

ML - Morris County Fair Housing Council  
vs. Beonton

~1984 ???

- Mount Olive

Pretrial Memorandum: Mount Olive Township

pp. 25

ML 0006628

**VOGEL AND CHAIT**

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ATTORNEYS FOR Defendant, Mt. Olive Township

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MORRIS COUNTY

*Plaintiff*

MORRIS COUNTY FAIR HOUSING COUNCIL, et al

MT. LAUREL II

vs.

*Docket No.* L-6001-78 P.W.

*Defendant*

BOONION TOWNSHIP, et al (including Mt. Olive Township)

**CIVIL ACTION**

PRETRIAL MEMORANDUM

Plaintiff:

CHESTER AND VAN DALEN ASSOCIATES, INC., et al :

MOUNT OLIVE TOWNSHIP

vs.

MOUNT OLIVE TOWNSHIP :

DOCKET NO. L-065604-83 PW

1. NATURE OF ACTION.

Prerogative writ action under Mt. Laurel II by Plaintiff, Public Advocate of New Jersey, against defendant, Township of Mount Olive. In addition, plaintiff Van Dalen Associates, a contract purchaser-developer, is also asserting a claim for relief under Mt. Laurel II and seeking a builder's remedy in conjunction therewith.

This first phase of the case is limited to the issues of: REGION, REGIONAL NEED, and METHODOLOGY FOR ASSESSING FAIR SHARE OBLIGATION OF EACH DEFENDANT MUNICIPALITY. (Compliance with each individual municipality's fair share obligation is reserved for the second phase of the trial.)

2. ADMISSIONS AND STIPULATIONS:

- a) Mount Olive Township is a municipal corporation of the State of New Jersey in which a small portion of the community is located within a growth area under the State Development Guide Plan. Approximately 3,000 multi-family housing units were constructed in Mount Olive Township over the past decade at a garden-apartment density of approximately 12 units per acre which the Township asserts were intended to be authorized for the purpose of complying with the original Mt. Laurel decision.
- b) The Carla Lerman report.
- c) Letter and report from Carla L. Lerman dated April 9, 1984 to Honorable Stephen Skillman detailing the fair share methodology for the purpose of determining each municipality's Mt. Laurel II obligations. In addition, the Carla Lerman report of April 5, 1984 to Judge Serpentelli in the Urban League of Greater New Brunswick vs. Carteret, et al case should be incorporated by reference.
- d) It is further stipulated that the statistical information and data upon which the fair share allocation is made to each municipality is based upon the information assembled by the 1980 census.
- e) Jay Lynch, the planner for Mount Olive Township participated in the development of the Carla L. Lerman (consensus) fair share methodology and concurs with the formula as well as the calculations of Mt. Olive's total Mt. Laurel obligation based on the 1980 census data of 504 low and moderate income units.

3-4. FACTUAL AND LEGAL CONTENTIONS:

The issues of region, regional need and fair share methodology plus the calculation of Mount Olive's total municipal fair share of 504 low and moderate income housing units has been fully explored and determined in the Carla L. Lerman (consensus) reports submitted to the Court. The plaintiff, in correspondence to the Court has acknowledged concurrence with the Carla Lerman formula and, implicitly, agreed to be bound by the same. Mount Olive Township likewise concurs in the Carla Lerman (consensus) analysis, methodology, and calculations and, through its planner's report dated June 3, 1984 (Exhibit D-M.O.-1). The Township agrees with the conclusion that Mount Olive's total fair share figure is 504 units.

Mount Olive Township totally rejects the after-the-fact analysis by the Abeles firm attempting to increase Mount Olive's fair share formulation to 600 units above the calculations of the Lerman report of April 9, 1984.

Mr. Lynch, Mount Olive's planning consultant, has responded to the Abeles report by his letter of June 3, 1984 which is annexed hereto as Exhibit D-M.O.-2. (See also Zimmerman report dated April 2, 1984 comparing fair share numbers of various planners including Carla Lerman - Exhibit D-M.O.-5)

Mt. Olive Township totally rejects and objects to the plaintiff's 11th hour report by Alan Mallach suggesting a major State Development Guide Plan growth area in Mount Olive. In the first place, Mr. Mallach is not a licensed planner of the State of New Jersey and any reports, testimony or activities given by him on planning issues, (such as the SDGP) are in violation of State law and

should not be admitted into evidence or otherwise allowed by the Court. Mr. Mallach's apparent expertise in housing matters should not be confused with the broad scope and range of planning information and issues addressed in the State Development Guide Plan.

Secondly, both the Supreme Court, and your Honor in the Chester Township case, made it abundantly clear that the policy of the law is to achieve certainty in terms of growth areas vs. non-growth areas for Mt. Laurel II issue purposes. The Court experienced years of litigation (without significant low and moderate income housing development) under Mt. Laurel I upon the issue of whether a community was a developing municipality. That experience led to the Supreme Court's search for a planning document which would provide certainty in terms of where the growth area should occur for Mt. Laurel II housing purposes. That there may be differences of opinion as to where the growth areas may or should evolve in our State is clear; the focus of the Mt. Laurel II opinion, however, is to achieve simplicity and certainty on the issue of the growth area lines. Mount Olive Township like many other communities has experienced some change but it is in the most northwestern corner of Morris County -- the outer fringes of the growth area of northern New Jersey. In the future, when the State Development Guide Plan is re-evaluated by someone, no doubt Mount Olive and many other communities on the outer limits of the growth areas will be re-evaluated. The forum, however, for such an endeavor is not the Superior Court in a presently pending Mt. Laurel II case. This is manifestly not a situation of mistake,

substantial change since 1980 or extreme arbitrariness on the part of Mr. Ginman and the other planners who developed the State Development Guid Plan. In this context, we urge the Court to follow the pattern set in previous cases, by calling Mr. Ginman, the Chief Planner for the State of New Jersey, Department of Community Affairs, who developed the SDGP. We also refer to the Court the comments by Mr. Lynch in his letter of June 3, 1984 marked Exhibit D-M.O.-3 annexed hereto in response to the Mallach report on the growth area.

Finally, Mount Olive Township recognizes the limitations of the Court's order for this first phase of the trial in this case. More significantly, Mount Olive reserves its right to provide proofs in the second phase of the trial demonstrating that it has intentionally and, in fact, complied with its Mt. Laurel responsibilities and Mount Olive seeks credits for the compliance under its existing housing stock and the provisions of its ordinances in effect at the time of the trial of the second phase of the case. In this regard, Mount Olive incorporates herein by reference the report by its planning consultant, Jay Lynch, dated October, 1983 (Exhibit D-M.O.-4) and the facts contained therein together with the Affidavit of its Tax Assessor Gloria Cross, dated December 1983 heretofore served on the plaintiff's attorneys.

Based upon these reports, it is clear that the existing garden apartments in Mount Olive Township provide far more than the Township's required moderate income housing under Mt. Laurel II. It should be noted that most of these apartments

were built pursuant to the Township's recognition of its responsibilities under Mt. Laurel I and that far more than 252 of these apartments do comply with the rental requirements for moderate income families under Mt. Laurel II. In addition, more than 252 of these units were built after the 1980 census data was collected.

With respect to low income housing in Mount Olive Township, this defendant notes inter alia the following:

1. There are approximately 30 to 35 Section 8 rent supplement (rental assistance) housing units provided under present programs in Mount Olive Township for low income families which are administered through the Morris County Housing Authority. Mount Olive Township is a participating municipality with the Morris County Housing Authority.
2. At the present time, there are 69 adults with 108 children living in Mount Olive Township who receive income under the AFDC (Aid for Families with Dependent Children) program, the funding of which is provided by the Morris County Board of Social Services and the housing is provided in the free market of Mount Olive Township under the rules and regulations of the AFDC program.
3. In addition, the Federal Food Stamp program reveals the 93 adults and 130 children who are residents of Mount Olive Township are low income families and receive such income assistance.

4. From 1977 through the present, 81 families in Mount Olive Township received Community Development grants to rehabilitate existing housing for lower income families in Mount Olive Township and 9 families are at the present time receiving aid for rehabilitation of their housing, making a total of 90 low income families. These Community Development grants are up to \$5,000 per home for rehabilitation of the housing for lower income persons, most of whom are senior citizens or handicapped and are in the low income category.
5. Mount Olive Township has granted approval to and supported a 202 senior citizen low income housing application by the Mount Olive Abiding Peace Lutheran Church for the construction of 100 units of low income senior citizen housing. Mount Olive has continued to give this project its full support including the support of a successful application for Community Development Grant seed money which has already been received by the project. Mount Olive believes that this project will be approved and funded by HUD within the next 1 to 3 years. (The Lutheran Church is an experienced and well recognized sponsor of this type of low income senior citizen housing.)
6. Residential Group Homes constituting sheltered care residences for developmentally disabled people licensed and funded by the State of New Jersey, Division of Mental Retardation, which provides housing for mentally



retarded low income persons. This housing is provided in Mount Olive Township for approximately 112 such persons, all of whom are in the low income category.

(The names of these facilities are: The Cobblestone, the Bartley home, and Geiger's Acorn Hill, and also several private homes provide homes for such persons.)

7. There are a number of extremely modest single family dwellings (40 to 50) in Mount Olive Township particularly in portions of the Budd Lake Section of the Township which provide housing for families of low income. There are also some converted motel units (efficiency apartments) which provide housing for approximately 10 low income families.

In addition to the above, Mount Olive reserves its right to submit other proofs to the court with regard to credits that it should receive demonstrating compliance with the requirements of Mt. Laurel II and other activities undertaken by the Township for compliance with the Mt. Laurel II decision.

5. DAMAGE AND INJURY CLAIMS:

Defendant, Mount Olive Township, seeks counsel fees and costs of court under Rule 4:58 in that Mount Olive Township, defendant, has made an Offer of Judgment under the first phase of the trial, establishing Mount Olive's obligation under Mt. Laurel II at 504 low and moderate income housing units.

6. AMENDMENTS:

NONE

7. ISSUES AND EVIDENCE PROBLEMS:

Phase One of the Trial.

- A. Region
- B. Overall regional need
- C. Fair Share allocation formula in determination of Mount Olive's fair share number.
- D. Whether the plaintiff has sustained its burden of establishing that the State Development Guide Plan's growth areas for Mount Olive Township should be changed.

Note that all other issues, including Mount Olive's defenses of credits for housing presently renting for low and/or moderate income levels (per Mt. Laurel II), housing being occupied by persons of low and moderate incomes and/or additional units approved under Mt. Olive's present zoning ordinance and yet to be constructed that will provide housing for persons of low or moderate income will be reserved for the second phase of the trial.

7. ISSUES AND EVIDENCE PROBLEMS: (continued)

- E. The right of plaintiff's proposed expert witness, Alan Mallach to testify as a professional planner particularly on the issue of the State Development Guide Plan, (Manifestly a planning issue), in view of the fact that the defendant, Mount Olive Township contends that Mr. Mallach is not a licensed professional planner of the State of New Jersey.

9. EXHIBITS:

- a. Letter of April 9, 1984 from Carla L. Lerman to Hon. Stephen Skillman with the fair share methodology Appendix A report annexed thereto.
- b. Letter of April 5, 1984 from Carla L. Lerman to Hon. Eugene Serpentelli with fair share report in Urban League of New Brunswick v. Carteret, et al dated April 2, 1984.

- c. Letter reports from John J. Lynch, Queale and Lynch, Planning Consultant for Mount Olive Township as follows:

- 1. June 3, 1984 re: Fair Share Housing suit -Lerman report on Fair Share, concurring with that formula and the fair share number for Mount Olive Township of 504 units.
- 2. Letter dated June 3, 1984 in response to the Mallach report on the State Development Guide Plan growth area in Mount Olive Township.
- 3. Letter dated June 3, 1984 in response to the May, 1984 supplemental report from Peter Abeles relative to Mount Olive Township's fair share number.

(Copies of the above three reports are annexed hereto and incorporated herein by reference)

- 4. Report dated Oct. 1983. (Annexed hereto and incorporated herein by reference.)
- d. Report of P. David Zimmerman of October 11, 1983 entitled "Housing and Planning Report concerning Public Advocate of New Jersey vs. M. C. Municipalities."
- e. Report of P. David Zimmerman, professional planner, dated January 25, 1984 entitled: "Housing and Planning Analysis in response to a fair share housing allocation for 10 municipalities in Morris County and Revised Calculation and Allocation of present and prospective fair share and regional housing needs.
- f. Report entitled "Supplemental Report to Housing and Planning Analysis in response to a "Fair Share housing allocation for 10 municipalities in Morris County and revised calculation and allocation of present and prospective fair share regional housing needs."
- g. Report of P. David Zimmerman, professional planner, with chart comparing and contrasting the fair share allocation formula of Carla L. Lerman (consensus formula), Peter Abeles and P. David Zimmerman (Report dated April 2, 1984).
- h. Affidavit of Gloria Cross, Tax Assessor for Mount Olive Township dated December, 1983.

10. EXPERT WITNESSES:

Court appointed expert witnesses:

- a. Carla L. Lerman
- b. Richard Ginman

Defendant Mount Olive Township's expert witnesses:

- a. In the event the Court determines not to call either Carla L. Lerman or Richard Ginman or both, Mount Olive Township reserves the right to call them as their own expert witnesses.
- b. Jay Lynch, Planning Consultant
- c. Gloria Cross, Tax Assessor, Mount Olive Township
- d. P. David Zimmerman, planner

Note that other witnesses are reserved for the second phase of the trial on the issue of credits and other defenses interposed by Mt. Olive Township, including expert witnesses Lynch and Cross noted above, plus Mayor Charles Johnson, Planning Board Chairman, George Petino, Mount Olive Township Welfare Director, Senior Citizen and Disabled Tenancy Act Administrative Agent and Project Director of Mount Olive Senior Citizen Program.

D - M. O. 1

QUEALE & LYNCH

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PROFESSIONAL PLANNERS AND HOUSING CONSULTANTS

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WILLIAM QUEALE, JR., P P, A I C P

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609-392-2324

June 3, 1984

PLEASE REPLY TO:

Herbert A. Vogel, Esq.  
Vogel and Chait  
Maple Avenue at Miller Road  
Morristown, NJ 07960

Re: Fair Housing Council Suit  
Lerman Report on Fair Share

Dear Herb:

The report prepared by Carla Lerman for Judge Skillman accurately reflects my understanding of the formula developed in the Urban League case in Middlesex County. I agree with the conclusion drawn in the report that the fair share figure for Mount Olive Township is 504 units.

I agree totally with the concept of applying a consistent formula to all municipalities so the fair share numbers can be allocated. Attempts at varying the assessment of need should be discouraged unless they are broadly applied. While those of us who participated in the process of developing the formula found certain areas of measurement to be less than ideal, the consensus position was reached in recognition of the general availability of data, and with the understanding that the method of measuring fair share could be improved in the future, particularly if accurate information became available on the availability of vacant developable within the Growth Areas, by municipality.

If you wish to discuss any matters related to the Lerman report, please let me know.

Very truly yours,

QUEALE & LYNCH, INC.

  
John J. Lynch

cc: Donald Ferguson

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QUEALE & LYNCH

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June 3, 1984

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Herbert A. Vogel, Esq.  
Vogel and Chait  
Maple Avenue at Miller Road  
Morristown, NJ 07960

PLEASE REPLY TO:

Re: Fair Housing Council Suit  
Abeles Report on Fair Share

Dear Herb:

In May, 1984, a supplemental report on the fair share methodology was prepared by the firm of Abeles Schwartz Associates, Inc. for the Department of the Public Advocate. I have reviewed the report and offer the following comments:

1. The report was prepared in response to Carla Lerman's report of April 9, which reflects the consensus methodology developed in the Urban League case. The report is characterized as "fine tuning" and not a fundamental disagreement with the consensus methodology.
2. On pages 2 and 3 of the report, a proposal is set forth to provide an upward adjustment factor related the percentage of single family building permits issued in the municipality compared to those issued in the prospective need region over the past 10 years. This is to counter what is perceived as an easy downward adjustment based on physical or environmental constraints to development.
3. The use of single family building permits may not relate well to an identification of those municipalities which should receive an upward adjustment, assuming any upward adjustment is needed at all. It should be kept in mind that the formula has a built-in upward adjustment of 20% to account for those situations where there is insufficient land to accommodate growth. On page 14 of the report, it notes that "...virtually all new housing affordable to low and moderate income persons is in multi-family buildings or mobile homes,..." yet it does not take into account in the formula any adjustment, or credit, for the actual development of multifamily housing or mobile homes. As an example, Mount Olive issued building permits for 644 multifamily units between 1973 and 1982 compared to 564 single family dwellings. This was on top of the issuance of permits for 3,050 multifamily units in the 3 years preceding this 10 year period.
4. The use of single family dwellings as reported in the building permit publications includes townhouses, so it is not a true measure of the development of single family detached dwellings.

5. If an adjustment factor is used to steer development into those municipalities which theoretically have more capacity to handle such development, since they are actively developing single family homes, then there should be some reduction in, or perhaps the complete elimination of the 20% upward adjustment factor in the consensus formula.

All things considered, the approach taken in the Abeles report is an attempt to punish those municipalities which have practiced exclusionary zoning. However, it does not include any corresponding rewards for those municipalities which have developed large quantities of multifamily housing over the years. It also appears to be unfair to assume that all single family dwellings are evidence of exclusionary zoning, particularly since townhouses are included in the count. In my opinion, the concerns raised in this report will be adequately addressed if and when accurate data becomes available on vacant, developable land located in the Growth Areas and tabulated by municipality. This could then be related to jobs, job growth and wealth to provide a more equitable allocation formula. Until that time, I believe the consensus formula provides more than sufficient opportunity for the housing marketplace to function effectively in providing large quantities of lower cost housing in areas which were heretofore unavailable based on zoning restrictions.

If you would like to discuss any other aspects of this report, please let me know.

Very truly yours,

QUEALE & LYNCH, INC.



John J. Lynch

cc: Donald Ferguson



0-M.O. 3

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PROFESSIONAL PLANNERS AND HOUSING CONSULTANTS

JOHN J. LYNCH, P.P.A.I.C.P.  
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June 3, 1984

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PLEASE REPLY TO:

Re: Fair Housing Council Suit  
Mallach Report on Growth Area

Dear Herb:

I have reviewed the report prepared by Alan Mallach on the appropriateness of the Growth Area designation in the State Development Guide Plan for Mount Olive Township. The report was prepared in January, 1984.

Mr. Mallach reviews a number of characteristics of the township and concludes that the Route 46 corridor should be included in the Growth Area in addition to the other areas designated for Growth in the State Development Guide Plan.

I have several comments to offer on the Mallach report, but the most serious concern I have is related to the concept of modifying the SDGP on a case-by-case basis. The Mount Laurel II decision cited the SDGP as a suitable guide for identifying those areas which should accommodate low and moderate income housing. However, it also noted that the SDGP should be updated by January, 1985, since much of the data on which the Guide Plan was based was becoming outdated. With this Supreme Court mandate in place, it seems inappropriate to begin to second guess the statewide planning conclusions by looking only at one or two municipalities.

The consequences of changes in the SDGP Growth Area designations are far reaching. One component of the formula for determining a municipality's fair share of regional housing needs is based on the percentage of local land in the Growth Area compared to that in the Growth Area in the region. If case-by-case adjustments are made in the Growth Area, the reliability of regional acreage figures for the Growth Areas, as published in the SDGP, is diminished. Each time an adjustment is made to either increase or decrease the land in the Growth Area, all other municipalities in the region would have to be notified of the change so they could make appropriate adjustments in their fair share calculations. This is obviously unworkable.

If there are allegations of problems in the validity of Growth Area designations, they should be addressed in the update of the SDGP and considered on balance with all other changes which may be appropriate. This allows for equal treatment of various issues on a broad basis, and does not subject those municipalities in litigation to premature updating of SDGP designations, which can only be done by assuming insight into the elements the State will consider important in changing its SDGP designations.

In reviewing the various component part of the Mallach report, the following comments are offered:

1. In the section on Topography and Land Use, the report notes the recent development of multifamily housing, indicating that it has occurred since 1972, which was the baseline year for much of the data used in the SDGP. Much of this housing was developed as part of a municipal effort to be responsive to the original Superior Court decision in Mount Laurel, and to the general sound planning policy of providing for a mix of housing types. What is left unsaid in the report is that the SDGP was not released until May, 1980, and to have been able to foresee what that document would proscribe would have required clairvoyance.
2. The section on Development Trends points out what has been the position of the township since the start of this suit. Mount Olive has not practiced exclusionary zoning. It has provided for substantial development, including a significant quantity of multifamily dwellings. The report notes that Mount Olive is primarily a non-minority community, with 97% of the population White. This is something the township has no control over, but it may be related in part to an absence of job opportunities in Mount Olive. While there were 6,774 year-round housing units in the township in 1980, there were only 1,909 jobs. This is a significant disparity, one which requires those who are employed to travel outside the township to work. Until there is a better balance between housing and job opportunities, Mount Olive will probably continue to be unattractive to minorities.
3. The Development Trends section also notes that Mount Olive is more affluent than the statewide average. The use of a statewide average is inappropriate in this regard since the provision of housing for lower income households is related to the region in which the township is located. The 11 county "Present Need" region for northern New Jersey had a 1979 median household income of \$24,177, as reported in the 1980 U.S. Census, while Mount Olive's median was \$23,354. Similarly, the "Prospective Need" region, which consisted of 6 counties, had a median of \$24,818. Since the township's income is lower than both its Present and Prospective Need regions, it should not be considered to be "affluent".
4. On page 4 of the report, there is a reference to the Foreign Trade Zone and the anticipated jobs to be created there. While the township is anxious to see successful industrial development in that area, the pace of building and the rate of job creation are a matter of considerable speculation. The methodology used to determine fair share allocations considers jobs, but only looks at past trends and actual jobs in place, and does not engage in job projections, which at the local level are as risky as population projections.


5. The section on Planning and Zoning points out that the township shows much of the area along Route 46 for higher intensity development, and that this pattern was reflected in the 1975 Master Plan. Several years ago the township embarked on an update of the Master Plan, and in so doing it noted that the 1980 SDGP called for a major deemphasis on development in the westerly part of the township. In fact, it showed most of the township to be outside the area they projected for growth. At the time the SDGP was released, it was looked upon as a basic document to be used capital improvement programming for State facilities, including highways, and for determining funding priorities for sewer systems involving federal aid. This fact forced some rethinking of local planning objectives, but the fact that the township was in the midst of litigation could not be overlooked. A change to reduce development opportunities based on the SDGP could easily be claimed as evidence that the township was practicing some form of exclusionary zoning, even though the change would have been related to a statewide planning policy. While this matter was under consideration, the Supreme Court decided the Mount Laurel II case, which imposed another dimension on the SDGP. It was decided at that time that it would be inappropriate to complete the update of the Master Plan and zoning ordinance, concluding instead that the results of such an update could only be interpreted as self-serving in the light of the pending litigation.

There are additional comments I could make on infrastructure, but they are not at the heart of the issue of the appropriateness of the SDGP designations. It is assumed that if there is a change in the SDGP Growth Area, the state will take whatever steps it feels are appropriate to provide financial support for highway and utility system improvements.

If you have any questions on the points raised in this letter, please let me know.

Very truly yours,

QUEALE & LYNCH, INC.



John J. Lynch

cc: Donald Ferguson

D - M. O. - 4

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PROFESSIONAL PLANNERS AND HOUSING CONSULTANTS

JOHN J. LYNCH, P.P., A.I.C.P.  
WILLIAM QUEALE, JR., P.P., A.I.C.P.

PLANNING REPORT

Morris County Fair Housing Council v. Mt. Olive

Prepared for the Township of Mount Olive

October, 1983

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PLEASE REPLY TO:

  
John J. Lynch, PP #19, AICP

This report is prepared to outline the planning testimony to be presented by this witness at trial. The contention of this report is that the township has developed more than its fair share of lower cost housing, that it has had an awareness of its responsibilities to do so over the years, that it has been a stated purpose in local planning documents, and that in less than 13 years it has produced 33 percent more lower cost units than called for in a 20 year period in the Statewide Housing Allocation Report.

The determination of "fair share" has yet to be made. However, in preparation for the update of the township Master Plan, an analysis of the Mount Laurel II decision was presented to the Planning Board in March, 1983, in Memorandum 3-83 entitled "Mount Laurel II, Preliminary Estimate of Low/Moderate Housing Need". A copy of that memorandum is attached to this report. The reference in the title of the memorandum to Memo 1-83 is to a summary of the Mount Laurel II decision prepared for the Planning Board.

Memorandum 3-83 shows a total need, including an indigenous need of 86 units as of 1980, and a 1980-2000 need of 394 units. Since Mount Olive has produced so much moderate income housing over the recent years, only 50 of the 480 units are needed for moderate income, and the rest are for low income households.

Mount Olive has a long history of recognizing the need for the production of lower cost housing. From my earliest exposure to the Planning Board in the early 1970's as a part of the development stages of the Master Plan adopted in the mid-1970's, attention was focused on housing, particularly multifamily housing and mixed housing as found in the planned unit developments which were approved about that time. The Mount Olive Master Plan reflected these public positions by incorporating the following goals and objectives which relate to housing. It should be noted that the document preceded the original New Jersey Supreme Court decision on Mount Laurel:

1. To provide an appropriate balance of housing, employment and recreational opportunities.

...continued

2. To provide areas for growth to allow for balanced housing development to help meet the housing needs of the region.
3. To encourage the development of a variety of housing types in recognition of the smaller size of household anticipated over the next several decades.

Relating these goals and objectives to housing production between 1970 and 1983, Mount Olive has produced 2,960 garden apartment rental units over that period, it has final approvals for an additional 726 units, and it has issued preliminary approvals for thousands of additional attached and multifamily units as a part of a large planned unit development.

In order to determine whether any of the units qualify as "affordable" to low and moderate income families, it is necessary to look at each of the projects, indicating its rental history, the number of units, and the relationship between rent and income. The Supreme Court in the Mount Laurel II decision gave some guidance on the relationship between rent and income, indicating 25 percent seemed to be a reasonable amount. However, it pointed out in a note that HUD used 30 percent in the Section 8 Rental Assistance Program. It should be noted that the Section 8 payment of 30 percent includes all utilities, whereas the Supreme Court decision is silent on the treatment of utility expenses.

The following paragraphs summarize the characteristics of each of the 5 garden apartment complexes which are open and operating in the township. All of the units were built since 1972. For income comparison purposes, this report uses the 1983 HUD published Section 8 Income Limits, which correspond to the 50 and 80 percent definitions used by the Supreme Court. The 1983 Median Income for the Newark Standard Metropolitan Statistical Area (SMSA) is \$31,500. The SMSA includes Morris, Essex, Union and Somerset Counties in their entirety. Moderate income for a 2 person household, which is the largest household size for a one bedroom unit, is \$20,150. For a 4 person household, which is maximum occupancy for a 2 bedroom unit, is \$25,200. Between 1970 and 1983, median family income has increased at an average annual rate of about 8 percent. Rents for each of the complexes are shown for 1983, and a figure is given which shows the rate at which the rents have increased since the units were placed on the market. In the region, rents have increased at about the same rate as incomes.

1. Village Green: The first units in this complex were occupied in 1972. The total number of units is 1,172. Rents for the one bedroom units in 1983 ranged from \$470-\$500, which is 28.0-29.8% of moderate income. For the 2 bedroom, rents are \$560-\$565, or 26.7-26.9% of moderate. Utilities are included in the rent, so all the units fall below 30% of median, and therefore qualify as moderate. Over the years, the one bedroom units have had rental increases averaging 8.3% and the 2 bedrooms 7.4%.

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2. Oakwood Village: There have been 648 units built in this development since 1973, and 584 additional have been approved, but not built to date. Some of the units in this complex include utilities, while others have the tenant paying for electricity. 1983 rents for the one bedroom units not including electricity are \$365-\$370, or 21.7-22.0% of moderate income, well below the 25% guideline. One bedrooms with utilities included rent for \$450-\$520, or 26.8-31.0%, placing all but a few of the units within the 30% guideline with utilities. Two bedroom units which do not include electricity have rents of \$440-\$445, or about 21.0% of moderate income, and those with utilities included rent for \$540-\$620, or 25.7-29.5% of moderate income. Rent increases on the one bedroom without utilities have increased at an average annual rate of 6.2%; two bedrooms without utilities have increased at 5.0%, one bedrooms with utilities have increased at 8.9%, and the corresponding increase for two bedrooms with utilities has been 7.8%. Virtually all of the units in Oakwood Village qualify as moderate income.
  
3. Hensyn Village: This is the smallest of the complexes, consisting of 264 units, all of which are open and operating. No outstanding approvals exist on this project. 1983 rents for one bedroom units range from \$395-\$415, or 23.5-24.7% of moderate income; and for two bedrooms, rents range from \$480-\$520, or 22.9-24.8% of income. In all cases, the units are marketed below 25 percent of moderate income, indicating they should be counted toward meeting fair share. Rental increases since the project opened in 1975 have averaged 7.0% for the one bedrooms, and 6.5% for the two bedroom units.
  
4. Eagle Rock Village: This development contains 520 units, all of which were built between 1973 and 1983. One bedroom units range in 1983 rents from \$395-\$420, or 23.5% to 25.0% of moderate income, while the two bedroom units rent from \$485-\$505, or 23.1-24.0% of moderate income. Since 1973, the lower priced one bedroom units have increased at a rate of 7.3%, while the two bedroom units have shown a 6.4% increase. As with almost all of the other units noted in this report, these units should all be counted as meeting the test of affordability for moderate income households. An additional 126 units have been approved for development as a part of this complex.
  
5. Kings Village: Almost all of the approved units have been built, with only 16 units remaining to be built, and 356 open and operating. One bedroom units have rents ranging from \$415-\$435 per month, or 24.7-25.9% of moderate income. Two bedroom units range from \$515-\$545 per month, which represents 24.5-26.0 percent of moderate. Based on these ranges, which are very close to the maximum based on utilities being extra, a minimum of one-third of the units, or about 120 could be counted as low and moderate. The annual rate of rent increase since the units opened in 1975 has been 8.3% for the one bedroom units and 7.7% for the two bedroom units.

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In summary, the above information indicates that the township has allowed the development of some 2,960 units of garden apartments since the early 1970's. The great majority of the units continue to be affordable to low and moderate income households. The township has outstanding final approvals for an additional 726 units, and several thousand additional units with approved preliminaries. This level of housing production has been carried out in a market area which has seen little else in the way of development. According to state building permit records, Mount Olive has authorized the construction of more garden apartment units since 1970 than all the other municipalities in Morris County combined. If this kind of reasoned approach to providing a fair share of the region's housing needs is considered insufficient or untimely, it is likely that few municipalities will engage in voluntary compliance with the precepts of Mount Laurel I and II.

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MEMORANDUM 3-83

DATE: March 17, 1983

TO: Mount Olive Planning Board

FROM: Queale & Lynch, Inc.

  
John J. Lynch P.P.#19, AICP

SUBJECT: Mount Laurel II  
Preliminary Estimate of Low/Moderate Housing Need  
(Also See Memo 1-83)

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This memorandum is a follow-up to Memo 1-83, which set forth in summary form the findings of the New Jersey Supreme Court in the Mount Laurel II decision. The purpose of this memorandum is to provide a preliminary estimate of the need for low and moderate income housing in Mount Olive, which will be followed by recommendations on ways in which to meet the need.

There are three types of need figures identified by the Supreme Court. One is the indigenous, or resident need of the population living within the municipality. While no formula is set forth by the Court, it seems to be related to those families living in housing which is in poor physical condition. The U.S. Census is the general resource for data on the characteristics of the housing stock, but the Census has not included any information on the condition of housing since the 1960 Census, except that which is related to deficiencies in facilities. Therefore, in order to provide an estimate of the indigenous need which is related to existing physical condition of the housing stock, those units in Mount Olive which are identified as having no bathroom facilities or only a half-bath are included, as are those with incomplete kitchen facilities. For the township, 60 units are deficient on the basis of bathroom facility defects, and 51 have incomplete kitchens. Since there may be some overlap between the two categories, it is assumed for the purpose of this estimate that half of the units with incomplete kitchens also have deficient bath facilities, resulting in a total facility-based indigenous need of 86 units.

The other two need tests apply to the regional need issues, and the requirement for municipalities which have some land identified in the State Development Guide Plan as Growth Area to accommodate a fair share of the regional need for low and moderate income housing. The first regional need test is the existing need. The factors used to estimate the existing need are the total units in the region which are deficient in facilities, as noted above for the identification of the indigenous need, and the general shortage of affordable housing. The region used for the purpose of Mount Laurel II purposes includes Morris, Union, Essex and Somerset Counties. The reason for this grouping is that it represents an area within which there is general competition for housing, and the 4 counties are grouped together by HUD in its establishment of income limits under the Section 8 Rental Assistance Program, which has as its target population those households in the same income categories as those identified by the Supreme Court as low and moderate income.

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The region has an adjusted total of 21,400 housing units with bath or kitchen related facility deficiencies. The adjustment made was to assume some overlap between the two deficiencies, as noted for the figures shown for Mount Olive. In addition, the number of low and moderate income households in the region exceeds the affordable housing supply by 29,116, which results in an estimated existing need in the region of 50,516 units. It should be noted that the quantity of housing affordable to moderate income households exceeds the total number of moderate income households by over 33,000. According to the 1980 Census, there are 103,656 households in the region earning between \$10,300 and \$16,500, and there are 136,887 units with rents or sales values affordable to them. However, the region has 163,619 low income households, earning less than \$10,300, and the supply of housing affordable to them is only 134,503 units. This leaves a deficit, all attributable to low income households, of 29,116. The measure of affordability is based on rentals which are no more than 25 percent of the income of low/moderate income households, and sales housing which is valued at no more than two times the income of these households.

The other measurement of regional need for fair share calculation purposes is the prospective need. This consists of an estimate of the total number of households which would be created in response to growth anticipated for the region, and an estimate of the number of those new households which would be low and moderate income. The source of population estimates is the New Jersey Department of Labor & Industry, which projects a job-related population level for the 4 county region which would be only 2,060 persons higher in 2000 than it was in 1980. However, the population gain for Morris and Somerset Counties for the 20 year period is projected to be 185,500, with the very low total gain for the region a reflection of substantial population declines forecast for Union and Essex Counties. In order to estimate the number of households which would make up the total population increase, the increase for Morris and Somerset Counties was divided by the 1980 average population per household. In Morris County, the 1980 average was 3.02, and in Somerset it was 2.95. The combined total household gain 1980-2000 would be 61,885 based on these averages. No adjustment was made for the decline in Essex-Union since that would artificially lower the regional need even though there is growth projected for the western part of the region.

Out of the increase of 61,885 units to accommodate anticipated population growth in Morris and Somerset, 14,914 would be low income and 9,468 would be moderate income, based on the 1980 proportions of 24.1 percent low and 15.3 percent moderate. This results in a total prospective need for low and moderate income housing for the region of 24,382.

Combining the existing regional need of 50,516 with the prospective need of 24,382, a total need of 74,898 units is generated. For allocation purposes, this can be rounded to 75,000 units because of the very broad estimating techniques used. One method of allocating this need, which would apply to the period through the year 2000, would be to relate it to the land area of the municipality which lies in the Growth Area compared to the land area of the region which lies in the Growth Area.

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A second method could be job-related, taking the number of jobs in Mount Olive as a percent of jobs in the region as of 1980. On the land area test, the region has 563 square miles in Growth Area, while Mount Olive only has about 15 percent of its 30 square mile land area designated as a Growth Area in the State Development Guide Plan, which is 4.5 square miles, or 0.80% of the regional Growth Area. On the job-related test, Mount Olive had 0.25% of the covered employment in the region as of 1980. Applying both percentages to the 75,000 unit need in the region, and averaging them, the fair share calculation for the township through the year 2000 would be 394 units, which when added to the indigenous need of 86 units, yields a total need of 480 units.

The existing regional quantity of low and moderate income households is 39.4% of the total number of households. The proportion in Mount Olive as of 1980, was 27.7%. The moderate income ratio in the township was 15.7% compared to 15.3% for the region, but the low income ratio in Mount Olive was only 12.0% compared to 24.1% for the region.

Very little information is available on the characteristics of the low and moderate income population. However, among the 1,780 households in Mount Olive which fall in this category, 761 are made up of only one person. This is 64.1% of all the one person households in the township, and it is safe to assume that it includes many elderly persons. Of the 1,780 households, 771 are below the low income threshold of \$10,300, accounting for 12 percent of all the households in the township. Based on this shortfall in low income households, and the regional and local deficiencies in the quantity of housing affordable to low income households, the total need of 480 units in Mount Olive should be primarily oriented to satisfying the low income need. The low income portion of the need should be about 430 units, and the moderate income a total of 50 units. This proportion is based on allocating the total indigenous need for the township to low income, allocating the fair share of the region's existing need to low income because of the sufficiency of housing priced within the reach of moderate income families, and splitting the regional prospective need proportionally between low and moderate according to the 1980 regional proportions.

In attempting to meet this need, the township should consider a variety of zoning approaches which will make it realistically possible to produce lower cost housing. However, production should only be provided for in the areas shown as Growth Areas, otherwise larger parts of the township will be considered as Growth Areas, and the fair share formula will change. If housing production proceeds at a pace which would exceed the township's fair share over the period of the projection of the need, phasing could be employed as a control, which should be related to an average annual need of about 24 units. The evaluation of progress toward meeting this need should take place every two to three years to determine whether any zoning adjustments are warranted either to accelerate or slow the pace of production.

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