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Ringwood

Countryside properties v Borough of Ringwood.

Report by Allan Mallach.

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**COUNTRYSIDE PROPERTIES, INC. ET ALS V. MAYOR AND COUNCIL OF THE
BOROUGH OF RINWOOD ET ALB. CDOCKET NO. L-4S095-813**

**REPORT TO HON. STEPHEN SKILLMFIN, J. S. C.,
BY ftLAN MftLLftCH, fiICP, fiDVISORY MfiSTER**

JANUARY 1986

REPORT OF ALAN MALLACH, ADVISORY MASTER

I. BACKGROUND

This is a Mount Laurel case brought by developers against the Borough of Ringwood, a municipality with a population of roughly 13,100 people (1984 estimate) on 7.5 square miles in northern Passaic County, immediately south of the New York - New Jersey state line. The municipality is located in its entirety within the Conservation area as delineated in the State Development Guide Plan (SDGP).

A hearing on whether to set aside that designation for Mount Laurel purposes, and on the extent of Ringwood's indigenous lower income housing need was held in mid-1984, with a decision rendered by the court on July 25, 1984. That decision upheld the SDGP designation of Ringwood, established the procedure for determination of the borough's indigenous need, and found that the existing zoning scheme of the borough was invalid under the standards of Mount Laurel II. The borough's indigenous lower income housing need was subsequently set at 80 units.

Subsequent to the July 25, 1984 decision, the parties reached a tentative settlement of the issues in the case. In order to assist the court in evaluating that settlement, and to assist the municipality in preparing an amendatory ordinance implementing the settlement in a manner consistent with Mount Laurel II, I was appointed advisory master in the case on March 10, 1985. From mid-April through the end of December 1985, I participated in a series

of meetings with the parties in order to assist in finalizing the settlement agreement, and in drafting an amendatory zoning ordinance to effectuate the settlement, and make possible the achievement of Ringwood's Mount Laurel goals. fit the beginning of 193&, I was informed by the parties that the borough had effectively decided not to enter into the settlement as it had been drafted, and had been previously tentatively approved. This report was requested by the court, after I had notified the court of these circumstances, early in January 1986.

The purpose of this report is to evaluate the sites that have been proposed for development by the plaintiff as well as other salient features of the proposed settlement, and recommend language for an amendatory zoning ordinance consistent with the standards set forth in Mount Laurel II. Although I am aware that additional issues have been raised by both parties as a result of the abandonment of the settlement negotiations, it would be beyond the scope of my present assignment to evaluate those issues in this report/I.

In brief summary, the settlement proposal contemplated the rezoning of two tracts owned by the plaintiffs for multifamily (principally townhouse) development. Plaintiffs would be responsible for infrastructure extensions. In addition, plaintiffs

1/Specifically, the Borough of Ringwood has submitted a new proposal for settlement, substantially different from that which had been negotiated at length during late 1984 and 1985 (letter of Lawrence D. Katz, Esq., of 1/13/86)5 the plaintiffs have, in the meantime, moved for reconsideration of the court's earlier findings with regard both to indigenous need and the status of the borough as a Conservation area under the State Development Guide Plan (Motion papers dated 1/3/86).

would be responsible for meeting Ringwood's indigenous housing need as follows; (a) at least 49 (out of the total number of 80) lower income units would be constructed on one of the two tracts to be rezoned, and (b) up to 31 existing substandard units occupied by lower income households would be rehabilitated with funds provided by the developer plaintiff, based on a contribution level of *6,00[®] p&r unit/2-

11- SITE SUITABILITY ASSESSMENT

The tentative settlement provided for the rezoning of two tracts owned by plaintiffs as follows:

1. Lot 16, Block 877 (referred to as the "lower tract") would be rezoned to provide for, in the alternative, 239 multifamily units of which 49 would be lower income units, or 170 multifamily units of which 8[©] would be lower income units (see footnote 2 below);

2. Lot 1, Block 7S2 (referred to as the "upper tract"[©]) would be rezoned to provide for 280 multifamily units, all of which would be market units-

In my analysis of these sites, and their suitability for the proposed development activity, I have relied in part on environ-

2/The settlement provided that the borough would propose to the court that 31 out of the 80 units of indigenous housing need be addressed through the rehabilitation of existing units, thus requiring that only 49 units of new housing be constructed- If the court rejected the proposal in its entirety, or, in the alternative, concluded that the number of units that could realistically be expected to be rehabilitated was less than 31 units, the number of lower income units that the plaintiff would be required to construct would be increased as necessary-

mental reports prepared by Thonet Associates (for plaintiffs) and Richard A. Alaimo Engineering Associates (for defendants). The location of the two sites is shown in Map 1 on the following page.

1. Lot 16, Block 677 (The Lower Tract)

A. Site Description

The Lower Tract is located along Skyline Drive, in the east-central part of Ringwood Borough. Skyline Drive, a major road and the principal means of access in and out of the eastern part of the borough, is the southern and western site boundary³, with existing single family development to the north, and High Mountain Brook to the east. There is additional single family development to the east, on the other side of High Mountain Brook. Adjacent land uses across Skyline Drive include single family residential development to the south and a large commercial area to the west. This last area is the only substantial commercial or office center within the borough, and acts in essence as the community's "downtown".

The site is complex, and includes substantial steep slope areas and flood plain areas. Approximately 7% of the site contains areas with slopes of 15% or greater, with 3% of the site in excess of a 5% slope⁴. General characteristics of the

³Plaintiffs have proposed to retain the southwest portion of the site, along Skyline Drive, for future commercial development, and not include it within the multifamily development under consideration here (see page 10 of this report).

⁴This is my estimate based on the following figures from the Thonet reports 10 to 10% (slope) - 5% (of site) 5 10% to 10% - 8% to 30% - 40%⁵ and over 30% - 10%. Cut-off points of 15* and 55* are more generally used in site analysis than those given in the Thonet report.

MAP I: SITES OWNED BY PLAINTIFFS AND INCLUDED IN PROPOSED SETTLEMENT



soils found on site suggest potential development problems with respect to rock outcroppings, depth to bedrock, and the presence of a high water table. Soil testing conducted for the plaintiff, however, suggests that actual depth to bedrock and water table conditions are not severe development constraints.

There is a mapped flood plain along High Mountain Brook, as well as small areas of fresh water wetlands associated with the brook, along the eastern site boundary. These areas would have to be protected; in addition, because of the water quality designation of High Mountain Brook as an FW-2 stream, certain standards would have to be met with respect to run-off into that stream.

As an element in the settlement negotiations, the parties developed extensive plans by which sewer and water service would be provided to the site, which plans are set forth with considerable specificity in the proposed settlement agreement. While there appear to be no major technical problems associated with these plans, it should be noted that access to sewerage capacity, in the final analysis, is dependent on an agreement with the Wanaque Regional Sewerage Authority and is thus beyond the control of the parties/5.

While this tract originally contained 62.9 acres of land, 5.9 acres with Skyline Drive frontage was subdivided off in 1983, and has since been developed in part with a service station. The plans of the developer indicate that 12.2 acres (also with Skyline Drive

5/Connecting this development with the {Regional Sewerage Authority treatment plant will significantly benefit the borough as well, since it will make possible connection of a number of existing developments with that facility, and the elimination of an existing (James Drive) package treatment plant with a history of creating water pollution problems in High Mountain Brook.

frontage) Mould be retained for future commercial development. The remaining 45 acres Mould be developed with either 239 units, for a gross density of 5.3 units/acre, or £70 units (density of 6 units/acre).

B. Site Suitability Assessment

The question of site suitability is in two partss locational suitability, and physical ,or environmental suitability. There is no question that the site is owned by a developer who is ready to build the developments as set forth in the proposed settlement agreement. It will also be assumed, for purposes of this assessment, that any difficulties with the provision of sewerage treatment can and will be resolved/6.

From a locational standpoint, given the character of the borough of Ringwood, the site appears to present no difficulties. It has frontage on Skyline Drive, a major road, and is located within walking distance of the only substantial commercial/office center in the borough. The nearest school is on Erskine Road, less than a mile from the site.

Adjacent land uses are not in conflict with the use of the lower tract for low/medium density multifamily housing. High Mountain Brook, properly buffered from development, can be an amenity to site development. Similarly, as a result of the setbacks that will have to be provided from High Mountain Brook,

6/The parties agree that adequate treatment capacity exists (or will exist in the immediate future) in the regional facility, and that no serious technical problems exist with respect to providing the interconnections from the site to the facility. Furthermore, it is impossible to imagine any problem arising with sewerage this site which would not equally impact any other site in the borough.

any reasonable concerns with regard to the impact on the single family residential development on the other side of the stream can easily be addressed. The same is true of the single family subdivision to the north of the site? this is a cluster subdivision, and with minor exceptions, the proposed development site abuts common open space rather than individual lots/7.

It should be noted that this site was initially recommended for rezoning for townhouse development in the 1981 Ringwood Master Plan, although the recommendation was deleted before final adoption of the Plan. In that document, a number of arguments were cited in support of rezoning this site, among which were the following/85

- It is adjacent to a major traffic artery⁵
- It is conveniently located to community shopping areas and bus service;
- It is in a transitional area between single-family residences and commercial uses;
- It is located outside of the Wanaque Reservoir watershed.

Thus, from a locational standpoint there appears to be no question that this site is highly suitable for the proposed multifamily development.

The question of physical suitability is more complex, because

^{7/1} believe that by this time the notion that there is any intrinsic incompatibility between single-family and multifamily development has been generally abandoned by serious professionals, although it may arise from time to time as a handy rallying cry for community opposition to developments of this nature.

^{8/}The draft master plan also designated another site for multifamily development, also subsequently deleted, in the immediate vicinity of the lower tract, on the other side of Skyline Drive.

of the identified physical constraints on the site. Of these, the most significant one is the extent to which the site is characterized by steep slopes.

The question of slopes, however, must be placed in context. According to the master plan, over half of the vacant land in the borough has a slope of 15% or greater (no more detailed breakdown is provided). The "slope map" attached to the master plan makes clear that a substantial amount, if not the majority, of development in the borough has taken place on land with slopes of 15% or greater. Similar patterns of hillside development are to be found throughout those parts of northern New Jersey of similar geological character. The master plan, as well as the topographic plan of the site, further indicate that, with respect to this particular site, the topography is characterized by steeper slopes around the site perimeter, with the central part of the site forming a knoll with less pronounced slope patterns. Given the moderate densities proposed (5 to 8 units/acre), the site topography should not present a serious barrier to development of the tract.

The same considerations are true with respect to the site relationship to High Mountain Brook, and the attendant flood plain and wetland areas. It is clearly understood that flood plain and wetland areas are not appropriate for development; they represent, however, only a small percentage of the land area of the site. Through their preservation, they will become a valuable site open space amenity. Their presence does not disqualify the balance of the site from development. Similarly, while run-off into High

Mountain Brook must be carefully managed to prevent stream degradation, as noted earlier, this site is located in one of the few areas in the borough which do not drain into the Uanaque Reservoir. As discussed in the Master Plan (pp. 31-33), it is the question of drainage into the reservoir, and those streams which feed the reservoir, which is the more significant environmental issue.

While this site, in my opinion, can be developed for the proposed use, it is clearly environmentally sensitive. Development of any kind on this site, whether single family, multifamily, or nonresidential⁹, if not properly conducted, runs the risk of triggering severe negative environmental impacts; in order to prevent those impacts, great care must be taken with respect to both the initial site planning of the development and the procedures adhered to during construction. Soil disturbance should be minimized through tight clustering of development, and the provisions for managing site drainage and run-off must be carefully engineered. Similarly, blasting, if necessary, excavation, and construction must all be managed to minimize the risk of soil erosion from the site. Explicit standards to govern all of these matters, as well as clearly-defined procedures for inspection and monitoring, should be incorporated as conditions for approval of development on this site.

Since it has arisen as an issue between the parties, the question of the plaintiff's reservation of part of this site for

⁹It should be noted that current zoning of the site, for the most part, is CC-80, an intense commercial use designation. According to the Alairno report, the proposed multifamily development would result in approximately 18 percent less of the site area being disturbed than would be the case under current zoning provisions.

future nonresidential development should be briefly addressed. Based on the agreement in the proposed settlement that development on this site should not exceed a gross density of 6 units per acre, plaintiffs argue that the maximum number of 27® units need occupy no more than 45 acres, allowing the balance of roughly 12 acres to be available for their use under the existing commercial zoning. I believe that this is a reasonable interpretation. The fact remains, however, that no more than conceptual planning has yet taken place with respect to the proposed development. Given the environmentally sensitive character of the land, it may well turn out that, when detailed planning and engineering takes place, more than 45 acres will be required to accomodate the proposed number of units in an environmentally sound manner. ftlaimo Associates has estimated that no more than 2 to 4 acres (rather than 12) will be available for nonresidential development.

In principle, the developer should be entitled to utilize the residual site acreage up to a maximum of 12 acres for nonresidential development consistent with the CC-8® zoning standards. In practice, the actual acreage that will be available for this purpose should not be determined at this stage, but only after site plan approval for the proposed multifamily residential development.

Given the moderate density, and by extension, moderate site coverage proposed for the site, all of these matters become questions of engineering and inspection, which a well-managed municipality should be readily capable of addressing. This site is clearly physically as well as locationally suitable for the

proposed multifamily development project; with specific respect to the proposed Mount Laurel housing, by virtue of its access and location, it is arguably the most appropriate site in the borough of Ringwood for such housing to be constructed.

2. Lot 1, Block 75E (The Upper Tract)

A. Site Description

The upper tract is also located along Skyline Drive, roughly one half mile to the southeast of the lower tract, placing the site very near the southeastern corner of the municipality. Skyline Drive is the southern site boundary, with existing single family development to the west. To the north is a vacant (wooded) parcel in private ownership, while the eastern site boundary is dedicated open space in public ownership.

The site contains substantial areas in steep slopes, as follows (Thonet Associates)a

0 to 15% slope	£&%
15 to 35%	43%
35 to 50%	19%
over 50%	if%

This distribution is roughly comparable to, although somewhat more pronounced than, the slope characteristics of the lower tract. There are no mapped streams, flood plains, or wetlands identified on the site. Soil characteristics are generally similar to those of the lower tract, and testing has established that the depth to bedrock is similar, generally in excess of 10 feet below the surface. This site is similarly situated with respect to public water and sewer service as the lower tract. The site contains

approximately 80 acres, and under the proposed settlement, would be rezoned to permit 80 townhouses, for a gross density of 4.5 units per acre. Under that settlement, there would be no lower income housing located on this site.

B. Site Suitability Assessment

The upper site lacks certain of the locational features of the lower tract that make the latter particularly suitable for multifamily development, most notably the immediate proximity to the commercial and business center of the municipality. At the same time, there are no significant locational features making the site unsuitable for low/medium density multifamily development. The only adjacent developed land use is a single family development on large lots to the west, to which the proposed development can easily be accommodated. The adjacent public lands can be seen as a site amenity. Furthermore, looking at this site with respect to the proposed use, which is luxury townhouses rather than a Mount Laurel development as such, the atmosphere of relative visual isolation of the site, coupled with its access to Skyline Drive and close proximity by car to shopping and community services, can be seen as a positive factor. Another positive factor, from a marketing standpoint, is the likelihood that attractive views over the valley to the west may be available from many of the units. Thus, the upper site is locationally suitable for the proposed development.

From a physical standpoint, the only severe constraint affecting this site is the widespread presence of moderate to severe

slopes. The problem is somewhat mitigated by the relative concentration of the more modest slopes in the east/central parts of the tract, which will facilitate clustering of the development. In the final analysis, my conclusion with respect to this site is the same as with regard to the lower tract? given a relatively low level of development intensity, townhouse development on this site is not incompatible with the site topography/10.

With the same considerations that have been cited with regard to the lower tract, particularly with respect to site planning and environmental management of the construction process, this site is physically suitable for development of the proposed townhouse complex., While the proposed gross density does not appear unreasonable, the possibility remains that downward adjustments may result from the detailed site planning and engineering process/11. In conclusion, this site is suitable for the proposed

10/Granting this general principle, it does not follow that any configuration of townhouses at moderate density would be appropriate for the site. On the contrary, development of this site in an environmentally sound manner requires a high level of care and sophistication with respect to site planning and design on the part of the developer, and an equally high level, both with respect to pre-development plan review, and subsequent monitoring of construction, by the municipal authorities. Neither has been consistently in evidence in the New Jersey development experience.

11/It would clearly simplify matters if there were a generally recognized standard with regard to construction on slopes. Although many municipalities have adopted ordinances barring construction on slopes of 15% or more, a cursory review of the technical literature suggests that there is no empirical support for this standard! on the contrary, some sources recommend that the maximum buildable slope be considerably steeper (20%, 25%, etc.), and others indicate no maximum slope, but instead suggest that substantially steeper slopes can be developed (one reference provides a site planning example based on a 35% slope) with varying and careful site treatment. Thus, there is no sound basis for applying an arbitrary cut-off point based on a certain maximum slope to development of this site.

development, although it lacks certain special locational features which pertain to the lower tract.

III. THE SETTLEMENT AGREEMENT

The proposed settlement agreement between Countryside Properties and Wallace & Czura Land co., on the one hand, and the Borough of Ringwood on the other, as negotiated and refined during the course of 1985, represented a reasonable framework for development of the two sites described above, and for achievement of Ringwood's indigenous Mount Laurel housing need, set at 8[©] lower income units/IS. In addition to the provisions governing development of the two sites owned by plaintiffs, the proposed settlement contained provisions dealing with meeting a part of the borough's indigenous housing needs through rehabilitation, which deserves brief comment.

While there are few units in Ringwood lacking plumbing, there appear to be a substantial number with other deficiencies, most notably inadequate heating systems, as well as overcrowded units. Prior to the rehabilitation efforts of the 1970's, the most notable concentration of substandard housing was the area in the northern part of the borough known as the "Mine area". As a result of those borough efforts during the 1970's, housing conditions in that area are¹[©] substantially improved.

^{1E}/This is not to say, from a planning or development standpoint, that it is the only reasonable way by which the borough's Mount Laurel obligations can be achieved. The scope of this report, however, is limited to an evaluation of the settlement that both parties represented as having been reached early in 1985.

The remaining substandard housing is scattered around the borough| much of this housing consists of units initially constructed as summer homes around one of the numerous lakes in the community, and subsequently converted to year-round occupancy. Many of these units lack adequate heating systems, and many have other deficiencies, including structural problems, inadequate utility services, etc. In addition, it should be noted that both in the Mine area and elsewhere, substantial numbers of overcrowded units remain in the community.

Much of this housing stock is suitable for rehabilitation. The substandard units are single family detached units, which generally appear to be in adequate structural condition, and located for the most part in areas of generally good housing and environmental quality. Furthermore, since these are detached single family units, it may even be possible in some cases to relieve overcrowding through adding a room to the existing unit, rather than needing to provide a new unit.

In light of this profile, I consider it reasonable both (a) that the borough should be able to identify 31 units of substandard or overcrowded housing, occupied by lower income people, where the owners are actively interested in receiving rehabilitation assistance; and (b) that an average rehabilitation cost of *6,000 per* unit (with a range of individual grants typically from \$4,000 to \$10,000) should be adequate to convert those units into sound housing for their occupants. For these reasons, I conclude that a rehabilitation program at the level proposed is an appropriate

element in the Ringwood mount Laurel compliance program-

Should this program be retained as an element in the borough's program, the essential missing element is the structure of the program itself. Specifically, three elements must be determined in order for the program to be implemented:

- The basic program structures who will be responsible for the program, who will set policy and make decisions, etc.
- The procedure for identifying prospective participants in the rehabilitation program; and
- The technical procedures to be followed, including responsibility for preparation of specs, costing of individual rehabilitation projects, selection of contractors, liens to be taken or resale restrictions imposed on properties rehabilitated, etc./13.

Since the proposed settlement is based on an "either/or" model, in the sense that, if the rehabilitation program is not implemented, the developer is obligated to construct the entire 8[®] lower income units, it is essential that these decisions, as well as the actual identification of a minimum number of participants, be made expeditiously, so that the progress of the development is not unreasonably delayed.

13/The question of what controls should be placed on units rehabilitated as part of a Mount Laurel program is a complicated one, which has not been formally addressed yet in this community. It is at least arguable that the imposition of long-term resale controls, as is being done on newly constructed Mount Laurel units, is inappropriate, as being a diminution in value disproportionate to the benefit being given the homeowner. Given that the benefit is a limited one, it is likely that imposition of long-term resale controls as a condition would significantly reduce potential homeowner interest in participating in the program. An alternative is a lien taken back by the municipal agency, equal to the value of the rehabilitation work (with accrued interest), which would be recaptured on resale in the event the unit passed to &riyon& other than a lower income buyer.

IV. AMENDATORY ZONING ORDINANCE PROVISIONS

A substantial element of my charge in this matter is the submission of a proposed amendatory zoning ordinance, through which Ringwood's Mount Laurel obligations can best be achieved. That task is substantially facilitated by the fact that, during the course of the settlement negotiations, an ordinance seeking to implement the settlement was drafted by the borough planning consultant; that draft was reviewed by the parties, a number of changes were agreed upon, and I provided additional language, particularly with respect the low and moderate income housing requirements of the ordinance.

The draft ordinance described above, however, differs in one substantial respect from the ordinance presented here. The draft ordinance was designed to effectuate a settlement; as such, it represented a compromise between the interests of the parties. As master, my review of that ordinance was limited to ensuring that, as an element in a negotiated settlement, it would be consistent with achievement of the Mount Laurel objectives embodied in the settlement. By contrast, at issue here is the adoption of an ordinance which can best effectuate achievement of the Mount Laurel objectives, which, it appears, are not likely to come about in the form of a negotiated settlement. Such an ordinance logically would be different from that acceptable in the context of a negotiated settlement.

Notwithstanding the broader charge, I have nonetheless considered it both appropriate and desireable to show the greatest

possible deference to the intentions of the municipality, as reflected in the draft prepared by their planning consultant, with respect to both ordinance form and substance. For that reason, the proposed ordinance presented here is directly modelled on that draft ordinance. Changes have been made only to the extent that it was considered appropriate in light of the master's charge; and, in some cases, to clarify the meaning or intent of the ordinance, or to eliminate sections which appeared either to be internally repetitive, or duplicative of existing statutory or regulatory requirements. It should be noted that, in the interest of brevity, certain elements of the amendatory ordinance which are purely ministerial; i.e., conforming the list of zone districts in the ordinance to the amendment, have not been included in the text contained here.

Before proceeding to the text of the ordinance, it should be noted that the drafting of zoning ordinances is not a scientific process; the adoption of zoning standards is not a matter of right and wrong. The standards proposed here are, in my judgment, reasonable ones; this should not preclude, however, either party suggesting modifications, deletions, or additions, before the ordinance reaches its final form.

PROPOSED AMENDATORY ZONING ORDINANCE - BOROUGH OF RINGWOOD

ORDINANCE

AN ORDINANCE to amend and supplement an ordinance entitled "An Ordinance to Regulate and Restrict the Location and Use of Buildings, Structures and Land for Industries, Business, Residence or other Purposes; the Height and Size of Buildings and Other Structures? the Intensity of Such Uses; the Area of all Yards and Other Open Spaces; to Divide the Borough into Districts and to Provide for Enforcement of the Provisions Herein and Prescribe Penalties" and more commonly known as the "Zoning Ordinance of the Borough of Ringwood".

1. Section §.£00 Definitions is amended by adding the following:

MULTIFAMILY HOUSING - A building occupied by or intended for occupancy as separate living quarters for more than two (€) families or households other than a Townhouse or Quadruple* building, in which each unit is provided with separate cooking, sleeping and sanitary facilities for the exclusive use of the occupants of the unit. Multifamily housing structures may include units of townhouse type, as well as units located on top of another unit.

QUADRUPLEX ~ Four attached dwellings in one structure in which each unit has at least two open space exposures and shares one or two walls with an adjoining unit or units, and in which one unit may be located on top of another unit.

SANITARY SEWER SYSTEM - A collection and treatment system containing of a minimum 8" or larger gravity and lift stations and interceptors leading to a sewerage treatment plant operated by a public agency as approved by the New Jersey Department of Environmental Protection, the Ringwood Borough Sewer Authority and the Wanaque Valley Sewer Authority, and which shall not provide for disposal through a package plant located in the Borough of Ringwood.

TOWNHOUSE - A building or structure designed for or occupied by no more than one (1) family or household and attached to other similar buildings or structures by not more than two (€) party walls extending from the foundation to the roof and providing two (€) direct means of access from the outside. No dwelling unit in a townhouse shall be located above another unit. Furthermore, each such dwelling unit shall be provided with cooking, sleeping and sanitary facilities for the exclusive use of the household occupying the unit.

f« CSec. f and 3 per draft of borough planning consultant3

4. Section 4.i©® Schedule of Regulations, Schedule 4-1 Schedule of District Use Regulations is amended by adding the following permitted, accessory and conditional uses in the Planned Residential One (PRD-1) and Planned Residential Two (PRD-f) zones:

PRD-i PERMITTED PRINCIPAL USES

1. Single family dwellings
- f» Townhouses and patio homes
3. Quadruplexes
4. Multifamily housing
5. Municipal parks and playgrounds, municipal buildings, libraries and fire stations
6. Public utilities

PERMITTED ACCESSORY USES

1. Accessory uses customarily incidental to a permitted principal use
- f. Signs, subject to Section 6.207
3. Private garages, subject to Section 6.206
- 4- Offstreet parking
5. Noncommercial indoor and outdoor recreation facilities consistent with the residential character of the development
- So Fences and walls subject to Section 6.204
7. Home occupations subject to Section 6. f11

CONDITIONAL USES

- 1- Agricultural and horticultural uses, subject to Section 6.301
- f. Essential services subject to Section 6- 3®3
3. Churches and other places of worship, including parish houses and Sunday school buildings, subject to Section 6.309
4. Public or private nursery, elementary, or secondary schools, subject to Section 6.306

PRD-2 PERMITTED PRINCIPAL USES

fill principal uses permitted in the PRD-1 zone

PERMITTED ACCESSORY USES

Oil accessory uses permitted in the PRD-i zone

CONDITIONAL USES

fill conditional uses permitted in the PRD-1 zone

5- Section 4.1(6) Schedule of Regulations, Schedule 4-2 fire, bulk and Yard Requirements is amended by adding the followings

	PRD-i	PRD-2
<u>Minimum area requirements</u>		
Minimum lot area.	60 acres	45 acres
Minimum lot width	500'	500'
Minimum lot depth	500'	500'
<u>Maximum bulk requirements</u>		
Disturbed land area	6054	6554
Improved lot coverage	35%	3554
Building Lot coverage	1554	2054
Building height (feet)	40'	40'
Building height (stories)	3	3
<u>Minimum yard requirements</u>		
Front yard	<small>MMSM</small> <small>IS E A * S</small> Sec. 6.851 --	
Each side yard	9BB -- see Sec. 6.851 --	
Rear yard	-- See Sec. 6.851 --	

6. Article VI Supplemental Regulations Concerning Certain Uses is amended by adding Sections 6.800 and 6.900 as follows

6.800 Planned Residential Development

S.810 Size

No tracts, parcels or lots, or tract, parcel or lot shall be developed as a planned residential development unless it shall contain a minimum of 6(6) acres in the PRD-1 zone, and 45 acres in the PRD-2 zone, of adjoining and contiguous land which shall contain access to an approved and improved street. For the purpose of this section, streets and rights of way shall not be deemed to divide the acreage of a planned residential development.

6.820 Sanitary Sewer System

ft planned residential development shall be required to be connected to a sanitary sewer system as defined herein, and approved as may be necessary by the agencies set forth therein.

6-B3@ Environmentally Sensitive Lands

No buildings or structures within a PRD-1 or PRD-2 zone shall be located within wetland areas, flood hazard and flood fringe areas as defined by the New Jersey Department of Environmental Protection.

&-^o4@ Central Water Supply Facilities

ft planned residential development shall be required to connect to a central source of water supply provided by a public utility. Water supply facilities shall be subject to review and approval by the Borough Engineer and, with respect to adequacy for firefighting purposes, by the Borough Fire Department.

6.85@ Yard and Bulk Requirements for Planned Residential Developments

6.351 fill buildings and structures shall be set back no less than fifty C5@3 feet from the tract property line. Where the tract property line borders on public parkland or forests, or other permanent open space areas, the minimum setback shall be twenty five C253 feet.

6.852 Area, yard and bulk controls shall be in accordance with the following Schedule:

Minimum distance between buildings

Front to front	75'
Front to side	60'
Front to rear	60'
Side to side (other than an attached unit)	30'
Side to rear	40'
Rear to rear	60'

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PRD-1	£00'
PRD-2	240'
Setback from internal streets	25'
Setback from parking areas	10'

6.853 fill setbacks shall be measured from the right of way line of the public street, but if the Master Plan or Official Map of the Borough shows the location of a right of way line different from the existing right of way line, the required setback shall be measured from the right of way line shown on the official map or Master Plan.

6.86® Land Use Intensity and Distribution of Units

6.861 Overall Residential Density. The maximum overall residential density for a PRD-i zone shall be four and one half (<4.5) units p&r acre of total land area, and the total number of units in the zone shall not exceed two hundred and eighty (£8®). The maximum density for a PRD-2 zone shall be six (6) units p&r acre of total land area, and the total number of market-rate units in the zone shall not exceed one hundred &nd ninety (190). The number of low and moderate income units shall be as set forth in Sec. 6.862 below.

6.862 Low and Moderate Income Housing. Within the PRD-2 zone, a minimum of 49 and a maximum of 8® low and moderate income housing units shall be provided, the exact number to be determined on the basis of the number of existing housing units certified by the Borough of Ringwood to be in substandard condition and occupied by a low or moderate income household, and which are to be rehabilitated with funds provided by the applicant under this section.

The application for subdivision and/or site plan approval shall indicate the minimum and maximum number of low and moderate income units to be constructed on site. In the event the Borough has certified some number of units as set forth above, the applicant shall subtract the number of units certified from the maximum number to be constructed on site, for purposes of this section.

For every unit subtracted from the maximum number of low and moderate income units required under this section the applicant shall contribute the amount of six thousand dollars (*6,0®®) to a fund established and administered by the Borough of Ringwood, to a maximum of thirty one (31) rehabilitated units or \$186,®®®.

6.863 Location of low and moderate income units. Low and moderate income units may be located in the

same buildings as market-rate units, in separate buildings distributed throughout of the PRD-2 zone, or, if provided as rental housing, as a separate cluster of buildings within the PRD-2 zone. If the units are provided as a separate cluster, that cluster shall be located so that it is immediately adjacent to market-rate residential structures in the development, and is as attractively situated, having as good access to community and recreation facilities, as the average market-rate cluster in the development.

- 6.864 Senior Citizen Units. If requested by the Borough at the time of final site plan approval, the applicant shall give preference for occupancy of ten percent (10%) of the low and moderate income units to qualifying households in which at least one member is aged sixty two (62) or older. No units, however, shall be reserved for exclusive occupancy by senior citizens.
- 6.865 Bedroom Distribution. No more than fifty percent (50%) of the low and moderate income units shall be efficiency or one bedroom units, and no less than fifteen percent (15%) shall be three bedroom or larger units. The bedroom distribution shall be substantially the same for each of the four income categories set forth in Section 6.892.
- 6.866 Priority Categories. The administering agency may require the applicant to give priority for sale or rental of low and moderate income housing units constructed under the provisions of this ordinance to income qualified households representing indigenous housing need within the Borough of Ringwood i.e., households living in physically substandard, overcrowded, or otherwise severely deficient housing conditions. Households entitled to priority under this section shall have priority only with respect to other households in the same income category, and not with respect to households in other income categories.

6.87[®] Phasing of Development

- 6.871 For the purposes of this section, and for the purpose of phasing the low and moderate income units with the market rate units, development on the PRD-1 and PRD-2 zones shall be considered a single development project.
- 6.872 In the event that at least six existing low and moderate income units are certified according to

the provisions of Sec. S-862, the applicant shall be required to contribute a minimum of \$36,00€ to the rehabilitation fund established by the borough upon receipt of the first certificate of occupancy for any market rate unit in either the PRD-i or PRD-f zone.

- 6.873 The applicant shall be permitted to construct, and to receive certificates of occupancy for, the market rate units in the PRD-1 and PRD-2 zones only to the extent that he constructs and sells or rents low and moderate income units and provides rehabilitation funds on the basis of his election of either of the two optional phasing schedules set forth in Schedule 6-4 herein. In each phase of construction of low and moderate income units, the number of low income units constructed shall be approximately equal to the number of moderate income units, and, to the extent reasonably feasible, the bedroom mix in each phase of low and moderate income housing constructed shall be similar to that of the total number of low and moderate income units to be constructed. The applicant shall submit as a condition of approval a detailed schedule setting forth the income distribution and bedroom mix of each separate phase of low and moderate income units to be constructed.

6.880 Open Space and Buffers

- 6.881 ft minimum of thirty percent (<3€%) of the total area of every planned residential development shall be retained as open space. The required open space may include common recreation areas for use of the residents of the development, wetlands and flood hazard areas, other open areas, as well as any buffer areas required by this section.

- 6.88€ Buffer fleas. Within all planned residential developments a buffer area of no less than twenty five C2S3 feet from all external lot lines of the site except for that which fronts upon an existing external street or roadway. Where wooded, such buffer areas shall be kept in their natural state; where natural vegetation is sparse or non-existent, the Planning Board may require the applicant to provide year-round visual screening. No trees are to be removed from the buffer area. The Planning Board may require fencing during construction in order to protect the vegetation within buffer areas.

The planning board may, upon a finding that

adjacent development is situated in unusual proximity to the site, or that the visual impact of development within a PRD zone on adjacent developed properties is accentuated as a result of unusual topographic conditions, require that the buffer area in those particular locations be increased to no more than fifty (50) feet.

No use or structure, including parking or loading areas, shall be permitted within the buffer area, except that the Planning Board may permit a portion of a buffer area to be used for utility easements and/or streets to ensure access to or from adjacent properties.

6.83 affordability standards for low and moderate income units resale and re-rental provisions

6.891 Definition. For purposes of this ordinance, a "low income household" shall be a household earning 50% or less of the area median income, adjusted by household size, and a "moderate income household" shall be a household earning between 50% and 80% of the area median income adjusted by household size; the area median income shall be the most recent median income figures promulgated by the United States Department of Housing & Urban Development for the Bergen-Passaic PMSfl, unless said figures are superseded by a ruling of a court of competent jurisdiction, or an administrative agency of the State of New Jersey acting under explicit statutory authority.

6.892 Within any development, the low and moderate income units shall be priced as follows:

Call Moderate income units - (1) 50% of the moderate income units shall be affordable to households earning 90% of the moderate income ceiling, or 72% of the area median income, adjusted for household size; and (2) 50% of the moderate income units shall be affordable to households earning 75% of the moderate income ceiling, or 60% of the area median income, adjusted for family size; preference in purchase or rental of these units shall be given to moderate income households earning less than 90% of the moderate income ceiling.

Eb3 Low income units - (1) 50% of the low income units shall be affordable to households earning 90% of the low income ceiling, or 45% of the area median income, adjusted for

household size; and (2) 50% of the low income units shall be affordable to households earning 75% of the low income ceiling, or 37.5% of the area median income as adjusted for household size; preference in purchase or rental of these units shall be given to low income households earning less than 90% of the low income ceiling.

6-893 alternative Pricing, fts an alternative to the above, the prices of the low and moderate income units may be set on a case by case basis for each unit, so that the price is that which results in each household spending no more than 8 percent of gross household income for those housing costs enumerated in Sec. 6.894. In the event that this alternative is adopted by the applicant, the sale of units shall be distributed as follows

Ca3 Moderate income units - 50% of the moderate income units shall be sold to households earning between 90 and 100 percent of the moderate income ceiling E72 to 80 percent of the area median income adjusted for household size!! and 50% shall be sold to households earning between 75 and 90 percent of the moderate income ceiling C60 to 72 percent of the area median income adjusted for household size3.

CB3 Low income units - 50% of the low income units shall be sold to households earning between 90 and 100 percent of the low income ceiling E45 to 50 percent of the area median income adjusted for household size], and 50% shall be sold to households earning between 75 and 90 percent of the low income ceiling E37.5 to 45 percent of the area median income adjusted for household size3»

6.894 Each unit offered for sale shall be affordable to a household at the appropriate income level for each category as set forth above, spending not more than 28 percent of gross household income for the sum of the following3

Ea3 Principal and interest on a mortgage, based on a 10 percent down payment and realistically available mortgage interest rates; the applicant may qualify buyers on the basis of a mortgage interest rate established through use of New Jersey Housing & Mortgage Finance Agency financing, or through use of mortgage

buydowns or adjustable rate mortgages, provided that any such buydown or mortgage permits an annual rate of increase in the mortgage interest rate of no more than one half of one percent ($\leq 0.5\%$).

Cb3 Property taxes at the rate currently levied in the Borough of Ringwood, based on the assessed value of the unit, which shall be the actual selling price multiplied by the current equalization ratio?

Cc3 Insurance, including private mortgage insurance, if applicable; and

Ed3 Homeowners' association fees, if any.

In the event that the applicant chooses to price units according to the alternative, or case by case, method provided in Section 6.393, the price shall be adjusted to reflect the actual down payment each purchaser can make; provided, however, that no household shall be required as a condition of purchase to make more than the minimum down payment, and that the applicant shall not give preference to households capable of making larger down payments over other households. The administering agency shall monitor the sale of the units to ensure compliance with these provisions.

The proposed prices for the low and moderate income units and the calculations by which those prices are established shall be submitted for approval by the applicant, as a part of the application for preliminary site plan approval, or at the request of either the applicant or the Planning Board, may be prepared by an independent expert identified by the Planning Board and acceptable to the applicant.

6.695 If low or moderate income units are to be offered for rent, they shall be rented for no more than 30 percent of the gross household income for a household at each of the income levels set forth in Section 6.898, said rental to be inclusive of all services, maintenance and utilities. In the event that any utility or other charges are paid directly by the tenant, the maximum rental of 30 percent shall represent the sum of the contract rent and all such utility or other charges. Rents shall be set individually for each tenant, on the basis of individually verified household income.

6.896 In establishing the affordability of a unit of a given number of bedrooms, such units shall be priced to be affordable as set forth above to households of the following size:

1 bedroom unit	2 person household
2 bedroom unit	3 person household
3 bedroom unit	5 person household

6.897 Standards to Govern Resale and Re-rental of Low and Moderate Income Units

Ca3 Any developer submitting an application under the provisions of this ordinance shall submit a plan for controlling resale or rental of the units to ensure that the units remain affordable to low and moderate income households for no less than thirty <3[®]) years from the date of initial occupancy. Such plan shall contain all of the elements set forth in this section, as well as conform to any regulations or guidelines consistent with this section adopted by the administering agency pursuant to Section 6.897<g).

CbD Any plan for controlling the resale of low and moderate income units shall permit the owner of such unit, upon resale, to sell the unit for a formula price determined as follows:

(1) The initial price paid for the unit, plus that price multiplied by 75 percent of the percentage increase in the Consumer Price Index between the date of initial purchase, and the date the owner notifies the agency responsible for administering these controls of intent to sell the unit.

<f) Reimbursement for documented monetary outlays made for reasonable property improvements, the determination of reasonableness to be at the discretion of the administering agency.

<3) Reasonable and necessary costs incurred in selling the unit.

Cc3 The plan shall provide that low income units upon resale may be sold to low income buyers, and that moderate income units to either low or moderate income buyers; provided, however, that the administering agency may establish reasonable provisions for waiver of this con-

dition on a case by case basis in the event it finds that a particular unit may not feasibly be sold subject to this condition. In the event that the administering agency grants such a waiver, it shall provide that the unit be sold at the formula price set forth in Section 6.897 (b), and that the resale controls remain in effect for &r*y subsequent sales of the unit.

Cd3 Resale controls shall be embodied in a deed restriction on the property that shall be submitted by the developer at the time of preliminary site plan approval, and shall be subject to approval by the municipal attorney and by the administering agency- All deed restrictions shall be consistent with all of the provisions of this section, and with any regulations adopted by the administering agency.

Ce3 Any low or moderate income unit offered as a rental unit shall continue to be offered as a rental unit for at least fifteen (15) years. After fifteen years, they may be converted to condominium or cooperative occupancy, but must be sold at prices affordable to low or to moderate income households, as appropriate, and subject to resale controls consistent with this section to ensure that the units will remain affordable to low and moderate income households for the remainder of the thirty year period beginning with issuance of a certificate of occupancy for the last low or moderate income unit in the development.

Cf3 The Borough of Ringwood shall designate by resolution of the governing body an administering agency responsible for administering the provisions of this section, which may be the municipality or any division, board, or agency thereof any other public or private nonprofit agency; or the developer acting under direct supervision and control of an agency of the municipality. The borough shall not require the developer to administer these controls as a condition of approval nor may any resale controls be held to be in compliance with this section merely through the existence of a deed restriction on the property.

Cg3 The administering agency shall adopt such regulations and guidelines not inconsistent

with the provisions of this section as may be necessary to carry out the provisions of this section? provided, however, that such regulations, if promulgated by other than an agency of the borough of Ringwood shall not be effective until approved by resolution of the governing body of the borough of Ringwood.

Chi In the event that rental units are built under this section, the administering agency shall adopt additional regulations and guidelines to control rent increases in any such development. Such regulations shall ensure that any low and moderate income rental units remain affordable to the low and moderate income population, and may include provisions for periodic adjustment of individual rents on the basis of re-examination of tenant income.

6.900 Miscellaneous Provisions

6.901 Offstreet parking. Two $\langle \rangle$ offstreet parking spaces shall be provided for each market-rate unit in a planned residential development. Parking requirements for low and moderate income units shall be as follows:

1 bedroom or efficiency	1.25 spaces
£ bedroom	1.75 spaces
3 bedroom or larger	£.0© spaces

6.90£ Street Requirements. Private streets within any planned residential development shall be designed in keeping with the standards set forth in "Residential Streets - Objectives, Principles & Design Considerations" published by the Urban Land Institute, the ftmerican Society of Civil Engineers and the National association of Homebuilders (1977)5 provided that private streets on which no parking is permitted shall not be required to be wider than £4' if two-way streets and 18' if one-way streets. fill private streets shall be subject to the approval of the Borough Engineer with respect to construction and safety standards.

The Planning Board may require the applicant, on finding that such circulation will further the overall planning of the community, to design his circulation system in such fashion that it will be effectively linked to that of adjoining developed or undeveloped land areas.

- 6-903 Runoff. The applicant shall demonstrate, to the extent feasible, that the development will not result in any increase in the rate of runoff into any adjoining or nearby stream or watercourse. Where appropriate, and with approval of the Borough Engineer, an increase in runoff of not more than 5# shall be permitted.
- 6.904 Flood Hazard Area Setback. Principal buildings shall be set back a minimum of twenty-five (25) feet from the boundary of the flood hazard area as delineated by FEMA or NJDEP. This setback area shall remain in its natural state to the extent feasible, except where necessary to provide utility easements, roadways, or detention and runoff facilities.
- 6.905 Comprehensive Planning. Any applicant for a planned residential development shall be required to submit a comprehensive plan for the entire area zoned PRD-1 and PRD-2 and under the control of the applicant, as an element of his application for preliminary site plan approval. Any conveyance of an interest in all or any part of the development subsequent to approval shall include provisions ensuring the timely construction of the required low and moderate income units according to the phasing requirements of this ordinance.

The Planning Board may approve the development of any planned residential development in stages, as provided by N.J.S.A. 40:55D-39(c)(6) and (d), upon finding that (a) each stage will be substantially self-sustaining with respect to access, utility services, parking, open space and similar physical features, and will be capable of occupancy, operation and maintenance upon completion of construction; (b) that each stage is properly related to the other stages of the proposed development, and to the community as a whole; and (c) that provisions, in the form of maintenance and performance guarantees, covenants, and other agreements, exist to ensure the proper provision of improvements in each stage and in the development as a whole. No staging plan approved under this section shall affect the phasing of low and moderate income units required by Section 6.870.

- 6.906 Severability. If the provisions of any section, subsection, sentence, clause or phrase of this ordinance is held by a court of competent

jurisdiction to be invalid, such order or judgment shall not affect or invalidate the remainder of any section, subsection, sentence, clause or phrase of this ordinance.

V. CONCLUSION

For the various reasons discussed above, I have reached the following conclusions!

<1) The two sites proposed for development by plaintiffs are suitable for development of the general character and intensity proposed;

<f) The rehabilitation program proposed by defendants, appropriately effectuated, is a reasonable and realistic means of addressing 31 units of indigenous lower income housing need;

<3> The proposed amendatory zoning ordinance, as set forth above, represents a reasonable framework for the development on the two sites, and for provision of low and moderate income units that will be affordable to a substantial part of the lower income population; and

(4) The combination of the proposed new development and the rehabilitation program represent a realistic opportunity for the achievement of Ringwood Borough's Mount Laurel obligations.

Two steps remain, both of a technical nature. These are the development of the implementation procedures for the rehabilitation program (see page 16 of this report), and the making of any necessary modifications to the borough site plan and subdivision ordinances to conform to the amendatory zoning ordinance/14. I believe that both of these can take place expeditiously.

14/flccording to the borough planning consultant, this latter step has been delayed by virtue of the fact that the existing ordinances are obsolete, and work is taking place on art entirely new ordinance, which will embody all necessary changes. Should any resolution of this case take place, I recommend that it include a timetable for implementation of the new ordinance, or, in its absence, adoption of necessary provisions to facilitate the Mount Laurel development at issue here.