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An Analysis of Mt. Olive  
Twp's conformance to the  
mandates of the UL II  
decision

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~~Mount Olive~~  
Abeles Schwartz

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AN ANALYSIS OF MOUNT OLIVE TOWNSHIP'S  
CONFORMANCE TO THE MANDATES OF THE  
MOUNT LAUREL II DECISION

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## I. MOUNT OLIVE'S OBLIGATION UNDER MOUNT LAUREL II

### A. MOUNT OLIVE'S FAIR SHARE HOUSING ALLOCATION

The New Jersey Supreme Court ruled in Southern Burlington Co. N.A.A.C.P. et.al. v. Twp. of Mount Laurel, 92 N.J. 158 (1983)\* that municipalities in New Jersey must provide a realistic opportunity for construction of low and moderate income housing. In addition to providing for the housing needs of their resident poor population, municipalities that are either partially or entirely within "Growth Areas" designated by the State Development Guide Plan must provide opportunity for a fair share of their region's present and prospective low and moderate income housing need.

A fair share housing allocation for Mount Olive Township was prepared by Abeles Schwartz Associates in its report for the New Jersey Department of the Public Advocate entitled A Fair Share Housing Allocation for Ten Municipalities in Morris County (October 1983). A total of 1,438 lower income housing units must be provided for; 268 are needed to meet present housing needs of low and moderate income households and 1,170 are for projected housing needs from 1980 to 1990. Under the Mount Laurel II decision Mount Olive's land use regulations must provide a realistic opportunity for these numbers of lower income dwellings.

### B. OTHER INDICATORS OF MOUNT OLIVE'S OBLIGATION UNDER MOUNT LAUREL II

#### 1. UNAVAILABILITY OF AFFORDABLE HOUSING

Another indication of the need for affirmative measures to provide for low and moderate income housing in Mount Olive is the current unavailability of units affordable to these income groups. The Mount Laurel II decision defines

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\* Hereinafter referred to as Mount Laurel II.

"affordable" housing to mean that households must pay no more than 25% of their income for such dwellings.\*

Applying this definition to the current income ranges for low and moderate income households in the Morris County area (as determined by the Department of Housing and Urban Development), Table 1 shows the maximum monthly shelter costs which can be afforded by households with one to six persons. These range from under \$238 per month for a one-person low-income household up to a maximum of \$591 per month for a six-person household at the top of the moderate income group.

In Mount Olive the most affordable housing, in terms of monthly cost, is offered by the Township's considerable stock of rental apartments.\*\* Virtually all of these are located in several large developments constructed since 1970. Due to past zoning restrictions the great majority of apartments are one-bedroom units. No apartments with more than two bedrooms were permitted, thereby effectively excluding all households with more than four persons and most families with children.

The current asking rents for units in Mount Olive's major apartment projects are presented in Table 2. The least expensive one-bedroom apartments are at Oakwood Village and rent for \$385 per month excluding all utilities. Utilities are estimated to cost an additional \$60 to \$70 per month on average, bringing total monthly shelter costs to \$445 or more. One bedroom apartments at Eagle Rock start at \$405 per month excluding electricity, which can run another \$25 to \$40 per month.

These rents result in total monthly shelter costs which clearly exceed the level that can be afforded by low-income households. They are even beyond the reach of one and

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\* 92 N.J. 158 at 221, footnote 8.

\*\* Approximately 40% of Mount Olive's housing, or 2,637 units, were occupied by renters in 1980.

TABLE 1

ANNUAL INCOMES AND MAXIMUM MONTHLY SHELTER COSTS  
LOW AND MODERATE INCOME HOUSEHOLDS  
NEWARK SMSA\*, 1983

<u>Household Size</u>	<u>Low-Income Households</u>		<u>Moderate-Income Households</u>	
	<u>Annual Income (1983)</u>	<u>Max. Monthly Shelter Costs**</u>	<u>Annual Income (1983)</u>	<u>Max. Monthly Shelter Costs**</u>
1-Person	Below \$11,450	Below \$238	\$11,450-\$17,650	\$238 - \$368
2-Person	Below \$13,100	Below \$273	\$13,100-\$20,150	\$273 - \$420
3-Person	Below \$14,700	Below \$306	\$14,700-\$22,700	\$306 - \$473
4-Person	Below \$16,350	Below \$341	\$16,350-\$25,200	\$341 - \$525
5-Person	Below \$17,650	Below \$368	\$17,650-\$26,750	\$368 - \$557
6-Person	Below \$18,950	Below \$395	\$18,950-\$28,350	\$395 - \$591

\* For most federal statistical purposes currently Mount Olive Township is included in the Newark Standard Metropolitan Statistical Area (SMSA) which incorporates Essex, Morris, Union and Somerset Counties.

\*\* Assuming no more than 25% of gross household income is devoted to housing.

SOURCE: Newark Area Office, U.S. Dept. of Housing and Urban Development Section 8 Income Limits effective March 1, 1983.

TABLE 2

ASKING RENTS AT APARTMENT PROJECTS  
IN MOUNT OLIVE - FALL 1983

<u>Name of Project</u>	<u>Monthly Rents*</u>	
	<u>1-Bedroom Apts.</u>	<u>2-Bedroom Apts.</u>
Oakwood Village	\$385** (Older Units) \$535*** (New Units)	\$585 - \$637***
Village Green	\$470 - \$475	\$560 - \$565
Eagle Rock	\$405 - \$450	\$490 - \$540
Hensen Village	\$425 - \$450	\$525 - \$540
Kings Village	\$435 - \$445	\$525 - \$540

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\* Unless otherwise noted rents include heat and hot water but tenant pays for electricity.

\*\* Rent excludes all utilities.

\*\*\* Rent includes all utilities.

SOURCE: Survey by Abeles Schwartz Associates, Fall 1983.

two-person moderate income households, and most of the three person households.

The affordability picture is even more dismal for two-bedroom apartments. These range in price from \$525 to \$637 per month. A four-person household at the very top of the moderate income group would still need to spend more than 25% of income for rent and utilities. In addition, available vacant two-bedroom apartments are extremely rare, since most developments were restricted to a maximum of 20% two-bedroom units.

In conclusion, Mount Olive's present housing stock does not appear to offer any units affordable to lower income households under Mount Laurel II guidelines, except for a few one-bedroom apartments affordable to households at the very upper limit of the moderate-income range. Mount Olive does not offer rental apartments at all for larger households.

Clearly there is an unmet need for low and moderate income housing units of all sizes and affordable to households earning well below the maximum for moderate income households. Provision for multi-family rental housing, which is not affordable to both low and moderate income households, even if less expensive than other housing types, does not begin to meet Mount Olive's obligation under Mount Laurel II.

2. IMBALANCE BETWEEN EMPLOYMENT-GENERATING ZONES AND RESIDENTIAL ZONING

One of the underlying principles of both the Mount Laurel I and Mount Laurel II decisions is that municipalities must zone to permit housing for low and moderate income persons presently working or expected to work within its borders. Thus, in Mount Laurel I the Supreme Court states that,



"certainly when a municipality zones for industry and commerce for local tax benefit purposes, it without question must zone to permit adequate housing within the means of the employees involved in such areas".\* The decision found that the community had "over-zoned" for industry in order to benefit the local tax rate without providing zones in which low and moderate income industrial workers could afford to live.

A similar situation exists in Mount Olive Township. Approximately 4,500 acres, or nearly one-quarter of the Township, is zoned for commercial activities, industry or offices and research laboratories, yet there is no provision for housing which is affordable to the low and moderate income employees who can be expected to work in these zones.

In recent years Mount Olive has successfully sought and encouraged economic growth and job formation. Between 1970 and 1982 the number of private covered jobs in the Township more than quadrupled from 505 to 2,085. In the late 1970's Mount Olive officials worked closely with the State and private developers to bring about the designation of a Foreign Trade Zone at the intersection of Interstate 80 and Route 46. This move alone is expected to generate an additional 5,000 to 8,000 jobs within 10 years. Construction work is just now beginning and eventually a huge complex of factories, warehouses, office buildings and associated commercial facilities will be developed. A set of "F.T.Z." zoning districts encompassing approximately 1,000 acres has been enacted to accommodate this growth.

Presently, an estimated 3,800 acres of vacant land is zoned for commerce, industry or offices and laboratories.\* Using

\* Under present zoning provisions, over 130 million square feet of space could theoretically be constructed on this land. This is nearly as much space as in all the prime office buildings in Midtown and Lower Manhattan, and gives some sense of the degree to which Mt. Olive has overzoned for nonresidential uses. Realistically speaking, only a tiny fraction of this zoned capacity will ever be developed and at much lower densities than the maximum permitted by the ordinance.

a highly conservative employment density factor of only 10 workers per acre, development of this land would generate a minimum of 38,000 new jobs in Mount Olive. Even if only 20% of these workers are low and moderate income, an apparent demand for 7,600 lower income housing units would result. Yet, Mount Olive's residential land use regulations do not permit any new housing for this population.

## II. ANALYSIS OF MOUNT OLIVE'S ZONING IN LIGHT OF MOUNT LAUREL II STANDARDS

### A. THE MOUNT LAUREL II DIRECTIVES

In the Mount Laurel II decision the Supreme Court held that each municipality in New Jersey must provide a realistic opportunity for construction of its fair share of low and moderate income housing. A municipality's "bona fide attempt to provide a realistic opportunity" is not sufficient. Only if a municipality has in fact provided a realistic opportunity for construction of its fair share has it met the Mount Laurel obligation.

The decision sets forth a series of actions which municipalities must take in order to satisfy their Mount Laurel responsibilities. These are meant to be implemented in concert to the extent necessary to make the construction of low and moderate income housing realistically possible.

The court's first directive is for municipalities to "remove all municipally created barriers to the construction of lower income housing", including "zoning and subdivision restrictions and exactions that are not necessary to protect health and safety". A prior expert report in this case submitted by Alan Mallach on behalf of the Department of the Public Advocate set forth reasonable development standards for low and moderate income housing provided pursuant to the Mount Laurel II decision. Another appropriate set of standards for such housing is the Department of Housing and Urban Development's Minimum Property Standards. Any provisions which exceed these minimums, and thereby generate unnecessary costs, violate the Supreme Court's directive to provide realistic opportunity for construction of lower income housing.

Unless removal of excessive restrictions, by itself, creates the housing opportunities called for, the court directs each municipality to take affirmative steps to make the opportunity for lower income housing a real one. The Mount Laurel II decision notes that "satisfaction of the Mount Laurel doctrine cannot depend on the inclination of developers to help the poor", but has to be assured by "affirmative inducements".\* The court identifies two categories of affirmative measures municipalities must take:

- (1) encouraging or requiring the use of available state or federal housing subsidies, and
- (2) providing incentives for or requiring private developers to set aside a portion of their developments for lower income housing.\*\*

The court recognizes that presently housing subsidies are in extremely short supply and therefore, turns to the second category of affirmative measures under the heading, "inclusionary zoning devices". These consist of two basic strategies which may be combined and modified.

- (1) Incentive Zoning - whereby an added increment of development density is granted to builders in return for their participation in a lower income housing program.
- (2) Mandatory Set-Asides - which require that a given percentage of units in new developments be made affordable to low and moderate income households.

The combination of a developer set-aside with an appreciable density bonus is one of the most promising sources of new lower income housing. However, the elimination of all unnecessary development restrictions is a prerequisite for such a mechanism

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\* 92 N.J. at 261.

\*\* 92 N.J. at 262.

to work. One restriction which is particularly harmful is exclusion of mobile homes. The Mount Laurel II decision cites the skyrocketing cost of conventionally-built dwellings and the soundness of less expensive manufactured housing in support of its directive that "municipalities that cannot otherwise meet their fair share obligations must provide zoning for low-cost mobile homes as an affirmative device in their zoning ordinances".\*

#### B. SUMMARY OF ZONE PROVISIONS

Mount Olive's zoning designates seven residential and nine nonresidential zones as follows:

R-AA	Rural Agricultural
R-A	Rural Agricultural
R-1	Residential
R-2	Residential
R-3	Residential
R-4	Residential
R-5	Residential
C-1	Neighborhood Commercial
C-2	Neighborhood Commercial
C-3	Regional Commercial
CR-3	Commercial Residential
G-1	General Industrial
M	Mining
L-1	Light Industrial
O-R	Office Building - Research Lab
F.T.Z. (I-IV)	Foreign Trade Zone

Provisions of Mount Olive's residential zones are summarized in Table 3. Three of the residential zones (R-AA, R-A and R-1) permit only detached single-family homes; the rest permit both attached (townhouse and duplex) and detached dwellings at gross

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\* 92 N.J. at 275.

TABLE 3

PROVISIONS OF MOUNT OLIVE'S RESIDENTIAL ZONES

Zone	Permitted Use(s)	Max. Density		Min. Lot Size		Min. Frontage		Min. Tract Size for Cluster or Attached Housing	Maximum Impervious Surface Coverage	Min. Front Yard			Other**
		Basic	Net	Basic	Cluster*	Basic	Cluster			Basic	Cluster	Other**	
R-AA	Detached S.F.	1 unit/ 3 acres	n.a.	3 acres	1 acre	200'	150'	80 acres	5%	100'	75'	A "trailer" is a conditional use as a secondary residence on a farm tract over 50 acres	
R-A	Detached S.F.	1 unit/ 2 acres	n.a.	2 acres	1 acre	200'	150'	50 acres	5%	75'	50'		
R-1***	Detached S.F.	1/acre	n.a.	40,000 sq.ft.	20,000 sq.ft.	150'	100'	30 acres	10%	60'	40'		
R-2***	Detached S.F.	2/acre	n.a.	20,000 sq.ft.	10,000 sq.ft.	100'	80'	20 acres	15%	50'	40'	Min. of 60% of units in development	
	Attached/Duplex	2/acre	6/acre	2,500 sq.ft.	n.a.	20'	n.a.	20 acres	15%	25'	n.a.	Max. of 40% of units in development	
R-3***	Detached S.F.	3/acre	n.a.	15,000 sq.ft.	8,000 sq.ft.	100'	75'	15 acres	20%	50'	25'	Min. of 40% of units in development	
	Attached/Duplex	3/acre	6/acre	2,500 sq.ft.	n.a.	20'	n.a.	10 acres	20%	25'	n.a.	Max. of 60% of units in development	
R-4***	Detached S.F.	4/acre	n.a.	10,000 sq.ft.	6,000 sq.ft.	80'	60'	10 acres	30%	40'	25'		
	Attached/Duplex	4/acre	6/acre	2,500 sq.ft.	n.a.	20'	n.a.	10 acres	30%	25'	n.a.	Max. of 50% of units in development	
	Garden Apt.	4/acre	10/acre	n.a.	n.a.	n.a.	n.a.	10 acres	30%	25'	n.a.	Max. of 50% of units in development	
R-5***	Detached S.F.	4/acre	n.a.	10,000 sq.ft.	6,000 sq.ft.	80'	60'	10 acres	30%	40'	25'		
	Attached/Duplex	4/acre	6/acre	2,500 sq.ft.	n.a.	20'	n.a.	10 acres	30%	25'	n.a.		
	Garden Apt.	4/acre	10/acre	n.a.	n.a.	n.a.	n.a.	10 acres	30%	25'	n.a.	Max. of 50% of units in development	

n.a. - not applicable

\* Clustering does not change basic density. Minimum of 25% of the tract area must be set aside as common property and/or offered to the Township for public purpose.

\*\* Maximum building height is 30 feet in all residential zones.

\*\*\* In these five zones all cluster and multifamily developments require central sewer service for approval. Minimum lot size for those lots served by septic systems is one acre. In addition, maximum basic density for areas designated "Critical Areas" by the Township's Master Plan is one-half of the permitted density shown.

SOURCE: Township of Mount Olive Zoning Ordinance.

densities ranging from 2 to 4 units per acre. The R-4 and R-5 zones also permit garden apartments at 4 units per gross acre when developed along with other housing types. The maximum building height in all residential zones is 30 feet.

Minimum lot sizes for detached, single family development range from 3 acres to 10,000 square feet; with clustering and reservation of 25% of the site as open space, minimum lot sizes range from one acre to 6,000 square feet. Clustering does not increase the basic permitted density. The minimum size for all single-family lots without central sewage service is one acre (regardless of zone). All cluster developments (except in R-A and R-AA zones), as well as all multi-family housing, must be served by a central sewage treatment facility.

A Planned Adult Community, with limited commercial facilities, may be developed in any residential zone, but the basic restrictions of the underlying zone pertain. In addition, there are special PAC requirements, many of which exceed those in other zones.

#### C. DEFICIENCIES IN MOUNT OLIVE'S RESIDENTIAL ZONING

With respect to the requirements of Mount Laurel II, Mount Olive's residential zoning exhibits six serious deficiencies:

- (1) A lack of any affirmative measures to induce construction of low and moderate income housing
- (2) Excessive density, bulk, and yard restrictions
- (3) Cost-generating design and amenity requirements
- (4) An absence of vacant land zoned at suitably high densities
- (5) Discretionary standards subject to arbitrary and possibly cost-generating requirements of the Planning Board

- (6) Lack of provision for mobile homes and inadequate choice and flexibility in provision of other housing types
- (7) An arbitrary and exclusionary definition of "family".

These seven deficiencies are discussed in greater detail below.

1. Lack of Affirmative Measures

Mount Olive's zoning contains no inclusionary devices to insure that a realistic opportunity for low and moderate income housing is provided. Neither density bonuses nor set-asides have been implemented as required by Mount Laurel II, nor has the Township reserved land for subsidized or non-profit housing development.

2. Excessive Density, Bulk and Yard Restrictions

The Township's regulations pertaining to residential density, building height, lot frontage, yards, impervious surface coverage, and the like go well beyond those needed to protect public health and safety and effectively preclude low and moderate income housing development. No zone is without such unnecessary and cost-generating restrictions.

Particularly harmful are the maximum gross densities in R-4 and R-5 zones, of 4 units per acre, and the net density limits in all zones of 6 and 10 units per acre for townhouses and garden apartments, respectively. Fourteen and 22 units per gross acre are perfectly appropriate maximum densities for these building types.

In addition, the minimum single family lot of 6,000 square feet is excessive and should be reduced to 5,000 square feet



with an overall permitted density of 7 units per acre. Likewise, Mount Olive's 20-foot minimum townhouse width serves no purpose except to insure that the resulting units are more expensive. The present 30-foot residential building height limit should also be changed to provide for three-story "flats" and mid-rise apartments, where appropriate.

3. Cost-Generating Design and Amenity Requirements

The following design and amenity requirements are unnecessary to protect health and safety and can impose considerable additional development costs:

- Minimum tract requirements for multi-family developments
- Off-street parking requirement of 2.0 spaces per dwelling unit regardless of size or type
- Certain subdivision design controls
- Maximum limit of 8 townhouse units in any one building
- Requirements that Planned Adult Communities provide garages, air conditioning, cable television and a clubhouse
- The requirement that each multi-family development have a "compatible architectural and landscaping theme", including such elements as varying unit widths and setbacks, different exterior materials, changing roof lines, etc.

4. Absence of Vacant Land in Suitably High-Density Zones

The maximum residential density permitted in Mount Olive of 4 units per gross acre does not allow for the development

economies necessary to make unsubsidized construction of low and moderate income housing realistically feasible. However, even if this density was sufficiently high no realistic opportunity would exist due to a lack of vacant land in the Township's higher density (R-4 and R-5) zones. The R-5 zone is completely developed and only a limited number of smaller vacant parcels remain in the R-4 zone. This contrasts sharply with Mount Olive's lower density residential zones where ample vacant and developable land is available.

5. Discretionary Standards

Mount Olive's zoning provides for the Planning Board to determine the exact requirements in many areas of project design without a set of consistent standards. This arrangement can result in excessive and arbitrary requirements as well as delays in gaining required approvals, thereby raising development costs and making it economically infeasible to build lower income housing. Issues currently settled by the Planning Board on a discretionary basis include buffer requirements, aesthetic controls for multi-family housing and the extent of the required Environmental Impact Assessment.

6. Lack of Provision for Mobile Homes and Inadequate Flexibility in Housing Types

Mount Olive does not permit any mobile homes except as a conditional use when situated on a farm lot of 50 acres or more in size, where it is not the principal dwelling. In addition, garden apartments and townhouses can only be constructed along with minimum percentages of detached single family homes, except in the R-4 and R-5 zones, which are nearly fully developed. Such restrictions clearly

limit unnecessarily the realistic opportunities available to develop lower income housing.

7. Arbitrary and Exclusionary Definition of "Family"

Mount Olive's zoning ordinance defines "family" so as to preclude more than two unrelated individuals from living together. This is an arbitrary and exclusionary stipulation which should be struck down as unconstitutional. It serves to unnecessarily restrict the housing opportunities of persons in all income classes who live with nonrelatives either out of economic necessity, personal choice or for other reasons (such as the need to be in a group home setting).

8. Conclusion

Because of the deficiencies outlined above it is clear that Mount Olive's zoning ordinance makes no provision whatsoever for lower income housing. Thus the zoning does not conform with the Township's obligations under Mount Laurel II.

D. NON-ZONING ACTIVITIES TO MEET THE MOUNT LAUREL II OBLIGATION

In addition to affirmative zoning devices, Mount Olive is obligated to use whatever other measures are feasible to meet their Mount Laurel obligation. These should include, but are not limited to, the following:

1. Use of federal Community Development Block Grant funds to facilitate provision of low and moderate income housing. Such funds could be used for site acquisition, infrastructure improvements or financing assistance.
2. Granting of tax abatement to valid non-profit, publicly-assisted housing developments.

3. Facilitating the development of subsidized housing through the passage of a Resolution of Need, provision of technical support, seed money, etc.
4. Donation of municipally-owned land for low and moderate income housing.
5. Coordination of infrastructure improvements with low and moderate income housing development through the capital budgeting process.