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June 6, 1984

Mount Olive Township

-Pretrial Order w/ various attachments

pp. 63

notes: double-sided pages

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# PRETRIAL ORDER

Pretried by Judge STEPHEN SKILLMAN, JSC  
Type Name  
on (date) June 14, 1 84

Superior COURT, Middlesex COUNTY, Law DIVISION

Docket No. L-6001-78

MORRIS COUNTY FAIR HOUSING, et al  
vs.  
BOONTON TOWNSHIP, et al

(L-29276-78)  
GREEN VILLAGE 139 CORP., et al  
vs.  
TOWNSHIP OF CHATHAM, et al

~~Plaintiff~~ L-0656604-83  
CHESTER & VAN DALEN ASSOCIATES, INC  
~~vs.~~

VS.  
MOUNT OLIVE TOWNSHIP.

Calendar No. ....

Defendant

The parties to this action, by their attorneys, having appeared before the Court at a pretrial conference on the above date, the following action was taken:

1. Prerogative writ action by Public Advocate and two developers challenging validity on Mt. Laurel grounds of zoning ordinances of 13 municipalities.
2. None at this time.
3. Attached.
- 4/ "
5. None by plaintiffs; Defendants ~~XXXXXX~~ seek counsel fees, except for Chatham Township.
6. None.
- 7.(A) First stage indigenous need; region; regional present need; regional prospective need; validity of SDGP as applied to Mt. Olive and Montxville; ~~xxxx~~ fair shares of defendant municipalities including claims to adjustments as more fully set forth in paragraph 7 and 13 & of Public Advocate's pretrial memorandum.

(B) Second stage: satisfaction of fair share obligations; entitlement to credits; whether certain credits required by either New Jersey or United States Constitution; validity of zoning ordinances under Mt. Laurel.

(C) Third stage: Validity of rezoning and/or other steps taken to comply with Mt. Laurel in the event current zoning is found to be invalid; plaintiff developers entitlement to builder's remedy.

8. Challenges to SDGP other than plaintiffs' challenges as to Mt. Olive, Montville and Chatham-as to latter, see paragraph 7A of Feb. 24, 1984 pretrial order in Green Village case.

9. Counsel to confer concerning exhibits on June 20, 1984 at 10:30A.M.; any objections not resolved at that time to be presented by motion no later than June 26, 1984; replies to such objections to be submitted no later than June 29, 1984. An index of exhibits and premarked exhibits to be presented July 2, 1984; arguments on objections on that same date.

10. None.

11. Deadlines to be set at trial.

12. No openings required; manner and order of closing to be set at trial.

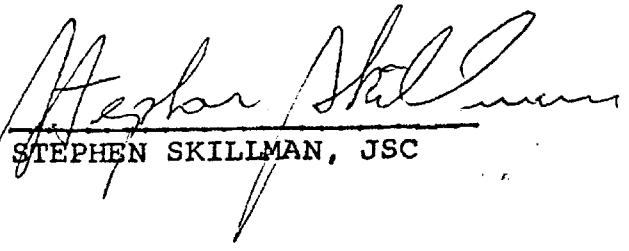
13. Public advocate's proposal as to severance of fair share determinations as to settling defendants to be heard as motion on June 29, 1984, with all responses or alternative proposals to be submitted no later than June 21, 1984.

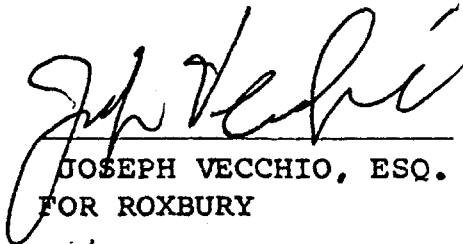
14. As set forth in pretrial memorandum.

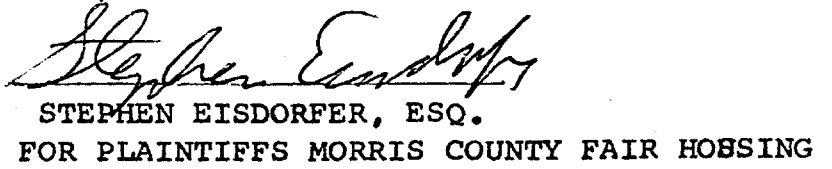
15. First stage one month.

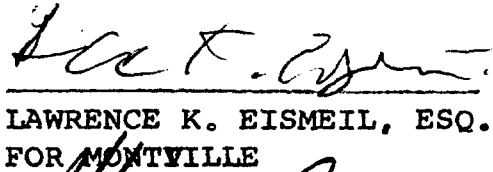
16. July 2, 1984, for first stage.

17. Except to the extent inconsistent with this order, the pretrial order dated Feb. 24, 1984 in Green Village et al V. Township of Chatham, et al shall remain in full force and effect.

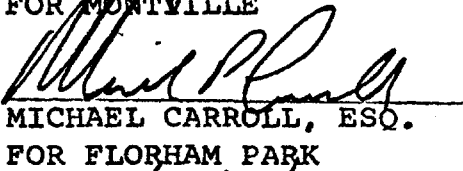
  
STEPHEN SKILLMAN, JSC

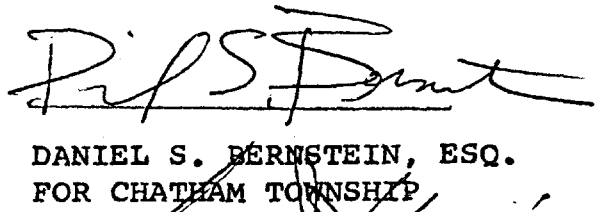
  
JOSEPH VECCHIO, ESQ.  
FOR ROXBURY

  
STEPHEN EISDORFER, ESQ.  
FOR PLAINTIFFS MORRIS COUNTY FAIR HOBSING

  
LAWRENCE K. EISMEIL, ESQ.  
FOR MONTVILLE

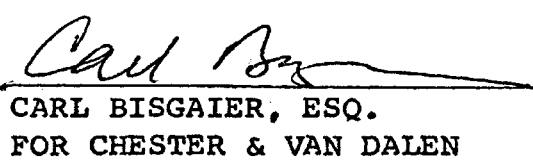
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JOHN J. CARL, ESQ.

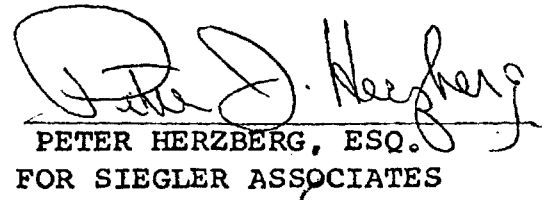
  
MICHAEL CARROLL, ESQ.  
FOR FLORHAM PARK

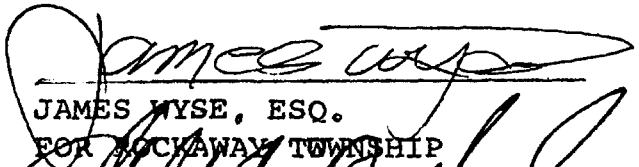
  
DANIEL S. BERNSTEIN, ESQ.  
FOR CHATHAM TOWNSHIP

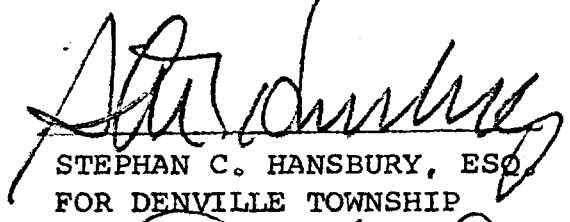
  
JOHN G. GILFILLAN III, ESQ.  
FOR PARSIPPANY-TROY HILLS

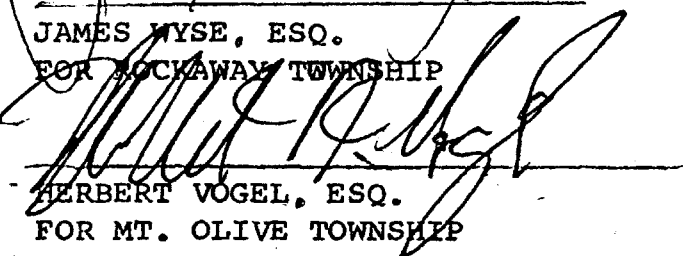
  
NORMAN I. KLEIN, ESQ.  
139 GREEN VILLAGE CORP.

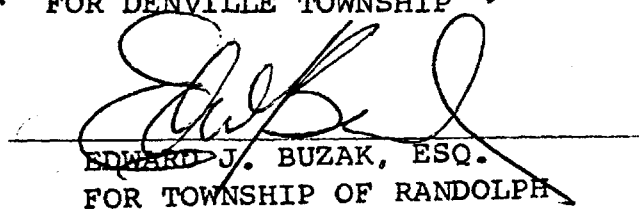
  
CARL BISGAIER, ESQ.  
FOR CHESTER & VAN DALEN

  
PETER HERZBERG, ESQ.  
FOR SIEGLER ASSOCIATES

  
JAMES WYSE, ESQ.  
FOR ROCKAWAY TOWNSHIP

  
STEPHAN C. HANSBURY, ESQ.  
FOR DENVILLE TOWNSHIP

  
HERBERT VOGEL, ESQ.  
FOR MT. OLIVE TOWNSHIP

  
EDWARD J. BUZAK, ESQ.  
FOR TOWNSHIP OF RANDOLPH

## ATTACHMENT B

### FACTUAL AND LEGAL CONTENTIONS OF PLAINTIFFS

Each defendant municipality is located in the growth area as designated by the State Development Guide Plan (1980). Each has a constitutional responsibility to provide realistic opportunities for sufficient, safe, decent housing affordable to low and moderate income persons residing in the municipality. Each also has a constitutional responsibility to provide sufficient realistic opportunities for safe, decent housing affordable to low and moderate income households to meet its fair share of the unmet present and prospective regional need.

By whatever reasonable standard that might be adopted to define indigenous need or to determine the region, regional need, or measure of fair share, none of defendant municipalities are providing sufficient realistic opportunities for housing affordable to low and moderate income households to satisfy their obligation to meet either their indigenous need or their fair share of the regional need.

The most appropriate means of delineating region for each of the defendant municipalities is a delineation of separate regions for present need and for prospective need. For purposes of present need, all defendant municipalities lie in a single 11-county region extending outwards from the urban areas of northeastern New Jersey, comprised of the following counties: Hudson, Essex, Union, Bergen, Passaic, Morris, Somerset, Middlesex, Warren, Sussex and Hunterdon.

For purposes of prospective need the most appropriate region for each municipality consists of all counties that would be reached by a 30-minute automobile trip in any direction from the municipality.

These regions satisfy the requirements of Mt. Laurel II and its predecessor decisions and are the most reasonable regions that satisfy those legal standards.

The most appropriate measure of present need is that set forth in the April 2, 1984 report of Carla Lerman. It is the aggregate of the number of dwellings recorded in the 1980 census which (1) lack complete plumbing, (2) lack heating systems and (3) are overcrowded. This measure omits important elements of housing need, including lack of housing affordable to low and moderate households, and other types physically deficient housing units, and therefore underestimates true need. It is, however, a reasonable, albeit conservative determination of present need consistent with criteria of Mt. Laurel II.

Each municipality is constitutionally obligated to meet its indigenous present need, except to the extent that a municipality's rate of indigenous present need exceeds the rate of indigenous need of the region as a whole. The excess in present need in these municipalities must be met elsewhere in the region. No defendant municipality has a rate of indigenous need in excess of the regional rate of indigenous need. Each defendant therefore is obligated to satisfy both its own indigenous present need and its fair share of the excess present need from elsewhere in the region.

The most appropriate means of determining each defendant municipality's fair share of the excess present regional need is that set forth in the April 2, 1984 report of Carla Lerman. This allocation is made on the basis of three factors: (1) land in the growth area in the municipality as a proportion of all land in the growth area in the region; (2) employment within the municipality as a proportion of all employment in the region; and (3) median household income in the municipality as compared to median household income in the region. This methodology satisfies the requirements of Mt. Laurel II.

The most appropriate measure of prospective regional need is that set forth in the April 2 report of Carla Lerman. This involves projecting the total number of additional households that will reside in the region and then projecting what proportion of these households will be additional lower income households. The most appropriate data for these projections are the official state population projections prepared by the New Jersey Department of Labor.

Allocation of regional prospective need among municipalities in the region is set forth in the April 2, 1984 report of Carla Lerman. This allocation is a conservative but appropriate basis for determining municipal fair share of regional prospective need, subject to individual adjustments in certain municipalities based upon factors of (1) land in the municipality in the growth area as a proportion of total land in the growth area in the region; (2) employment in the municipality as a proportion of total employment in the region; (3) recent employment growth in the municipality as a proportion of total recent employment growth in the region and (4) median household income as compared to median household income throughout the region. In those municipalities, however, which have a high rate of single family housing development, which reflects both availability of developable land and intense development pressure, the Lerman allocation should be adjusted as set forth in the May 1984 report of Abeles Schwartz Associates. This allocation satisfies the requirements of Mt. Laurel II and its predecessor cases.

As to all defendants, the determinations of present indigenous need set forth in the April 9, 1984 report of Carla Lerman are appropriate.

As to all defendants except Montville and Mount Olive, the determinations of municipal fair share of present regional need set forth in the April 9, 1984 report of Carla Lerman are appropriate.

As to defendants Florham Park, Hanover, Parsippany-Troy Hills and Rockaway Township, the determinations of municipal fair share of regional prospective need set forth in the April 19, 1984 report of Carla Lerman are appropriate.

As to Denville, Morris Township, Randolph and Roxbury, the determinations of municipal fair share of regional prospective need set forth in the May, 1984 report of Abeles Schwartz Associates are appropriate.

As to Mount Olive and Montville, the boundaries of the "growth area" as delineated in the State Development Guide Plan are arbitrary and capricious and are no longer valid because of changes subsequent to the preparation of the Plan. In both of these municipalities substantial concentrations of development existed in areas outside the SDGP-delineated "growth area" before the preparation of the State Development Guide Plan and have continued to grow since the preparation of that plan. As a result of these patterns of development certain areas outside the SDGP-delineated "growth area" in Montville and Mount Olive substantially met all the criteria for designation as "growth areas" when the SDGP was prepared. Subsequent development in these areas has further invalidated the "growth area" designations in these municipalities.

In Mt. Olive Township and Montville Township, the determinations of municipal fair share of present and prospective regional need as set forth in the May, 1984 report of Abeles Schwartz Associates as further adjusted to reflect the true extent of the "growth area" in these municipalities.

These determinations of municipal housing obligation are appropriate, although conservative, are reasonable and consistent with the decision of the Supreme Court in Mt. Laurel II and predecessor cases.

The determinations of the Court as to region, and regional present and prospective need, should be given presumptive validity under Mt. Laurel II.



ATTACHMENT

3. and 4. FACTUAL AND LEGAL CONTENTIONS: Plaintiffs are the owners of approximately 110 acres of land in the defendant Mount Olive Township. Plaintiffs wish to develop these lands for residential uses (1100 dwellings) and to provide a substantial percentage (20%) of units for low and moderate income persons. The defendant's land use plan and zoning ordinance places plaintiffs' lands in a zone on which residential units can be built at one unit for every two acres. Plaintiffs contend that said zoning and planning is arbitrary and capricious, and is inimical to the construction of low and moderate income housing. Defendant's land use plan and zoning ordinance as otherwise approved does not provide for defendant's provision of a realistic opportunity for the construction of its fair share of its region's low and moderate income housing needs. The SDGP designations are arbitrary and capricious and/or, in light of changed circumstances, presently unreasonable and should be changed to greatly extend the growth area. Defendant has zoned an insufficient amount of land for higher density uses subject to a zoning scheme which will not produce low and moderate income housing. With regard to the aforementioned claims, plaintiffs seek declaratory and injunctive relief, invalidating the land use plan and zoning ordinance of the defendant, appointing a master to facilitate the adoption of appropriate land use ordinances and providing plaintiffs with a builder's remedy.

RIDER

3. - 4. FACTUAL AND LEGAL CONTENTIONS

1. The property owned by Siegler Associates has excellent potential for high density, low to moderate income housing. The property has excellent proximity to existing utility lines, thus facilitating high density low to moderate income housing. The property is also physically suitable for high density, low and moderate income development.

2. The current master plan and ordinances of Denville preclude a low and moderate income housing development on the Siegler Associates site.

3. The ordinances adopted by the Township are not reasonably necessary for the protection of vital public interests or the public health, safety or general welfare, but rather have the effect of raising unit rentals and unit sales costs of potential residential dwellings beyond the reach of the low and moderate income population of the township and of the region.

4. Denville has consistently failed and refused to take affirmative steps which would increase the likelihood that low and moderate income housing would actually be built. Not only has Denville failed to revise its zoning ordinance but it has refused to authorize any direct or indirect financial assistance or any tax abatements to developers seeking to build projects that include low and moderate income housing.

5. Plaintiff stands ready, willing and able to present an economically feasible plan for residential development in accordance with the principals of Mount Laurel II which includes a substantial percentage of its total units being made available to and affordable by low and moderate income persons in a manner which is consistent with principles of sound land use and environmental planning.

6. The Township has, by its system of land use regulations, violated its presumptive constitutional obligation to plan for and provide a realistic opportunity for low and moderate income persons and has failed to provide a realistic opportunity for the construction of its fair share of the present and prospective indigenous and regional low and moderate income housing needs. The ordinances of Denville are intended to have, and have had the effect of precluding any actual construction of, or the realistic opportunity for the construction of, low and moderate income housing within Denville.

7. Denville has, by its land use regulations, failed to satisfy its constitutional obligations to promote the general welfare of all people within the municipality and region and to provide its fair share of the region's present and prospective need for low and moderate income housing.

8. The Township of Denville, through its zoning ordinances and land use regulations, failed to provide or afford a realistic opportunity for decent housing for its indigenous poor.

9. Therefore the zoning ordinance and the development regulations of the Township of Denville are presumptively facially invalid, ultra vires, and contrary to the substantive due process and equal protection guarantees inherent in Article 1, Section 1 of the New Jersey Constitution, are contrary to N.J.S.A. 40:55D-62 and are in violation of the federal constitutional guarantees of due process and equal protection.

### 3-4. FACTUAL AND LEGAL CONTENTIONS

Plaintiffs have instituted this action against twenty-seven (27) Morris County municipalities alleging that said municipalities practice exclusionary zoning making their land use practices unconstitutional and illegal. The action was instituted on October 13, 1978. After much pretrial preparation, the matter was stayed by the Supreme Court of New Jersey pending their decision in the Mount Laurel cases which were presently before them. As a result of the issuance of the Mount Laurel II decision in January of 1983, upon motion made by plaintiffs, the stay was lifted and the matter was transferred to be heard before the Honorable Stephen Skillman as the Mount Laurel Judge for northern New Jersey.

As a result of a scheduling order entered by the court on May 30, 1984, the trial in this matter is bifurcated. The court determined that the first segment of the trial will involve the delineation of region, the determination of regional need, and the determination of a methodology for allocating that municipality's fair share of the regional need. This pretrial memorandum is submitted with respect to the first segment of this trial.

Plaintiffs contend that an eight-county region is appropriate for determining a present and prospective need. Said region consists of the Counties of Bergen, Essex, Hudson, Passaic, Union, Middlesex, Morris and Somerset. Peter L. Abeles, plaintiffs' expert, projected the regional households for this eight-county region and then found that 36% of the household growth would be low or moderate income units, arriving at a figure for the region's needs of low and moderate income units of 55,804 units. That number was then increased by applying a vacancy factor such that the total prospective regional need was determined to be 58,036 units - divided into 35,228 low income units and 22,808 moderate income units.

Plaintiffs allocated the prospective need based upon vacant developable land in the region versus vacant developable land in a particular municipality and growth in private employment in the region versus growth of private employment in the municipality between the years 1975 and 1981. Both factors are equally weighted and, for Randolph Township, plaintiff determined that 960 low and moderate income units should be constructed.

Plaintiff then determined the present need within the region utilizing physical deficiencies, market factors, and financial hardships and then allocated to each municipality a figure equal to 6.795% of the municipality's total occupied year-round housing units, crediting that municipality with its existing indigenous replacement need. One-third of that sum was added to the total indigenous need to come up with a figure. For Randolph Township, it was 275 units. Randolph's total share, therefore, was 1,235 units.

Plaintiff then issued a supplemental expert report which made certain other modifications to the figures produced and also credited municipalities with any approved low and moderate income units since 1980. Randolph was credited with 132 units, leaving a balance of 1,103 units to be supplied as Randolph's fair share.

Defendants contend that the appropriate region is a four-county region known as the Newark Housing Region, consisting of Morris, Union, Somerset and Essex Counties (MUSE). In support of its position, Randolph has submitted a report of P. David Zimmerman which outlines the basis upon which the four-county region was determined to be appropriate and relevant for the purposes of a municipality satisfying its needs. Briefly, the basis for the selection of the four-county region was the consideration of Mr. Zimmerman of the four traditional criteria for determining regions. Mr. Zimmerman identified the four as follows:

1. Sharing of housing needs;
2. Housing market interdependence
3. Data availability; and
4. Regional identification by a governmental agency.

Job location and commuter time are important factors in housing choice considerations. In defining regions, emphasis should be given to the fact that most people who live in a region also work in that region. Mr. Zimmerman contends that 74.5% of the people who reside in Morris County work in the Newark Housing Region. Recognizing that the defining of a housing region is a complex project, Mr. Zimmerman concludes that the Newark Housing Region is a reasonable and supportable one. He concludes in his report:

"The Newark Housing Region is reasonable in that it does circumscribe a geographic area within which housing is competitive, or would be competitive absent restrictive land use controls. The Region satisfies such other criteria as having sending/receiving areas, all parts are reasonably accessible, it has ample data, and has been extensively used by many governmental agencies. Other alternative regions, in the opinion of this report, are not as reasonable and exhibit serious problems pertaining to the theoretical basis and practical necessities of this litigation."

Mr. Zimmerman goes on to determine the present and prospective needs of the four-county region, concluding that the total regional housing need is 18,544 units, of which Morris County should provide 8,599 housing units based upon the percentage of open developable land within the growth area in Morris County as compared to the open developable land within the growth area of the four-county region.

Although Mr. Zimmerman does not go on to allocate the units to particular municipalities, he suggests that a proper allocation would be based upon the open developable land within the growth area of a municipality compared to the open developable land in the growth area of the county as a whole. This factor is important because the Supreme Court has made it clear that growth should be channeled into the growth areas. Not utilizing open developable land within the growth area is a fatal flaw in other allocation methodologies.

As an alternative, the Township has also produced an expert report from its planner, Adrian P. Humbert. Mr. Humbert has suggested a one-county region for several reasons. He opines that the growth area of Randolph Township is centrally located in Morris County making the journey to work at peak traffic hours to the perimeter of the county a 25 to 35-minute drive. Since the 1980 census figures, note that the mean travel time to work for Morris County residents is 25.5 minutes and for Randolph residents is 28.8 minutes, he determines that the county itself represents an accurate commutershed. Moreover, he points out that economic cohesiveness of Morris County as a place to work for most Randolph residents is confirmed in the 1980 census data wherein 68.4% of the residents of Randolph Township work within Morris County. Therefore, more than two-thirds of Randolph's labor force work within the county. Since there is data available on a county level upon which determinations can be made, he finds that utilizing the county as the "region" is appropriate, noting that it is the standard reference unit for future state activities in connection with further refinement and updating of the State Development Guide Plan.

Utilizing data not unlike that of Mr. Abeles from the census, Mr. Humbert determines that the Township has a indigenous poor population of 177 units. Then, utilizing definitions of low and moderate income, as suggested in Mount Laurel II, Mr. Humbert determines the present ratio of low and moderate income families within the region. The allocation of the region's needs to Randolph Township is based upon a comparison of the vacant developable land within Randolph Township in the Rockaway corridor growth area to the vacant developable land within the Rockaway corridor itself. Mr. Humbert finds that the prospective need developed by utilization of this methodology is 682 units. When added to the indigenous poor or 177 units, he arrives at a gross requirement of 859 units for Randolph Township.

The court has appointed an expert, Carla Lerman, who has also produced a report utilizing the "consensus methodology" proffered in the Urban League case. This report produces two different regions, a present need region consisting of eleven counties north of Monmouth County and a prospective need region based upon a 30-minute commutershed, commencing at the geographic center of a municipality and moving outward in all directions at 30 miles per hour on local roads, 40 miles per hour on state and federal highways, and 50 miles per hour on interstates, the Garden State Parkway, and the New Jersey Turnpike. The regional present need is determined in a manner not unlike that of Abeles, Zimmerman, and Humbert. The allocation thereof, however, is made by taking municipal employment in 1982 as a percentage of the region's employment and municipal growth area as a percentage of the regions, averaging those percentages and multiplying that by the pool of excess units. The regional prospective need is determined by a projection of population households by county within the commutershed region and then taking 39.4% of those prospective units as being low and moderate income units. The figure is allocated based upon four factors: employment growth over a ten-year period; municipal employment in 1982; municipal land area in the growth area as a percentage of the commutershed land in the growth area; and, a financial factor comparing median income of the municipality with the median income of the region. There is then a 3% vacancy

factor added, plus a 20% factor to the figure. The Lerman report produces a figure of 248 present need units and 624 prospective need units, for a total of 872 units.

Finally, plaintiffs have produced a supplemental report which modifies the Lerman report to the extent that a building permit factor is added which, for Randolph Township, has the effect of increasing the prospective need to 819 units (from 624 units), for a total of 1,067 units as opposed to 872 units, an increase of 195 units.



REVISED CHATHAM TOWNSHIP FAIR SHARE HOUSING ALLOCATION  
AND DEVELOPMENT SUITABILITY STUDY

Prepared by

JOHN T. CHADWICK IV, P.P.

of

E. EUGENE OROSS ASSOCIATES

for

G.V.I.- 139, Inc.

FEBRUARY 1984

REVISED MAY 1984

Introduction:

This report sets forth further revised fair share housing allocation for the Township of Chatham located in Morris County. The general concepts and methodology employed to arrive at total housing obligation are based upon a report prepared by Carla Lerman and on file with the court. Further, a review has been made of Carla Lerman's Chatham Township fair share obligation calculation presented to the Honorable Judge Skillman.

In context with the foregoing as well as prior report presented to the court in this matter dated February 1984, I submit the following opinion and recommendations to the court.

Housing Region:

The Chatham Township housing region consists of two geographic areas. The existing housing need region represents an eleven-county region as described in the Lerman report dated April 1984.

The prospective housing region for Chatham Township consists of seven counties, again as stated in Lerman calculations presented to the court. All of these counties are within a 30-minute measured travel distance from the approximate geographic center of the Township. Prior report of myself did not include Passaic County. Verification has been made that Passaic County is within a measured 30-minute travel distance of Chatham Township.

Fair Share Housing Obligation Calculation Present Need:

The present housing need consists of indigenous housing need and reallocation of substandard housing from the region.

The total reallocated substandard housing for the 11 county region as set forth in the Lerman report is inflated. The basis for this opinion is set forth in the attached letter.

The adjusted total present need is estimated at 74 units. This estimate has been formulated using ratio factor of the "pool" figures of Lerman report and myself.

Prospective Housing Need:

A revised prospective housing need for Chatham Township has been computed. The prospective housing need is based upon a calculated total low and moderate income housing need for the prospective region of Chatham, again, as outlined in the Lerman report.

Adjustments to the formula are recommended. The adjustments are described in the attachment (letter dated April 18, 1984).

In context with the above, my preliminary estimate of prospective housing need for Chatham Township is 151 units for a six-year period.

Total Housing Obligation:

The estimated total housing obligation of Chatham Township is as follows:

- a. Present need including indigenous - 74 units
- b. Prospective need (6-year period) - 151 units

Total Fair Share Obligation - 225 units

Development Suitability-Green Village 139 Corp.:

A planning analysis of the Green Village Road area has been made to determine the suitability of development of higher density housing along Green Village Road beginning in the vicinity of the post office and extending easterly to the Shunpike. Investigation included a review of the existing zoning plan of the Township, adopted Master Plan of the Township, reports filed by consultants to the Township, USDA soil surveys, New Jersey geological surveys relevant to wetland delineation, as well as site survey of the general area.

Based upon the above investigation, the following statements of fact and opinion are made.

1. Topography: No topographic restrictions exist to development. The subject area is not steeply sloped nor does same feature an irregular or fractured landscape.

2. Soils: The areas to both the north and southerly sides of Green Village Road are classified by the USDA as an RM. This is a riverhead soil series. Utilizing Table 7 of the USDA publication of soil survey for Morris County, it is concluded that this soil type does not exhibit constraints to development or grading. In general, this soil type is rated as having a "slight" restriction (such activities as grading and foundations).

3. Roadway Access: Green Village Road is shown as a major traffic route in the adopted Master Plan of the Township. Additionally, the Master Plan indicates a bypass route within the vicinity of the Green Village 139 Corp. properties.

Green Village Road connects in an easterly direction to the Shunpike which is a major north-south roadway within the Township. These roadways provide access to major freeways within the Chatham Township region as well as to railroad stations located east and north of the Township.

4. Water Supply: Public water supply exists along Green Village Road and is available for connection.

5. Sanitary Sewer Facilities: Existing sanitary sewer facilities are located in the vicinity of the Green Village 139 Corp. tract. Sewer facilities do exist in the easterly portion of Green Village Road.

The Township contends that treatment capacity of existing facilities are extremely limited. The resolve of the treatment

capacity of the existing plant obviously involves engineering study. In my opinion, this is an issue to be resolved at the time of development application.

6. Existing Land Use Pattern: A major multi-family development exists at the intersection of Green Village Road and the Shunpike. Various commercial and residential uses exist along Green Village Road within the defined survey area. In my opinion, the introduction of multi-family housing in this area is compatible with existing development.

7. Land Use Plan: The Chatham Township Master Plan proposes multiple family housing in the easterly portion of Green Village Road. The proposed use of the land by Green Village 139 Corp. is consistent with the Land Use Plan of the Township.

The above items are fundamental to a planning analysis to determine suitability of an area for development. In my opinion, the Green Village Road area is clearly appropriate for multi-family development. Further, such opinion is generally consistent with the adopted land use policies of the community.

Planning considerations associate with the land will focus upon capacity of sanitary sewer facilities and impact upon the Great Swamp National Wildlife Preserve. These issues in my opinion are manageable in context with the scope of the study area and are legitimately the function of development application review and proper site development technique.

# E. Eugene Cross Associates

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April 18, 1984

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*Director of Planning*

PETER M. TOLISCHUS, P.P.  
*Professional Planner*

THOMAS A. VIGNA, P.P.  
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Re: Green Village 139 Corp.

Dear Norman:

Pursuant to our discussion of 4/17/84 and Carla Lehman's fair share allocation calculation for Chatham Township, I submit the following:

1. The calculation of fair share housing obligation for Chatham Township prepared by Carla Lehman and forwarded to yourself by Honorable Judge Stephen Skillman has been computed in accordance with the "concensus" methodology developed within the Court of the Honorable Judge Serpentelli.

2. The concensus formula has been reviewed at great length by myself in context with other litigation-Mt. Laurel II cases. In my opinion, the formula warrants adjustment and modification in the following areas:

A. Indigenous need:

In my opinion, the existing substandard housing (units lacking plumbing and complete heating facilities) should not be included in the municipality's obligation to be addressed by zoning. In my opinion, such units should be addressed by local housing programs targeted to such units. It seems ridiculous, in my opinion, to apply the Mt. Laurel obligation to such units.

B. Present need (redistribution of substandard units within the 11 county region):

1. The "pool" figure of substandard units is generated from 18 communities within the 11 county region. Of the 22 municipalities, 8 communities contribute 29,418 units to the total pool of approximately 34,000 units.

It is my opinion that in those communities, substantial rehabilitation efforts have occurred. For example, in Jersey City since May 1980 to May 1983, over 6800 units were rehabilitated utilizing federal funds. This figure does not include private rehabilitation funded through commercial sources.

In context with the above, in my opinion, the base figure (pool number) is inflated significantly.

2. The formula for allocation of existing need gives equal weight to three components. In my opinion, the employment components should be given a 50 percent weight within the formula.

In context with the above, in my opinion, the present need figure computed in accordance with the consensus formula is inflated.

C. Prospective need:

1. The commutershed region for Chatham has been checked by this office and is agreed to (seven counties).

2. The allocation formula, in my opinion, should be amended to provide a two-third's weight to employment factors.

3. The computation of prospective need based upon a ten-year housing forecast is not sound, in my opinion. I firmly believe that 60 percent of the ten-year projection is appropriate to the six-year repose. It's contrasted to the formula application whereby a ten-year projection is compressed into the six-year period.

4. There exists considerable debate as to the forecast method of housing production for the state of New Jersey. Additional research and examination of this issue is warranted.

In context with the above, in my opinion the total fair share housing obligation for Chatham Township ranges between 200 and 225 units.



Norman Klein, Esq.

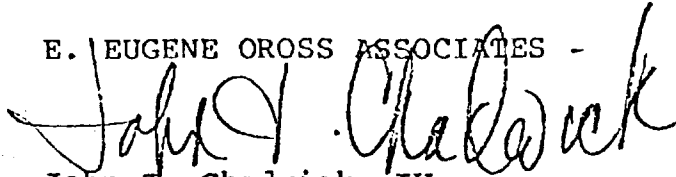
-3-

April 18, 1984

If you have any questions, please do not hesitate to advise.

Respectfully,

E. EUGENE CROSS ASSOCIATES -

A handwritten signature in cursive script that reads "John T. Chadwick, IV". The signature is written in dark ink and is positioned over the typed name and title.

John T. Chadwick, IV  
Planning Director

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

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

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

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

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

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

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

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

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

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

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

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

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

D - M. O. 1

QUEALE & LYNCH  
INCORPORATED

PROFESSIONAL PLANNERS AND HOUSING CONSULTANTS

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

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P. O. BOX 2324  
TRENTON, N.J. 08607  
609-392-2324

June 3, 1984

PLEASE REPLY TO:

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

Re: Fair Housing Council Suit  
Lerman Report on Fair Share

Dear Herb:

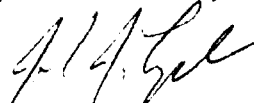
The report prepared by Carla Lerman for Judge Skillman accurately reflects my understanding of the formula developed in the Urban League case in Middlesex County. I agree with the conclusion drawn in the report that the fair share figure for Mount Olive Township is 504 units.

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

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

Very truly yours,

QUEALE & LYNCH, INC.



John J. Lynch

cc: Donald Ferguson

0-102

QUEALE & LYNCH  
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Maple Avenue at Miller Road  
Morristown, NJ 07960

Re: Fair Housing Council Suit  
Abeles Report on Fair Share

Dear Herb:

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

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



#### 4. FACTUAL AND LEGAL CONTENTIONS OF PARSIPPANY TROY-HILLS

The Township of Parsippany-Troy Hills has submitted a report concerning region in conjunction with several other municipalities. The report, prepared by Mr. P. David Zimmerman, concludes that the most appropriate region for Parsippany-Troy Hills to comply with the Mt. Laurel II requirements is a four county region comprised of Essex, Morris, Somerset and Union counties. This is known as the Newark Housing Region (NHR) and is also recognized as the Newark Standard Metropolitan Statistical Area (SMSA).

The supportive reasoning for concluding that the NHR is the proper region involves the evaluation of four traditionally considered and important criteria.

The first criterion is the sharing of housing needs, i.e. a balanced mix between areas with high housing need and few resources and areas with opposite characteristics. The NHR is a compact one with sending and receiving areas in close proximity thus resulting in a realistic sharing of housing needs. The second criterion is housing market interdependence, i.e. a high correspondence between job location, choice of housing location and suitable transportation and service facilities. The third consideration is the availability of up-to-date, reliable socio-economic data for the region. The final criterion is acceptance of the defined region by other governmental agencies. The Newark SMSA region satisfies all four of these primary criteria.

It must be recognized that there are many complex factors that help define a region. Some of the more important factors include journey-to-work, style of life, type of residence, proximity to relatives and friends and educational or religious institutions.

Job location and commutation time are given much weight as important factors in housing choice considerations. In defining a region, emphasis must be given to the

fact that most of the people who live in the region also work in that region. It has been shown that 74.5 percent of the people who reside in Morris County work in the Newark Housing Region.

This Morris County percentage could be increased if the region under consideration was expanded. However, the objective of Mt. Laurel II is not to expand a region to include all workers, but rather to arrive at a reasonable region which describes most journey-to-work trips and which, together with other housing criteria, defines a housing region.

A further argument for choosing the NHR over other suggested regions is that it does not include Sussex County. The inappropriateness of including Sussex County is illustrated by the fact that there are very few jobs in Sussex County. It is not a growth area. Very few people commute there to work and it is unlikely that low or moderate income people could afford the cost of commutation from Sussex County to work in Essex and Union Counties. Inclusion of Sussex County in the housing region serves no practical purpose.

Thus the area described by the NHR is substantially a whole system based upon commutation and circumscribes a geographic area within which most journey-to-work trips occur. The NHR is reasonable in that it circumscribes a geographic area within which housing is competitive, or would be competitive absent restrictive land use controls. Further, the region satisfies other criteria such as having sending/receiving areas and accessibility. Additionally, ample data as to the region has been developed and extensively used by many governmental agencies.

The factual bases for and expert opinions with respect to determination of region and regional need are set out in detail in the expert reports of Messrs. Zimmerman, Masters and Dresdner which are incorporated herein by reference.

These reports, previously filed and served clearly define the position of Parsippany Troy-Hills Township as to these issues.

With respect to fair share allocation, and as is clearly discussed in detail in Master's report, Parsippany Troy-Hills feels strongly that it has fulfilled its Mt. Laurell II fair share obligation as to the region's present and prospective low and moderate income housing need.

Fifteen percent of the Township has been designated a Conservation Area by the State Development Guide Plan. The remainder of the Township has been designated a Growth Area.

Most of the undeveloped lands in the Township have environmental constraints which limit and/or prohibit development. The constraints include flood prone lands, wetlands, qualified farmlands, shallow depth to bedrock, seasonal high groundwater table and steep slopes in excess of 12 percent. There are 256.21 acres of vacant land not subject to environmental constraints, in the Township.

Of these 256.21 acres, 129.92 acres are reserved on the approved master plan for non-residential development, which development is necessary for the creation of new employment opportunities. Further, 69.74 acres represent small tracts, mostly individual lots in established residential areas, which tracts are not suitable for high density development. Their development is per force limited by the nature of the development of adjacent tracts and existing improvements.

DISTRIBUTION OF LAND  
TOWNSHIP OF PARSIPPANY TROY-HILLS, 1983

<u>ASSESSED</u>	<u>ACRES</u>	<u>% OF TOTAL</u>
Total Assessed Land Area	15,102	100
Total Developed Land Area	10,871	72
Vacant Lands	4,231	28
Less: Environmental Constraints	3,857	(61% of vacant lands)
(Qualified Farmlands)	5.5	n/a(de minimus)
Development Approval/ Pending	786	18.6% of vacant lands
Vacant Developable Lands	256.21	6% of vacant lands
	VDL includes 129.92 acres zoned for non-residential development; 69.74 acres of small lots and tracts, and 56.55 acres of developable residential land in the "RR" and "R-3" zones.	

The above figures will be up-dated to the date of trial.

As is evident from the foregoing, ParsIPPany is largely developed and provides a diverse economic base. The housing supply in the Township is atypical of most Morris County communities due to a large percentage of rental units. ParsIPPany maintains 13 percent of the total Morris County Housing stock and 22 percent of the total rental units in the County.

In estimating ParsIPPany's indigenous housing need, information concerning housing stock with deficiencies in facilities was taken from the 1980 Census. The 1980 Census indicated there were 116 units having no bathroom facilities or only half a bath and 87 units having incomplete kitchen facilities. There is assumed to be a 40 percent overlap of units with incomplete kitchens also having deficient bathroom facilities. This results in ParsIPPany's total indigenous housing need being 168 units.

Similarly, if substandard units are calculated based upon units with inadequate plumbing and units with inadequate heating, and further assuming a 40% overlap, Parsippany's total indigenous housing need would be 172 units. (The Lerman assignation of indigeous need to Parsippany is 360 units because, contrary to the Mt. Laurel II decision, it aggregates substandard housing and overcrowding.)

In estimating the Township's share of the prospective housing need Parsippany's experts relied on a 1983 New Jersey Department of Labor report entitled, New Jersey Revised Total in Age and Sex Population Projections, July 1, 1985-2000. Using the economic/demographic data on employment shifts and projected population for the four county region and considering the actual vacant developable land within the Growth Area of Parsippany Troy-Hills which is suitable for residential development, the municipality's fair share obligation is to accomodate 0.099% of the prospective housing need in Morris County. This results in Parsippany's fair share being a total of 90 new housing units affordable to low and moderate income households.

The Township of Parsippany Troy Hills has adopted affirmative measures that create realistic opportunities for housing affordable to low and moderate income households. Subsequent to 1980 there were constructed two senior citizen housing complexes, which provide 441 units of HUD Section 8 subsidized housing. An additional 28 units of Section 8 subsidized apartments are provided in two other garden apartment complexes.

The Township provides 5,946 garden apartments. These apartments are for the most part affordable to low and moderate income households and account for 40 percent of the total housing stock in the Township. The residential land development policy of Parsippany encourages small lot, single family residential development. The Township provides for housing construction on lot sizes of 6,000 square feet and less.

This accounts for approximately 42 percent of the existing single family housing stock in the Township.

The Township expects a total of 488 condominium conversions to take place in the near future. These units will qualify as affordable to low and moderate income households within the housing region.

Parsippany's total present and prospective need for housing affordable to low and moderate income households is 177 units if calculated using inadequate plumbing and kitchen facilities as the basis for determining indigenous need, 181 units if calculated using inadequate plumbing and heating facilities as the basis for determining indigenous need, or 369 units if the Lerman methodology for indigenous need is adopted. Housing opportunities affordable to low and moderate income households provided by the Township subsequent to 1980 total 441 units. Thus depending upon the figures used Parsippany has provided 193 units, 184 units or 81 units of low and moderate income housing over and above its fair share quota. As such the Township has no fair share obligation at this time.

EXISTING HOUSING STOCK  
TOWNSHIP OF PARSIPPANY-TROY HILLS

<u>Housing Type</u>	<u>Housing Units</u>	<u>Percent of Total Housing Units</u>
Single Family	10,726	60%
Garden Apartments	6,946(1)	40%
Total	17,672(2)	100%

Single Family Housing Units<sup>(3)</sup>

<u>Lot Size</u>	<u>Housing Units</u>	<u>Percent of Total Single Family Housing Units</u>
1/4 Acre or Less	4,513	42%
50' Lot Width or Less	1,281	12%

- (1) Township Housing Department
- (2) 1980 Census
- (3) Existing Land Use Survey  
William F. Masters, Jr.  
September 1983

7. SPECIFICATION OF THE ISSUES TO BE DETERMINED:

- a. What is the definition of Region under Mt. Laurel II?
- b. In determining a Region under Mt. Laurel II, does the statement of a procedure for that purpose as announced by the Supreme Court, preclude adoption and use of alternative procedures for determining Region?
- c. What are all factors to be considered in determining a Region under Mt. Laurel II?
- d. How precise and timely must data be in order to be sufficiently precise to satisfy the requirements established by the Supreme Court in Mount Laurel II?
- e. Is the data adopted and used by the Plaintiff's and the Court's experts sufficiently precise to satisfy the Supreme Court requirements?
- f. What are relevant factors to be considered in determining regional need?
- g. In determining fair share allocation, what credit should be given to a municipality for residential units previously constructed which qualify as low or moderate housing units?



h. What are all criteria to be utilized in determining whether vacant land is developable for purposes of satisfying Mt. Laurel II allocations?

i. Would failure to acknowledge prior provisions of low and moderate income housing units in determining a fair share allocation under Mt. Laurel II force upon Parsippany-Troy Hills a constitutionally impermissible burden in violation of the New Jersey Constitution and the Constitution of the United States.

j. Must Plaintiff establish a Region falling within the definition of Region as announced in Mt. Laurel II in order to establish a prima facie case against the defendant municipalities?

k. Are plaintiff's proposed regional need determination and allocation methods consistent with guidelines and holdings of Mt. Laurel II?

l. Are the plaintiff's models and methods unreasonable, arbitrary and capricious, and therefore irrelevant as a matter of law?

m. Has Parsippany-Troy Hills met its burden of providing a fair share of low and moderate income housing in view of its prior action and efforts?

n. If Mr. Mallach is not a licensed professional planner of the State of New Jersey, should he be disqualified and not permitted to testify, particularly on the issue of the State Development Guide Plan.

3-4. FACTUAL AND LEGAL CONTENTIONS:

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

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

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

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

o. Do the New Jersey Rules of Evidence, particularly R. 19 through 22, R. 56 through R. 63 et seq. preclude certain of the proffered expert testimony.

p. Has Parsippany-Troy Hills satisfied its constitutional obligation regarding low and moderate income housing by reason of having provided such housing in the past and by its continued provision of such housing.

q. Is the consensus methodology for determining Region and Regional need, particularly the methodology for indigenous need, consistent with Mt. Laurel II and/or reasonable planning considerations.

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

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

Very truly yours,

QUEALE & LYNCH, INC.



John J. Lynch

cc: Donald Ferguson



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

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

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

Very truly yours,

QUEALE & LYNCH, INC.



John J. Lynch

cc: Donald Ferguson

0-M.O. 3

QUEALE & LYNCH

INCORPORATED

PROFESSIONAL PLANNERS AND HOUSING CONSULTANTS

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

June 3, 1984

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PLEASE REPLY TO:

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

Re: Fair Housing Council Suit  
Mallach Report on Growth Area

Dear Herb:

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

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

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

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

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

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

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

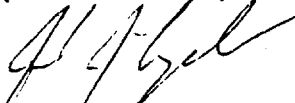
5. The section on Planning and Zoning points out that the township shows much of the area along Route 46 for higher intensity development, and that this pattern was reflected in the 1975 Master Plan. Several years ago the township embarked on an update of the Master Plan, and in so doing it noted that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

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

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

Very truly yours,

QUEALE & LYNCH, INC.



John J. Lynch

cc: Donald Ferguson

D-M.O.-4

QUEALE & LYNCH

INCORPORATED

PROFESSIONAL PLANNERS AND HOUSING CONSULTANTS

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

PLANNING REPORT

Morris County Fair Housing Council v. Mt. Olive

Prepared for the Township of Mount Olive

October, 1983

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PLEASE REPLY TO:

  
John J. Lynch, PP #19, AICP

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

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

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

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

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

...continued

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

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

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

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

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

...continued

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

...continued

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

\* \* \*



MEMORANDUM 3-83

DATE: March 17, 1983

TO: Mount Olive Planning Board

FROM: Queale & Lynch, Inc.

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

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

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

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

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

...continued

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

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

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

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

...continued

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

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

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

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

\* \* \*

FACTUAL AND LEGAL CONTENTIONS

OF

DENVILLE TOWNSHIP

The factual and legal contentions of Denville Township are as set forth in the previously submitted expert reports and affidavits of fact witnesses. The defendant has been constrained in providing housing opportunities due to numerous environmental constraints as well as a court imposed sewer ban, which is still in place. The Rockaway Valley Sewage Authority has under construction a new sewer plant which will add capacity to all its member communities, including Denville Township, commencing in 1986. The ability therefore of the defendant, Denville Township to provide additional housing for low and moderate income people is limited by its ability to provide sewage disposal capacity. In addition, there are severe environmental constraints including steep slopes, which limit the amount of vacant developable land which would be suitable for high density low and moderate income housing.

January 24, 1984

**SUMMARY OF POSITION ON  
REGIONAL FAIR SHARE  
AND  
ADEQUACY OF ZONING  
TOWNSHIP OF MONTVILLE  
MORRIS COUNTY FAIR HOUSING SUIT**

**REGIONAL FAIR SHARE**

Montville Township has followed a seven (7) step procedure in establishing its regional fair share housing allocation. The procedure and results thereof are summarized below.

- I. Housing Region. Montville's housing region was established on the basis of a trip to work methodology stemming from the assumption that there is a direct relationship between job opportunities and the housing market and that people will seek employment within reasonable travel distances of their homes or will locate their residences within reasonable travel distances of their jobs.

The proposed housing region was established utilizing a 30 minute travel time from the Township and applying varying travel speeds depending upon the type of roadway. The 30 minute travel time was selected as a reasonable maximum, again based on statistical data available from the 1980 U.S. Census. Energy efficient objectives of the Municipal Land Use Law and economies to lower income workers also entered into the selection of 30 minutes.

The resultant housing region for Montville Township, utilizing the foregoing criteria, is shown on the accompanying map. It consists of 84 municipalities in 8 counties, encompasses approximately 614 square miles and contains 1,862,330 persons. The region includes the following:

- 8 Municipalities in Bergen County
- 22 Municipalities in Essex County
- 2 Municipalities in Hudson County
- 33 Municipalities in Morris County
- 13 Municipalities in Passaic County
- 3 Municipalities in Somerset County
- 1 Municipality in Sussex County
- 2 Municipalities in Union County

II. Projection of Employment. Phase II involves a projection of employment within the previously established housing region. The basis of the housing allocation methodology is that a direct relationship exists between job growth in an area and housing need or demand in that area. If job growth in the housing region is known, it then becomes a simple task, through statistical evaluation, of determining housing need.

New Jersey Department of Labor and Industry data on covered jobs was used in projecting employment. The projected total jobs of Montville's housing region for the year 1990 is 68,092.

III. Conversion of Jobs to Housing Units. Having projected growth in employment, the next step is to determine the relationship between jobs and housing units. According to the U.S. Census, 0.43 new housing units were created for each new job between 1970 and 1980. Applying the average of 0.43 new housing units for each new covered job to the 68,092 additional jobs results in 29,279 additional housing units needed in the Township's housing region in 1990.

IV. Determination of Housing Unit Need by Income Range. The next step in the allocation process involves conversion of the projected total housing need of the Region to various income categories as related to the median household income of the Region. This figure is \$20,147. Application of the percentage distribution of incomes in the housing region results in 6,090 low income units and 5,563 moderate income units.

V. Township Share of Prospective Regional Housing Need. In determining Montville's share of the prospective housing need, three criteria were utilized. These were Montville's share of the regional growth area, employment growth and vacant developable land. Equal weight was given to the three criteria and, when

averaged and applied to the regional prospective need results in a prospective need in Montville of 382 units (200) low income and 182 moderate income).

- VI. Present Housing Need. It was determined that insufficient reliable data was available in order to determine present regional housing need and that extensive research needed to determine that need precisely could not be performed within prevailing time constraints. Lacking such information, an arbitrary 50% of the prospective housing need was assumed to represent the present need. This number is 191 units.
- VII. Total Housing Need. The combined present and prospective housing need for the Township for the year 1990 is estimated to be 573 units. Assuming the distribution of these units in low and moderate income categories to be the same as for prospective need, this total figure would consist of 299 low income units and 274 moderate income units.

#### ADEQUACY OF ZONING

The following statements summarize Montville's position as to its ability to meet a fair share obligation and the efforts it has made to provide high density housing.

1. 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.

2. The densities established in the Township's zoning regulations for the various categories of multi-family housing are as follows:

Two-Family Dwelling	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.

A detailed discussion of the Township's multi-family housing sites is contained in the planner's report dated 10/3/83.

3. 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.



4. 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. These investigations are summarized in the planner's report dated 10/3/83.

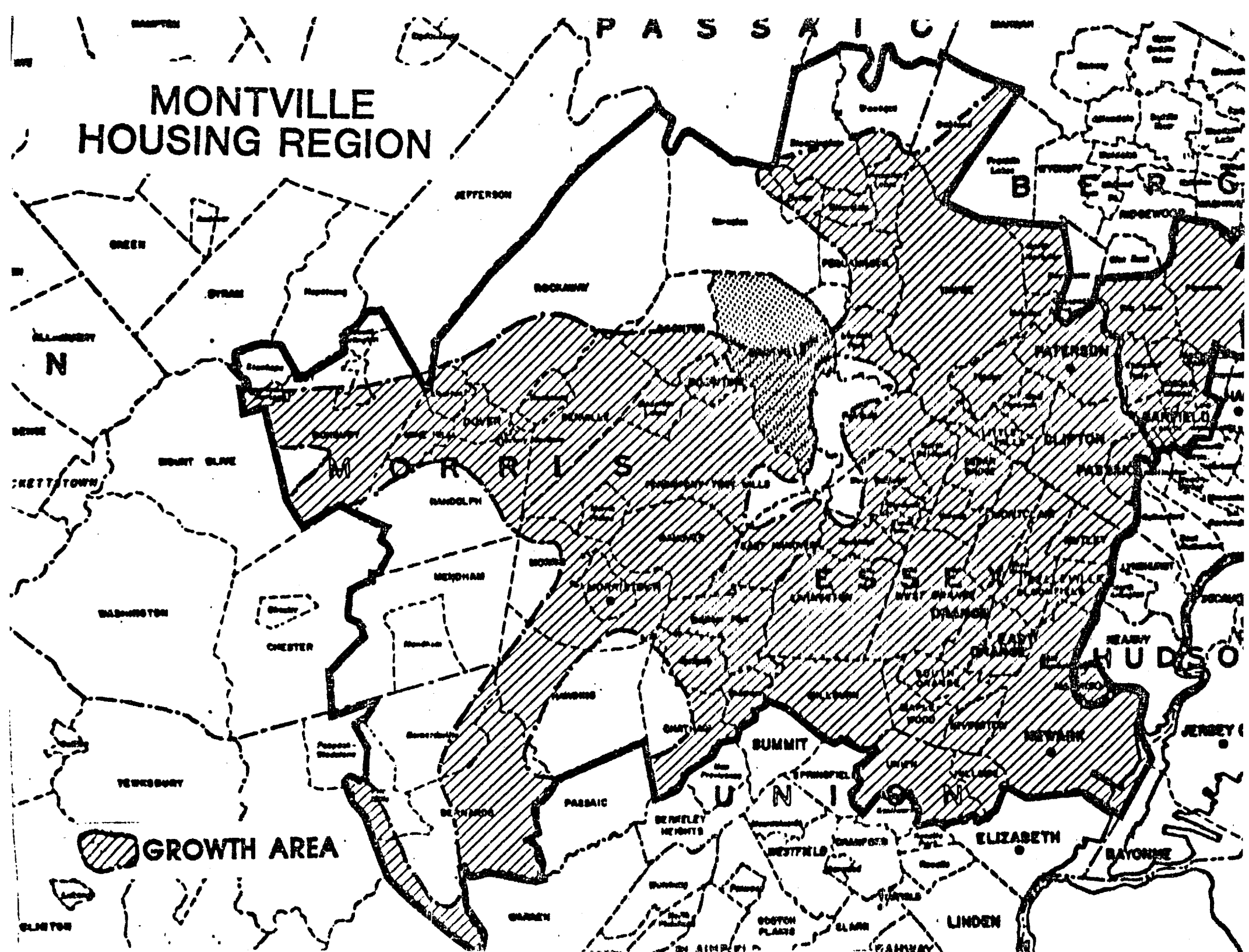
Although previous investigations indicate that substantial vacant acreage exists, very little of this land is suitable for intensive development and no where is there any vacant land that could sustain substantial densities, even given the availability of sanitary sewers.

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, it is concluded 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.

# MONTVILLE HOUSING REGION



# Roxbury

## FACTUAL AND LEGAL CONTENTIONS

Roxbury Township has and is providing for its fair share of low and moderate income housing in accordance with Mt. Laurel II and its Land Use Ordinances provide for an appropriate variety of housing and comport with the terms of N.J.S.A. 40:55D-1, and Article 1, paragraphs 1 and 5 of the New Jersey Constitution. Roxbury Township has attempted to, and has provided for, a reasonable fair share of low and moderate income housing, as well as a variety of housing. Roxbury Township has been a housing donor in the region for a substantial number of years. Roxbury Township is located in Morris County, New Jersey, and abuts Sussex County. It should not be included in the region postulated by plaintiff or in the consensus region. In establishing a region for the allocation of housing, the region should encompass a housing market area in the absence of proof of special circumstances requiring an expansion of such a region. Additionally, any methodology employed for the establishment of a region for housing allocation purposes should encompass a study of the existing housing stock in all political subdivision located within the region, and an assessment of each political subdivision ability to meet that need. Additionally, factors such as infrastructure, vertical construction and conversion of existing building, should be considered.

Roxbury Township is in a smaller region than region 11 postulated by plaintiff and the consensus region. There is no provision in Mt. Laurel II to have a bifurcated type of region

based upon present need and another region based upon prospective need. Roxbury Township should receive credit with reference to its existing housing stock constructed subsequent to Mt. Laurel I and prior thereto. Roxbury Township has provided and continues to provide a substantial amount of housing at moderate income levels and lower.

The criteria used by plaintiff and the consensus methodology to establish their postulated regions and to include Roxbury Township in that region, are arbitrary, capricious, non-specific, extremely general, and contrary to the very purposes of zoning as set forth in N.J.S.A. 40:55D-2.

The characteristics of Roxbury Township precluded from being in a region as defined by plaintiff and the consensus report. A gross analysis as set forth in the Abeles Report and Consensus Report is entitled to no presumption of validity; further where Roxbury has, through the adoption of its master plan and recent land use ordinances provided for set-asides and other types of low and moderate income housing, its actions have been reasonable and comport with the dictates of Mt. Laurel II. Roxbury Township is in the drainage basin of three major rivers and is within the jurisdiction of the New Jersey Department of Environmental Protection in three different river basins. These waters are classified as FW-2. It is improbable that dense development will be permitted in these areas, and in fact, it should not be permitted. The treatment capacity in the basins is at "limit".

On-site sewage disposal is not a realistic alternative; if such systems fail, a central sewage disposal system would have to be constructed; however, treatment and plant capacity and stream assimilative capacity will not be available.

Effluent discharge of an on-site disposal system affects the allowable flow to regional and/or municipal sewage plants. If there is a population density of over ten persons per acre, it is recommended that central sewers be required. (PRM 78-9 USEPA). If there are less than 1.7 persons per acre, central sewers are not required. If lot sizes are less than one-half acre, central sewers should be required. If there is no public water supply, the lot should be one acre or larger.

The soil conditions in Roxbury limit development potential and density. Many areas where septic systems could be adequately located are being used for public water supplies by wells. Novel types of sewage treatment systems through innovative technology, should not be undertaken since streams have reached limit, and in the event of failure, the units would have to be abandoned.

Dense development must be limited, especially in areas such as Roxbury, which is in the headwaters of major drainage basins. Such areas should be conserved. Development should be concentrated in the areas with existing infrastructure. Priorities should be given to development of, or rehabilitation of existing centers of population. Dense development in Roxbury Township, in many areas, would be contrary to the spirit of, or in violation of certain

ROXBURY TOWNSHIP

SUMMARY AS TO REGIONAL  
FAIR SHARE

REGION:

Roxbury Township has examined five regions, since it is not certain what region may ultimately be established as a result of this litigation. Roxbury is in the process of examining the four county region established by the Rutgers Report. Since the exact region has not yet been established, the following have been reviewed through the experts employed by Roxbury:

1. Journey To Work: Established by a 45 minute drive time. This region includes 151 municipalities in the following counties - Morris, Essex, Sussex, Passaic, Warren and Somerset.
2. Four County Region including Morris, Essex, Somerset, and Union.
3. Eight County Region including Morris, Essex, Somerset, Union, Passaic, Sussex, Warren and Hunterdon.
4. D.C.A. Region 11 espoused by the plaintiff was also reviewed, which includes Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset and Union.
5. One County Region including Morris County.

Regional need for low and moderate income housing for each region was examined in order to check one against the other and establish a reasonable determination as to Roxbury's "fair share" as follows:

Regional Need to 1990 for:

- |   |              |
|---|--------------|
| 1. Journey to work region<br>(including 151 Municipalities)   | 16,808 units |
| 2. Four County Region (including<br>Morris, Essex, Somerset & Union)  | 10,119 units |
| 3. Eight County Region (including<br>Morris, Essex, Somerset, Union,<br>Passaic, Sussex, Warren and<br>Hunterdon) | 23,111 units |
| 4. D.C.A. Region 11   | 23,526 units |
| 5. One County Region  | 4,788 units  |

Items 1 thru 5 include the need for all units, market units as well as low and moderate.

Additional portions of the land are committed to development.

Using a methodology relating to 1) substantial ratable growth and 2) substantial new employment and a one county region, one can reasonably conclude that Roxbury's prospective fair share thru 1990 is zero.

EXISTING HOUSING STOCK:

Based upon 1979 values, since the 1980 census is based on 1979 salaries, Roxbury has and is providing for its fair share. Roxbury has traditionally been a housing donor to whatever region is ultimately established. An analysis of existing housing units in Roxbury Township reveals that Roxbury has as of 1979:

1. 711 units or 12.8% of its entire housing stock with market values of less than \$35,400.00.
2. 973 units or 17.4% with market values between \$35,400.00 to \$49,560.00.
3. 1,040 units or 18.7% with market values between \$49,561.00 to \$59,000.00.

In 1979, forty-eight and nine-tenths (48.9%) of all units in Roxbury Township had values of \$59,000.00 or less.

The township had 4,549 covered jobs in 1980, and 4,892 in 1981. It had 615 rental units and 5,203 "for sale" units. Thus, Roxbury has more units than jobs, which accounts for its being a housing donor, and based upon values; a donor of low priced units. Additionally, the vacancy rate of rental units in Roxbury (1980 census) was 13%; far above the State and County averages and substantially above the norm generally accepted which is about 5%.

Additionally, Roxbury Township, prior to the advent of Mount Laurel had provided for and continues to provide for low and moderate income housing. In the B-1 zone, apartments of 600 square feet are permitted; and prior ordinances permitted development of dwellings on 5,000 square foot lots. Many units were constructed and exist on 5,000 square foot lots in Roxbury. Even prior to 1946, twenty-two two-family dwelling units were constructed by Hercules Powder Company, which two-family units were subdivided in 1968. In addition to the 5,000 square foot lots and construction of 2-family dwelling units, variances have been granted for low-priced units as follows:

A range of need for low and moderate housing was established to 1990 using the various regions as follows:

1. Journey to work:	161 units
2. Four County Region:	99 units
3. Eight County Region	176 units
4. Region 11	112 units
5. One County Region	-0- units

Using a methodology relating to growth area and the percentage of growth area in the region - depending upon the region which is ultimately established for Roxbury; its fair share would range between 99 units to 176 units thru 1990. Pursuant to the State Development Guide Plan, Roxbury Township is partially within the growth area. The township has a total of 21 square miles; 15.426 of which are in the growth area and 5.574 are in a limited growth area. Of the 15.426 square miles in the growth area only 972.78 acres, or less, consist of vacant land. Of the land in the "growth area" much falls into the categories recognized by the State Development Guide Plan as not suitable for development:

1. Lands designated as recreation and conservation;
2. Flood plains;
3. Steep Slopes;
4. Wetlands

Much of the land has been developed; is subjected to environmental constraints, and some rather unusual existent uses such as:

1. Hercules Powder Company which manufactures and tests munitions;
2. Soil Mining;
3. County golf courses;
4. Airport;
5. Relay facility for AT & T;
6. Lake Hopatcong and Lake Musconetcong State Parks



1. Permitting two-family dwelling units above a commercial use on Route 46 in a B-2 zone in October of 1983.
2. Converting a structure in a B-1 zone to four small units.
3. Converting a one-family home to a two-family home in a B-1 zone in October of 1983.
4. Converting a one-family home to a two-family home in February of 1979.
5. Creation of two apartments in a B-1 zone in September of 1970.
6. Conversion of a school to eight apartments in October of 1970.
7. Creation of two apartments in a B-1 zone in May of 1975.
8. Creation of two apartments in a B-1 zone in July of 1972.
9. Creation of two apartments in a B-1 zone.
10. Conversion of a structure to 9 apartments in June of 1962.
11. Conversion of a single-family dwelling to a two-family dwelling in October of 1983.
12. Creation of two apartments over stores in November of 1976.
13. Creation of apartments over stores in April of 1982.

Other applications are pending before the Zoning Board at the present time.

In addition to variances and prior zoning for 5,000 square foot lots and apartments of 600 square feet, Roxbury has been involved in the Morris County Program for Rehabilitation of Housing, where units providing for both large families (5 or more persons) and small families (4 or less persons) with incomes ranging from very low (50% of median and less); to low (80% of median or less); have obtained low

cost or no cost loans to rehabilitate their units. Rehabilitation loans have been provided for forty-six such units ranging in value from \$8,500.00 to \$45,100.00. Four new loans have been approved and three are presently awaiting approval by the county agency. This program was initiated by Roxbury in 1977.

In addition to the fifty-three rehabilitation units; \$8 rental assistance is provided in Roxbury and at present 39 low income families are receiving rental assistance through that program. Between \$8 rental assistance and rehabilitation Roxbury has dealt with some 92 low and moderate income families' housing needs.

Roxbury Township through its existing housing stock has provided a large number of low and moderate income dwellings through resales as follows:

In 1978, as to Class 2 properties, there were 5,239 residential type properties with market values as follows: (Class 2 properties are those having 4 units or less)

<u>Market Price</u>	<u>No. of Properties</u>	<u>% of Total</u>
a. up to \$30,000	627	12.0
b. \$30,001 - \$42,000	902	17.2
c. \$42,001 - \$50,000	<u>1,016</u>	<u>19.4</u>
	2,545	48.6

Adjusting those figures to reflect properties with excess land which can be subdivided, and parcels with more than one dwelling structure, and adjusting for properties priced above \$50,000 with more than one dwelling unit, shows:

<u>Market Price</u>	<u>No. of Properties</u>	<u>% of Total</u>
a. up to \$30,000	661	12.5
b. \$30,001 - \$42,000	930	17.6
c. \$42,001 - \$50,000	<u>1,029</u>	<u>19.5</u>
	2,620/5,273 =	49.6%

Adjusting to reflect total living units on the above properties results in the following:

<u>Market Price</u>	<u>No. of Properties</u>	<u>% of Total</u>
a. up to \$30,000	661 + 50 = 711	13.2
b. \$30,001 - \$42,000	930 + 43 = 973	18.1
c. \$42,000 - \$50,000	1029 + 11 = <u>1,040</u>	<u>19.3</u>
	<u>2,724</u>	<u>50.7%</u>

(Total Class 2 units would be 5,273 + 104 = 5,377)

The above do not include any dwelling units on commercial properties or any units not recorded in the assessor's records.

Using the State Director's Table noted for 1973, 1974, 1977 and 1978; and the State Director's list of "Useable Sales" for 1975, 1976 and 1979, the following reflects home sales in Roxbury of existing housing from July 1 to June 30 of each year shown.

<u>SALES PRICE</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>
1. Total Up to \$30,000	23	29	22	43	53	23
2. Total Up to \$40,000	97	94	83	125	156	73
3. Total Up to \$50,000	193	197	152	188	225	107
4. TOTAL RESALES	392	341	243	264	283	129

5. Analysis of New Home Sales for the period July 1977 thru June 1978 show:

13 sales at \$50,000 or below;  
12 sales at \$50,001 to \$55,000

6. Analysis of all sales for the period July 1978 thru June 1979 show:

Total sales up to \$33,000 = 17  
Total sales up to \$44,000 = 70  
Total sales up to \$55,000 = 141

7. Percentage of resales up to \$55,000 = 42.5%  
Percentage of resales up to \$50,000 = 32.1%

Over 50% of all housing units in Roxbury Township have a true value of \$50,000 or less as of 1978.

Much of Roxbury's "fair share" need will be met and has been met by resales.

In 1978 6% of resales were under \$30,000; 19% were under \$40,000; 25% of Roxbury's resales were within low and moderate income limits.

#### ZONING AND PLANNING:

The B-1 zone permits apartments of 600 square feet. The R-4 zone permits dwellings on lots of 7,500 square feet. The R-5 zone permits five units per acre; two family and four family units. The R-6 zone permits 6 units per acre; two family and four family units. The 1983 revision of the master plan contains as a portion of its land use element a new R-6 zone which would provide an additional three hundred multi-family units. Recently enacted amendments to the zoning ordinances provide for set-a-sides in the R-5, R-6 and OB-2 zones.

#### DEVELOPMENTAL LIMITS:

Roxbury Township lies in the headwaters of three major river basins which are sources of potable water under the jurisdiction of the N.J.D.E.P. The water courses in Roxbury are classified as FW-2, trout producing streams; with limited assimilative capacity. Even with the highest level of treatment only limited volumes of effluent can be discharged into the streams.

Three sewerage plants service Roxbury Township. The Musconetcong Regional Plan which services other municipalities as well as Roxbury is at capacity. If improvements are made to this plant pursuant to a 201 facilities plan study, which may or may not occur, Roxbury could only discharge into that plant an additional 100,000 gallons per day. In this drainage basin, therefore, after, and if, improvements are made, only 357 additional units could be serviced by public sewer.

In the Upper Loamington River Basin Roxbury operates the Ajax Terrace Sewage Plant. This plant has no uncommitted capacity. A similar 201 facilities plan is pending as to this plant. If this plan were approved by the N.J.D.E.P. and the U.S.E.P.A., only 1,012 additional units could be serviced.

The Skyview Treatment Plant is also at capacity. As to this plant, the N.J.D.E.P. has required it to be upgraded at substantial expense because of the limited assimilative capacity of the receiving stream. No additional gallonage will be available as a result of this upgrading of the plant.

A small portion of Roxbury is within the jurisdiction of the Rockaway Valley Sewerage Authority. No sewer lines even exist in this portion of Roxbury and it is doubtful if any gallonage will be allocated to Roxbury except to serve existing developments if sewer lines are ever built.

No funds are available in the foreseeable future to increase the capacity of the plants servicing Roxbury Township. If funds were available through the U.S.E.P.A. these funds would be used for existing built-up areas; and not to service new development.

Other municipalities and governmental agencies have received funding, constructed sewage plants and have excess capacity. Some of these plants in the general area of Roxbury Township are operating at only 50% of capacity. Large scale and high density development should be located in those areas which have unused sewage capacity. This would place development where the infrastructure presently exists.

The use of septic systems on small lots in Roxbury Township has already caused problems, and the use of novel types of waste water treatment in the headwaters of three major river basins could well cause pollution of major sources of water supply in the State of New Jersey. Novel types of treatment such as discharging waste water into soils are not well understood and there is an insufficient data base to determine the effectiveness of such systems or their reliability.

The construction of dwelling units in Roxbury at high densities without central sewage is not practical. There are few parcels of land in Roxbury of sufficient size to accommodate large scale development with on-site sewage disposal. Furthermore, such on-site systems if located in Roxbury because of their cost and the use of expansive land areas will not provide low and moderate income housing; and pose a threat to major water supplies in the State.

Under the circumstances present in Roxbury; as to limited potable water supply; limited sewage capacity; and other constraints, Roxbury Township has and is supplying its "fair share" of low and moderate income housing through present zoning, rehabilitation, \$8 rental subsidies, small sized lots, filtering, housing conversions through variances, and present zoning. These processes provide for both the prospective and indigenous need for Roxbury Township.

## FACTUAL AND LEGAL CONTENTIONS OF ROCKAWAY TOWNSHIP

### I. Region:

Rockaway Township, along with certain other defendant municipalities, has submitted a report prepared by P. David Zimmerman which sets forth Rockaway Township's position concerning delineation of a region. The region advanced is that consisting of the four counties of Morris, Essex, Union and Somerset. This 4 county region is coextensive with the Bureau of Census' Newark Standard Metropolitan Statistical Area (Newark SMSA Region). This region constitutes a true housing market area - the primary criterion enunciated in the Mount Laurel decisions.

The Newark SMSA Region satisfies four criteria for testing the appropriateness of a housing region: (1) sharing of housing needs, i.e. a balanced mix between areas with high housing need and few resources and areas with opposite characteristics; (2) Housing market interdependence, i.e. a high correspondence between job location, choice of housing location, and suitable transportation and service facilities; (3) Availability of data, i.e. the availability of reliable, ongoing socio-economic data by which to judge market forces affecting housing and jobs, demographic profiles and other relevant considerations necessary in order to plan in a rational, informed and effective way; and (4) Acceptance by other governmental agencies.

The recently published report prepared by Rutgers' Center for Urban Policy Research adopts a four county region comprising Morris, Essex, Union and Sussex counties. This region coincides with the new Census Bureau Primary Metropolitan Statistical Area (PMSA) and differs from the Newark SMSA Region in its substitution of Sussex County in place of Somerset County. The Newark SMSA Region is considered by Rockaway Township to be a more suitable housing region. A review of the physical boundaries of the Newark SMSA Region shows it to be more compact in that there is closer proximity between sending and receiving areas. This closer proximity enhances the likelihood that a true housing market relationship does and will exist than is the case where sending and receiving areas are physically separated by long distances.

The Newark SMSA Region demonstrates a high correspondence between those who live in the region and those who work in the region. Of those who reside in Morris County, 74.5 percent work within the Newark SMSA Region. Overall, 69.2 percent of people who live in the Newark SMSA Region also work in that region. Inasmuch as proximity to job location is the

most important factor in housing choice decisions, this high correspondence indicates that the Newark SMSA Region represents a true, mutually competitive housing market. Obviously, geographic expansion of the region leads to an increase in the above percentages. However, even when using the DCA 8-county region, the correspondence between job and housing location increases only slightly. On the other hand, commutation time between points in the region and physical separation of sending and receiving areas increases so dramatically as to belie any contention that the 8-county region represents a realistic competitive housing market.

The present need region advocated by the Court's expert, Carla Lerman, is, by her own admission, not a housing market area. Mount Laurel II requires that any region adopted constitute a housing market area.

## II. Regional Housing Need.

The basic method used by Rockaway Township to calculate prospective regional housing need is to convert overall population growth projections to a household growth projection and then to determine the percentage of this growth which can be expected to have low and moderate income levels.

In July 1983 the New Jersey Department of Labor published four sets of population projections for the State, representing four different models for projecting population growth. Two of these models, both labeled "regression" models, are not considered appropriate for planning for housing need. The Zimmerman report advocates an averaging of the remaining two models. They are: the ODEA Economic/Demographic Cohort Model, a model which factors in as a major element job growth in the area under consideration and the ODEA Demographic Cohort Model.

The 1990 population projection for the Newark SMSA Region is 1,951,750. This represents an increase of 32,341 from 1980 population levels. The number of households represented by this increase is calculated by county using each county's 1980 average household size. In the opinion of Mr. Zimmerman, the recent decrease in average household size has probably reached a bottom point and use of any lower figure would be highly speculative. Similarly, the percentage of new households of low and moderate income is determined using 1980 percentages by county. The average percentage of low and moderate income households for the region is 38.3 percent, which can be expected to remain relatively constant.

Within the Newark SMSA Region, these calculations show a net decrease in 1990 households in one county - Essex. The



total 1990 increase in low and moderate income households for the remaining counties of Morris, Union and Somerset is 12,004. This prospective regional need is then allocated among the counties in the region according to their respective percentages of vacant developable land located in SDGP Growth areas. Morris County accounts for 46.37 percent of that land. Morris County's allocation of the regional increase in low and moderate income households is thus 5,566 units. Morris County's allocation of regional present need is 2,293 units. The total present and prospective need for lower income housing allocated to Morris County is thus 7,859 units.

Allocation of Morris County's need for low and moderate income housing units was undertaken by Robert Catlin and Associates. A straight-forward allocation methodology was used, based upon the proportion of SDGP designated "growth" area in the municipality compared to that of Morris County as a whole. Rockaway Township contains 9.326 square miles in the "growth" area compared to 182.943 square miles for Morris County, or 5.1 percent. The result is an allocation to Rockaway Township of 401 new units of lower income housing, with this need approximately evenly divided between low income units and moderate income units. It should be noted that no reliable data exists for comparing vacant developable land within "growth" areas at the municipal level. It is not considered necessary to factor in relative employment growth since this parameter is expected to be relatively uniform within Morris County.

### III. Indigenous Housing Need.

The physical housing need for indigenous lower income households is a composite of three factors: (1) Housing vacancy rates; (2) Overcrowded housing; and (3) Dilapidated housing.

As regards vacancy rates, Rockaway Township's vacancy rate for owner housing is 1.49 based upon 1980 Census figures. The Township's vacancy rate for rental housing is 6.93 percent. Both of these numbers compare favorably with accepted criteria for normal housing market operation of 1.5 percent and 5.0 percent, respectively.

Overcrowded housing is commonly defined to include units occupied by more than one person per room. The 1980 Census data indicates 82 of Rockaway Township's 6,251 occupied housing units are occupied by more than one person per room and are therefore overcrowded.

The most recent figures on dilapidated housing are those published by the Department of Community Affairs in 1975 in its report, "An Analysis of Low and Moderate Income Housing

in New Jersey." This report discloses 156 dilapidated units in Rockaway Township. The total present physical indigenous need is thus 238 units.

In addition to physical need, indigenous housing need is also comprised of a financial need component. This component is the number of lower income renter households paying 25 percent or more of their income for rent, a total of 270 such households in Rockaway Township, according to 1980 Census data.

To account for the inevitable overlap between the component categories of physical need and financial need, an overlap factor of 25 percent is applied to the total of physical and financial components of 508 units to yield a total indigenous housing need of 381 lower income housing units in Rockaway Township.

The total of present and prospective regional and indigenous housing need for lower income units in Rockaway Township to the year 1990 is 782 housing units.

#### IV. Housing Stock and Environmental Constraints.

A large proportion of Rockaway Township's existing housing stock started out as lakeside bungalows constructed on very narrow lots. Many of these lots have above average depth, only because they were laid out from the nearest street to the lake's edge. These homes have historically sold at well below county averages and comprise an existing stock of housing affordable to moderate to middle income residents. Rockaway Township also actively sought out and secured federal subsidies for low and moderate income housing. Presently in process in the Township are plans for two federally funded lower income housing projects, a 40 unit project for lower income families and a 75 unit project for lower income elderly, handicapped and disabled persons. These are slated for construction within the next several years.

Rockaway Township's geographic setting is one of mountainous terrain and lakes. Most of the northerly two-thirds of the Township lie outside the SDGP "growth area", partly because of the immense development problems associated with that part of the Township and partly because a large percentage of the land area is devoted to watershed for the Newark and Jersey City reservoir system. Within the "growth area", much of the vacant land is impacted with excessive slopes, wetlands, seasonal high water table, uncharted iron mine shafts and tunnels, and severe septic disposal limitations. Few, if any, parcels of land are completely unaffected by such constraints. As a result, sound land use

planning calls for low overall densities and judicious use of clustering in order to accommodate the large proportion of undevelopable land which exists within each vacant tract. These various environmental constraints and their locations have been identified and will be presented in exhibit form.

A further development limitation operative in Rockaway Township is that imposed by the present sewer use ban in Morris County and, ultimately, by the final sewerage flow allocations set by the Rockaway Valley Regional Sewerage Authority. This final allocation is a function of the maximum stream assimilative capacity of the Rockaway Valley Basin and cannot be altered by Rockaway Township. Rockaway Township's final flow allocation is 4.9 million gallons per day, of which 0.5 mgd is to be utilized by the Picatinny Arsenal. Of the remainder, 3.2 mgd is presently committed, leaving only 1.2 mgd for future development of all kinds.

Alternative on site sewerage disposal methods are particularly unsuited for use in Rockaway Township because of the diffuse presence of the aforementioned environmental constraints, the reliance by the Township upon its already polluted underground aquifer for potable water supply, and the fact that the Township is a watershed area for the extremely sensitive Buried Valley aquifer-one of the few to be designated a sole source aquifer. Alternative wastewater treatment systems, which rely upon soil assimilative capacities, are poorly understood, are still experimental in nature, and present unacceptable and irreversible environmental risks. Land use planning in Rockaway Township, or in any similar geographic area, should not rationally be predicated on the alleged availability of spray irrigation and similar wastewater treatment techniques unless and until their efficacy and safety can be conclusively established.

The sensitivity of Rockaway Township's groundwater to environmental pollution has, unfortunately, already been demonstrated. In 1980, significant levels of carcinogenic pollutants began appearing in the Township's municipal well system. This necessitated closing two of three wells and has since required constant and very expensive filtering of all of the Township's potable water in order to render it fit for human use. This is a major problem. The fact that it was caused by relatively recent surface pollution with the Township graphically proves the need for extreme caution when applying new pollution treatment technologies in this area.

presidential orders, i.e., executive order 11988, 11990. Improper waste water treatment in Roxbury Township, being in the headwaters of a number of drainage basins, would have statewide ramifications. At present, Lake Hopatcong, which is partially located in Roxbury Township, is in a state of eutrophication. On-site sewage disposal because of subsurface geological and water characteristics, is undesirable, if not dangerous. At present, there are numerous septic system failures in Roxbury. Even existing development violates the present provisions of Chapter 199, N.J.S.A. 58, and N.J.A.C. 7. Larger lot sizes are required to provide adequate health protection. At the present time, Lake Hopatcong itself has extensive algae blooms and has both nitrates and phosphores in the lake.