

Mt. Laurel II

2/8/1985

Internal memo re: five reg + for builders  
remedy implementation

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No A.I.

TO: Eric Neisser  
FR: Valarie A. Jones  
RE: Time Limitation for Implementation of Builder's Remedy  
DA: February 8, 1985

ISSUE: Does the Mount Laurel II decision establish a time requirement for the construction of low and moderate income housing?

The court is concerned that the Mt. Laurel II decision be more than a theoretical paper right. Following Mt. Laurel I there were years of litigation, including numerous written documents rationalizing the municipalities' exclusionary zoning ordinances. While the number of trials and appeals escalated steadily, the realistic opportunity for construction of housing amounted to nothing.

The Mt. Laurel II decision proposes to cure the administrative deficiencies to the extent that the obligation to provide a realistic opportunity for housing will become a reality, i.e., that the lower income housing will actually be constructed. "Affirmative" in the Mt. Laurel rule, suggests that the municipality is going to do something, and "realistic opportunity" suggests that what it is going to do will make it realistically possible for lower income housing to be built. p. 442.

Although the court is compelled to require the municipalities to comply with the constitutional mandate of the doctrine, municipalities' fears of being over saturated with low and moderate units are unfounded. The citizens can be reassured that any changes brought about by this opinion need not be drastic or destructive. p. 421.

In certain instances the Mt. Laurel obligation is remediated by the use of the "phase-in" process in order to lessen its impact on the community.

The Mt. Laurel obligation to meet the prospective lower income housing need of the region, is...one that is met year after year in the future, throughout the years of the particular projection used in calculating prospective need. In this sense the affirmative obligation to construct a fair share of lower income housing is met by a phase-in over those years; it need not be provided immediately. Nevertheless, there may be circumstances in which the obligation requires zoning that will provide an immediate opportunity—for instance, zoning to meet the region's present lower income housing need. In some cases, where the town may be radically transformed overnight by the number of units to be constructed, trial courts shall have the discretion...to moderate the impact of such housing by allowing even the present need to be phased in over a period of years. Such power, however, should be exercised sparingly. The same power may be exercised in the satisfaction of prospective need, equally sparingly, and with special care to assure that such further postponement will not significantly dilute the Mount Laurel obligation. p. 420

Consistent with this rationale the court has further stated:

With regard to the number of units to be constructed, the trial court has 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. 452-453.

One can infer from the tone of the opinion that the court is primarily interested in seeing that units are developed.

Finally we feel that after 10 years of litigation it is time that something be built for the resident and non-resident lower income plaintiffs in this case who have borne the brunt of Mt. Laurel's unconstitutional policy of exclusion. 467.

The court may disapprove a phase-in process if it is viewed by the court as an attempt to thwart the constitutional obligation of the Mt. Laurel doctrine.