

ML - Morris County Fair Housing Council
vs. Boonton

March 13, 1984

Pretrial Brief of Plaintiffs, Morris County Fair Housing Council,
Morris County Branch, N.A.A.C.P. and Public Advocate of New
Jersey on the Issue of Racial

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SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION-MIDDLESEX/MORRIS COUNTIES
 DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING :
 COUNCIL, et al., :

Plaintiffs, :

vs. :

BOONTON TOWNSHIP, et al., :

Defendants. :

Civil Action
 (Mt. Laurel Case)

PRETRIAL BRIEF OF PLAINTIFFS, MORRIS COUNTY
 FAIR HOUSING COUNCIL, MORRIS COUNTY BRANCH,
 N.A.A.C.P. AND PUBLIC ADVOCATE OF NEW JERSEY
 ON THE ISSUE OF REGION

On the brief:

STEPHEN EISDORFER
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INTRODUCTION

Plaintiffs, the Morris County Fair Housing Council, the Morris County Branch of the N.A.A.C.P., and the Public Advocate, have brought suit against the twelve defendant municipalities alleging that they failed to provide realistic opportunities for construction of their fair share of housing affordable to low and moderate households. Two other cases, Green Village v. Township of Chatham and Chester and Van Dalen v. Mt. Olive Township have been consolidated with this case for trial.

By order dated February 14, 1984, the Court split the trial into several parts. The first part concerns the issue of delineation of a Mt. Laurel region or regions for defendant municipalities. Plaintiffs submit this pretrial brief as to delineation of region in accordance with that order.

Plaintiffs submit that all the defendants lie in a single region extending outward from the large cities of northeastern New Jersey and encompassing Hudson, Essex, Union, Bergen, Passaic, Morris, Somerset, and Middlesex Counties. While other regions might plausibly be drawn around defendants, this is the smallest region that is suitable for determination and allocation of both present and prospective regional need and that satisfies the requirements of Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township, 92 N.J. 158 (1983) and its predecessor cases. Plaintiffs further submit that none of the various regions proposed by defendants meets the essential requirements of Mt. Laurel.

Plaintiffs will first demonstrate that the eight-county region is an appropriate region and satisfies the requirements of Mt. Laurel. We shall then analyze the various regions proposed by the defendants and demonstrate serious deficiencies in these alternatives.

I. THE EIGHT-COUNTY REGION IS AN APPROPRIATE REGION FOR DEFENDANTS AND SATISFIES THE REQUIREMENTS OF MT. LAUREL

In Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township, 92 N.J. 158 (1983) (hereinafter Mt. Laurel II), the New Jersey Supreme Court ruled that every municipality that lies in the "growth area" mapped by the New Jersey State Development Guide Plan has a constitutional obligation to provide a realistic opportunity for construction of its fair share of the present and prospective regional need for housing affordable to low and moderate income households. Id. at 215. The Court held that any litigation enforcing this obligation must result in "a determination by the court of a precise region, a precise regional present and prospective need, and a precise determination of the present and prospective need that the municipality is obligated to design its ordinance to meet." Id. at 257.

The Supreme Court summarized the concept of region as:

"that general area that constitutes, more or less, the housing market area of which the subject municipality is a part, and from which the prospective population of the municipality would be drawn, in the absence of exclusionary zoning." 92 N.J. at 256.

From this decision and prior decisions of the Supreme Court - Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township, 67 N.J. 151 (1975), app. diss., 423 U.S. 808 (1975) (hereinafter Mt. Laurel I) and Oakwood-at-Madison, Inc. v. Township of Madison, 72 N.J. 481 (1972) (hereinafter Oakwood-at-Madison) - certain essential requirements for a Mt. Laurel region emerge. Among these requirements are the following:

1. The region must achieve the purposes of Mt. Laurel.
2. The region must be large enough to include all realistic sources of housing demand.

3. The region must permit a reasonably precise, statistically sound determination of prospective regional need and a fair and equitable allocation of that need.
4. The region must permit reasonably precise, statistically sound determinations of present regional need and a fair and equitable allocation of that need.
5. The region must exhibit some degree of social and economic interconnectedness.

We will discuss how the proposed eight-county region satisfies each of these requirements in turn.

1. The region must achieve the purposes of Mt. Laurel.

In delineating Mt. Laurel regions the court must keep in mind the original rationale for defining the municipal constitutional housing obligation in regional terms. As the New Jersey Supreme Court has repeatedly noted, see, Mt. Laurel II, supra at 209-10, Mt. Laurel I, supra at 172-73, New Jersey's cities were once economically and socially integral units, occupied by rich and poor alike. After World War II, affluent residents migrated from cities to the outlying communities. In time, business and industries also migrated to the suburbs. Only the poor, who have been excluded from those communities by exclusionary zoning and planning policies, were left behind. The result is a stark pattern of economic and racial segregation.

The constitutional principles enunciated in the Mt. Laurel decisions seek to prevent suburban municipalities from using their zoning and planning powers in ways that further exacerbate this pattern of segregation and to undo the consequences of past misuse of these powers. See, Mt. Laurel II, supra at 208-10. These principles demand that the poor be given the same opportunity to choose whether to live in the cities or the suburbs that, because of exclusionary zoning, has previously been available only to the affluent. In delineating Mt. Laurel regions, the court must look at the historical pattern

of movement of population and jobs outward from the cities and must ask the following question: into what geographical areas have affluent households and jobs migrated from the cities? It is in this context that the Supreme Court in Oakwood-at-Madison characterized "region" for suburban municipalities in terms of "the areas from which the lower income population of the municipality would substantially be drawn absent exclusionary zoning" and noted especially that "evidence of historical sources of the municipality's population, among other indicia, is relevant thereto." Oakwood-at-Madison, supra at 539-40.

The pattern of flow of population and jobs in northeastern New Jersey since World War II is clear beyond dispute. There has been a dramatic flow from the urban centers - Newark, Jersey City, Elizabeth, Paterson, etc. - spreading outward into successively more remote rings of suburbs. This outward flow of population and jobs has been the single most powerful demographic force shaping Morris County for the past 35 years. As plaintiffs' evidence will show, this fact is demonstrated by uncontrovertible statistical data concerning the changing locations of jobs, people and housing. (Wiener, October 1983 at 4,5;* Wiener, Map-Distribution of Population growth in northeastern New Jersey 1950-1960; Wiener, Map-Distribution of population growth in northeastern New Jersey 1960-1970; Wiener, Map-Distribution of population growth in northeastern New Jersey 1970-80; New Jersey Department of Labor, Economic Profile of Morris County). It is universally recognized, not only by state and regional planning agencies, such as the New Jersey Departments of Community Affairs and Transportation, the Tri-State Regional Planning Commission, and the Re-

* For purposes of this brief, reports of the expert witnesses will be identified by witness, date of report, and page. For example, "Wiener, Oct. 1983" refers to Abeles Schwartz Associates, A Fair Share Housing Allocation for Ten Municipalities in Morris County (Oct. 1983) and "Wiener, Feb. 1984," refers to Abeles Schwartz Associates, A Supplemental Report on Fair Share Issues (Feb. 1984).

gional Plan Association, (New Jersey Department of Community Affairs, State Development Guide Plan, 1-2, 15-16 (1980); New Jersey Department of Transportation, Draft Route 206 Corridor Study: Bridgewater to Roxbury, pp 12-27 (1982); Tri-State Regional Planning Commission, Regional Development Guide (1972); Regional Plan Association, The Second Regional Plan 1968); Regional Plan Association; The Future of Morris County: A Supplement to the Second Regional Plan (1970); Morris County Planning Board, Transportation Plan, pp 9-23) but also by virtually every one of the defendants in their own planning documents. (A Comprehensive Revision to the Master Plan Report for Denville Township (1975), pp. 68-74, 77; Florham Park Existing Land Use Master Plan Survey Report (1972), pp. 14-15; Background Notes on Economic Development for the Florham Park Master Plan (1972), pp. 1-3; A Comprehensive Guide for Development of the Township of Hanover (1963); pp. 4-5, 26-28, 35-42; Township of Morris 1983 Master Plan Revision Background Report (1983); Report 1, pp. 9-10, 15-18; Reexamination Report, pp. 11-12, 15-18; Morris Township Master Plan (1972), pp. 1-2, A9-10; Population and Housing Element, Master Plan of the Township of Parsippany-Troy Hills (July 1983), pp. 6-11, 28-29; Transportation Report, Township of Parsippany-Troy Hills (1974), pp. 1-2, 70-75; Housing Analysis and Development Policy Study, Township of Parsippany-Troy Hills (1975), pp. 1, 35; Land Use Analysis, Township of Parsippany-Troy Hills (1973), pp. 2-5; Population and Housing Study Township of Parsippany Troy Hills (1973), pp. 2-5; Phase 1 Master Plan for Montville Township, Background for Planning (1976), pp. 1-2, 29-32; Master Plan Update for the Township of Randolph (1980), pp. 1-9; Randolph Township Master Plan (1972), pp. 1-14; Reexamination and Comprehensive Revision of the Township of Rockaway Master Plan (1983), pp. 8-13; Reexamination of Comprehensive Revision of the Township of Roxbury Master Plan (1983), pp. 9-11; Comprehensive Revision to the Master Plan Report for the Township of Roxbury, Part 2 (1973), pp. 1-2, 11-14). For this

reason, no region can be drawn consistently with Mt. Laurel for any defendant in this litigation that does not include the urban core of northeastern New Jersey and the other counties who have been shaped by the same historical forces. As the evidence will show, this includes all of northeastern New Jersey extending out from the cities to the ring of counties that includes Passaic, Somerset, and Middlesex Counties, as well as Morris County.

2. The region must be large enough to include all conceivable substantial sources of housing demand.

Although the Supreme Court has described Mt. Laurel regions in terms of "housing markets," the Court clearly does not refer to housing market in the narrow sense used by real estate brokers. Rather it refers to those large areas encompassing both urban areas from which population has moved outward and the suburban areas in which that population has sought housing. The examples cited by the Supreme Court as "regions large enough and sufficiently integrated to form legitimately functional housing market areas" illustrate this point: the five counties surrounding Dayton, Ohio; the fifteen counties surrounding Washington, D.C.; the nine counties surrounding Philadelphia and Camden. Oakwood-at-Madison, supra at 538-39. The Court emphasized the critical features of these regions:

The present significance of the cited plans is that it is difficult to conceive of a substantial demand for housing therein coming from any one locality outside the jurisdictional region, even absent exclusionary zoning. The essence of the cited plans is "to provide families in those economic categories [low and moderate] a choice of location." Id. at 539 (emphasis and brackets in original).

The purposes of Mt. Laurel are defeated if the region does not include all the areas in which lower income populations were left behind by suburbanization. As the Supreme Court notes, "harm to the objective of securing adequate opportunity for lower income housing is less likely from imperfect allocation models

than from undue restriction of the pertinent region...." Id. at 541; Mt. Laurel II, supra at 253. (emphasis added)

A region which excludes either any portion of the urban core of northeastern New Jersey or any of the areas whose growth has been shaped by the outward flow from that core cannot satisfy this requirement. Indeed in Oakwood-at-Madison, the Supreme Court cited with approval testimony that indicated a seven-county region in northeastern New Jersey would be appropriate for Madison Township in Middlesex County and the use by the Department of Community Affairs of the eight-county region proposed by plaintiffs in this litigation. Oakwood-at-Madison, supra at 528 n. 35.

3. The region must permit a reasonably precise, statistically sound determination of prospective regional need and a fair and equitable allocation of that need.

The harm done by selecting an inappropriate region is that the municipality's constitutional obligation will be defined in terms of an inadequate determination of regional need.

[H]arm to the objective of securing adequate opportunity for lower income housing is less likely from imperfect allocation models than from undue restriction of the pertinent region. The essential thing from that standpoint is that that the true regional need be adequately quantified. Id. at 541. (emphasis added)

Consequently, the region selected must permit a reasonably precise and statistically sound determination of prospective regional need. As plaintiffs' evidence will show, this requirement cannot be satisfied unless regions consist of aggregates of whole counties.

Regional prospective need can be computed only by estimating the number of low and moderate income households who will need housing during the relevant future period. There is one source of data on future population that is clearly preferable to all others -- the official population projections

made by the New Jersey Department of Labor. See Office of Demographic and Economic Analysis, New Jersey Department of Labor, New Jersey Revised Total and Age & Sex Population Projections - 1985 to 2000 (1983)(Wiener, Oct. 1983 at 7-9). This source of data is preferable for several reasons. First, these projections are based on highly sophisticated statistical analyses of demographic trends. Second, they represent the State's official projections and are widely used by various agencies for planning purposes. Third, the Department of Labor, recognizing the statistically questionable character of population projections for very small areas, projects population growth for no geographic entities smaller than counties.

If regional need is to be determined using this data, however, regions must be comprised of aggregations of whole counties.

Were regions to consist of fragments of counties, these official populations projections could not be used. Household growth would have to be computed in some other manner, either by aggregating municipal population projections, or by trying to estimate future growth in the number of low and moderate income households on the basis of even more dubious data, such as projections of municipal employment growth.

The use of municipal population projections in fair share analysis is not only statistically unsound (Wiener, Oct. 1983 at 7-9); it has also been expressly disapproved by the Supreme Court, for such projections often reflect and perpetuate existing patterns of exclusionary zoning. Mt. Laurel II, supra at 258. The use of municipal employment growth data is even more questionable. (Wiener, Feb. 1984 at 17). Unlike population growth, which is largely determined by long-term demographic trends, employment growth is strongly influenced by unforeseeable dips and rises in the national economy. Municipal employment growth projections are especially unreliable since the arrival or departure of one or two major employers can completely change the employment

picture in a municipality.

In sum, the need to make sound projections of prospective housing need requires that regions consist of aggregates of whole counties.

4. The region must permit reasonably precise, statistically sound determination of present regional need and a fair and equitable allocation of that need.

In addition to determining and allocating prospective housing need, the court must also determine and allocate present housing need. As the Court observed in Mt. Laurel II:

[A]ll municipalities' land use regulations will be required to provide a realistic opportunity for the construction of their fair share of the region's present lower income housing need generated by present dilapidated or overcrowded lower income units, including their own. Municipalities located in "growth areas" may, of course, have an obligation to meet the present need of the region that goes far beyond that generated in the municipality itself; there may be some municipalities, however, in growth areas where the portion of the region's present need generated by that municipality far exceeds the municipality's fair share. The portion of the region's present need that must be addressed by municipalities in growth areas will depend, then, on conventional fair share analysis, some municipality's fair share being more than the present need generated within the municipality and in some cases less. 92 N.J. at 243-44.

Elsewhere in the opinion the Court makes it clear that it is the excess present need in urban areas which have a disproportionate share of low and moderate income households that will be reallocated to other municipalities that have the capacity to accommodate this need. Id. at 215.

Hence, any region which includes a poor city must also include communities with large areas of vacant developable land in which the present housing need reallocated from that city can be met. In any such region there must be a balance between areas which have large lower income populations and areas which have large quantities of vacant developable land.

This requirement places very severe constraints on the delineation of regions in North Jersey. Hudson County, for example, has a very high concentration of lower income households and virtually no vacant developable land (Wiener, Oct. 1983 at 14). The adjacent counties, Union, Essex and Bergen, have no substantial quantity of vacant developable land and have additional concentrations of lower income populations. (Wiener, Oct. 1983, at 13, 14). As a result, it is impossible to select a realistic region containing Hudson County which does not include the next ring of counties: Passaic, Morris, Somerset and Middlesex. Consequently, there is no realistic region including Hudson County smaller than the eight-county region proposed by plaintiffs. (Wiener, Oct. 1983 at 13-15).

5. The region must exhibit some degree of social and economic interconnectedness.

Both the majority in Oakwood-at-Madison, 72 N.J. at 539-41, and Justice Pashman in his concurrence in Mt. Laurel I, 57 N.J. at 215 n. 16, suggest that regions should be areas that are to some degree economically and socially interconnected.

This type of interconnection is very difficult to measure. Commutation patterns are, of course, relevant. A region might well include areas in which many residents commute to a common urban center. See, Oakwood-at-Madison, supra at 528 n. 35, 540. Commutation patterns, by themselves, however, are an insufficient indicator, since they have no relevance to the large portion of the lower income population who are retired or otherwise outside the labor market. Id. at 541. (Wiener, Feb. 1984 at 15). Another relevant indicator is linkage by major highways and public transit routes that give residents of one part of the region access to jobs, public institutions, and public services in other parts of the region. A third indicator, and by no means the least importa

is the extent to which there is a public perception within the region of mutual interconnectedness.

By all these criteria, the eight-county region is appropriate. A substantial proportion of the workers in all the suburban counties commute to work in the urban core (although this proportion is steadily diminishing as the jobs migrate outward from the cities). (Census data set forth at Zimmerman, Oct. 11, 1983 at A-8-9). Furthermore, the region has been interconnected by major state and federal highways and by a network of commuter railroads spreading out from Newark, Jersey City, and Hoboken into the outlying areas.

Perhaps the most telling evidence of interconnectedness, however, is to be found in the planning reports of state and regional planning agencies that have concerned themselves with housing and in the planning reports of the defendants themselves. The eight-county region is substantially identical to the core, inner ring, and intermediate ring of the New Jersey portion of the New York Metropolitan Area as designated by the Regional Plan Association, (Regional Plan Association, Second Region Plan (1967) and has been recognized by RPA as an appropriate area in which to analyze the balance between housing need and housing opportunity. (Regional Plan Association, Segregation and Opportunity in the Region's Housing (1979)). It also substantially coincides with the New Jersey subregion of the planning area of the former Tri-State Regional Planning Commission, (Tri-State Regional Planning Commission, Regional Development Guide (1977)) and has been recognized by that agency as appropriate for fair share planning (Tri-State Regional Planning Commission, People, Housing and Neighborhoods (1979)). It is also the planning area identified by the (New Jersey Department of Community Affairs as appropriate for fair share planning. New Jersey Department of Community Affairs, A Revised Housing Allocation Report for New Jersey (1978); New Jersey Department of Community Affairs, Housing Allocation Regions (1975)). Moreover, virtually all of the defendants in their own planning documents

have identified themselves as part of the New York Metropolitan Region, often utilizing the terminology of the Regional Plan Association. (A Comprehensive Revision to the Master Plan Report for Denville Township (1975), pp. 68-74, 77; Florham Park Existing Land Use Master Plan Survey Report (1972), pp. 14-15; Background Notes on Economic Development for the Florham Park Master Plan (1972), pp. 1-3; A Comprehensive Guide for Development of the Township of Hanover (1963); pp. 4-5, 26-28, 35-42; Township of Morris 1983 Master Plan Revision Background Report (1983); Report 1, pp. 9-10, 15-18; Reexamination Report, pp. 11-12, 15-18; Morris Township Master Plan (1972), pp. 1-2, A9-10; Population and Housing Element, Master Plan of the Township of Parsippany-Troy Hills (July 1983), pp. 6-11, 28-29; Transportation Report Township of Parsippany-Troy Hills (1974), pp. 1-2, 70-75; Housing Analysis and Development Policy Study Township of Parsippany-Troy Hills (1975), pp. 1, 35; Land Use Analysis, Township of Parsippany-Troy Hills (1973), pp. 2-5; Population and Housing Study Township of Parsippany Troy Hills (1973), pp. 2-5; Phase 1 Master Plan for Montville Township, Background for Planning (1976), pp. 1-2, 29-32; Master Plan Update for the Township of Randolph (1980), pp. 1-9; Randolph Township Master Plan (1972), pp. 1-14; Reexamination and Comprehensive Revision of the Township of Rockaway Master Plan (1983), pp. 8-13; Reexamination of Comprehensive Revision of the Township of Roxbury Master Plan (1983), pp. 9-11; Comprehensive Revision to the Master Plan Report for the Township of Roxbury, Part 2 (1973), pp. 1-2, 11-14).

By all of these indicia, the eight county region shows a substantial degree of economic and social interconnectedness.

In sum, the eight-county region is the smallest region encompassing all of the defendants that satisfies the major requirements of the Mt. Laurel decisions.

II. NONE OF THE REGIONS PROPOSED BY
THE VARIOUS DEFENDANTS SATISFY
THE REQUIREMENTS OF MT. LAUREL

Defendants offer three mutually inconsistent types of region: 1) Morris County, 2) a four-county region (Essex, Union, Somerset and Morris), and 3) multiple floating regions based on a commutershed surrounding each municipality. None of these types of region satisfies the requirements of Mt. Laurel.

1. Morris County region

Two defendants adopt Morris County as their region. This choice is somewhat surprising since the Supreme Court has repeatedly warned that a single county will rarely represent an appropriate region by itself. Mt. Laurel I, supra at 189-90; Oakwood-at-Madison, supra 536-39; Mt. Laurel II, supra at 349. As plaintiffs' testimony will show (Wiener, Feb. 1984 at 14), a Morris County region is also deficient in other respects: it does not reflect the historical pattern of population flow outward from the cities; it is incompatible with any reasonable division of north Jersey into regions that balance housing need with vacant land supply; and it excludes the most important sources of housing demand. To the extent it addresses the issue of "housing market," it uses a narrow real estate broker's notion of housing market, rather than the far broader concept called for by the Supreme Court. It ignores all evidence concerning interconnectness, including the planning documents of the defendants themselves, except commutation patterns. In short, this proposed region violates virtually all the requirements of Mt. Laurel.

2. Four-county region

The four-county region, which consists of Essex, Union, Morris, and Somerset, has many of the same defects, albeit to a somewhat lesser degree. It, too, ignores the historical pattern of migration outward from the urban areas of northeastern New Jersey - on one hand including the urban areas of

Essex while excluding the suburban areas of Bergen, Passaic, and Middlesex, and on the other hand, excluding the urban areas of Hudson and Passaic while including the suburban areas of Union, Somerset and Morris. It also excludes major sources of housing demand from the urban area of Hudson and Passaic counties and utilizes an inappropriately narrow notion of housing market. While this proposal recognizes some indicia of interconnectedness, including commutation patterns and the fact that some agencies have treated these four counties as a region for certain purposes, it disregards the fact that the three agencies that have specifically concerned themselves with the balance of housing need with housing opportunity - the Regional Plan Association, the Tri-State Regional Planning Commission, and the New Jersey Department of Community Affairs - have all concluded that the appropriate region is a larger metropolitan one.

Most seriously, this choice of region makes it impossible to balance housing need and vacant land in north Jersey. (Wiener, Feb. 1984 at 13-14). If Essex, Union, Somerset, and Morris comprise a region, Hudson must either stand alone or be linked in a strange L-shaped shape region with Bergen and Passaic. This Hudson-Bergen-Passaic region is geographically unnatural, omitting two of the three counties that border Hudson and veering oddly around Essex County. It bears little discernible relationship to historic migration patterns. Most important, it lacks vacant developable land in the growth area to balance the large low and moderate income population.

The four-county region thus fails to satisfy the requirements of Mt. Laurel.

3. Municipal commutersheds

The third type of region, the municipal commutershed, is not really a region at all, but a formula for delineating 567 separate and overlapping regions, one for each municipality in New Jersey.

The proponents of this type of region do not even purport to consider the historical pattern of migration outward from the cities or the need to include

all substantial sources of housing demand. These considerations are wholly absent from their methodology. Moreover, disregarding the express direction of Mt. Laurel II, they do not attempt to determine or allocate present regional housing need and have not sought to draw regions that balance areas with present concentrations of low and moderate income populations with areas with vacant developable land. In addition, they ignore all indicia of interconnectedness, including the findings of their own master plans, except commutation patterns.

This type of region has a further defect. The commutersheds do not coincide with county boundaries. As a result, official state population projections cannot be used to determine prospective regional housing need. Instead proponents of this type of region are obliged to devise an entirely ad hoc method of projecting the number of households - one not used for any planning purpose in this state other than determining need for housing for the poor. This method involves projecting job growth in each municipality in the region, aggregating that job growth across the region, positing a linear relationship between job growth and increase in the number of households, and then converting projected job growth to estimates of increase in the number of households. Denville's planner, Mr. Montney, for example, draws a 30-minute commutershed around Denville Township encompassing 88 towns in nine counties. For each of these towns he determines the job growth during the period in 1971-81. He adds these figures to determine the rate of job growth for the entire region. He then projects job growth from 1983 to 1990 on the assumption that employment will continue to grow at the same annual rate during that period as it did between 1971-1981. He then multiplies this figure by a conversion factor of .42 to determine the number of additional households that will result from this job growth. Finally, he takes 39.8 percent of this figure to determine the number of lower income households that will result. (Montney, Oct. 19, 1983 at 1-4).

This procedure pyramids one methodological defect on top of another. Projections of job growth are generally far less reliable than projections of population growth. Population growth is largely determined by long term demographic trends. By contrast job growth fluctuates dramatically with unforeseeable changes in the national economy. Job growth at the municipal level is especially untrustworthy since the arrival or departure of one or two major employers can radically change the employment picture in a given municipality. Aggregating municipal employment projections across the region merely aggregates these potential errors.

Because job growth is being computed for 567 regions, none of which coincide with regions commonly used in regional planning, proponents of this type of region cannot utilize regional job growth projections made by various regional and federal agencies through use of sophisticated econometric models. Instead, they must use the least sophisticated and most unreliable means of projecting job growth, namely assuming blindly that past trends will continue unchanged for the next ten years. Having made this projection of regional employment growth, proponents of this methodology then posit a direct relationship between the number of new jobs and the increase in the number of households. They posit this relationship even though a substantial portion of the projected growth in the population - and especially in the lower income population - consists of senior citizens and other persons not in the labor market and not affected by changes in the number of jobs. (Wiener, Feb. 1984, at 17).

Finally, proponents of this methodology apply a variety of conversion factors to this employment growth to calculate the number of new households in the region. The unreliability of this step is suggested by the fact that the conversion factors used by the various defendants range from .42 (Montney) to .975 (Moskowitz), a difference of more than 130 percent.

Of course, these computations may well be the most precise determinations that can be made with the type of region. The defect lies in the choice of region itself. It simply does not permit reasonably precise, statistically sound determinations of regional need.*

For all these reasons, plaintiffs submit that none of the regions offered by defendants meet the requirements of Mt. Laurel.

* A further objection to this type of region is that it conflicts with the clear intent of the Supreme Court in Mt. Laurel II "that after several cases have been tried before each [Mt. Laurel] judge, a regional pattern for the area for which he or she is responsible will emerge," Mt. Laurel II, *supra* at 254, minimizing the need for subsequent litigation over this issue and promoting voluntary compliance. *Id.* at 254-55. To the contrary, using municipal commutersheds as regions means that the boundaries of the region will have to be separately litigated for every municipality in the state and that no municipal official will be quite sure what the precise dimensions of the region surrounding his or her municipality are until they have been litigated. In some instances, differences of a few miles will have a spectacular effect on the extent of the municipality's housing obligation.

CONCLUSION

Plaintiffs urge that the Court find that all defendants lie in a common Mt. Laurel region consisting of eight-counties extending outward from the urban areas of northeastern New Jersey.*

Respectfully submitted,

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BY:



STEPHEN EISDORFER
Assistant Deputy Public Advocate

Dated: March 13, 1984

* Plaintiffs have previously brought to the Court's attention the approach to region unanimously approved by the planners for the various parties in Urban League of Greater New Brunswick v. Borough of Carteret. Plaintiffs have indicated that they would accept this approach as a compromise in the interest of securing a speedy and uniform resolution of this issue.

The Urban League approach to region, unlike the approach presented by plaintiffs in the reports of Mr. Wiener, provide for separate regions for determination and allocation of present regional housing need and determination and allocation of prospective regional housing need. The present need region - an eleven-county region surrounding the urban core of northeastern New Jersey - is expressly designed to meet the Mt. Laurel requirements listed above. The prospective need region is a hybrid. Although it is based on the concept of municipal commutersheds, it recognizes the serious defects on a commutershed type region set out above. It seeks to avoid some of these defects by modifying the definition of commutershed. Under the Urban League plan, if a municipality's 30-minute commutershed touches any county, the whole county is included in the region. This substantially reduces uncertainty, since in most cases the exact location of the boundary of the 30-minute commutershed ceases to be important and nearby municipalities will all lie in the same region. Even more important, since the region consists of whole counties, the state's official population projections can be used to determine prospective need.