14, Landscaping, appears to have many restrictive measures. Amoung them are the requirements that plants have a ... minimum size and that shrubs be at least two feet tall, 14-4:3, and that street trees be planted at minimum intervals of 50 to 70 feet for large trees and 40 to 50 for small ones, 14-5:2. Also, off-street parking areas of 20 or more spaces must be at least 20% landscaped in a PD zone, 14-7:2.

15-6:1 requires that all existing above-ground utility lines be removed and replaced with underground components.

Furthermore, any development must conform to the requirements listed in Section 8, Performance and Maintenance Guarantees, which include streets, sidewalks, landscaping, trees, lighting, sewers, water lines. Although SEction 9, Planned Developments, begins with a statment as to the greater flexibility under the section, Section 8 still applies and there appears to be little flexibility there. See also Section 15 which requires the developer to provide all the major infrastructure.

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

A review of the township zoning map shows that a large portion of the planned development zoning is located adjacent to wetlands. This would hinder the development of Mount Laurel housing in that the existing major infrastructure is too far from the development and the developer will have to pay to hook up his or her development with that infrastructure.

8-2 outlines two major off-site costs for the developer; pro rata drainage share (8-2:1) and pro rata transportation share (8-2:2). Both require the developer to pay for the excess capacity created by the development. Neither provision contains any bonding by the municipality to off-set these costs. Section 15 requires a developer to provide all the major infrastructure.

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

The Old Bridge ordinance does contain some phasing. In the Affordable Housing section, 9-5:2.1.3, there is a schedule for the phased development of the affordable housing with the rest of the planned development. This provision links the development of the remainder of the development to a state or federal agency approval of the housing permits as affordable. 9-10 outlines the staging schedule of non-residential development which specifically excludes affordable housing, 9-10:2.1. This plan provides a staging of the non-residential with that of the residential and is fairly strict. By excluding affordable housing such housing, the town is providing an additional incentive to build such housing; the developer will look favorably towards this type of exclusion from a restrictive provision.

(2) Zoning Land to Make Possible Inclusionary Objectives

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

a. It must be remembered that the only units that count toward the fair share goal are the low and moderate income units, and not the balance of the units in the PUD or other multifamily development. Thus, the zoning envelope for the district or districts subject to a mandatory setaside must contain far more potential units than the fair share number. The number it must contain is a function of the setaside percentage that has been adopted. If, for example, the community adopts an ordinance with a 20% lower income housing percentage, the capacity of the district must be at a minimum five times the fair share. Thus, if the fair share is 1000 units, one must zone for 5000 units (5000 x .20 = 1000).

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

the fair share goal. The extent of the overzoning may vary from community to community; it is a function of land ownership patterns, infrastructure, etc. In all cases, it must be structured to ensure that the lower income housing opportunity being created is a realistic one.

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

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

The Old Bridge ordinance does not mention overzoning. A look at the township map indicates that much of the available (shown by the lack of street development) land is zoned for planned development generally.

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

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

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

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

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

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

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

f. Waive fees: Many municipalities impose substantial fees for approval, sewer and water hookups, engineering inspection, etc. Consideration should be given to waiving these fees, at least with regard to the (± 20%)

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

The Old Bridge ordinance does not contain any affirmative devices whereby Mount Laurel housing will be facilitated. In terms of fees, the ordinance makes a residential planned development much harder to accomplish by requiring a seperate and additional fee schedule for planned developments, 2-8:6.1 and 2-8:6.2.

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

The above sections have presented overall development standards and incentives appropriate for an inclusionary zoning ordinance. This section will deal, in greater detail, with standards apppropriate for ~~such~~ specific housing types that may be used by a municipality to meet its fair share obligation. Before discussing the specific housing types, some standards should be noted which apply generally to all housing types that may be under consideration.

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

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

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

The Old Bridge ordinance does not mention specific house design standards. These are probably part of another document called the Standard Specifications and Details of the Township of Old Bridge. The parking space requirements are discussed above, as are the open space provisions.

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

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

The ordinance does contain a "zig-zag" provision, 9-7 column 10, which relates the maximum units in a continuous line to the housing type. Section 9 is the section for planned developments and the requirement only applies to multi-family dwelling units so this is exactely the type of provision that is proscribed. There do not appear to be any "look alike" standards in the ordinance. The open space requirements are discussed above. Some of the provisions which seem to be excessive are the following: the buffer zones for a planned development are 50 feet abutting a major arterial and 25 feet abutting a minor arterial, 9-7:7.1 (remember that these roads are required in a planned development); the spacing requirements are 50 feet between any new attached residential dwelling unit and any existing single family detached dweling units abutting, 9-7:7.2, and there are minimum spacing requirements between residential units of a similar type that are in a planned development; townhouses are subject to the same "zig-zag" provision as a planned development, 4-4:4.2.2; and the landscaping provisions x discussed above combined with the peripheral coverage provision (14-6:2) serve to hinder low-cost development.

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

- requirements that developer provide major infrastructure or facility improvements at his expense;*

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

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

Under Section 15 of the Old Bridge ordinance the developer is required to provide all the major infrastructure: water facilities, (15-4), storm drainage (15-1), easements on adjacent natural structures (15-2), aquifer recharge (15-3), sewerage facilities (15-5), and all major utilities (15-6). These are all on-site improvements and there are no provisions for the town to assist in their construction. The problems associated with proximity to the existing infrastructure have been discussed. There are no requirements that the developer or the residents pay for services that the balance of the community recieves free although there is the problem of the Homeowner's Association discussed above.

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

Although there is no absolute standard of crowding to determine the smallest possible unit that is consistent with health and safety, the existence of, and the extensive experience with HUD Minimum Property Standards (MPS) makes it unnecessary. These standards have resulted in the construction of thousands of livable housing units over the past more than 40 years. They are performance standards; i.e., rather than establish a flat square footage figure for a dwelling unit, they establish requirements for specific rooms, for storage space, hallway clearances, etc., from which an architect can construct a conforming floor plan. The following floor areas are representative of successful units constructed in accordance with the MPS conditions:

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

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

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

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

- Be no greater than the MPS requirements, and be preferably related to performance standards, rather than flat area requirements;

- Be occupancy related; i.e., vary with number of bedrooms, rather than a single requirement for a zone;

- Be consistent across zones; i.e., the same standard for a unit of a given number of bedrooms should apply in all zones;

- Eliminate any requirement not clearly related to health and safety, such as differential requirements for 1 story, 1½ story, and 2 story single family dwellings.

4-6, Room Sizes For Residential Dwellings, is very reasonable. The requirements are uniformly less than those of the MPS, they appear to be occupancy related, are consistant across zones, and there are no apparent requirements unrelated to health and safety. There is also a waiver provision for affordable housing, 4-6:2.7. Section 4-5, chart, column 14 establishes minimum gross floor area requirements, none of which apply to residential development.

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

a. Standards for Detached Single Family Houses*

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

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

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

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

Lot size can be further reduced where clustering is proposed, or where creative site planning and design make it feasible. Side and rear yard setbacks are less significant than front setbacks from a cost standpoint, but should in any event be modest enough so that the feasibility of placing a conventional house on a 5000 SF lot is not impaired.

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

The minimum lot size for a single family detached dwelling unit is 7,500 SF in a non-PD zone (4-5) and is the same for within a PD. However, with clustering or patio homes the numbers are reduced in a PD zone to 5,000 SF and 4,500 SF respectively, (9-7).

The minimum frontage requirement does not appear in the ordinance.

The minimum front yard setback is 25 feet for a non-PD and is the same for a PD zone. In the planned development, clustering or patio homes reduce the number to 20 feet.

b. Standards for Townhouses

The following standards should govern townhouse development:

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

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

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

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

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

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

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

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

(8) Parking requirements should not exceed the following*:

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

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

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

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

Townhouses are permitted in the following zones: PD, A-F, A-R, and Townhouse (TH). The ordinance matches up to the criterea listed above in the order suggested there.

(1) DEnsity requirements: Only the TH zone has a density requirement and that is six (6) dwelling units per acre. The density requirements for a PD are discussed above. There are no listed densities for A-F or A-R. Townhouses are a provisional use in the Town Center Zone (TCD) which is a very small section of town. The density limit there is the same as that for the TH zone.

(2) The setback requirements in the Old Bridge ordinance for townhouses are as follows:

A-R and A-F = 50 feet for the front yard, 4-5 col.9.
TCD and TH both refer to PD zone, 9-7.
PD zone = two sta ards depending upon the housing being developed, Affordable and Standard. Both are the same, 9-7:2(b). This relates the distance between the building face and the street curb to the height of the highest wall with a minimum of 20 feet. The maximum height is 30 feet.

(3) The ordinance refers to minimum lot size in area measured by square feet (SF). These are as follows:

A-F and A-R =6A (unclear what A is, acres?), 4-5.
TCD = unknown
TH and PD = Affordable= lot area is 1,600 SF 9-7:2
Standard = lot area is 2,000 SF

The maximum units allowed in any building (townhouse) is 8, 9-7, col. 9.

(4) There is nothing on the minimum width of a townhouse in the ordinance. The minimum lot sizes are discussed in the preceeding discussion.

(5) The ordinance permits only four (4) units in a continuous line, 9-7 col.10. Townhouses are susceptable to all of the aesthetic considerations discussed above with reference to a planned development and specified in 9-7:9 and discussed above.

(6) The maximum units allowed per building or structure is 8. 9-7.

(7) The open space requirement for a PD is 23%, 9-8:1(b) and is discussed above. The minimum usuable outdoor space required per dwelling unit is 140 SF, 9-7, col 12.

(8) Parking is discussed above and applies to every development. The general requirements are as follows:

1.75 spaces/unit for a one-bedroom
2.00 spaces/unit for a two-bedroom (12-3)
.25 spaces for each additional bedroom.

There is no compact car provision. Concerning buffers, under 14-5:6 the Approving Board can require them at their discretion. 9-7:7 on PD buffers applies to townhouses through 4-4:4.2.2 and requires buffers be 50 feet from a major arterial and 25 feet from a minor arterial.

The general requirements for the townhouse zone are contained in 4-4:4. Under 3-84 a townhouse is not designed to be a rental structure; it is meant to be either a condominium or a fee simple. Furthermore, under 3-85 there is a minimum number of units required in order for a structure to be a townhouse dwelling structure. This number is three (3).

C. Standards for Garden Apartments

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

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

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

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

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

(5) No maximum number of units per structure.

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

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

The Old Bridge ordinance does not have Garden Apartments listed. It does have housing types other than those discussed above. These are duplex, triplex, quadraplex, maisonette, and multiplex. Although it is doubtfull that any type other than maisonette or multiplex would be considered the equivelent of a Garden Apartment, the analysis will include wherever possible all the five types.
These types are permitted in the following zones: (4-5 chart)

Duplex(DX): Planned Development (PD),High density residential (R7), and Town Center (TCD)

Triplex (TX): PD, TCD,Apartment-Family (A-F), Apartment REtirement (A-R), Townhouse (TH).

Quadraplex (QX): PD, TH, TCD,A-F, and A-R.

Maisonette (MS): PD2,

Multiplex (MX): PD2, A-F, A-R, TCD

The definitions of these housing types show that only maisonette or multiplex are worth considering as Mount Laurel housing.

DX: a two family structure (3-14)
TX: a three family structure (3-89)
QX: a four family structure (3-68)
MS: a multifamily back-to-back townhouse configuration (3-49)
MX: a structure with five or more dwelling units (3-54)

(1) The density restrictions for these housing types are a function of what zone they appear in. The densities for zones other than PD or TH are not discussed (TCD is ~~xhexsamexasxRDx4x4x1x2x2xx~~ mentioned though)

TCD: maximum density is 6 dwelling units per acre (4-4:1.3.2).
PD: this is discussed above. In general they are way too small; the maximum for PD1 is 3.4 per Gross Project Area (9-5:1.1) and for a PD2 is 4.0 (9-5:1.2)
TH: The maximum permitted densities for the permitted uses is 6 per acre.

The height requirements are as follows(those that are mentioned):

PD and TH (4-4:4.2.1): 30 feet maximum for all types, 9-7, col.
TCD: will be decided by the Approving Board, 4-4:1.2(a).

(2) The setback requirements are as follows:

A-F, A-R: 50 feet , 4-5 col.5.
PD,TCD(4-4:1.3.2), TH(4-4:4.2.2): the table in 9-7 refers us to 9-7:2.
9-7:2(b) links the setback of the structure to the height of the hgihest wall. This requirement was discussed with reference to the townhouse zone.

(3) The minimum number of units required is shown in the discussion above under the definition section. The minimum lot size is discussed in the ordinance as lot area in square feet.

DX: 3,500 SF
TX: 2,500 SF
QX: 1,750 SF
MS: 1,200 SF for standard housing and 900 SF for affordable.
MX: There is none.

The above are the requirements listed in the planned development section, 9-7 chart column 1. The other zones are as follows:

A-F: 6A (no explaination of "A")
A-R: 6A section 4-5 chart col. 1.
TCD and TH are the same as PD

(4) All the aesthetic requirements are discussed above and apply to all the housing types in a PD. They also apply to the other zones. In a planned development there are requirements for a maximum number of units in a continuous line, 9-7 col. 10.

(5) Within a planned development there is a requirement [illegible] of the maximum number of units permitted in a structure, 9-7 col. 9. There appears to be no such requirement for the other zones. These requirements apply as well to the TCD zone, 4-4:1.3.2, and the TH zone, 4-4:4.2.2.

DX: 2 TX:8 QX:4 MS:16 MX:24

(6) Parking is discussed above. There is no provision waiving the 23% open space requirement for a planned development of less than 25 units.

(7) The maximum lot coverage numbers are all above 30% for a planned development, 9-7 col. 7. As in (5), this provision is extended to the TCD zone and the TH zone. However, both A-F and A-R are 20%, 4-5 chart col. 11.

49 d. Standards for Senior Citizen Housing

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

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

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

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

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

Apartment Retired is the zone designed for senior citizens, 4-1. There is no provisions for any special parking needs although there is an exemption provision in the general parking section, 12-3:2, Under 4-5 chart, column 13 the maximum height for this zone (A-R) is 30 feet and that must be in 2 stories (col. 12). There are no density provisions regarding this zone.

e. Standards for Mobile Homes

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

Mobile home parks (with ownership of land separate from ownership of the unit) and mobile home subdivisions (fee simple ownership of the land with the unit) should be permitted at a density of no less than 7 units per acre with individual lot sizes of 2800 SF for single-wide, and 4500 SF for double-wide units. Open space requirements should be the same as those set forth for townhouses.

The Old Bridge ordinance does not contain any prohibitions against mobile homes but according to 4-3 chart there are no zones in which this use is permitted. 4-4:11 covers the specific requirements for a mobile home park and the homes themselves. 4-4:11.3 refers to the design of the units. Under (c) the ~~maxim~~ minimum width of a home is 40 feet and the minimum length is 100 feet. This is quite large. Under (a) the maximum density for a park is 5 homes per acre. Under (c) the minimum size of a space for a home is 4,00 square feet. The open space requirement is 10% minimum with a recreation area of 200 square feet for every home, 4-4:11.9. Under 4-4:11.3 (d) there are many seperation and setback requirements that appear to be excessive.

f. Other Provisions

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

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

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

(3) Conversion of single family houses to two family or three family occupancy, under appropriate standards and conditions, should be generally permitted.

and reasonable

The only provisions that may be applicable to this are those that allow for cluster housing and patio homes in the single family detached zoned areas. As a matter of fact neither of these are permitted uses in any of the residential zones, 4-3 chart.

C. EVALUATING MUNICIPAL ZONING ORDINANCES

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

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

It has been shown that the ordinance fails to provide an adequate opportunity for low-cost housing in that it goes beyond Sec.B(3) in its cost-generating provisions. In addition, there are some other provisions that will cause a developer to incur greater costs than is necessary. These include the minimum acreage requirement for a planned development, 9-4:1, and the excessive fees and application proceedures (especially fiscal impact statements, 7-7:1.2(j) and 7-7:3.3.2.).

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

The only zone that is arguably inclusionary is the affordable housing section discussed above. There are many problems with the section the least of wich is that it is only a voluntary method. Some other problems are the zoning of other uses within a planned development that would allow a developer to prodeed without even considering any uses that might provide for high density, the bonus for nonresidential development, and the definition of affordable used.

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

As discussed above, there are no such provisions in the ordinance.

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

The affordable housing section, 9-5:2.1.3, outlines the housing benefit and the requirements of the residents that must be met in order for the developer to comply. The cost of the housing cannot exceed 30% of the annual family income of a "least cost family." Such a family is one that earns 120% or less of the current median family income for the New Brunswick/Perth Amboy/Sayreville SMSA and has four or more members. The maximum should not be 120%, it should be 80%. There are no provisions which distinguish between low and moderate incmoe families. There are no provisions which gaurentee that these units remain low cost. And there are no provisions which would insure that the ~~people with~~ units remain open for only those with low incomes.

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

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

(1) Definition of Low and Moderate Income

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

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

The decision further recommends that one rely on those median income figures and household size adjustments for the appropriate SMSA issued by the United States Department of Housing & Urban Development, in this case the New Brunswick-Perth Amboy-Sayreville SMSA*. The most recent figures, adopted on March 1, 1983 are given on the following page. These numbers are based on an estimated median household income in this SMSA, equivalent to Middlesex County, in

*The Bureau of the Census has relocated Middlesex County to a new area, to be made up of Middlesex, Somerset and Hunterdon Counties. At some point it is likely that HUD figures will be adjusted to reflect this change; the above figures will hold, however, for the indefinite future.