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STANDARDS FOR THE PROVISION OF LOW AND MODERATE INCOME HOUSING PURSUANT TO THE NEW JERSEY SUPREME COURT MT. LAUREL II DECISION

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INTRODUCTION

This report has been prepared on behalf of the New Jersey Department of the Public Advocate in the matter of Morris County Fair Housing Council et al v. Township of Boonton et al (hereater referred to as the Morris County case), in order to provide a planning and housing framework for the development of low and moderate income housing in Morris County municipalities in a manner consistent with the recent holding of the New Jersey Supreme Court in Mt. Laurel II. This decision is particularly significant, since it provides municipalities, developers, and the lower courts with explicit standards by which they are to be guided in this pursuit. It is the position of this analysis that the language of the Court is to be interpreted as literally as possible, and that the object of the analysis is to provide the technical details that are necessary to carry out the clear intentions of the Court.

After a statement of the basic Mt. Laurel II holdings, the report focuses on three major areas:

(1) Overall standards and guidelines for the adoption of an inclusionary zoning ordinance, incorporating both mandatory setasides and the provision of incentives, as required by Mt. Laurel II;

(2) Standards by which it can be determined whether units produced under such ordinances, both sales and rental units, are and will continue to be affordable to low and moderate income households, as defined in Mt. Laurel II:

(3) Specific standards for different unit types which may potentially be incorporated in a municipality's program to conform to the Mt. Laurel II standards (least cost housing).

It is our firm belief that these three areas provide a thorough picture, on the basis of which a municipality should be able to evaluate its present ordinances, and develop new ordinances that will indeed provide a realistic opportunity for the provision of low and moderate income housing in the community.

I. THE MT. LAUREL II HOLDINGS

Before beginning the detailed technical discussion, it is appropriate to summarize the key holdings of the Supreme Court in Mt. Laurel II which dictate the approach followed in this report. Other holdings, directly germane to specific parts of this report, will be discussed at the appropriate place.

The Court held that each municipality must provide a realistic opportunity for its fair share of low and moderate income housing to be constructed; in determining what was to be considered "realistic", the Court noted:

> Satisfaction of the Mt. Laurel obligation shall be determined solely on an objective basis: if the municipality has in fact provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the Mt. Laurel obligation to satisfy the constitutional requirement; if it has not, then it has failed to satisfy it. (slip opinion at 36)

In order to do so, the Court sets down a series of steps by which a municipality must meet its Mt. Laurel obligation These steps, it should be stressed, are not alternatives, or mutually exclusive; they are cumulative, in the sense that a municipality must adopt all of them, or as many are necessary clearly to establish that it has provided the opportunity called for.

(1) A municipality must remove, to the extent necessary to meet its fair share obligations, "zoning and subdivision restrictions and exactions that are not necessary to protect health and safety" (at 97);

(2) A municipality must act affirmatively to "make the opportunity real"; i.e., to provide conditions under which builders and developers will actually construct the needed low and moderate income housing. The Court identifies two types of affirmative measure:

> a. Encouraging or requiring the use of available Federal or state housing subsidies; and
>
> b. Providing incentives for or requiring private developers to set aside a portion of their developments for lower income housing (at 102).

To the degree that subsidies are available, municipalities are obligated to seek them, or facilitate developers' efforts to do so. The Court recognizes, however, that at present subsidies are in limited supply, and turns to the subject of inclusionary zoning devices, both voluntary and mandatory.

The Court takes notice of the existence of voluntary inclusionary programs, referred to as "incentive zoning", and notes experience that "those municipalities that relied exclusively on such programs were not very successful in actually providing lower income housing" (at 109, citing study by Fox & Davis, 3 Hastings Const. L.Q. 1015). The Court then notes, with regard to this point, that

> a more effective inclusionary device that municipalities must use if they cannot otherwise meet their fair share obligations is the mandatory set-aside (at 110).

The evidence is nearly incontrovertible that New Jersey suburban municipalities will not be able to meet their fair share obligations otherwise, and will therefore be required to adopt mandatory set-aside ordinances. Not only is there an extensive literature that documents the limited reach of voluntary inclusionary ordinances, such as the Fox & Davis article cited by the Court, and the more recent major examination of the California experience by Schwartz, Johnston & Burtraw, Local Government Initiatives for Affordable Housing (Davis, CA, 1981), but the New Jersey experience is consistent with this. East Brunswick, despite admirable affirmative efforts, was able only to create 168 units of Federally-assisted moderate income units over 7 years. Developers without access to Federal or other subsidies have been unwilling to utilize these voluntary density bonus programs.

It is, therefore, our conclusion that, under all but the most extraordinary circumstances, a municipal zoning ordinance must include a mandatory set-aside program in order to meet its fair share obligation under Mt. Laurel II. It is for this reason that the greater part of this report is devoted to setting forth the basic conditions and standards that must be met by such an inclusionary housing program.

(3) A municipality, unless it can show that it can meet its fair share obligations otherwise, must "provide zoning for low-cost mobile homes as an affirmative device in their zoning ordinance (at 122).

Finally, the Court deals with 'least-cost' housing. This, however, is different from the least cost housing approach, as initially pursued in the Madison decision. In essence, the position that the Mt. Laurel II court takes in this regard is that if it is demonstrated to be impossible, despite every affirmative effort, to provide housing for low and moderate income households, housing must be provided for the lowest income population for whom it is feasible to provide new housing. This point is stressed, since it should be clearly understood that 'least cost' housing, in this context is not a substitute for affirmative measures, and mandatory set-asides, but an adjustment of such measures in the light of economic realities, only upon conclusive evidence that it is not possible to provide bona fide low and moderate income units. It is our position, however, that in the great majority of cases

it will be possible to produce at least some percentage of low and moderate income housing, so that the 'least cost' issue need not be addressed directly at this time.

Thus, both the scope of affirmative actions - inclusionary ordinances and other supportive municipal actions - as well as the elimination of cost-generating provisions must be addressed by a municipality seeking to comply with Mt. Laurel II. Furthermore, as the Court makes clear, the scope of the ordinance is not limited to the physical characteristics of the units that are permitted; the low and moderate income units thus provided are to be affordable to, and occupied by, over an extended period, by lower income households. The ordinance, either in itself or through regulations or guidelines separately adopted, must deal with these issues as well as the classical physical issues of zoning and land use controls.

II. STANDARDS FOR ADOPTION OF AN INCLUSIONARY ZONING ORDINANCE UNDER MT. LAUREL II

The Supreme Court in Mt. Laurel II provides certain specific standards to guide those seeking to frame an inclusionary zoning ordinance responsive to the Court's mandate:

a. It may not be made contingent on the availability of subsidies (at 112);

b. It must include provisions to ensure that units continue to rent and/or sell at prices affordable by lower income households, and by inference, be occupied by lower income households (at 113);

c. It must provide that the lower income units be phased in generally in proportion to the development as a whole (at 114);

The Court further notes that a standard that 20% of the units be low and moderate income housing "appears to us to be a reasonable minimum" (at 129), and, elsewhere, ordered Mt. Laurel Township to award building permits to the plaintiff-intervenor on the basis of a condition that "at least 20 percent of the units built are affordable by lower income households, with at least half of these being affordable by low income households (at 176)".

Two general criteria underly the framing of a sound inclusionary zoning ordinance. First, the mandatory setaside of low and moderate income units must be both reasonable and consistent with the Court standards set forth above; and second, the general development conditions must be reasonable, and free from potentially cost increasing and unreasonable standards or provisions.

A. Standards for Mandatory Setaside of Low and Moderate Income Units

In the absence of a compelling rationale to the contrary, it is reasonable to adopt the implicit Mt. Laurel II standard; namely, that each development contain 10% low and 10% moderate income housing units. Such evidence that is available so far suggests that this standard can be achieved by developers in most cases, but that significantly more stringent standards may not generally be economiecally feasible.

A municipality can adopt a lower standard (perhaps 15% lower income units), if it can demonstrate that the likelihood of the municipality's fair share being achieved thereby is increased. Such a circumstance might exist were (a) ample land is available for development; and (b) market conditions make achievement of 20% lower income units difficult, thereby discouraging developers from pursuing this option. A more stringent requirement than 20% (or, within a 20% requirement, requiring more than half of the units to be low income housing) is unlikely to be justifiable. A municipality may, however, provide incentives such as density bonuses for increasing the number of low and moderate income units beyond 20% of the total number in a development.

Additional provisions governing the setaside of low and moderate income units must include the following:

(1) Phasing: A phasing standard must be included in the ordinance, that provides that construction of the low and moderate income units must take place simultaneously with the balance of the development. Such a standard, however, should allow the developer to begin with market rate units, for important marketability reasons. A proposed standard would be as follows:

MINIMUM NUMBER OF LOWER INCOME UNITS UNDER CONSTRUCTION	MAXIMUM NUMBER OF PERMITS ISSUED FOR CONVENTIONAL UNITS
0	0 to 24%
25%	25 to 49%
50%	50 to 74%
100%	75 to 100%

In other words, the developer can construct the first 24% of his/her units before beginning construction on the low and moderate income units, which is ample to establish marketability of the conventional units. The developer, however, must begin construction of all of the lower income units before he/she can take out permits for the last 25% of the conventional units. This is presented as one proposed approach, consistent with both

realistic market considerations and Mt. Laurel II, but alternatives are not precluded.

(2) Characteristics of the Lower Income Units: Certain standards with regard to physical characgteristics of the lower income units are appropriate, while others are not. The following standards are appropriate:

a. General language calling for visual compatibility between the lower income units and the balance of the development;

b. Except in projects earmarked for senior citizen occupancy, requirements that there be a reasonable mix of unit sizes. In large developments; e.g., where over 100 low and moderate income units are provided, this can include a requirement for a minimum percentage of three bedroom units.

c. General language calling for a similar mix of units by number of bedrooms to be offered to low and to moderate income households respectively;

The following standards are not appropriate, and should not be included in an inclusionary zoning ordinance:

a. Any requirement that the low and moderate income units be similar to the conventional units in terms of floor area, bedroom mix, or other features;

b. Any requirement that the low and moderate income units be intermingled in the same structures as the conventional units;

c. Any mathematically inflexible standards with regard to occupancy, distribution of low and moderate income households within the units, etc.

d. Any cost-generating requirement or standard unrelated to health and safety requirements.

(3) Occupancy Controls: Although practical considerations may result in the actual establishment of occupancy controls being handled by the developer, such matters are the ultimate responsibility of the municipality, being part and parcel of the community's fair share obligation. The ordinance must either set forth the manner in which such controls will be carried out, or else set forth the scope of those controls, and general principles for the guidance of applicants, who may then submit a specific proposal as part of the development application. Alternatively, the ordinance may provide that enforcement of occupancy controls be delegated to a specific entity, which may be a nonprofit corporation, housing authority, or similar body.

Whatever the specific machinery established, the scope of occupancy controls which should be set forth in the ordinance, and which should be in place for each development containing a mandatory setaside of low and moderate income units must include the following:

a. Provisions for screening of initial buyers or tenants to ensure that they meet low and moderate income eligibility standards, as well as any other appropriate priority categories;

b. Provisions to ensure continued rental occupancy by lower income households, including control of rents, and screening of all subsequent prospective tenants;

c. Resale controls, to ensure that in the event of resale of any unit, the unit is sold to a lower income buyer at a price affordable to him or her.

Additional specific provisions may be proposed by developers, and may be embodied in specific development approvals, but should not be part of a general ordinance.

B. Standards for Developments subject to a Mandatory Setaside of Low and Moderate Income Units

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

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

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

(2) Flexibility in Modification: Particularly in developments to be built in phases over a number of years, the developer

should be allowed flexibility to modify the development mix in response to changing market conditions and requirements. Ordinances which require extensive submissions, hearings, and approvals for modifications which do not fundamentally change the character and the community impact of a development should be avoided.

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

(4) Reasonable Development Densities: Net densities for each housing type should be consistent with least-cost standards (see Section IV of this report). Gross development densities, if included in the ordinance, should be such that they do not interfere with achievement of the net densities provided.

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

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

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

Finally, it is essential that the amount, and the location, of land zoned subject to the mandatory setaside must be ample and suitably chosen to provide the "realistic opportunity" that Mt. Laurel II calls for. It is important to remember that, if the low and moderate income units are to be 20% of the total number of units permitted, the envelope provided by the zoning ordinance must, at a minimum, provide for a capacity 5 times the municipality's fair share. Realistically, bearing in mind the considerations that have led both the Madison and the

Mt. Laurel II courts to call for "overzoning", the amount of land zoned could easily be 50% to 100% greater in order to provide the realistic opportunity sought*. Thus, if a municipality has a fair share goal of 800 units, a reasonable zoning provision, assuming a gross density of 8 units per care in the inclusionary zone, would be:

FAIR SHARE GOAL	800 units
	x 5
TOTAL UNIT GOAL	4000 units
	x 1.5
UNITS WITH OVERZONING	6000 units
	+ 8
ACREAGE REQUIRED	750 acres

Actual conditions, and therefore, the actual acreage needed to achieve fair share goals, will vary from community to community**.

C. Incentives in Support of Development with Mandatory Setasides

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

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

(2) Provide Tax Abatement: While New Jersey law does not appear to provide any means by which tax abatement can be provided to sales housing, provisions exist for abatement of

*The extent of overzoning needed will depend on land ownership patterns, realistic availability of tracts for development, land prices, and so forth. It should be noted as well that the ordinance must not set a minimum tract size for use of planned development provisions which would have the effect of making land assembly for development under the ordinance more difficult.

**It should be noted that literal application of this approach would result in a different problem; specifically, under-representation of the low income population in the fair share. It is estimated that in the Northeastern New Jersey region, low income families make up 60 to 65% of the total fair share need. It is not realistic, however, to expect developers to provide more than half of their lower income units for low income households.

taxes on rental developments. In view of the demonstrably great difficulty in making a rental development affordable to low and moderate income households (particularly low income), tax abatement should be provided as a matter of course to any developer undertaking such a project.

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

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

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

The above are all general approaches, which are likely to be applicable in a variety of circumstances. There are likely to be a variety of specific steps that will emerge out of particular needs. For example, under the County Improvement Authorities Law (N.J.S.A 40:37A-44 et seq.) municipalities are empowered to guarantee bond issues by such a county authority, which can issue bonds to finance housing and redevelopment projects. This could be a useful source of below-market financing in some cases. In other circumstances, a municipality could make funds available to support the nonprofit corporation which was to administer the occupancy controls required for this housing (see II.A.(3) above). The crux of the matter is that Mt. Laurel II obligates each municipality to do what it can, within reasonable but broad parameters, to facilitate meeting their fair share obligation. Anything less is clearly inconsistent with the explicit intent of the New Jersey Supreme Court.

III. STANDARDS FOR DETERMINING AFFORDABILITY OF LOW AND MODERATE INCOME HOUSING UNDER MT. LAUREL II

The Mt. Laurel II decision provides an explicit definition of low and moderate income households, and a clear basis for determining reasonable affordability standards for units directed at each category. Since it should be clear that the intent of the decision is that housing be provided that will indeed be occupied by lower income households, any affordability standard that does not clearly provide that opportunity is inappropriate.

The definition of low and moderate income households in Mt. Laurel II is as follows:

> "Moderate income families" are those whose incomes are no greater than 80 percent and no less than 50 percent of the median income of the area, with adjustments for smaller and larger families. "Low income families" are those whose incomes do not exceed 50 percent of the median income of the area, with adjustments for smaller and larger families. (Footnote 8, at 36)

The Court further recommends use of the median income figures promulgated for the different Standard Metropolitan Statistical Areas of the state by the U.S. Department of Housing & Urban Development*. This definition, while restrictive, is clearly deliberately so. The Court makes clear its intention, in numerous locations, that this decision be targeted at the poor, not at the mass of middle-class households who may or may not be having difficulty finding suitable housing. For this reason, any effort to establish a rationale for upwardly adjusting the standard set forth in Mt. Laurel II and cited above, is patently inappropriate.

The most recent figures, adopted March 1983, for the area in which Morris County is located (the Newark, New Jersey SMSA) are as follows:

	LOW INCOME	MODERATE INCOME
1 person	$11450	$17650
2 persons	13100	20150
3 persons	14700	22700
4 persons	16350	25200
5 persons	17650	26750
6 persons	18950	28350

The median income, from which the above numbers were derived, was estimated to be $31,500.

*The Court does not preclude use of other numbers than the HUD figures, if another definition "may be more reasonable". In this case, however, the HUD numbers appear to be reasonable, perhaps even slightly on the high side.

As a rule of thumb, the Court continues by stating, "when we refer in this opinion to housing being "affordable" by lower income families, we mean that the family pays no more than 25 percent of its income for such housing..." (at 37) The court continues by noting that other standards; e.g., 30% of income for HUD-supported rental projects, are more and more widely accepted. While the 25 percent standard is a good one, its use creates a potential problem. If one provides a lower income unit at a given price, it can be afforded by a family earning, say, X dollars a year on the basis of 25 percent of income for shelter. In the case of housing offered for sale, however, lenders at present will qualify households on the basis of their spending 28 percent of income for shelter. On that basis, the same unit could be afforded by a household earning .89X. At 30% of income for shelter, a household earning .83X could afford the unit. The higher the percentage of income allowed for shelter, the lower the income a household needs to afford the unit.

It is appropriate, therefore, that where a lender will qualify households on the basis of a higher percentage, and households are willing to spend that higher percentage of their income for shelter, such a higher percentage be used, in order to expand the "reach" of the lower income housing as much as possible. Conversely, the household at the ceiling income for its category (by income category and household size) should not have to spend more than 25 percent of its income for shelter.

Setting the 25 percent figure, therefore, as a threshold level, other figures can be used to qualify prospective buyers or tenants, based on the current standard in the industry. The recommended figures are as follows:

Sales Housing: No more than 28 percent of gross income for mortgage payments, property taxes, hazard insurance, and homeowners' association fees (if any).

Rental Housing: No more than 30 percent of gross income for all shelter costs including utilities.

The former is widely acceptable to lenders, as well as to FNMA, and the latter has been adopted by HUD as their standard for rental development with which they are involved.

One major further point regarding affordability in general must be made. Since occupancy of these units will as a rule be subject to an income ceiling; i.e., families earning more than the amounts given on page 11 will not be eligible to occupy these units, the minimum income needed to qualify for a unit must be at least some reasonable amount below the maximum.

For example, if a two bedroom unit is constructed for low income occupancy, no family earning more than $16,350 (the ceiling for a family of four) may occupy that unit. If the price of that unit is set so that no family earning less than $16,350 could afford the unit, there will be hardly any households

extant who will be able to qualify; namely, only those earning exactly $16,350. Therefore, both the intent of Mt. Laurel II, to provide housing generally to families of lower income, and the common sense of marketability, dictate that the minimum income needed to qualify for any such unit be some reasonable distance below the maximum income above which one is no longer eligible to occupy the unit. A reasonable target that the minimum income be 80% of the maximum income is recommended, although if the minimum income can be further reduced through whatever means that is highly desireable.

A. Affordability Standards for Sales Housing

The price at which a unit can be sold, at be affordable to a lower income household, is a function of the mortgage interest rate and property tax rate applicable to that unit, as well as whether there are homeowners' association fees to be included in the cost. For this reason, a unit may be considered affordable in one community, in which property taxes are particularly low, and not affordable in another. Similarly, a unit will be affordable under a particular mortgage program, but not affordable if the effective interest rate paid by the prospective buyer is substantially higher.

It is for this reason that any ordinance standard defining affordability in terms of a house price that is a set multiple of the ceiling income for a category ("a unit shall be considered affordable if it sells for no more than 2.5 times the ceiling income for a household of appropriate size and income category") is clearly inappropriate. Affordability can only be established by an affirmative demonstration that a household of the appropriate size and income can indeed afford to buy the unit. That, in turn, can only be established by a statement of the actual costs, based on realistic assumptions about interest rates, property tax rates, and the like. Any shortcuts, however well intended, are inappropriate, because they do not lead to the practical objective at hand; namely, ensuring that the units are realistically affordable to lower income households.

A hypothetical example will serve as an illustration of the general principle, and to establish the basis for applying that principle to other cases. Let us assume that the objective is to provide a two bedroom unit for moderate income occupany; i.e., affordable to a household earning 80% of the ceiling for a family of four.

Since the ceiling income (p.11) is $25,200, the unit must be affordable to a household earning:

$25,200 x .8 = $20,160

based on 28 percent of that household's gross income for the four categories of shelter cost noted above. It therefore becomes essential to estimate the cost of each category, as a percentage of total house price.

The assumptions with regard to cost are as follows:

(1) The buyer will have an NJ Mortgage Finance Agency mortgage for 30 years at 10½%, based on tax-exempt bond sales by that agency*, with an annual constant of .1098.

(2) The buyer will pay a 10% down payment.

(3) Property taxes in the community are 2% of market value.

(4) Insurance is $40 per year per $10,000 of house value; e.g., $160 per year for a $40,000 house

(5) Homeowners' association fees are $180 per year per $10,000 house value; e.g., $60 per month for a $40,000 house**.

Framed as a percentage of house price, each cost component is represented as follows:

MORTGAGE	(.1098 x .9)	.09882	
PROPERTY TAXES		.02000	
INSURANCE		.00400	
HOMEOWNERS ASSOCIATION FEES		.01800	
TOTAL SHELTER COSTS		.14082	HOUSE PRICE

Therefore, if we represent house price as P, and income as I, we derive a simple formula:

$$.14082P = .28I$$

Since the sum of the above categories cannot exceed 28% of the target income. Since the target income has already been determined to be $20,160, we obtain

$$.14082P = (.28)20,160 = \$5644.80$$

$$5644.80 \div .14082 = \$40,085 = \text{MAXIMUM HOUSE PRICE}$$

Therefore, under the assumptions given above, a two bedroom unit designed to be affordable to moderate income households should sell for no more than $40,085, or, rounded, $40,000***.

*This is roughly 3% below conventional fixed-rate mortgages at present, although there are variable rate mortgages which carry a comparable initial interest rate. We believe that municipalities and developers should cooperate to obtain such financing.

**These units will typically be townhouses or condominimum flats; a homeowners' association, therefore, is likely to be required.

***It will be noted that this is only 1.6 times the ceiling income for the household income/size category in question, far from the hypothetical 2.5 times figure.

For purposes of illustration, and based on the same hypothetical assumptions given above, the price of 1, 2 and 3 bedroom units affordable by low and by moderate income households would be as set forth below. THIS IS HYPOTHETICAL ONLY, AND SHOULD NOT BE APPLIED LITERALLY.

	LOW INCOME	MODERATE INCOME
1 BEDROOM	$21,000	$32,000
2 BEDROOM	$26,000	$40,000
3 BEDROOM	$28,000	$42,500

It may well be possible under some circumstances to generate higher prices, while remaining within the affordability range. A buydown of the mortgage interest rate can have an impact, as can low property tax rates, savings on homeowners' association fees in various ways*, and the like. Affordability must be defined de novo for each project, within the above general guidelines.

B. Affordability Standards for Rental Housing

As noted, the maximum percentage of income for shelter cost, including utilities, that a household can spend for rent is 30 percent of gross income. Since, as a general rule, rental developments today provide for separately metered and paid utilities, the determination of the rent to be charged is keyed to 30% less a utility allowance, which is a well-grounded determination of the amount a typical household would spend for utilities in any given unit type.

Unlike sales housing, where a set price must be established for each unit or unit type, in rental housing it is possible to adjust the rent on the basis of the income of each household, so that each household pays the same percentage of income for shelter, as is done in many subsidized housing projects. By setting the average rent at 85% of the rent level for a household at the ceiling income for their category, a wide range of low and moderate income households can be housed, specifically:

LOW	35% to 50% of median
MODERATE	56% to 80% of median

It is hoped that it will be possible, in at least some cases, to couple low and moderate income rental housing built pursuant to Mt. Laurel II with Section 8 Existing Housing Certificates, in order to provide units affordable by very low income households.

*Some options include having the municipality accept dedication of interior roads within such developments, and maintain them, having the municipality provide services such as trash removal, snow removal, etc.; also, providing a blanket hazard insurance policy through the association can result in significant savings.

The table below presents target rents by income category and household size for Morris County, based on the income figures given on page 11.

TARGET RENT LEVELS BY INCOME CATEGORY AND HOUSEHOLD SIZE

	HOUSEHOLD SIZE				
	1	2	3	4	5
LOW INCOME					
Number of Bedrooms	1	1	2	2	3
Maximum Gross Rent	$286.25	$327.50	$367.50	$408.75	$441.25
85% Max. Gross Rent	243	278	312	347	375
Utility Allowance	(50)	(50)	(70)	(70)	(90)
Target Net Rent	$193	$228	$242	$277	$285
MODERATE INCOME					
Maximum Gross Rent	$441.25	$503.75	$567.50	$630.00	$668.75
85% Max. Gross Rent	375	428	482	536	568
Utility Allowance	(50)	(50)	(70)	(70)	(90)
Target Net Rent	$325	$378	$412	$466	$478

Adjustments, based on economic considerations, the household size and income distribution anticipated to reside in the development, th availability of Section 8 certificates, etc., can result in changes in average or target rent levels. The numbers in the table above, however, make clear the ballpark, as it were, in which rents must fall in order for the rental development to represent a sound contribution to low and moderate income housing, in the Mt. Laurel II context.

Again, each project must be evaluated at the time of application to determine that the proposed lower income units are indeed affordable to low and moderate income households. The above discussion, however, should make clear the nature of the standards that should be embodied in ordinances or regulations; and, beyond that, provide a straightforward format through which any specific housing development proposal can be evaluated.

IV. STANDARDS FOR SPECIFIC HOUSING TYPES UNDER A MT. LAUREL II ZONING ORDINANCE

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

First, one general principle that must be adhered to in framing the ordinance must be stressed. Mt. Laurel II does not, of course, require that all housing permitted in a municipality must contribute toward meeting the municipality's fair share obligation. A municipality may have large lot zones, agricultural zones, and the like. If, however, a municipality is seeking to meet its fair share obligation through an inclusionary zoning ordinance, that municipality may not zone other parts of the community for development at standards or densities comparable to those of the inclusionary districts, but without an inclusionary requirement. To do so would clearly place anyone seeking to develop under the inclusionary provisions at a disadvantage, thereby hindering achievement of the fair share objectives of the municipality.

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

(1) Requirements designed to enhance house value, such as:

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

(2) Requirements designed to achieve visual or aesthetic* goals, such as:

- 'zigzag' standards, requiring that setbacks of multifamily buildings vary at regular intervals

- 'no look alike' standards, requiring that houses or townhouses shown significant variation from one another in facade, elevation, roofline, etc.

- Excessive open space dedication requirements;

- excessive setback, buffer, perimeter landscaping, and similar requirements.

(3) Requirements designed to displace costs onto developers, and by extension, residents of new housing, such as:

- Requirements that developers provide major infrastructure or facility improvements at his expense**;

- Requirements that developers or multifamily residents bear the cost of services (snow removal, trash removal, etc.) borne by the municipality in the balane of the community.

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

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

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*It should be noted in passing that, as a general rule, imposition of these types of standard do little for the real aesthetic character of a community; indeed, many observers feel that 'no look alike' requirements in particular tend to create visual effets that are unpleasant and clashing, rather than aesthetically appealing.

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

areas are representative of successful units constructed in accordance with the MPS conditions:

1 bedroom	550 to 600 SF
2 bedroom	660 to 720 SF
3 bedroom	850 to 900 SF

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

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

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

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

(2) be occupancy related; i.e., vary with number of bedrooms, rather than a single requirement for a zone;

(3) be consistent across zones; i.e., the same standard for a unit of a given number of bedrooms should apply in all zones;

(4) Eliminate any requirement not clearly rlated to health and safety, such as differential requirements for 1 story, 1½ story, and 2 story single family dwellings.

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

A. Standards for Detached Single Family Houses

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

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

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

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

Lot size can be further reduced where clustering is proposed, or

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

B. Standards for Townhouses

The following standards should govern townhouse development:

(1) Net residential density of at least 10 units per acre;

(2) Front yard setback no more than 20 feet

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

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

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

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

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

(8) Parking requirements should not exceed the following:

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

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

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

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

C. Standards for Garden Apartments

The following standards should govern garden apartment development:

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

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

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

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

(5) No maximum number of units per structure.

(6) Parking and open space requirements should be the same as those set forth for townhouses (page 20). There should be no minium open space requirement for developments of less than 25 units.

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

D. Standards for Senior Citizen Housing

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

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

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

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

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

E. Standards for Mobile Homes

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

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

F. Other Provisions

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

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

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

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

*In developments in California such as Irvine, three-family houses designed to look like large, mansion-like, single family houses, have been constructed in single family residential zones.