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Post Mt. Laurel II Review of Compliance Plan

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Review and Recommendations:
Mount Laurel II Compliance Program
Monroe Township, New Jersey

Prepared for
Honorable Eugene D. Serpentelli, A.J.S.C.
Ocean County Court House
Toms River, New Jersey

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Preface

The Monroe Township Council submitted a Compliance Program for meeting their obligation to provide a Fair Share of low and moderate income housing to the Superior Court of Ocean County in April 1985. This review of that Compliance Program, prepared by Carla L. Lerman, Court-appointed Master, will review the procedures used to develop the Compliance Program, review the characteristics of the Township, present briefly the scope of the proposals that were presented to the Township, the basis of the criteria used by the Council in their evaluation of the proposals and the criteria used by the Township planner in his evaluation of the proposals. This report will then evaluate the Compliance Program presented by the Township to the Court, and will discuss specifically the developers' proposals for those who assert a claim to the builder's remedy.

The procedure used, as well as some description of characteristics of the Township, is important in this case, as the conflicts within the Township between different factions of the decision-making bodies regarding the approach to take to the Mount Laurel II decision had an impact not only on the procedures that were used in developing a Compliance Program, but on the Compliance Program itself.

Procedure

Monroe Township, located in the southeastern corner of Middlesex County, was one of the seven towns in the case of Urban League of Greater New Brunswick v. Carteret et al. which was remanded back to the Trial Court by the New Jersey Supreme Court in January, 1983, in the decision now known as Mount Laurel II. On July 27, 1984, following the preparation of a fair-share analysis for the seven municipalities, and a trial on that fair share number, Judge Eugene D. Serpentelli, in the Ocean County Superior Court, signed an order which gave Monroe Township a fair-share of the regional need for low and moderate income housing of 774 units. In this order, Judge Serpentelli appointed Carla L. Lerman as Master to assist the township in developing a Compliance Program, and the requisite rezoning which would accompany such a program. The rezoning was to be complete in 90 days. Mayor Peter Garibaldi of Monroe Township, indicated that he did not intend to participate in the process of rezoning any part of Monroe Township to accommodate any portion of the fair-share number of housing units.

The governing body of Monroe Township, consists of a five person Council with a Council President, which can function in certain areas independently of the Mayor. This Council determined that they would rezone, under protest, reserving their right to appeal following the rezoning. In October 1984, the president of the Monroe Township Council and its members, started a series of public meetings to hear proposals from developers who were requesting zoning changes that would permit

development of higher density housing, which would include a set-aside of low and moderate income units. These meetings were held into November of 1984, with each developer being given an opportunity to make a presentation to the Council, without evaluation by the Council at that time. During this period 14 sites were identified: 13 by developers, and one proposed by Council members attending the hearings/meetings. It was reported by the Council President that the Mayor had instructed members of the Planning Board not to participate in the planning process, and that the Township's professional consulting planners and the Township engineer had been instructed not to participate in the process either. The Township attorney participated in all sessions.

Following these sessions with developers, a number of meetings were held in November, December and January to discuss the impact on litigation of the various proposals of the developers. Although no planners were present to represent the Township, the latest adopted Master Plan, the Zoning Ordinance, and the Environmental Resource Inventory for Monroe Township were all used as resource materials in evaluating the proposed developments. One of the Council Members participating was also a member of the Planning Board and another was also a Commissioner of the Monroe Township Municipal Utilities Authority. Their input on the issues that the Council members felt were critical- the sewer facilities, water availability and traffic problems- was very helpful. Throughout the proceedings, the Township attorney indicated his opinion that one developer, Monroe Development Associates, was entitled to a builder's

remedy and absent any significant planning or environmental constraints, that developer's site should be zoned for higher density housing requiring a set aside of low and moderate income housing.

Recognizing that they needed their own professional services for the final assembly of a compliance package and the necessary ordinance revision, the Council members participating in these meetings decided to engage the services of a professional planner, Carl Hintz, who, in a public meeting of the Council, presented a formal analysis of each proposal based on seventeen site criteria which he had used with other such projects. In March 1985, after several revisions, the Compliance Program was completed and adopted by a majority of the Council at a public meeting on March 29, 1985.

This report will provide an evaluation of the Monroe Township Compliance Program as adopted by the Township Council. The evaluation will be based upon the existing characteristics of Monroe Township, and its development policies to date, the nature of the developers' proposals, the extent of Monroe's obligation to provide low and moderate income housing, and the capacity of the Compliance Program to provide realistic opportunities for that housing to be built. Based on the presentation in the Compliance Report of all the alternatives available to the Township, this report will also indicate the preferred alternatives of those presented, which would reasonably supplement the Compliance Program where it is perceived to be deficient.

Characteristics of Development in Monroe Township

Monroe Township, located in the southeastern corner of Middlesex County, consists of 42 square miles of gently rolling, primarily undeveloped land. A distinctly rural community until the growth following World War II, Monroe has experienced substantial growth in the decades from 1950 to 1980, increasing from a population of 4,000 persons in 1950, to nearly 16,000 in 1980. Experiencing the same pressures of growth and development that its neighboring municipalities have experienced, Monroe has seen over 3,000 new housing units added in the decade from 1970 to 1980. Even with this growth, Monroe remains a Township with extensive areas of open, undeveloped land, and agricultural land. Most of the earlier development in the municipality was concentrated in the northeastern section; the planned retirement communities, which account for a substantial portion of the growth since 1970, have all been located on the western side of the Township.

Monroe Township was created from the southern portion of South Amboy in 1838, and since then has given up part of its area to the formation of Cranberry, Helmetta, Spotswood, East Brunswick and Jamesburg. The Borough of Jamesburg lies wholly within the boundaries of Monroe Township. Since the area was first settled in the 18th century, there have been small clusters of commercial development at various intersections of the roads serving the farms throughout the area. There have been some concentrations of commercial development, particularly along major roads, but there has not been a traditional "center" of the Township. The municipal complex is relatively new, and

permitted the consolidation of municipal services that had been scattered on several sites. Aside from the interest that this might be to geographers and land use planners, the growth and development pattern of Monroe are of some importance in determining what future land use patterns should be, and which areas of the town would be most appropriate for higher densities of residential development.

The New Jersey Turnpike borders the western side of the township, and, with two exits feeding into major roads in the Township, provides excellent access for industrial development as well as centers of population growth. N.J. Route 33 along the southern edge of the Township provides good east-west access to Mercer County on the west and Monmouth County on the east, as well as to the New Jersey Turnpike.

Most residential development in Monroe is single family. The northeast section near Spotswood consists of single family residences on small lots, but much of the other single family housing in Monroe is either widely scattered or in subdivisions along major roads with lot sizes of 1/2 acre or more. The outstanding departure from this pattern is found in the three retirement communities located on the western side of the town. These three communities, Rossmoor, Clearbrook and Concordia, were built under a zoning ordinance which permitted a planned retirement community (PRC) to be developed at a density of 14 units per acre. These communities seem to provide the nearly ideal suburban use: good ratables with minimum expenses to the municipality. The communities provide their own recreation, their own security and their own services for their own roads

and recreation areas, and provide virtually no school age children to be educated! Although the density permitted in new PRCs has recently been reduced from 14 units per acre to 7 units per acre, the pattern of higher density developments in the west central portion of the township has been clearly established.

The pressures of growth and the changes in economic patterns have influenced Monroe Township as well as the surrounding areas in Middlesex and Monmouth Counties. Agricultural uses are declining throughout central New Jersey, and the value of the land for other types of development is such that fewer and fewer farmers feel that it is economically viable to maintain their farms in the face of offers from developers. The impact of office and business growth in the Route One corridor is felt in Monroe Township as well as in the municipalities which Route One traverses. Substantial amounts of new industrial growth have been undertaken or are in the planning stages in Monroe Township and in South Brunswick adjacent to Monroe. On the east, the Township of Old Bridge is experiencing tremendous growth, and it is anticipated that within the next two years two major residential developments in that Township immediately adjacent to the eastern border of Monroe Township, will start construction. These two developments will result ultimately in the construction of more than 15,000 dwelling units, creating essentially an entire new town, larger than most of the suburban communities in the state. This development in Old Bridge, although it is served on the east by Routes 9 and 18, will have a profound impact on traffic patterns in the adjacent municipalities, including the northeastern

portion of Monroe Township. To the extent that access to the New Jersey Turnpike is to be gained through the Township of Monroe, traffic on certain east-west roads will be impacted significantly.

Summary of Proposals

The developers' proposals, which were presented to the Council for the construction of Mount Laurel housing, fall into two general locations, with one exception. Five of the proposals are located in the northeast corner of the township, north of the New Jersey State Home for Boys. Seven of the proposals are on sites located along the western side of the township, from as far north as Forsgate Road, down along Applegarth Road to the area south of Route 33. The one exception is a 430 acre site directly in the center of the township. The sites range in size from 28 acres to 553 acres, but the sites with fewer than 100 acres and the sites with 400 to 500 acres comprise more than two thirds of the proposals. In general, the proposals are for similar housing development types: townhouses and clustered houses, called patio homes, duplexes, etc., occasionally combined with garden apartments, at densities generally between 7 and 14 per acre. Some of the developers were highly experienced builders and packagers of developments; some of the developers were merely contract purchasers of land which they made clear they intended to sell to an actual builder, subject to the proposed zoning change. Some of the developers had built in Monroe before, some were residents of Middlesex County, some had developed or built in

other parts of Middlesex County. The proposals covered the full gamut in sophistication: from the developers making the proposal standing before the council with no written material and no copy of a tax map to give the precise location of the site, on the one hand, to developers with professional planners and architects making presentations with full graphics, texts, and large scale maps for the Council's review. Some presenters knew virtually nothing about the land which they were proposing to develop; other presenters had already completed detailed planning and engineering studies. All the proposals presented during those meetings with the Council covered nearly 3,300 acres and the densities proposed would have resulted in nearly 22,000 new housing units.

Council Evaluation of Proposals

Although the members of the council were not planners, there were certain basic considerations that they used in listening to proposals and later in evaluating them themselves, prior to a professional's evaluation. These considerations were as follows:

Traffic: There was great concern expressed about the current traffic volumes on local roads, based on experiential evidence rather than on traffic counts, and therefore higher value placed on any proposal which minimized the traffic impact on roads which crossed the township.

Sewer and Water Availability: It was of great concern that new developments be able to tie in easily to the existing utilities, and not burden a system which is already considered to be overburdened. The fact that the public utilities appear to be in need of enlargement and upgrading for the existing developments was an ongoing concern.

Schools: The impact on the schools of the 3,500 units that might be required to produce Monroe's fair share on a four-to-one basis, was of concern to the members of the Council. A Board of Education member attended at least one of the public meetings, but there was not an ongoing input from the Board of Education.

Proportion of Mount Laurel Units: A major consideration in looking at all proposals was the maximization of Mount Laurel units as a percentage of market rate units. The Council members felt that the 20 percent proposed by most developers was a minimum; any proposal which had suggested a higher proportion of Mount Laurel units to market rate units was closely scrutinized.

Limited Growth Policy: The policy as expressed in the zoning ordinance of not encouraging higher density growth, with the exception of the planned retirement communities was an important consideration in the Council review. The planned retirement communities have been considered in Monroe an acceptable form of higher density development, and all other new development has been limited to densities of two units per acre, or lower densities. The recent lowering of permitted densities in the planned retirement communities, from 14 units per acre to 7 units per acre, was used as a demonstration of this policy being implemented in Monroe.

All of the above considerations were discussed at great length in reference to the general location of future development in the township, and how the required zone changes for Mount Laurel development would impact on those considerations.

It is relevant to note that these discussions were undertaken in the interest of determining which proposals from developers would be most in keeping with the development policies of the Township and would have the least impact on the existing population. The absence of the Township planner, and indeed the age of the last adopted Master Plan (Land Use Plan adopted in November 1978), as well as the understandable

reluctance of Council members to take on the role of the Planning Board, seriously limited the way in which higher density housing could be incorporated into planning objectives for the Township.

Planner Evaluation of Proposals

In January, after extensive public and closed sessions, the Council determined that the ordinance revision necessary to complete the Compliance Program in detail would require its own (the Council's) professional assistance. A professional planner, Carl Hintz, was hired to do the detailed evaluation on each site, as well as to draft the ordinances necessary to implement the Compliance Program. Mr. Hintz provided a seventeen point set of criteria for evaluating each site. These seventeen criteria are as follows:

1. Job location 15 minutes
2. Compact shape
3. Natural features
4. Adequate utilities
5. Mass transportation
6. Highway network
7. Neighborhood commercial
8. Regional shopping
9. Health care
10. Schools/day care
11. Recreational facilities
12. First aid, fire and police
13. Consistency with existing neighborhood character

14. Consistency with zoning and planning of adjacent municipalities
15. Location relative to S.D.G.P. designated growth area/limited growth/non-growth area
16. Consistency with agricultural preservation goals
17. Builder/Developer's past experience in similar projects

The full explanation of each of these criteria is contained within the Monroe compliance report and need not be repeated here. All of the seventeen site selection criteria relate to planning issues that would be evaluated in the preparation of a land use plan to be reflected in a zoning ordinance. The criteria relate specifically to accessibility to transportation and employment, availability of infrastructure (water and sewer), availability of community facilities, and environmental considerations. Based on these criteria, the resulting evaluation of all of the developers' proposed sites provided a detailed and specific ranking of proposals beyond the general policy considerations which had been discussed by the Council.

These rankings were presented at a public meeting by Carl Hintz, at which the developers and the general public were permitted to question the rankings and comment on them.

Review of Compliance Program

The Compliance Program as outlined in Table 4 of the Mount Laurel II Compliance Program for Monroe, New Jersey, as submitted to the Court, lists five steps to be taken, each of which is expected to provide a specific number of housing units

for low and moderate income households.

1.) Rehabilitation of Existing Deficient Housing Units

It is proposed that ninety units of substandard housing will be rehabilitated during the six year period that this program covers. The proposal that 15 units of substandard housing could be rehabilitated each year is not an unreasonable one. Administratively it is entirely possible that this could be accomplished. Although the fair share report for Monroe Township indicated specific deficiencies with specific numbers as indicated in the 1980 census, it is possible that other deficiencies would be corrected either in addition to, or instead of, those specific deficiencies counted in that report. As the Mount Laurel II decision referred to "dilapidated" units as ones to be counted in determination of present need, it would not contradict the principal of that decision if units needing roof repairs or siding repairs were rehabilitated as well as units that might be deficient in plumbing or heating or overcrowding, as long as those units were occupied by low or moderate income households.

I have stated that administratively 90 units in 6 years is a plausible goal. The Compliance Program, however, refers to two possible sources of funding to undertake this rehabilitation: the Middlesex County Agency of Community Development, which administers Community Development Block Grant funds, and funds from a development fee to be levied on all new development which does not include Mount Laurel II housing. The Middlesex County Community Development Block Grant funds are

available to 21 towns in Middlesex County, and presently a home improvement program is administered by this county agency. The program is targeted to low income households (50 percent of median income and below) and at the present time has 150 applicants on the waiting list and is taking no further applicants, although the Community Development office expects this to change in the near future. However, this program will still be geared to the low income households. Monroe Township has been receiving approximately \$90,000 a year in Community Development funds for other projects. The Township could establish its own rehab program with a part of this money and establish guidelines to include low and moderate income households. If the Township indicates a plan to do this, this rehabilitation could be considered a realistic mechanism.

The development fee that might be levied on developers has been discussed with the Township Council, but it does not appear at this time that any action is being taken by the Council to establish a fee procedure. If there is not evidence that this procedure is being established, then it would appear that 15 units per year may not be realistic as a goal.

Recommendation: The Compliance Program could assume 10 rehabilitated units per year for six years, based on the existing county home improvement program and Monroe's supplement of that program using community development funds allocated to the Township. For the purpose of the Compliance Program, this rehabilitation program would result in 60 units during the six year compliance period.

2.) New Infill Housing by Housing Authority

The concept of instituting a housing authority has been discussed by the Monroe Township Council at a number of meetings. The Township attorney had been asked to provide information on the procedures for establishing a housing authority, and his report back to the Council had been discussed at some length. To date, there has been no public action taken by the Council towards establishing a housing authority.

It is true that under New Jersey Statute 55:14a et seq., a municipality may establish a housing authority which has broad powers to acquire land, construct housing which it shall own, issue bonds to finance such housing, rehabilitate housing, and own and operate housing for low and moderate income people. These powers are granted under State law regardless of the availability of federal funding. However, in the current housing market, and with the current interest rates, some form of subsidy is required in order for any entity, even a housing authority, to be able to construct housing for low and moderate income households. That subsidy might be in the form of municipal assistance, or it might be in the form of a developer's fee, or it could be in the form of Community Development Block Grant funds for land purchase or site improvements. Before a number as high as 70 units (which is the low end of the projected production of the proposed housing authority) could be considered a realistic possibility, a more specific plan related to available funds would have to be developed. As in the plan for rehabilitation, administratively

a housing authority could produce 70 to 150 units in a six year period; however, clarification of funding sources would be required before this plan could be evaluated as a realistic mechanism.

Recommendation: This aspect of the Compliance Program should not be considered at this time. If, during the compliance period, the Township Council establishes a housing authority which is able to construct or otherwise provide additional housing units for low and moderate income households, the number of units thus provided would be counted as credit towards Monroe's fair share, either for the decade 1980-1990 or the following decade.

3.) Monroe Development Associates: Builder's Remedy Site

Throughout the Township Council's deliberations the Township attorney expressed his opinion that Monroe Development Associates was clearly the one developer who was entitled to a builder's remedy. This site, which is located adjacent to Cranbury Township on the west central boundary of Monroe, consists of 60 acres, approximately 1/3 of which are estimated in the Compliance Program report to be located in the floodplain. The developer provided a further report, after the Compliance Program was submitted to the Court, which indicated that he estimates that only 17percent of this site is unusable for construction due to location of the floodplain. The site is on a through road that leads from Applegarth Road (a major north/south route in Monroe) to Route 130 (a major north/south route in Cranbury Township). It is within one mile of water and

sewer connections, although the exact nature of the sewer connections and how they will coordinate with the proposed modifications of the Forsgate Treatment Plant are not clear. The site is approximately three miles from two substantial neighborhood shopping centers -- one to the south on Route 33 in East Windsor, and the other to the east on Perrineville-Jamesburg Road, in the Concordia development. For convenience goods within walking distance, the developers are planning a small, two acre commercial development on the site. There are some environmental constraints on development of the site, owing to the fact that the floodplain covers a portion of the site; the site development plan does not propose any structures or building on that portion of the site, but designates that area for recreation and open space. This site is clearly in the Growth Area as defined in the State Development Guide Plan, and, as such, is one of only three of the proposed sites which can be so categorized. The developers have proposed to build 840 units, which is a gross density of 14 units per acre. Twenty percent of those units would be designated for low and moderate income households, with ten percent of the units for low income, 10 percent for moderate income. The Compliance Program, because of the environmental constraints of the floodplain area, proposes that a maximum of 600 hundred units be constructed on this site, which would result in 120 low and moderate income housing units.

The Court in Mount Laurel II made it quite clear under what situation a builder was to be granted a builder's remedy.

We hold that where a developer succeeds in

Mount Laurel litigation and proposes a project providing a substantial amount of lower income housing, 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.

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The absence of input from the Planning Board or the Township's consulting planner creates difficulty in determining whether this site is consistent with policies as reflected in the master plan update due in 1985. However, certain decisions that have been made by the Township would indicate that this site of Monroe Development Associates is not inappropriate in Monroe Township for higher density housing. The Township has permitted three major developments of higher density housing (Planned Retirement Communities) on the western side of the town, one of which is less than 1/2 mile from this proposed site. In addition, the Township anticipated a fairly dense concentrated development of the western portion of the Township by zoning many, many hundreds of acres for light impact industrial use, which would incur substantial water and sewage requirements, as well as substantial additions to traffic on local roads. If the policy direction for the Township had been to maintain open space and agricultural use, some efforts would have been made to encourage agricultural preservation rather than zoning the entire Township for full development.

The most significant drawback to development of this site has been the need to expand and/or change the function of the Forsgate Treatment Plant, which is where the sewer connections would be made. However, other development being permitted on

the western side of the Township, and anticipated further development has resulted in an application being made by the Monroe Township Municipal Utility Authority to convert the Forsgate Treatment Plant to a pumping station. All local approvals have been obtained, with final approval from the State Department of Environmental Protection being awaited. The Monroe Development Associate's site is merely one part of the pattern of development which has required that these improvements in the Forsgate Treatment Plant be made in the immediate future.

Recommendation: On balance, the site proposed for development by the Monroe Development Associates seems suitable for higher residential densities, and is recommended to be included in the Compliance Program for Monroe Township. The gross density that is recommended, however, is 8 units per acre.

There is no valid planning reason, in a primarily rural municipality with approximately 20 net square miles for development to encourage higher density development than is economically required. Naturally, developers are interested in the highest possible densities that will not negatively impact marketability, in order to spread site costs and maximize profits. In this case, the developer has estimated his sewer connection costs at approximately \$350 per market rate unit. The lower density would increase this cost to approximately \$625 per market rate unit. This amount does not seem excessive for a development of this type. As far as the developer's contribution to the improvements required at the Forsgate Treatment Plant, it is reasonable to assume that the required

contribution will be based on the number of units, not the acreage. Therefore, a lower density should not have a negative impact on per unit costs for plant improvements.

Monroe Township has permitted higher density housing in the planned retirement communities, but in those developments the zoning required high cost facilities for residents, such as a golf course, swimming pools, community buildings, houses of worship, etc., which added substantially to the site development costs. Recently, the permitted density was reduced to 7 units per acre, with no change in the site requirements. This density policy is reflected in the proposed PVD (Planned Village Development) zone included as appendix A in the compliance report. This zone calls for a gross density of 8-10 units per acre. Therefore, considering the floodplain area and the proposed retail area, it is reasonable to choose the lower of the proposed PVD densities for this site.

This recommendation will result in 480 housing units on this site, of which 96 will be for low and moderate income households.

4.) Concordia Planned Retirement Community Expansion
(5percent Low/moderate)

In an effort to provide some housing for low and moderate income elderly, and in order to take advantage of proposed new developments that would qualify for approvals regardless of Mount Laurel II, the Township Council included in the Compliance Program a mandatory 5percent set aside for the Concordia expansion, the application for which was considered to

be imminent. The Compliance Program only refers to Concordia, but consideration had been given to making a 5 percent set-aside for low and moderate income households a mandatory requirement for all future planned retirement communities.

Recently Concordia received site development plan approval from the Planning Board, and subsequently, in June, 1985, received approval of the site development plan from the Township Council without the inclusion of the 5 percent set-aside for low and moderate income households. As it was expected that Concordia would be requesting approval for 2,000 units, this aspect of the Compliance Program would have provided 100 units of low and moderate income housing. This requirement in this development is apparently no longer being considered in the Compliance Program. Monroe Township has a significant portion of its households located in age restricted communities, but within those communities there is no housing that would be affordable to the low income elderly who are living on Social Security and a small pension. It had been felt that this was a reasonable request to make of the developer of a planned retirement community, given the densities permitted by right. This type of housing, it was believed, would meet a need in Monroe Township among present residents.

Recommendation: The PRC (planned retirement community) zone should be amended to include the requirement that 5 percent of all developments be set aside for low and moderate income elderly households. For the purposes of this Compliance Program, this should be required of the Concordia expansion as well as future PRCs.

5.) Balantrae (Stratford at Monroe, Inc.)

This development was originally proposed as a planned retirement community prior to the Township Council meetings regarding the Mount Laurel II obligations. It is a large site (442 acres), and continues the west side locational pattern of the other retirement communities. (The R.H. Development Company's commercial plans for the Forsgate Country Club site are part of the plans for this "west side" development.) The proposal for the Balantrae site in the Compliance Program indicates that 396 acres will be developed as a planned retirement community, and 46 acres will be developed separately for low and moderate income households.

The Court-appointed Master has twice requested by telephone additional information from this developer regarding location of the Mount Laurel II units, distribution of sizes of units, and evidence that the full nature of the Mount Laurel II obligation is understood by the developer. At the date of this writing, a letter has been received from the attorney to the developer indicating a willingness to provide 300-350 low and moderate income housing units of which at least one third would be age restricted. The site is not an inappropriate one and does not present any greater sewer or water problems than Monroe Development Associates' site, (in fact would add another developer to share sewage treatment costs); however, the developer's present proposal is a substantial reduction in Mount Laurel units from what was proposed in the Compliance Program.

Recommendation: The proposal for Balantrae to be

developed as a planned retirement community, with the provision of 325 units of low and moderate income housing units is recommended to be included in the Compliance Program. It is understood that no more than one third of the low and moderate income units will be age restricted.

It is further understood that the recommended amendment to the PRC zone requiring a 5 percent set aside for low and moderate income units for the elderly will not be required in this development in addition to the 10 percent they will be providing as Mount Laurel units.

The above elements of the Compliance Program which have been considered to be feasible, would result in 581 units of Mount Laurel housing. This does not quite meet the fair share of 774 units which Monroe Township has been instructed to provide by the Superior Court. It is necessary, therefore, to indicate additional sites or alternative means for providing Mount Laurel housing. Several other developers have indicated an intention of asserting their right to a builder's remedy. In order to evaluate those sites and/or select other sites as realistic mechanisms for Monroe to employ in order to achieve its fair share, it will be useful to examine the planning principles and policies that appear to have been utilized in the zoning decisions made in Monroe Township. Additionally, planning considerations that will affect future generations must be weighed in evaluating the response to developers' demands.

Sites of Other Developers Claiming Builder's Remedy

There are three sites for which the counsels for the

developers have indicated that they wish to assert the builder's remedy. Two of these sites are to be developed by the same developer: the Lori Associates site on Applegarth Road, and HABD Associates site, on Spotswood-Englishtown and Old Texas Roads. The third site, divided in two sections, is Monroe Greens, in the area north of Matchaponix Road, west of Spotswood-Englishtown Road.

1.) Lori Associates

The Lori site is located on Applegarth Road immediately opposite the Balantrae site. Its frontage on Applegarth Road starts on the south of the Applegarth School. The property extends east to Prospect Plains Road, and consists of 142 acres. The developer proposed that 1,562 housing units would be built on this site, 20% of which would be for low and moderate income households. The site is presently in agricultural use, and is flat and almost entirely open. It would be served by water in the same way as the Monroe Development Associates site or the Balantrae site would be served. It is located very close to the Forsgate Treatment Plant and could provide a direct run to that plant of about 1200 feet. A relatively small portion of the site is in one of Monroe's Conservation Areas and that section would be preserved as open space. According to the State Development Guide Plan, the line of the Growth Area falls somewhere between Applegarth Road and the western boundary of the Township. This places the Lori site in an area designated as Agricultural in the State Development Guide Plan. Although the site is not in the Growth Area, its relationship to

Clearbrook and to the proposed Monroe Development Associates and Balantrae sites makes it consistent with a pattern of higher density development which has already been started, and indeed sanctioned, in Monroe Township.

2) HABD Associates

The HABD site is located at the intersection of Old Texas Road and Spotswood-Englishtown Road; it has available utilities and is a fully developable site, which consists of 166 acres and is proposed for 1800 units with twenty percent set aside for low and moderate income housing. Evaluated by itself as a site, it is suitable for higher density residential development. Taken in the context of its surroundings in Monroe Township, and its place in the region, it would increase the number of housing units, people and traffic in an area which is already a built up and heavily developed portion of Monroe Township. In Old Bridge Township, immediately to the east, two major developments which will ultimately be comprised of over 15,000 dwelling units are expected to start development in the next year. Old Texas Road is the direct connection from those developments to Monroe Township and to Spotswood-Englishtown Road. It is also the point of transit for traffic bound for the New Jersey Turnpike, particularly in the southbound direction, which would logically try to cross Monroe Township to reach Exit 8a or 8 on the New Jersey Turnpike.

This site is part of an area approximately double its size which is zoned R-60 or 1.5 acres per dwelling unit. It is immediately north of one of Monroe's 3 acre zones. It could be

considered a transitional area between very low density in several areas to the south and the much higher density areas to the north up to Spotswood. As such, it is appropriate to maintain it for the near future as a lower density area.

3) Monroe Greens

Monroe Greens consists of two locations but is presented as one development, extending from Matchaponix Road on the south to the Outcalt section on the north. One section of this development has access to Spotswood-Englishtown Road, and a substantial portion of that site is actually designated as wetlands. The other section of Monroe Greens is larger, consisting of 360 acres, of which 49 acres are freshwater wetlands and therefore would not be built upon. Altogether, the two locations consist of 545 acres of which 179 acres are wetlands which would not be built upon. Sewer is available to these sites, but the water supply is not fully available at this time to these sites. The smaller location adjacent to Spotswood-Englishtown Road presents such a substantial area of wetland to be conserved, that the insertion of higher density housing units in the smaller areas around the wetlands is a questionable practice. The larger section has another problem the real consequences of which are not known at this time. A former toxic waste dump of Browning Ferris Industries is located adjacent to this site, and although presently this dump is closed, there are some unanswered questions as to the nature and direction of the leachate infiltrating the soil in the surrounding areas. A full analysis of this problem should be

undertaken by engineers who specialize in this area before any development is permitted in the vicinity of the dump site.

A traffic study prepared for the developer indicates that with the full development of this site of three thousand units, intersection widening and signalizations will be required at four out of five intersections adjacent to the site. The traffic consultant indicated that if half the proposed number of units were developed, only one intersection would need improvement and signalization.

Rationale for Mount Laurel Site Selection

If Monroe Township were geographically small or limited in terms of potential area for future development, it might be necessary to include in a Compliance Program any site with a realistic possibility for development; however, the Township Council has been presented with 15 sites, most of which could provide at least realistic possibilities for meeting the Mount Laurel obligation. As the Court has ruled in Allan-Deane Corporation v. the Township of Bedminster, "a municipality must provide a realistic opportunity to provide for the construction of its fair share... (p. 12) ...The Court should not look to any site not selected or mechanisms not employed even if they might arguably be as realistic or more realistic unless an excluded site has earned a builder's remedy. Absent a builders remedy, a municipality should have the right under Mount Laurel to choose any reasonable combination of realistic sites or realistic mechanisms that will produce the required result--the likelihood" (p.13). This approach is particularly useful in

evaluating Monroe Township's Compliance Program as, among the fifteen proposed sites for rezoning, many developer's proposals could be considered realistic for providing housing to meet the fair share.

Sites that are located in the older, built-up portion of Monroe (the northeast) have probably the easier availability of sewer and water. These sites, however, are located in the area, which for the planning reasons discussed earlier, would not be recommended for concentrations of higher density housing. Those sites located on the western side of the Township, which from the points of view of site suitability factors discussed in the Bedminster decision (environmental suitability, proximity to goods and services, regional accessibility, and compatibility with neighboring planned uses), would rank very high, share one factor that limits suitability, i.e., availability and adequacy of existing sewer facilities. The mitigating circumstances relating to sewers on the west side of Monroe is that developments either approved already or about to be approved will require improvements to be made to the Forsgate Treatment Plant. It will be necessary to either expand its sewage treatment capacity, or to convert it to a pumping station, to pump sewage to the Middlesex County Utility Authority treatment facility in Sayreville. As these improvements to the Forsgate Treatment Plant will be necessary regardless of the proposed Mount Laurel -generated housing, the sites on the west side of Monroe overcome the lack of immediately available sewer infrastructure, and thus can be deemed realistic mechanisms to provide Mount Laurel housing. The Allan-Deane v. Bedminster

opinion addresses a similar sewer question as follows:

The issue of whether a site may appropriately be included in the compliance package should not turn solely upon the question of its relative susceptibility to being sewerred. Of course, if the proofs demonstrate that one site has very little likelihood of having the appropriate infrastructure provided to it and that another site is comparatively assured of having such facilities, those proofs cannot be overlooked.

The Allan-Deane Corporation v.
The Township of Bedminster, p. 32.

It appears initially that only one builder, Monroe Development Associates, is clearly entitled to the builder's remedy. Other builders who have asserted a claim to the builder's remedy will have that claim evaluated by the Court.

Planning Considerations

In general, the Compliance Program developed for Monroe Township has concentrated the development of higher density housing along the western side of the Township. From a planning perspective, this appears to be justifiable based upon traffic patterns, current and anticipated, previous and current development policies of the Township, and relevance of the State Development Guide Plan.

The concern expressed by the Council of Monroe Township about increasing traffic on local streets within the Township can be met by the location of higher density housing in an area of the Township which is easily accessible to major highways: Route 33 and the New Jersey Turnpike. The two access points to New Jersey Turnpike Exits 8 and 8a from Monroe Township, are

Route 33, a major four lane divided highway, and Forsgate Drive, which although presently limited by a two lane bridge is proposed for significant improvement accompanying development of the Forsgate Country Club as a hotel/convention center and upgraded golf and country club.

The previous development policies that have been approved in Monroe suggest that the west side of the Township is the area most appropriate for high density development, both commercial and residential. Naturally, one might say that this policy developed as a result of developers' requests for permission to build, but the reason that this area would have been attractive to developers relates to its appropriateness because of its ease of access discussed earlier. Going back to the early 1970's, when plans for Rossmoor were developed, followed by Clearbrook and then Concordia, the higher density planned retirement communities created a pattern on the western side of the Township which then further stimulated the provision of sewage treatment facilities and currently the construction of a major water storage facility. Similarly, the Concordia developers have near completion a 40 store shopping center, stimulated not only by the Concordia planned retirement community, but also by the presence of two other major planned retirement communities. The Forsgate Country Club has now become a logical location for a major commercial development, consisting of a hotel/conference center, a championship golf course, and ultimately office development, in large part because of its excellent access to the New Jersey Turnpike.

The location of the sites proposed by developers in the

northeast section of Monroe, not only presents problems of an older densely developed area, but offers continued patterns of traffic congestion when one looks at planned development in the adjacent township of Old Bridge. Ironically, the older densely developed area of Northeast Monroe is better served by sewage pumping stations than the newer high density area on the west. This, however, cannot be considered a good enough reason to add yet greater density to an inadequate street system when conversion to a pumping station of the sewage treatment facilities is required on the western side of the Township even to serve the development which has already been approved. From the planning standpoint, both within Monroe Township and in a wider area of southeastern Middlesex County, to concentrate higher density development closer to major regional access roads, seems to be a sounder decision than burdening a road system which is of random design and is congested.

The State Development Guide Plan was designated in Mount Laurel II as the document to provide the basis for a municipality's obligation to provide a fair share of the region's housing needs.

The SDGP divides the state into six basic areas: growth, limited growth, agriculture, conservation, pinelands and coastal zones (the pinelands and coastal zones actually being the product of other protective legislation). (10) While it does not purport to draw its lines so finely as to delineate actual municipal boundaries or specific parcels of land, the concept map, through the county maps, makes it quite clear how every municipality in the state should be classified (see Appendix). By clearly setting forth the state's policy as to where growth should be encouraged and discouraged, these maps effectively serve as

a blueprint for the implementation of the Mount Laurel doctrine. Pursuant to the concept map, development (including residential development) is targeted for areas characterized as "growth." The Mount Laurel obligation should, as a matter of sound judicial discretion reflecting public policy, be consistent with the state's plan for its future development. Consequently, the obligation should apply in these "growth" areas, and only in these areas, subject to the exceptions mentioned infra at 240-243. (11)

92 NJ 158 at 226-227

In Monroe Township the Growth Area borders the western and northern sides of the Township, including the lands close to the New Jersey Turnpike and the older built-up areas near Spotswood.

However, the Court did indicate that where a municipality had been admitting or encouraging development in a non-growth area, the designation of Growth Area as shown on the State Development Guide Plan would not be the factor which limited that municipality's obligation to provide opportunities for low and moderate income housing. Monroe Township, in its 1979 zoning ordinance, zoned all parts of the town for development--residential, commercial and light industrial. They did not maintain an agricultural zone or an area that could be set aside for agricultural preservation. Additionally, since 1979, the policy of the Township has been to permit development within the agricultural area, both for residential and commercial uses (Concordia, shopping center, etc.). It would appear therefore that Monroe Township's policy is not to limit development in the Agricultural Area as opposed to the Growth Area as defined in the State Development Guide Plan. This policy makes designation

of areas for development within the Agricultural Area more reasonable than might be the case if other land use policies had been pursued by the Township.

Anticipation of this situation is reflected in the exceptions referred to by the Court in the discussion quoted above.

For instance, if, after the date of this decision, a municipality containing no growth area allows the construction of a significant industrial use creating significant employment opportunities, that would be sufficient to justify a court in imposing a Mount Laurel remedy on that municipality as if a portion of it had been characterized as "growth area"; the same conclusion would follow if such a municipality, after the date of this decision, encourages or allows the construction of a residential subdivision, or if, though unsuccessful, it attempts to attract development of either kind or of a commercial nature.

92 NJ 158 at 242-243

Summary of the Compliance Program Evaluation

In summary, then, the evaluation of the proposed Compliance Program with recommended modifications, or as not recommended, is as follows:

1.) Rehabilitation Program

A rehabilitation program for 60 households (10 per year) with incomes below eighty percent of the median income, to correct heating and plumbing deficiencies, overcrowding, or other basic code violations is recommended for credit in the Compliance Program.

2.) Housing Authority- Infill Housing

The proposal in the Compliance Program to create a housing

authority and to provide from seventy to one hundred fifty new housing units through infill housing is not approved as a realistic mechanism. This concept would be acceptable in principle, but to date the Township has not taken any action to establish a housing authority, or to develop the required source of funding for the infill housing program.

3.) Monroe Development Associates

The property of Monroe Development Associates will be rezoned for multi-family housing under the planned PVD (planned village development) zone as set forth in the Compliance Program. This zone, as described, provides for a maximum gross density of eight to ten dwelling units per acre. This site is recommended to be developed at the lower limit, i.e., a gross density of eight units per acre. Its sixty acres will contain four hundred eighty dwelling units, of which ninety six will be for low and moderate income households, evenly divided between the two categories.

4.) Concordia Expansion

The Compliance Program proposal for Concordia planned retirement community expansion, which would have included a five percent set aside of 100 units for low and moderate income elderly, has not been included by the Township Council in the approval of the site development plan for this expansion. It is recommended, however, that the PRC zone be amended to require a 5 percent set-aside for all future PRCs which would include the final approvals for Concordia.

5.) Balantrae (Stratford at Monroe)

This development, a planned retirement community to be

constructed on 443 acres, could provide a total of 3100 housing units. The developer has indicated that he will provide 325 housing units for low and moderate income households of which one third will be for the elderly. The Mount Laurel units will be distributed evenly between low and moderate income. This site is recommended to be approved as per the latest proposal by the developer, with the understanding that the elderly Mount Laurel units will be integrated within the planned retirement community and the non-elderly units will be located separately, appropriately placed in relation to adjacent residential development.

Correcting Deficiencies in the Compliance Program

The total number of units provided under the above described aspects of the Compliance Program will not equal the fair share assigned to Monroe Township by the Court. In reviewing all of the proposals presented to the Township Council, and in relating those proposals to what appears to be the planning policies of the Township based on approvals already given for development, it is recommended that the Lori Associates site be rezoned for PVD development at 8 dwelling units per acre. This would result in an overall development of 1136 units of housing, with 227 being provided for low and moderate income households. Although the Lori site is in the Agricultural Area of the State Development Guide Plan, it is in an area that has been zoned for residential development by Monroe Township, and is close to the Growth Area line. The site, which has been previously described, has been proposed by

the developer for development at a higher density, over ten units per acre, but given the nature of other developments in Monroe Township as well as the densities proposed for Balantrae development, there is no planning justification for building as many units on the land as it can hold, particularly as that level of development would not be in keeping with the surrounding community and its facilities. The future conversion of the Forsgate Treatment Plant to a pumping station, and the extension of utility lines toward Route 33, proposed as future actions by the M.T.M.U.A., will continue to change the character of the western side of Monroe, and therefore will make this the appropriate area for higher density development.

The proposals approved herein, including Lori Associates, provide 808 units of low and moderate income housing. As was indicated earlier, the realistic measure of rehabilitation efforts or housing authority developments will only be possible to evaluate after Monroe Township adopts the required ordinances and indicates its willingness and ability to establish the administrative mechanisms necessary for those aspects of the Compliance Program to be successful.

In order to assure that opportunities are provided which are realistic for the achievement of Monroe Township's Fair Share, the progress of the Compliance Program should be monitored throughout the six year compliance period. If, at the end of the second year, the rehabilitation program is not fully underway, or if any of the proposed developments are not under construction, then additional areas which would provide a realistic mechanism for provision of Mount Laurel housing

should be rezoned in a way to provide that mechanism. It would seem from the present situation in Monroe, assuming the proposed improvements to the Forsgate Treatment Plant are undertaken, that a continuation of higher density housing on the western side of the Township would be appropriate, including consideration of sites from Forsgate Drive south to Route 33.

Phasing of the Fair Share Housing Units

The question of phasing the fair share obligation was discussed in the Mount Laurel II decision, in reference to preventing an impact of housing growth that would "radically transform the municipality overnight." 92 NJ 158 at 219.

This does not appear to be a relevant problem in Monroe Township. In 1950 Monroe was a completely rural township made up of farms and small scattered hamlets. Since 1950, growth has been steady, resulting in a population in 1980 that was nearly quadruple the population in 1950- from 4082 to 15,858. This is a substantial growth, but over a thirty year period it has not had the negative impact anticipated by the Court when it advised the trial court that it had the power

to adjust the timing of builder's remedies so as to cushion the impact of these developments on municipalities where that impact would otherwise cause a sudden and radical transformation of the municipality.
92 NJ 158 at 280

It is assumed that the zoning ordinance enacted by Monroe Township which established a 400 acre planned retirement community zone at 14 units per acre, reflected planning policies

which anticipated and accepted significant increases in the number of housing units in the Township with each approval of a planned retirement community.

In the Compliance Program, over 500 of the required 774 low and moderate income units are located in developments that are currently permitted by the existing zoning, with no increases in density, or will be provided through rehabilitation of existing units. Although the Balantrae site would require a variance to permit its location in a light impact industrial zone instead of a residential zone, it will not result in higher densities than are currently permitted in the PRC zone. Similarly, the 5 percent set-aside in all planned retirement communities will not increase the number of units permitted by right.

The only actual increase in housing units caused by Mount Laurel housing will be in the Monroe Development Associates and the Lori Associates sites, with a total of 1600 housing units. As these two developments combined are smaller than one planned retirement community, it does not appear that providing the zoning which will permit the development of Monroe's assigned fair share will have any serious negative impacts on the Township of Monroe, nor that it need be phased beyond the six year repose period.

Proposed Ordinance Changes in the Compliance Report

The appendix to the Monroe compliance report consists of proposed amendments to the existing zoning ordinance which would provide definitions and controls on low and moderate income housing and provide for a planned village development (PVD) to supplement the existing zone for planned retirement community (PRC). These comments will address items in that appendix that could be improved by modification or that might be considered restrictive in the provision of housing for low and moderate income households.

The Compliance Report does not include any proposed ordinances for the monitoring and/or administration of the affordability of the Mount Laurel housing, either initially or for a reasonable duration. Some mechanism to insure the affordability on a continuing basis will be required in order for any Compliance Program to be effective.

Article III Section 130-7, "Definitions"

In the definition of a low income housing unit the term affordable should be clarified to distinguish between rent affordability and sales price affordability. The monthly rent that would be considered affordable would be 30% of gross income including the cost of utilities. The monthly payment of a mortgage on a sales unit, including principal, interest, taxes, insurance and condominium fees, should not exceed 28% of the gross monthly income. These percentages should be applied to the family whose income does not exceed 50% of the regional median income in order to be considered a low income housing

unit.

A moderate income housing unit is one in which the monthly rent or the monthly mortgage payments do not exceed the above percentages for a family whose income would be between 50% and 80% of the regional median income. These definitions will then be accurate in terms of the specific terms defined by the Court. However, in order to provide units that are affordable to households whose incomes are in a broader range than just the top of the income limit, the percentages for affordability should be applied to 90% of the maximum income limits. For the low income housing this would mean 45% of the regional median income, and for moderate income housing, this would mean 72% of the regional median income.

New Section (i), "Low and moderate income housing"

The description in this section of the ordinance amendment under Items 1 and 2 talks in general about phasing and control of occupancy of the units. There should be considerably more detail in this section, or a separate Affordable Housing Ordinance should be developed, which would specify how the low and moderate income units would be marketed, how applicants would be screened, how standards of affordability would be determined (source of median income data), how ongoing monitoring of occupancy will be done and how resales or rental turnover would be handled. An agency in the municipality, or an agency designated by the municipality, would be best equipped to handle this process, rather than the Planning Board, which generally has a heavy workload in a developing municipality such

as Monroe Township.

Regulations for the Planned Village District
Article IV Section (13)

V. Standards

In Item K, Number 3, the requirements for sidewalks four feet wide suggest paved sidewalks. It would be possible as a cost saving device to have pedestrian walkways which were not paved sidewalks, but were graded and planned walks of stonedust. Similarly, requirements for paving and curbing on roads might be modified to save money where a lesser standard of development might not impinge on the health and safety of the occupants. This amendment to the ordinance for planned village development should provide that in locations of low and moderate income housing units, the Township engineer might relieve some of the requirements for higher standards of development that would not be considered necessary to either health or safety.

O. Townhouses

The requirement in Number 3 that townhouse residential units shall comprise at least 40% of the total residential units seems arbitrary. There is nothing particularly valuable in a townhouse in terms of living standards and quality of life that could not be provided in clustered units, garden apartments, stacked flats, etc. Similarly, the setback requirements in Number 4 in this section appear to be cost generating in reference to the provision of housing for low and moderate income households. Within the portions of planned village

development which are designated as appropriate for low and moderate income households, it would be adequate protection for the residents and surrounding uses, to give the Township Engineer the leeway to relieve some of the setback requirements based on the overall site plan, and to relieve the constraints that might be placed on the location of residential units within that site plan. Parking requirements for Mount Laurel households should reflect the expected family size and lower income of the occupants. It is unlikely that more than an average of 1.5 or 1.75 parking spaces per unit would be required. Therefore Number 5 in this category is excessively cost generating.

The standards set forth in Number 13 for an enclosed, roofed structure for solid waste and maintenance equipment for each twelve units is cost generative and excessive in the production of Mount Laurel units. A plan for solid waste management certainly should be prepared and submitted for approval in any development, but it is entirely possible that a solution could be developed which did not involve a fully enclosed and roofed building.

P. Apartments

Requirements in Number 3 under this heading for parking areas are excessive for Mount Laurel units. Based on the income of the occupants it is sufficient to require an average of 1.25 parking spaces for one bedroom units, 1.50 parking spaces for the two bedroom units, and 1.75 parking spaces for three bedroom units.