

ML - Morris County Fair Housing Council v.
Twp of Montville

10/3/83

O'Grady - investigation of Montville Twp's
planning and zoning policies in order
to address issues involved in subject
litigation

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October 3, 1983

Mr. Lawrence K. Eismeier
Attorney At Law
307 West Main Street
Boonton, New Jersey 07005

Re: Morris County Fair Housing Council
et al. vs. Township of Montville

Dear Mr. Eismeier:

As requested by you, I have performed, an investigation of Montville Township's planning and zoning policies in order to address the issues involved in the subject litigation. This report seeks to determine the appropriateness of the Township's zoning regulations as they relate to housing and to establish the justification for those regulations.

Essentially, this report updates previous studies performed in 1979 following initiation of the suit. Over four years have passed since that time and significant changes have occurred which may impact the suit. To the best of my knowledge, the Public Advocate has not submitted any new or revised allegations, although I understand that these may be forthcoming. I will be happy to reassess the findings herein when and if any new material from the advocate's office is received.

1. Montville Township and the Municipal Land Use Law

Montville Township's Master Plan was adopted February 8, 1977 and its zoning regulations to implement the Land Use Element of that Plan were adopted shortly thereafter. The primary reason for the drafting of these documents was to comply with the requirements of the Municipal Land Use Law.

In drafting the Master Plan, specific attention was given to satisfy all conditions established by the Law. Specifically to this end, the Plan considers the planning and zoning policies of surrounding municipalities and plans of Morris County. At that time, the Statewide Development Plan Guide had not been published.

In addition, the Land Use Element of the Plan is based upon other elements which may be part of a Master Plan, including housing. Concerning the latter, particular attention was given to providing for a variety of housing types to meet the housing needs of various segments of the population.

As noted above, the adopted Master Plan was implemented by comprehensive zoning regulations which were consistent with the Land Use Element of the Plan. The Master Plan and the Land Use Ordinance speak for themselves, but, in my opinion, represent logical and reasonable planning approaches and foster appropriate use of land throughout the Township.

In 1982, the Planning Board, in accordance with the requirements of the Municipal Land Use Law, initiated a reexamination of the Master Plan and local development regulations. The studies of the Board, which are still in process, involve in-depth reassessment of the entire planning and zoning scheme of the Township and, therefore, go beyond a simple reexamination which might be assumed as all that is required by the law.

Among the matters considered in the reexamination is the State Development Guide Plan published in May, 1980. This Plan is addressed more specifically later, however, reference to that document reveals basic consistency with local planning policies.

2. Present Zoning

Montville's Land Use Ordinance establishes twenty-one (21) different zone districts which are summarized as follows:

R-1 Residence District (One Family - 120,000 sq. ft.)

R-2 Residence District (One Family - 45,000 sq. ft.)

- R-3A Residence District (One Family - 27,000 sq. ft.)
- R-3B Residence District (One Family - 27,000 sq. ft.)
(Townhouse Option)
- R-3BB Residence District (One Family - 27,000 sq. ft.)
(Townhouse Option)
- R-3C Residence District (One Family - 27,000 sq. ft.)
(Senior Citizen Housing Option)
- R-3D Residence District (One Family - 27,000 sq. ft.)
(Private Recreation as
Conditional Use)
- R-3E Residence District (One Family - 27,000 sq. ft.)
(Office Buildings as Conditional
Use)
- R-4A Residence District (One Family - 20,000 sq. ft.)
- R-4B Residence District (One Family - 20,000 sq. ft.)
(Two Family Option)
- R-5 Residence District (One Family - 15,000 sq. ft.)
- B-1 Business District
- B-2 Business District
- B-3 Business District
- OB-1 Office Building District
- OB-2 Office Building District
- OB-3 Office Buiding District
- I-1 Industrial District
- I-2A Industrial District
- I-3B Industrial District
- CI Commercial Industrial District

In addition to these twenty-one (21) zone districts, Planned Unit Residential Development (PURD) is allowed in one area of the Township.

In connection with the foregoing zones, it is interesting to note the following:

- (a) The R-1 District requiring a minimum lot size of almost three (3) acres has been sustained by the Morris County Superior Court and the Appellate Division. The R-1 Zone was established in recognition of the environmental constraints which prevail in Montville.
- (b) Whereas previous zoning made no provision for multi-family housing, the present regulations provide for townhouses, senior citizen apartments and two-family dwellings as well as for apartments and townhouses in the PURD area. It is estimated that present zoning will accommodate the following mix of non-single-family housing:

	<u>Dwelling Units</u>
Two-Family Homes	130
Townhouses	331
Apartments	126
Senior Citizen Apartments	<u>136</u>
Total	723

These statistics indicate both a willingness and an effort on the part of the Township to provide for a variety of housing.

3. Housing Sites and Densities

It is recognized that a major issue in the suit is not only housing variety, but also housing density. The densities established in the Township's zoning regulations for the various categories of multi-family housing are as follows:

Two-Family Dwellings	2.2	units per acre
Townhouses (non-PURD)	4.0	units per acre
Townhouses (non-PURD)	5.93	units per acre
PURD Townhouses and Apartments	3.0	units per acre
Senior Citizen Apartments	9.5	units per acre

On the surface, these densities would appear to be relatively low, however, precise density itself is not meaningful unless related to the conditions of the sites involved and other factors influencing the determination of these densities. These aspects of the Township's zoning policies are discussed below.

The Township's zoning policies were based upon numerous considerations, however, the primary motivating factors influencing the selection of sites and densities were as follows:

- (a) Proximity to utility systems.
- (b) Traffic accessibility.
- (c) Existing development pattern including impact on or from adjoining uses.
- (d) Environmental constraints.

Each of the sites zoned for multi-family use is discussed generally in these terms below.

Site A, R-4B Zone. This zone is located on the westerly side of Changebridge Road and contains approximately 60 acres.

Conditions favorable to multi-family development include water and sanitary sewer utilities which are in close proximity and the site is served directly by Changebridge Road, a County road. Limiting factors, however, include the following:

The northerly and southerly sides of the site and property on the opposite side of the street are developed or being developed for one-family dwellings on lots of one-half acre or larger in size. Preserving the integrity of this neighborhood character is a concern.

The rear portion of the zone is in the flood hazard area of the Rockaway River and contains utility easements which limit the area available for development.

According to the Morris County Soil Survey, land outside the flood hazard area contains soils with a moderately high seasonal water table (1/2 to 1-1/2 feet of the surface). Moreover, the zone is located in a stratified drift formation which presumably serves a groundwater or aquifer recharge function. Because of these factors, limited land coverage is desirable.

Although the minimum lot size for a two-family structure in the R-4B Zone is 40,000 square feet, the Ordinance allows lot clustering whereby the lot may be reduced to 20,000 square feet. This feature will allow total utilization of the properties, at the same time avoiding development in the flood hazard area and the more severely wet areas.

As a result of the zoning provisions, development of the site will be in keeping with the character of adjoining neighborhood character, but at double the dwelling unit density where lots are clustered, and will preserve environmentally sensitive features. Some increase in density and additional dwelling unit types are being considered in the Master Plan reexamination.

Site B, R-3B Zone. The R-3B Zone allows townhouses at a density of 4 dwelling units per acre. It is located in an area bounded by Route 287, Route 202 and River Road and contains approximately 26 acres that could effectively be used for townhouse development. Because of physical features and proximity to Route 287, one-family home development was not considered the most appropriate use of the land and townhouses were, therefore, selected as an optional use.

The site has good access to main transportation routes and has access to public water. Unfavorable conditions include the following:

Existing sanitary sewer facilities are located a considerable distance from the site.

The site is traversed by Crooked Brook, a primary internal drainage course in the Township. A flood hazard area extends beyond the Brook.

A significant portion of the site contains slopes with a grade of 15 percent or greater and reaching 50 percent or more in part.

An estimated 50 percent of the site combines high water table, flood prone and steep slope soils.

Because of these factors, it was found essential to establish a conservative density.

Site C, R-3BB Zone. This zone was established by amendment to the Land Use Ordinance as a result of an out-of-court settlement in connection with a zoning suit involving what had been a B-3 Shopping Center Zone. It is located on the easterly side of Changebridge Road between Brittany and Cambray Roads. The zone contains approximately 11.9 acres and, with an allowable density of 5.93 units per acre, will accommodate 70 dwelling units. A site plan containing that number of units recently received preliminary approval. The development is extremely appropriate for the site and the density and other zoning regulations protect the integrity of the adjoining neighborhood.

Site D, R-3C Zone. This site is intended for senior citizen housing. It is located north of Horseneck Road and east of Changebridge Road. It was selected for this type of housing because of proximity to recreational, cultural and potential future shopping facilities. Public water is available in the area and sanitary sewers are within reasonable promimity. The primary negative factor dictating a moderate density of 9.5 units per acre for this type of housing are the severe wetland conditions throughout the entire site.

Site E, PURD Area. The area designated for PURD is located east of Changebridge Road and south of the railroad. It consists of 105 acres, 90 percent of which may be developed for townhouses and apartments at a density of 3 units per acre. The site has direct access to Changebridge Road and is very near Route 202 and Route 287. Public water is available but sanitary sewers are a considerable distance.

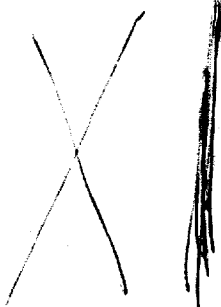
Site E was once an extensive soil mining operation for extracting sand and gravel. This operation has created

a large depression extending through most of the site with the perimeter consisting of high, steep embankments. PURD was considered to be an appropriate vehicle for rehabilitating the area and providing a potential for viable future use, at the same time establishing an opportunity to add to the housing variety of the Township. Presently pending before the Planning Board is an application for development of 288 dwelling units on 96 acres of the PURD area.

4. Alternate Housing Sites

In the process of developing the Master Plan, numerous vacant lands, and particularly those in reasonable proximity to sanitary sewer facilities, were evaluated in terms of potential use for multi-family housing. These investigations revealed that any of the sites that might feasibly be used for this purpose also contained physical and environmental impediments that discourage densities higher than those allowed on sites zoned for multi-family use or that the necessary utility infrastructure to support higher density development was not available. Nevertheless, additional areas for potential multi-family use are being explored as part of the Master Plan reexamination.

5. Evaluation of Vacant Lands



The major allegation in the Fair Housing Council Suit is that the Defendant municipalities fail through their zoning regulations, to make provision for the development for low and moderate income housing. It has been the Township's contention that local circumstances, including those relating to physical and environmental constraints and availability of utility systems preclude the establishment of densities that would be necessary to produce such housing. In order to justify this conclusion, investigations of all vacant lands, in terms of their capacity to support development, were undertaken.

A large portion of the Township can immediately be excluded from consideration for high density housing and other forms of intensive development. This involves the section of the Township generally lying north of Route 202 and the Railroad. This area is designated on the State Development Guide Plan as a Limited Growth Area. In its Mount Laurel II decision, the State Supreme Court indicates

that moderate and low income housing obligations should be met within Growth Areas as designated on the State Development Guide Plan. Local conditions in Montville support this judicially established development policy. Specifically the following conditions are found to exist:

- a. The R-1 Zone in Northern Montville. The Supreme Court, in refusing to hear the matter, has sustained the lower court decision in the Devanne case pertaining to the R-1 Zone. Justification for the 3-acre zoning in this area was based on geographical location, road access, lack of utilities and environmental constraints.
- b. The R-2 Zone in Northern Montville. Major portions of the R-2 Zone (45,000 square foot lots) in the northern part of Montville fall within the same Pre-Cambrian geologic formation as the R-1 Zone and have similar physical and environmental limitations, including steep slopes and assorted wetlands, and are remote from sanitary sewers.
- c. Acquifer Area. A recent study of the Towaco area by Geonics, defined an aquifer area encompassing over 1,000 acres with an estimated water yield of 3 - 4 mgd. In order to protect this aquifer and the quality of the water supply, the study makes certain recommendations as follows:
 - (a) Development of any kind should be generally precluded from the prime water bearing zone (100 acres).
 - (b) Development within 1,000 feet of the prime aquifer zone should be carefully controlled (450 acres).
 - (c) Sanitary sewerage should not be provided since this would result in removal of significant recharge.
- d. Most remaining portions of Northern Montville, i.e., north of the Railroad are either developed or involve wetland and steep slope characteristics. It is estimated that only portions of two parcels of land north of the Railroad and totaling not more than 100 acres have physical and environmental characteristics that might be favorable to higher density development. This represents only 1.7 percent of the total area of

5,722 acres north of the Railroad. Lacking sanitary sewers, high density development could not be justified.

The Growth Area as established in the State Development Guide Plan is a broad designation and its limit is subject to local refinement. In terms of environmental features and availability of utilities, the limit of the Growth Area, as shown on the Guide Plan, represents an absolute maximum. In fact, to some degree it extends beyond reasonable limits for intensive growth, being located somewhat north of the Railroad in certain sections. Even south of the Railroad there are areas that are not conducive to intensive growth, however, all properties within the Growth Area would have to be carefully evaluated in terms of their capacity for development.

Based on these considerations, all of Montville lying north of the Railroad and representing 5,722 acres or 46 percent of the Township can be removed from consideration for low and moderate income housing.

Although similar arguments can be made for balance of the Township, vacant lands south of the railroad involve a wide assortment of zones and conditions. Therefore, a more site specific evaluation of vacant lands by zone in this area has been made. Vacant lands are defined as privately-owned, undeveloped or essentially undeveloped properties of sufficient size to sustain future development or further subdivision. Individual, vacant subdivided lots have been excluded, as have properties which have received preliminary or final subdivision approval. Each vacant area, by zone district, is evaluated below:

R-1 Residence District (One-family dwellings, 120,000 square feet)

A single R-1 Zone of 312 acres lies south of the Railroad and it is completely vacant. This zone lies southeast of Peace Valley Road and borders on the Passaic River and Lincoln Park. It is entirely a swampy area, is part of Great Peace Meadows and is totally within either a floodway of 100-year flood fringe. Because of these conditions, the zone is unsuitable for development of any kind. A large portion (135 acres) has been acquired by the State D.E.P. The entire zone is identified as a Conservation on the State Development

Guide Plan.

R-2 Residence District (One-family dwellings, 45,000 square feet)

The R-2 Zone is also a single zone adjoining the R-1 Zone and extends from Pine Brook Road to Peace Valley Road and Two Bridges Road. Some 158 acres are vacant. Part of the vacant area lies on the southeasterly side of Peace Valley Road and has conditions identical to the R-1 Zone. Other vacant properties in the zone contain steep slopes exceeding 25 percent and/or have shallow or exposed bedrocks. The entire area is remote from existing sanitary sewers.

R-3A Residence District (One-family dwellings, 27,000 square feet)

Approximately 3,028 acres or 45 percent of the area south of the Railroad is in the R-3A Zone. Also, approximately 2,152 acres or 71 percent of the zone is developed, leaving some 18 parcels or groups of parcels totaling 876 acres of vacant or predominantly vacant land. Each of the vacant areas is described below:

1. Block 54, Lot 3; (12 Acres). This area between Vreeland Avenue and the Rockaway River drops off sharply from the road to a flat flood hazard area. There are no utilities and it could sustain only limited development along the road.
2. Block 57, Lots 1, 5, and 10; (26 Acres). This area lies north of Route 202 and east of Valhalla Road. It is traversed by the Morris Canal and Valhalla Brook and is a wetland and flood plain area. It is partially developed with two residences. Sewers are 2-1/2 miles away.
3. Block 59.01, Lots 5, 8, 14, 16, 17 and 18; (105 Acres). This area lies east of River Road and extends from Millers Lane to Route 287. It contains a variety of physical and environmental features and characteristics. The easterly portion estimated at 15 acres lies within the flood fringe of Crooked Brook. Another 20 acres is an abandoned soil mining pit which appears unsuitable for development, but

which is popular to geologists, professional and student. A significant portion has grades exceeding 15 percent. Adjoining is a new, single-family development. Not more than 40 acres or 38 percent of the area is considered suitable for extensive development and, lacking sewers, it cannot sustain densities higher than present zoning requirements allow. Establishment of an even larger minimum lot size is under consideration based on Master Plan reexamination studies.

4. Block 59.01, Lot 3; (38 Acres). Located on Changebridge Road south of Route 202, this deep property is bisected by utility easements 400 feet wide. It is a flat area with high seasonal water tables and is presently devoted to farming. The rear portion is in the Crooked Brook flood plain and there are no sewers.
5. Block 76, Lots 2, 3, 4, 13 and 15; (73 Acres). Lies south of Millers Lane and extends from River Road to Changebridge Road. It is traversed by the Crooked Brook flood plain and utility easements 400 feet in width. Wetland soils (0 - 1-1/2') dominate the area and sanitary sewers are not available. Only one-third of the area has soils favorable for development so that high density development is impractical. Like area #3 above, a larger minimum lot size is being considered.
6. Area 6 includes a large group of properties in various tax blocks described as follows:
 - 6A. Block 82, Lots 5, 11, 24, 28, 38, 39, 45, 46 and 96; (170 Acres). This area is located between Changebridge Road and Pine Brook Road north of Passaic Valley Road and can be described as very hilly territory with some sections containing very steep grades. It has severe limitations for septic disposal and sewers are not accessible. It is interior land and access is limited. Adjoining development is one-family residential. Development elsewhere in similar soils and geologic strata has involved extensive blasting for utility and drainage installation.

- 6B. Block 75, Lots 5 and 8; (19 Acres). Adjoins area 6A and is similar.
- 6C. Block 79, Lots 24 and 25; (6 Acres). Adjoins area 6A and is similar.
- 6D. Block 80, Lot 1; (5 Acres). Adjoins area 6A and is similar.
- 6E. Block 82.01, Lot 11; (46 Acres). Adjoins area 6A and has steep slopes and rock outcrop.
- 6F. Block 82, Lot 51; (26 Acres). In same vicinity as area 6A and has similar characteristics.
7. Block 109, Lots 30, 42 and 44; (37 Acres). This area lies near the Lincoln Park boundary just south of Route 202. Adjoining properties to the east and west are developed residentially and each of these three properties contains a residence. They have moderately steep slopes with very shallow bedrock. The area is remote from sanitary sewers.
8. Block 124, Lot 6; (12 Acres). Located on Passaic Valley Road and presently containing a residence, this relatively small tract is surrounded by developed properties. It is located on a narrow, hazardous section of the road. Soils present severe limitations to development because of stonyness and perched water table. Continuation of the established residential character of the area is the only logical development.
9. Block 125, Lots 3 and 4; (30 Acres). This area is located on the westerly side of Pine Brook Road on an extremely steep hillside with shallow bedrock and rock outcrop. It is totally surrounded by residential development and access to most of the tract can be gained only through established neighborhoods.
10. Block 125.05, Lot 14; (13 Acres). Conditions here are similar to area 10. There are no sewers in the immediate area and road access is Horseneck Road which is very steep and narrow.

11. Block 120, Lot 28 and Block 122, Lots 24 and 31; (46 Acres). These three separated parcels are partly developed and extend from Pine Brook Road to the Passaic River. Almost all of the undeveloped portion is in a floodway or flood fringe.
12. Block 131, Lot 13 and Block 138, Lot 1; (18 Acres). Included here are both sides of the westerly portion of Green Meadows Road. Most of the land is a flood hazard area or has very high water table soils. Green Meadows Road is a dead-end street and the easterly portion is residential.
13. Block 139.06, Lot 19; (10 Acres). This is an odd-shaped parcel sandwiched between residential development and presently farmed. New roads have been constructed up to the property lines for future interconnection through the property and its only logical use is to continue the development pattern in the area.
14. Block 139, Lot 2; (11 Acres). This lot is located at the southwest corner of Horseneck Road and Gillens Road, an extremely dangerous intersection. The surrounding development is residential and the logical approach to development, like area 13, is the continuation of streets from the adjoining residential neighborhood.
15. Block 139.04, Lot 40; (5 Acres). Located at the northeast corner of Changebridge Road and Cambray Road this property is bounded on two sides by residences and logically should be put to the same use. Part of the property is in a high water table area. Extension of the R-3BB Zone to include this property would be logical.
16. Block 163, Lots 1, 2, 3, 5, 6, 7, 8 and 19; (60 Acres). This group of properties extends along the easterly side of Gillens Road and also fronts on Horseneck and Hook Mountain Roads. Most of the property has very steep grades and the soil and bedrock conditions are similar to areas 9 and 10. Access to the more level area of the site is along Gillens Road, an unpaved and treacherous road which

has a hazardous intersection with Horseneck Road. This area will not sustain high density even if it could be served with sanitary sewers.

17. Block 159, Lots 3, 4 and 6; (48 Acres). Most of this area is a steep, mountainous hillside extending from Changebridge Road to Hook Mountain Road with recent residential development to the north. Slopes, bedrock and soil conditions are similar, if not more severe, than area 15.
18. Block 164, Lots 5, 8, 13 and 20; (60 Acres). These properties are located south of Horseneck Road and extend from Hook Mountain Road to the Passaic River. Except for some immediate road frontage, the properties are in a flood hazard area.

R-3B Residence District (One-family dwellings, 27,000 square feet, Townhouse Option at 4 units per acre)

The R-3B Zone is located in an area bounded by Route 287, Route 202 and River Road and contains 26 acres. Because of physical features and proximity to Route 287, one-family home development was not considered the most appropriate use of the land and townhouses were, therefore, selected as an optional use.

The site has good access to main transportation routes and has access to public water. Unfavorable conditions include the following:

Existing sanitary sewer facilities are located a considerable distance from the site.

The site is traversed by Crooked Brook a primary internal drainage course in the Township. A flood hazard area extends beyond the Brook.

A significant portion of the site contains slopes with a grade of 15 percent or greater and reaching 50 percent or more in part.

An estimated 50 percent of the site combines high water table, flood prone and steep slope soils.

Because of these factors, it was found essential to

establish a conservative density.

R-4A Residence District (One-family dwellings, 20,000 square feet)

The R-4A Zone encompasses 698 acres of which only one site totaling 14 acres, namely Block 100, Lot 4, is vacant. This is an interior property accessible only through established residential neighborhoods. It is located west of Barney Road, remote from sanitary sewers and is partly a wetland area. Slopes are moderately steep in part.

R-4B Residential District (One-family dwellings, 20,000 square feet, Two-family dwellings, 40,000 square feet with clustering to 20,000 square feet)

This zone is located on the westerly side of Changebridge Road and contains about 60 acres, 8 of which is owned by the the Diocese of Paterson and is being reserved for a future church, leaving 52 acres for potential development.

Conditions favorable to development include water and sanitary sewer utilities which are in close proximity and the site is served directly by Changebridge Road, a County road. Limiting factors, however, include the following:

The northerly and southerly sides of the site and property on the opposite side of the street are developed or being developed for one-family dwellings on lots of one-half acre or larger in size. Preserving the intergrity of this neighborhood character is a concern.

The rear portion of the zone is in the flood hazard area of the Rockaway River, is a wetland area and contains utility easements which limit the area available for development.

According to the Morris County Soil Survey, land outside the flood hazard area contains soils with a moderately high seasonal water table (1/2 to 1-1/2 feet of the surface). Moreover, the zone is located in a stratified drift formation which presumably

serves a groundwater or aquifer recharge function. Because of these factors, limited land coverage is desirable.

With these conditions, it is estimated that not more than 50 percent or 26 acres, including high water table soils, can be developed.

Although the minimum lot size for a two-family structure in the R-4B Zone is 40,000 square feet, the Ordinance allows lot clustering whereby the lot may be reduced to 20,000 square feet. This feature will allow total utilization of the properties, at the same time avoiding development in the flood hazard area and the more severely wet areas. A part of the Master Plan reexamination, currently in process, some increase in density and possible expansion of dwelling unit types are being considered.

OB-1 Office Building District.

Only one property of 6 acres in this zone is vacant or not committed to development. It is located at the intersection of Changebridge Road and Horseneck Road, one of the busiest intersections in the Township. Because of traffic and use of adjoining properties, residential development would be inappropriate.

OB-3 Office Building District

The OB-3 Zone contains approximately 28 acres of vacant land situated between Changebridge and Hook Mountain Roads and bordering on the northerly side of Route 80. An application for a large office complex on most of the property has received preliminary approval from the Planning Board.

Also, located in the OB-3 Zone is a former sand and gravel removal site on the westerly side of Changebridge Road. This property is 14 acres in size, is depressed, bisected by powerline easements and wedged between commercial development.

I-1 Industrial District

This zone contains only one vacant parcel of 3.75 acres

bounded by Changebridge Road, Bloomfield Avenue and Waxburg Lane. Traffic and nearby commercial development are discouraging to any form of residential development.

I-2 Industrial District

There are 8 vacant areas in the I-2 Industrial District. An evaluation of these areas follows:

1. Block 51, Lots 19 and 30; (35 Acres). This area is located between Route 202 and 287 opposite Taylortown Road. A new industrial building has recently been constructed between the two properties and land on the opposite side of Route 202 is commercial or industrial.
2. Block 52, Lot 33; (108 Acres). This property lies on the northerly side of Vreeland Avenue to the west of River Road. A large portion of the property is devoted to a soil mining operation which is expected to continue for many years. Until that operation ceases and ultimate physical characteristics are known it is not possible to determine whether or not residential development would be feasible. If residential development is feasible, it is believed that, at best, only moderate densities could be sustained due to steep slopes likely to result from the soil mining operation and the traffic capacity limitations of existing roads.
3. Block 82, Lot 11; (96 Acres). This property carries a zoning option for Planned Unit Residential Development and is discussed later.
4. Block 123, Lots 14, 19 and 20; (64 Acres). Located on the easterly side of River Road south of the municipal building, this area contains 3 properties ranging in size from 5 to 30 acres. All of which are located in the floodways and flood fringes of the Rockaway River and Crooked Brook. It is entirely a wetland area. About 28 acres is farmed and devoted to nursery use.
5. Block 131, Lots 4, 15, 18, 20 and 21; (148 Acres). This area lies south of River Road and West of Changebridge Road. Flood plain and utility

easements leave only 30 acres or 20 percent of the area that can be developed. About 15 of the 30 acres has severe development limitations because of a high water table. Although residential development is a potentially viable use, these conditions dictate relatively low density.

6. Block 138, Lots 8, 10.01, 10.02 and 12; (64 Acres). This area is also located on the westerly side of Changebridge Road and is situated north of Stiles Lane. All but 20 acres is in a flood hazard area. Nearby existing uses have set the pattern for future development as non-residential.
7. Block 167, Lots 15, 29, 30, 31, 32, and 33 and Block 168, Lot 1 and 2; (70 Acres). This area is located north of Route 46 and is entirely in floodway or flood fringe. It contains an extensive auto salvage operation.
8. Block 180, Lots 1 and 2, Block 181, Lot 1, and Block 184, Lots 4, 6, 7, 8 and 9; (316 Acres). This group of properties is located south of Route 46 where the established development is industrial. At the most, only 75 acres lies outside the flood hazard areas of the Rockaway and Passaic Rivers. In terms of adjoining development, residential use of remaining good land would be inappropriate. Moreover, encouragement of residential development south of Route 46 would create service problems for the Township, particularly in terms of school transportation.

Planned Unit Residential Development (PURD)

The I-2 Industrial area #3 along with some adjoining residentially zoned land is designated for PURD optional use.

The area is located east of Changebridge Road and south of the Railroad. It consists of 105 acres, 90 percent of which may be developed for townhouses and apartments at a density of 3 units per acre. The site has direct access to Changebridge Road and is very near Route 202 and Route 287. Public water is available but sanitary sewers are a considerable distance.

Most of the area was once an extensive soil mining operation for extracting sand and gravel. This operation has created a large depression extending through most of the site with the perimeter consisting of high, steep embankments. PURD was considered to be an appropriate vehicle for rehabilitating the area and providing a potential for viable future use, at the same time establishing an opportunity to add to the housing variety of the Township.

While the site has these advantages, the soil mining operation has left extensive areas unsuitable for development along the steep slope outer boundaries. Moreover, because of the physical depression of the site, on-site storm water disposal will be necessary. These conditions dictate a low density approach to development.

Public hearings are currently being conducted in connection with an application for development of 288 dwelling units on 96 acres of the PURD Zone, are in accordance with current zoning regulations.

The foregoing evaluation reveals that although there are some 2,490 acres of vacant land south of the Railroad, 1,551 acres of which is zoned for residential use, very little of this land is suitable for intensive development and no where is there any vacant land that, in my opinion, could sustain substantial densities, even given the availability of sanitary sewers.

As revealed in the Master Plan, Montville Township is replete with environmental limitations and constraints and it is essentially these conditions which dictate more modest densities. These constraints include extensive flood plains along the Rockaway and Passaic Rivers, extensive internal flood hazard areas and assorted wetlands and considerable area of steep slopes and shallow and exposed bedrock, particularly in the traprock area along Hook Mountain.

Despite the impropriety of zoning for high density, the Township has made efforts to provide zoning which will allow efficient utilization of land and to provide for a variety of housing types. Lot clustering is allowed throughout the residential zones and two-family and multi-family housing,

which could result in over 700 dwelling units, is permitted in certain zones. Although permitted densities are modest, they recognize the carrying capacity of the land.

In summary, I conclude that Montville has made reasonable efforts to provide for a variety of housing in the Township and the sites and densities selected are also reasonable given the development character of the community and the environmental constraints that prevail throughout.

6. Impact of Mt. Laurel II Decision

Despite the foregoing contentions and factual conditions, the Supreme Court, in its Mt. Laurel II Decision, has made it abundantly clear that a municipality, any part of which is located in a growth area as delineated in the SDGP, has an obligation to provide for its fair share of the present and prospective need for housing by low and moderate income households. Montville Township recognizes this mandate and, as part of the Master Plan reexamination, currently in process, is taking steps to determine its fair share and the affirmative measures needed to make development of such housing realistically possible. Due to time constraints, as well as the importance of dovetailing lower income housing policies with overall land use planning proposals in the Master Plan, no definite conclusions have been reached. Moreover, to the best of this planner's knowledge, the Plaintiff has submitted no specific contentions as to region, regional housing need and local fair share to which I can react or respond. Nevertheless, we are proceeding with appropriate studies involving the following:

- a. Determination of Region. Initial investigations indicate that the most logical planning approach to establishment of Housing region is based on the "journey to work" concept whereby the housing region would involve all municipalities located within an approximate 1/2 hour travel time by automobile. In Montville's case, this would involve all or parts of 8 counties. Recent information indicates that the "journey to work" concept is not likely to be accepted by the Courts since a different region for each municipality would result. Should this be the case, then a single region for all Morris municipalities should be established so as to produce statistical uniformity and management convenience for the Courts. The Newark SMSA (Essex,

Morris, Somerset and Union Counties) would constitute a logical region.

- b. Regional Housing Need. Depending upon how region is determined and the precise limits of that region, it may be important, if not essential, that a single figure of regional housing need be established. Hopefully, such a single figure that can be accepted by all municipalities involved will be determined.
- c. Local Fair Share. Once the regional need has been determined, the next step will be for Montville to determine its fair share of that need. The factors involved in this determination might include, but would not necessarily be limited to, the following:
 1. Portion of regional growth area in the Township.
 2. Portion of regional employment, present and future, in the Township.
 3. Amount of developable vacant land in the Township's growth area.
- d. Affirmative Measures. Upon establishment of the Township's fair share of the regional housing need, it will be necessary to develop affirmative zoning measures that will make development of lower income housing realistically possible. Considerable time and effort will be needed to develop these measures and select appropriate sites, areas and zones that will prove most consistent with the Township's established zoning pattern and its long-range planning objectives.

Please communicate any questions you may have to me in connection with this report.

Very truly yours,

ROBERT CATLIN AND ASSOCIATES


Robert J. O'Grady, P.P., A.I.C.P.