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"Plan of Action" to Address Low Income Housing Crisis

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A PLAN OF ACTION TO ADDRESS HOBOKEN'S LOWER INCOME HOUSING CRISIS

CAMPAIGN FOR HOUSING JUSTICE
HOBOKEN NEW JERSEY

APRIL 1985

A PLAN OF ACTION TO ADDRESS HOBOKEN'S LOWER INCOME HOUSING CRISIS

I. THE PROBLEM

After many decades of housing an economically mixed population, of which a substantial part were lower income households, Hoboken in recent years has become an attractive location for upper-income immigration, a major center of gentrification, and, as a result, lower income displacement. This has happened in part as a result of Hoboken's immediate proximity to midtown Manhattan, and in part by virtue of its sound older housing stock. While upper-income movement to Hoboken started with small-scale rehabilitation of townhouses, the pace of change has accelerated, and today includes large scale conversion of older apartment buildings into condominiums, and increased construction of new housing for an affluent market. The plan for the waterfront development sponsored by the Port Authority of New York and New Jersey represents the culmination of a trend many years in the making.

We recognize that Hoboken needs the economic development now going on, and recognize, further, that to discourage private investment and prevent economic development from happening is not necessarily either in the interest of the city or of its lower income population. We feel even more strongly, however, that it is unacceptable that the lower income population of Hoboken be victimized by Hoboken's economic development. These are not the only alternatives: economic development in Hoboken can happen in ways that respond to the needs of the city's lower income population,

and use the development taking place as a means of creating resources which can be applied to meet lower income housing needs, and to counteract some of the economic pressures created by those same development activities.

There is no question that the economic effects of the development taking place, in themselves, are drastically affecting the availability of housing for lower income families. Displacement has happened in communities experiencing gentrification, even where the local government policies were generally sympathetic to the housing needs of the poor. The effects of gentrification, however, can be mitigated by effective governmental action, or they can be made far worse by the actions of a local government that is insensitive to the needs of the poor, or which is actively supporting activities which lead to displacement and the elimination of affordable housing.

Part of the solution, we believe, lies in the problem itself. In marked contrast to most of New Jersey's older core cities, where few if any resources are available for economic development. Hoboken has clearly become an attractive area for private investment, offering a substantial return on dollars invested there. Inclusionary housing developments in suburban communities tap the return the developer obtains from constructing market-rate housing in order to create lower income housing opportunities. The same technique can be used to create lower income housing in Hoboken.

In the final analysis, however, the question is not an economic one, but a political and legal one. Private developers will not contribute to lower income housing development except to the

extent that it is a condition they must meet to be able to carry out their projects. That condition can only be imposed by local government. If things are to change in Hoboken, local government must not only cease to be a silent partner in the process of displacement, but must begin to take an active role in fostering ways of maintaining existing affordable housing, and creating additional housing affordable to the poor.

The city of Hoboken not only has a moral obligation to do so, but a legal obligation as well. Contrary to the impression held by many people, the Mount Laurel II decision makes clear that all municipalities, not only the affluent suburbs, have an obligation, at a minimum, to address the housing needs of their indigenous poor. While Hoboken undoubtedly once sought to do so, in the past, as evidenced by the subsidized housing in the city, it is no longer doing so, but rather is exacerbating the problem through its present policies and actions. Thousands of lower income households still live in substandard and overcrowded housing conditions in Hoboken, and other thousands of these households are being forced out of the city as a result of the gentrification going on. The history of past efforts does not mean that local government can ignore present needs, or permit the displacement of those households not fortunate to live in subsidized housing.

Hoboken's legal obligation to address the housing needs of its lower income households grows directly out of the Mount Laurel decision, and exists at three separate levels. First, as the decision makes clear, all municipalities in New Jersey have an obligation to meet the housing needs of indigenous lower income

households; that is, the lower income households living today in the city in substandard and overcrowded conditions. Second, to the extent a community grows, particularly in terms of attracting large scale nonresidential rateables, it incurs an obligation to meet its fair share of the regional need of lower income housing. We have estimated, for example, that the Port Authority waterfront development, as proposed, will generate some 7,500 new jobs in the city of Hoboken. That job growth clearly carries with it the obligation to provide for additional lower income housing, in reasonable proportion to the jobs created that will be held by lower income workers. Finally, whatever the scope of Hoboken's affirmative obligation may be found to be, no city may use its regulatory powers, directly or indirectly, to drive lower income households out of the community; as the Mount Laurel decision says, "the zoning power is no more abused by keeping out the region's poor than by forcing out the resident poor". Appendix 1 to the Plan of Action provides a more detailed discussion of the issue of Hoboken's legal obligations under Mount Laurel.

In conclusion, Hoboken is facing a crisis in the housing of its lower income population. That the crisis exists is undisputed fact. It is our contention that not only do the means exist to address that crisis, but that the city of Hoboken has a clear legal as well as moral obligation to use every feasible means to preserve and extend lower income housing opportunities in the city, rather than allow them to be eroded by gentrification and redevelopment. It is to that goal that this Plan of Action is dedicated.

II. FIVE PROPOSALS FOR ACTION TO ADDRESS HOBOKEN'S LOWER INCOME HOUSING CRISIS

The following housing action proposals are submitted to the city of Hoboken by the Campaign for Housing Justice. They represent a series of feasible, realistic, steps which can be taken, and, in our judgment, must be taken by the City of Hoboken, in order to respond to the continuing need for lower income housing in the city, and to reduce the negative effects of the gentrification and displacement, which are both taking place today almost unconstrained throughout the city. Each proposal is realistic: each one falls within the legal authority of the City, and can be carried out within the resources available to the City.

1. APPROVAL OF THE PORT AUTHORITY WATERFRONT DEVELOPMENT SHOULD BE CONDITIONED ON CONSTRUCTION OF A REASONABLE PERCENTAGE OF LOWER INCOME HOUSING UNITS. A SUBSTANTIAL PERCENTAGE OF THESE UNITS MUST BE PROVIDED WITHIN THE PROPOSED DEVELOPMENT, WITH THE BALANCE PROVIDED OFFSITE OR IN THE FORM OF A PROPORTIONATE CONTRIBUTION TO A HOUSING TRUST FUND ESTABLISHED TO PROVIDE LOWER INCOME UNITS IN HOBOKEN.

The Port Authority waterfront development proposal will be, by far, the largest single development project ever to take place in the City of Hoboken. As planned, it will add 1,500 luxury housing units to the city's housing stock, and approximately 7,500 jobs, of which the great majority will be white-collar office jobs. The effect of the development on the city will be immense; not only will the construction of these luxury housing units further increase market demand within the existing housing stock (already bid up dramatically over recent years), but the job creation will trigger the demand for additional lower income housing, as well as

market housing, in the community.

The impact of the waterfront development on affordable housing in Hoboken is so great that it would be irresponsible to allow it to proceed without requiring strong measures to mitigate those impacts. Under the legislation authorizing the Port Authority to undertake this project, that agency must obtain prior approval from the City of Hoboken. Thus, the city has a solid legal basis for requiring that the lower income housing impacts of the Port Authority project be fully addressed in the conditions under which that project will go forward. Using its statutory approval powers, the city should require:

- construction of lower income housing within the waterfront development;

and

- construction or rehabilitation of lower income housing in other locations in Hoboken, financed within the waterfront development, and undertaken simultaneously with it.

Alternatively, if it can be demonstrated that contributions can be effectively utilized under the circumstances governing development in Hoboken, and will indeed result in a comparable number of lower income units being provided, some of the funds could be applied to a Housing Trust Fund, which would be dedicated exclusively to the construction and rehabilitation of lower income housing in the city.

It must be stressed that these are not mutually exclusive alternatives; indeed, we consider it essential that a substantial part of the lower income housing obligation associated with the waterfront project be constructed as a part of the waterfront

development, and within that development. Furthermore, the units that should be provided within the waterfront development should provide for a mixture of housing unit types and sizes, appropriate to the needs of the lower income population of the city. Hoboken has historically been a community in which a substantial amount of economic integration took place, and it is our hope that the current revitalization of the city will maintain and enhance that tradition. It would be highly inappropriate and undesirable for the proposed waterfront development to result in creation of an upper-income enclave, in but not of the City of Hoboken.

A precedent for such inclusionary conditions, the Office/Housing Production Program, under which the City of San Francisco has required similar housing contributions from the developers of office buildings, has been successfully implemented in that city over the past four years. An estimate of the magnitude of the housing impacts from the waterfront development, and a recommendation of the number of lower income housing units that should be provided by this development, are given in Appendix 2. At least half of this total should be incorporated within the waterfront development itself.

2. APPROVAL OF FUTURE DEVELOPMENT IN THE CITY, INCLUDING MAJOR IMPROVEMENT OR REHABILITATION AND CONDOMINIUM CONVERSION OF EXISTING BUILDINGS, WHERE THAT DEVELOPMENT RESULTS DIRECTLY OR INDIRECTLY IN THE LOSS OF HOUSING UNITS AFFORDABLE TO LOWER INCOME HOUSEHOLDS, SHOULD BE SUBJECT TO A CONDITION THAT ALL SUCH DEVELOPMENT INCLUDE LOWER INCOME UNITS, AND PROVIDE FOR ADEQUATE RELOCATION OF ANY DISPLACED RESIDENTIAL OCCUPANTS WITHIN THE CITY OF HOBOKEN.

Hoboken has become a center of gentrification, arguably the most significantly impacted such area in New Jersey. Unlike many other urban areas, where gentrification has largely arisen from

individual families buying row houses and rehabilitating them, Hoboken's redevelopment is heavily oriented to acquisition of apartment buildings by developers and their rehabilitation for the luxury market, often including their conversion to condominiums. Such conversions, which are facilitated by loopholes in city ordinances, result directly in the displacement of lower income households. In the future, construction of new luxury housing is likely to become more and more attractive; this process has already begun. In view of the limited availability of vacant land, even construction of new housing, or conversion of industrial properties to residential use, which may not directly displace lower income households are likely to result in future displacement of lower income households, in some cases through demolition and in some cases through the impact of such development on the cost of nearby housing.

Land, and habitable housing units, are both a scarce resource in Hoboken. To the extent that that resource is being used more and more to provide luxury housing, simultaneous efforts must be made to secure as much housing as possible for the less affluent before it is too late. The unacceptable alternative is a gradual diminution in the availability of housing for any but the affluent. In the absence of substantial Federal housing subsidies, an ordinance provision which makes the inclusion of lower income housing a condition of approval of future development is likely to be the only realistic way of providing at least some modest resources for this objective. Such an ordinance can provide, where it can be shown that circumstances clearly make production of housing

feasible through such contributions, that a contribution to a Housing Trust Fund can be made in lieu of all or some of the lower income housing units otherwise required to be incorporated into the proposed development or redevelopment project.

Finally, the same provision should apply to any substantial non-residential development, such as major shopping facilities or office buildings, constructed in the city, including any such developments that have resulted from the conversion of existing residential structures to non-residential use. These developments have the same impact on the price of housing, by increasing demand for land and buildings, as do luxury housing developments. While literal incorporation of lower income housing into such nonresidential developments is usually not feasible, a contribution to the housing trust fund in direct proportion to the impact of the development on lower income housing need is not only reasonable, but necessary. A mixed use development, which combines both residential and non-residential uses, of course, may well be able to incorporate lower income units directly into the development.

3. UPON ENACTMENT OF THE ORDINANCES CREATING THE HOUSING TRUST FUND, AND MANDATING CONTRIBUTIONS FROM THE WATERFRONT DEVELOPMENT AS WELL AS OTHER DEVELOPMENT IN THE CITY OF HOBOKEN, A NONPROFIT CORPORATION COMMITTED TO THE GOAL OF MEETING LOWER INCOME HOUSING NEEDS SHOULD BE ESTABLISHED TO ADMINISTER THIS FUND.

The history of housing trust funds elsewhere in the United States has made clear that, without an organization committed to making such programs a success, with the resources and flexibility to undertake creative housing programs, such funds often accomplish far less than they should. Indeed, there are a number of cases on record where contributions to housing trust funds have simply gone

into the fund, and years later remain unspent, accumulating interest. In Hoboken, given the high costs and the constraints on land availability, the problems of ensuring effective use of a housing trust fund revenues are particularly severe. If funds are to be used effectively, not only must the administering entity have the technical capability to carry out innovative housing programs, but it also must have an unequivocal commitment to see that any such funds are indeed used to maximize lower income housing opportunities in the city of Hoboken.

For those reasons, the Hoboken housing fund should be administered by a corporation separate from City government, made up of a mix of community lower income housing advocates and housing professionals (the latter not necessarily residents of the community). While this organization would be empowered to initiate its own projects, it could provide financial support to projects initiated by other developers and nonprofit organizations within the community. By being separate from city government, the corporation would be able to focus directly on the objective of maximizing lower income housing opportunities, without the countervailing pressures that might potentially constrain an entity of the municipal government.

4. THE CITY OF HOBOKEN SHOULD ESTABLISH A TENANT ADVOCACY AGENCY, TO PROVIDE AN EFFECTIVE MEANS OF SECURING THE RIGHTS OF TENANTS IN HOBOKEN TO DECENT HOUSING AND FULL PROTECTION OF THE LAW.

Although there are a wide variety of laws on the books designed to secure tenants rights to decent, habitable, housing, as well as to protection in the event of demolition, condominium conversion, and the like, both at the local and state levels, their

enforcement is irregular and inefficient, and there is little or no coordination between agencies responsible for different duties in this area. In some areas, such as rent control, although a law exists, not only does it contain significant loopholes, but there is no effective vehicle to ensure that it is properly enforced. Furthermore, little information is provided to tenants to enable them to understand their rights, and the manner in which they can enforce those rights.

The present economic environment in Hoboken is such that there is constant pressure from landlords to vacate their buildings in order to make possible their upgrading for a luxury clientele. From all accounts, violations of the housing code, of the rent levelling law, and of other statutes are widespread. Effective enforcement of these laws, coupled with effective tenant education and advocacy, is a major element in preserving the affordability of at least some part of Hoboken's housing stock. Realistically, given the many pressures affecting the municipal agencies who have responsibilities in this area, we believe that the only way that effective enforcement of the laws is likely to take place, and a regulatory climate supportive of the needs and concerns of lower income tenants established, will be through creation of such a tenant advocacy agency, with a clear mandate to work for effective and aggressive enforcement of the laws. Among the responsibilities of this office would be:

- Investigating tenant inquiries and complaints under the rent control law, as well as providing tenants with information regarding their protections under that law;

- Coordinate inspection efforts to ensure systematic and effective code enforcement, including effective follow-up on correction of violations, in rental buildings;
- Participating in rent levelling board hearings, court proceedings, etc., to ensure full and effective representation of tenant interests and concerns.

One further area in which this agency is particularly badly needed is that of relocation. There is a desperate need for an aggressive program of relocation assistance, including both the development of resources and the ongoing monitoring of private owners' activities, to ensure that lower income households vacated as a result of redevelopment and rehabilitation activities are provided with the full measure of assistance under the law; indeed, given the particular problems of Hoboken, relocation assistance should go well beyond the minimum requirements of New Jersey state law.

5. ELIMINATE LOOPHOLES IN THE LAW WHICH ALLOW BUILDINGS TO BE VACATED, AND REHABILITATED, OR CONVERTED TO CONDOMINIUMS, WITHOUT ADEQUATE PROTECTION OF TENANT INTERESTS.

Under the Hoboken rent levelling law currently in effect (Sec. 18:53 through 18:61 of the General Ordinances of the City of Hoboken) buildings can be vacated and either re-rented at uncontrolled rent levels or converted to condominiums without any effective protection for the lower income households initially residing in the buildings. The economic rewards from doing so have become so great that large numbers of tenants have already been displaced, and the tenure of remaining lower income households is in jeopardy. While we do not seek to prevent the rehabilitation of housing in Hoboken, we consider it essential that it take place in a manner that fully protects existing tenants, and respects their

right to decent housing.

Properly framed local ordinances, effectively enforced, are capable of substantially mitigating the abuses now taking place. The following ordinance provisions, which can be framed as amendments to the existing rent levelling ordinance, would substantially increase the likelihood that, as redevelopment continues to take place, it will take place in a manner consistent not only with the City's improvement, but with the interests of the City's lower income population as well:

A. The ordinance should provide that, with regard to any vacant building proposed for substantial rehabilitation and/or condominium conversion, the burden shall be on the applicant to establish either (1) that the building was not vacated for the purpose of rehabilitation and/or conversion; or (2) if it was indeed vacated for that purpose, that the tenants were not vacated unlawfully, and were provided with the full measure of legal relocation assistance.

B. In the above determination, any evidence that, prior to the rehabilitation, the operation of the building was characterized by either (1) patterns of repeated failure to correct code violations; or (2) patterns of not filling vacancies as they occur, shall be considered prima facie evidence that the building was vacated unlawfully. The applicant shall be responsible for any acts or omissions of any previous owner contributing to the unlawful vacating of the building.

C. Only if the applicant can meet the burden of showing compliance with the provisions of A(1) or A(2) above, shall the applicant be entitled to the exemption from the rent control ordinance now provided for initial rental after substantial rehabilitation. Such re-rental shall also be conditioned on his satisfying the inclusionary requirements (see our proposal [2] above) to be adopted governing development and redevelopment within the city; inclusionary requirements must be satisfied whether or not outside subsidy funds, such as Section 8, are available. Furthermore, if the ordinance permits a cash contribution to a housing trust fund to be made in lieu of providing lower income units, any such contribution must be made in full prior to issuance of any Certificates of Occupancy for the building.

D. Any applicant who cannot establish that the building in question was not unlawfully vacated may still rehabilitate the property, but the initial rental after completion of rehabilitation shall be limited to the rental prior to rehabilitation plus an amount equal to the carrying cost of the applicant's documented rehabilitation expenses. Such units will also be subject to the inclusionary requirements of proposal [2].

E. Any applicant who cannot establish that the building in question was not unlawfully vacated, and seeks to convert that building to condominium occupancy, shall be subject to an inclusionary requirement twice that generally applicable to such a building under the standards to be adopted to implement proposal [2]; e.g., if the generally applicable inclusionary standard calls for twenty percent of the units in the development to be lower income housing (or a proportionate contribution), a condominium conversion failing to establish lawful vacation of the building would be responsible for a forty percent inclusionary requirement.

The above provisions, if carefully and responsibly enforced, can establish a far better balance between providing opportunities for rehabilitation and safeguarding the interests of the City's lower income population than is true of the ordinance currently in effect.

In conclusion, we call upon the City of Hoboken to adopt the policies and specific ordinance provisions necessary to make these proposals a reality. To do so is not only a moral obligation of the City but a legal obligation as well. We stand ready to provide whatever assistance the City needs, either in framing the specific provisions needed to implement these proposals, or in implementing them once adopted.

APPENDIX 1: LEGAL ARGUMENTS IN SUPPORT OF A MOUNT LAUREL OBLIGATION IN URBAN AREAS

Although the two Mount Laurel decisions focus directly on housing in suburban communities, given the nature of the municipalities that were the subject of that litigation, they also provide a clear basis for a parallel housing obligation for urban municipalities, and by extension, for litigation to address urban lower income housing needs. This basis is found both in the broad constitutional principles that underlie the decision, as well as in specific holdings and dicta.

A. The Constitutional Basis of the Decision

Although it is widely perceived that the Mount Laurel decisions deal with "exclusionary zoning", nothing in the decisions turns on either the Municipal Land Use Law, the constitutional provisions dealing with zoning, or any specific feature of the zoning power. They are based, instead, on the broad duty of local government to exercise its police powers to further the general welfare, a point made explicitly in the Mount Laurel II decision, where the Supreme Court describes the constitutional basis of its holdings as follows:

The constitutional power to zone, delegated to the municipalities subject to legislation, is but one portion of the police power and, as such, must be exercised for the general welfare. When the exercise of that power by a municipality affects something as fundamental as housing, the general welfare includes more than the welfare of that municipality and its citizens: it also includes the general welfare - in this case the housing needs - of those residing outside the municipality but within the region that contribute to the housing demand within the municipality. Municipal land use regulations that conflict with the general welfare thus defined abuse the police power and are unconstitutional.

It would be useful to remind ourselves that the doctrine does not arise from some theoretical analysis of our Constitution, but rather from underlying concepts of fundamental fairness in the exercise of governmental power. The basis for the constitutional obligation is simple: the State controls the use of land, all of the land. In exercising that control, it cannot favor rich over poor. It cannot legislatively set aside dilapidated housing in urban ghettos for the poor and decent housing elsewhere for everyone else. The government that controls the land represents everybody. While the State may not have the ability to eliminate poverty, it cannot use that condition as the basis for imposing further disadvantages. And the same applies to the municipality, to which this control over land has been constitutionally delegated. (92 NJ at 208-209)

While historically, in suburban communities, zoning has been the tool by which the police power has been exercised to exclude the poor, the issue is the police power itself; thus, to the extent

APPENDIX 1 (2)

that urban communities are using other techniques under the police power to the same end, it is subsumed under the same constitutional objection.

Applying this general principle, as well as the specific holdings of Mount Laurel II, there are three separate areas, or aspects of the decision, which provide a basis for imposing an affirmative housing obligation on a city such as Hoboken:

(1) Housing obligations based on that part of the indigenous need in the municipality which should not be reallocated to suburban jurisdictions;

(2) Housing obligations based on the needs created by recent and anticipated job-generating economic development activities; and

(3) Housing obligations arising from "expulsionary", rather than exclusionary, practices by the municipality.

B. Housing Obligations Based on Indigenous Need

The Mount Laurel II decision makes the universality of the housing obligation clear, stating that every municipality must provide for "a realistic opportunity for decent housing for at least some part of its resident poor who now occupy dilapidated housing" (at 214). Indeed, the word "every" is italicized in the decision, in order to prevent any doubt arising. The decision further notes, in apparent reference to urban areas, that some municipalities may have a present; i.e., indigenous need that exceeds a reasonable fair share obligation for that municipality, in which case the municipality may legitimately address only a portion of the present need generated within the municipality (at 243-244). The same point is made differently, where it is noted that urban areas where the indigenous poor represent "a disproportionately large segment of the population as compared with the rest of the region" need not necessarily provide housing opportunities for all of their indigenous poor (at 215).

In the development of the fair share allocation methodology by the planning group convened by Judge Serpentelli early in 1984, and subsequently in that judge's decision in AMG v. Warren Township, a formula was developed to quantify that principle. Specifically, it was held that urban communities would be required to meet a part of their indigenous housing needs¹. That part was defined as the percentage of the municipality's housing stock which corresponded to the overall regional percentage of indigenous need; thus, if, within the region, indigenous need represented 6.4% of all housing units, and in one municipality, indigenous need represented 10% of its housing stock, it would be obligated to meet 64% of that total (6.4% of its housing stock), and the

¹Indigenous housing need is defined, in general terms, as the sum of lower income households living in units either lacking adequate plumbing, adequate heating, or overcrowded. The sum of these three categories is considered a statistical surrogate for the phrase "dilapidated and overcrowded" used in the Mount Laurel decision.

APPENDIX 1 (3)

remaining 36% would be reallocated among "growth area" municipalities within the region.

Based on the analysis of 1980 Census data carried out by the planning group, and incorporated into the AMG decision, the indigeneous housing need figures for Jersey City and Hoboken are as follows:

	JERSEY CITY	HOBOKEN
Total indigeneous need	10,087	3,127
Reallocated to other municipalities	[4,921]	[2,141]
Indigeneous need remaining (municipal obligation)	5,166	986

Thus, even without consideration of the other factors discussed below, each municipality has a substantial obligation. This obligation is based, as noted, on 1980 Census data; to the extent that either municipality has provided additional lower income housing for its indigeneous need between 1980 and 1985, that number would be subtracted from the above figure.

This would appear to be a strong basis for defining a threshold obligation. The basic principle governing the manner in which present need is to be distributed adopted in the AMG decision, and summarized above, has been adopted by Judge Skillman, responsible for hearing Mount Laurel cases in the northern part of New Jersey (which includes Hudson County), in a recent decision involving a determination of fair share, Van Dalen v. Washington Township (December 6, 1984). While this methodology has not been made presumptively binding on all municipalities, it could reasonably be anticipated to carry considerable weight if applied by an urban community such as Hoboken.

C. Housing Obligations Created by Economic Development

The theme that municipalities must provide housing for those who work in jobs within the municipality, particularly those actively sought or fostered by the municipality, is a central theme of both Mount Laurel decisions. In the first decision, in 1975, the court held that:

Certainly, when a municipality zones for industry and commerce for local tax benefit purposes, it without question must zone to permit adequate housing within the means of the employees involved in such uses (67 NJ at 187).

The same theme was struck in 1983, where the court held, with specific reference to the determination of a municipality's fair share of prospective housing need, that:

Formulas that accord substantial weight to employment opportunities in the municipality, especially new employment

APPENDIX 1 (4)

accompanied by substantial ratables, shall be favored (at 256).

It is generally held that core cities do not have a housing obligation based on prospective housing need, inasmuch as it can be documented that most cities are experiencing population decline (in some cases, precipitously) as well as a net decline in the number of jobs within the municipality. Where a city is creating substantial numbers of new jobs, however, it is creating an incremental housing need, and thus may arguably be responsible for a proportionate share of its region's prospective lower income housing need.

In order to pursue this argument further, it is necessary to have a means of quantifying the relationship between jobs and housing need, at a level of accuracy capable of creating a clear nexus between a particular economic development project and the fair share obligation. One effort in that direction, which suggests a feasible approach, is a formula developed by Princeton Township, and incorporated in that municipality's recently adopted Affordable Housing Ordinance. The formula creates a chain, beginning with the number of square feet in the facility, translating that into a total number of jobs, and ending in a numerical lower income housing obligation associated with the particular facility. This is a manageable technical problem, although it could be anticipated that there could be some dispute over any specific series of technical coefficients that would be developed.

D. Expulsionary Land Use Policies

At a minimum, Mount Laurel stands for the proposition that municipalities may not use their regulatory powers to drive lower income households out of the community, directly or indirectly. While the common view of exclusionary zoning litigation is that it is prompted by the desire of households to move into suburban communities, it should be remembered that the initial litigation centered around efforts by Mount Laurel Township to use its code enforcement powers to drive out indigenous lower income households, a practice condemned in Mount Laurel I (67 NJ at 169-170). This point is largely assumed in Mount Laurel II, where the court observes that "the zoning power is no more abused by keeping out the region's poor than by forcing out the resident poor" (at 214).

To the extent that a pattern of use of the municipal police power in ways leading to the displacement of the resident poor can be present, and can be documented, it reinforces the extent of the municipal lower income housing obligation, and, in the event litigation arises, it can be anticipated that such patterns would become a significant element in that litigation. This argument, therefore, becomes as much a butress for the other potential claims, particularly the second one discussed above dealing with employment growth, as it is an issue in itself.

APPENDIX 2: ANALYSIS OF THE LOWER INCOME HOUSING EFFECTS OF THE PROPOSED PORT AUTHORITY WATERFRONT DEVELOPMENT

The proposed waterfront development is anticipated to contain 1500 luxury housing units, as well as a wide variety of job generating facilities, such as office buildings and research & development facilities. Each of these areas triggers the need for lower income housing.

With regard to the housing, if this development were located in a suburban community that was implementing an inclusionary ordinance under the standards of the Mount Laurel II decision, it would, typically, be required to include a setaside of 20% of the total number of units in the development for lower income occupancy. In other words, if a developer wanted to build X number of luxury units, he would be required to build .25X lower income units, thus resulting in a development in which the lower income units represented 20% of the combined total of all units. Applying this principle to the waterfront development, this would trigger the following:

$$1500 \text{ units} \times .25 = 375 \text{ lower income units}$$

Thus, the lower income setaside requirement associated with construction of 1500 luxury units is 375 lower income housing units.

With regard to the job creating facilities, there are widely used statistical formulae which have been devised to translate the number of square feet of such facilities being built into a number of jobs. Additional formulae have been devised recently to convert that figure into lower income housing needs. An estimate of the number of jobs to be generated by the waterfront development is as follows:

FACILITY/SF	JOBS PER SQUARE FOOT	JOBS
Office/1.4 million SF	1 per 250 SF	5600
Hotel/400 rooms	.39 per room	156
Retail/150,000 SF	1 per 1000 SF	150
R&D/750,000 SF	1 per 500 SF	1500
Marina	estimated	60
TOTAL		7466

Nearly 7,500 jobs will be created in this facility.

From the 1980 Census, two statistics can be derived, which serve as a basis for converting jobs into lower income housing need. These statistics are the number of households per job (.775 to 1), and the percentage of all households that are job-linked lower income households (.219). It should be noted that the percentage of lower income households generally is higher, but for this purpose only job-linked households (those in which there is one or more employed

APPENDIX 2 (2)

family member) are considered. Thus, the number of lower income households that will be supported by the waterfront development is as follows:

$$7466 \text{ jobs} \times .775 = 5786 \text{ households}$$

$$5786 \times .219 = 1267 \text{ lower income households}$$

It would be unreasonable, however, to assert that ALL of these households will need housing as a result of this facility. That might be the case if it were built in an isolated area, but not in the heart of the New York metropolitan area. The Princeton Township inclusionary ordinance, for example, estimates that each employer should be responsible for supporting housing for 25% of the lower income households that are generated as a result of this formula. If we apply that percentage, we obtain:

$$1267 \times .25 = 317$$

Coupled with the 375 units resulting from imposition of a setaside on the residential units, this would create a total obligation of $(317 + 375) = 692$ lower income housing units.

This can be provided in the form of units, or a combination of some number of units together with a contribution to a Housing Trust Fund, such a contribution option being subject to the conditions discussed previously. While the precise amount of the contribution per unit will have to be determined on the basis of a specific and detailed study, given the high cost of land and buildings today in Hoboken, it is likely that the realistic level of direct subsidy cost needed to provide each lower income units will be well in excess of \$20,000. Assuming that the residentially-derived units would be provided in the waterfront development on site, appropriately interspersed with the other development taking place, and assuming a contribution level of \$20,000 to \$30,000 per unit, the waterfront development should include at a minimum 375 lower income housing units, and make a contribution to the housing trust fund that can be estimated in the area of \$6 million to \$9 million.