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Standards for the provision of
low + moderate income housing
pursuant to the US Supreme Ct.
Mt Laurel II Decision.

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REVIEW AND COMMENT

STANDARDS FOR THE PROVISION OF LOW AND MODERATE
INCOME HOUSING PURSUANT TO THE NEW JERSEY
SUPREME COURT MT. LAUREL II DECISION

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FOR: NEW JERSEY PUBLIC ADVOCATE

REVIEW: QUARRY HILL ASSOCIATES, YARDLEY, PA
BY: KENNETH J. BUTKO, PP, AICP

The New Jersey Supreme Court in Mount Laurel II does not, as the author of this report suggest, provide municipalities with "explicit standards" with which to solve their Mount Laurel Obligation (MLO). The Court rather suggests broad guidelines and potential programs that can be adapted to local needs instead of providing specific products for local use..

The title of this report for the Public Advocate leads the reader to believe that certain standards will be developed based upon the Court decision. A standard, according to Webster, relates to specific criteria upon which all members of a class can be measured for accuracy. Perhaps "guidelines" would have been a more proper title for the report since there are few of what can be called standards contained therein. The report also indicates that its' object is to provide "technical details" and a "detailed technical discussion", however, there appears to be very little of what can be considered technical standards by which to judge New Jersey zoning ordinance performance.

The report of the consultant, Mallach, deals with "realistic opportunity" at the beginning, but confines "realistic" to only those things which can be satisfied through a revision of the local ordinance having as its' key element the provision for mandatory set asides. The Court, however, on page 100 of the Mount Laurel II decision says that realistic refers to the action which a municipality will take that makes it realistic for low and moderate income housing to be built. Obviously all of the potential actions that a municipality may take will not be included in a zoning ordinance, nor will the mandatory set aside process be the only avenue to satisfy a MLO. The Court goes on to say on page 101 that a realistic

opportunity should be one "that is at least sensible for someone to use." It is the contention of this reply report that the author has failed to provide the "explicit standards" promised, and has provided, on the other hand, guidelines that may not be "sensible" in creating the desired result.

ANALYSIS OF THE REPORT:

The author immediately jumps to a mandatory set aside approach as the major solution to the satisfaction of the MLO, however, the Court on page 117 says "these inclusionary devices are to be used (only) when less restrictive alternatives of eliminating restrictive barriers will not produce the realistic opportunity...."

These "less restrictive" alternatives can only be tested empirically by the local government and not by the author's citation of footnotes found in the pages of the Decision, such as Fox and Davis, "Density Bonus Zoning to Provide Low and Moderate Cost Housing." The Court recognizes on page 110 that sole reliance on any one affirmative device may prove in a particular case to be "insufficient to achieve compliance."

Since the author chose to provide one affirmative device, i.e., mandatory set aside zones, that section of his report will now be analyzed:

- (1) If mandatory set asides are incorporated into a local ordinance they should be utilized up to the satisfaction of a MLO and not beyond, otherwise the municipality will begin producing in excess of its' MLO and upset a regional balance for "fair share." The author failed to indicate this problem, furthermore, the 20% figure considered a "reasonable minimum" by the Court in footnote 37, and cited by the author as a goal, is currently under

reconsideration in areas where the mandatory set aside has been used over time.

- (2) The concept of resale price controls flies in the face of one major reason for investing in homeownership, i.e., the hope of an increase in value for the eventual sale, and, move "up the ladder." The author failed to elaborate upon this theory or to mitigate its' impact in any manner, therefore, one can only conclude that people of low and moderate income will not be afforded the same inflationary joys of homeownership as will their more affluent neighbors. In addition, with respect to rental units, the Court says on page 110, "no one suggests that units created by mandatory set asides be exempt thereafter from rent increases...."
- (3) There is no problem with a flexibility in residential mix as long as the developer's selection and placement of units does not depreciate other sections of the project. The author eliminates what he calls "arbitrary percentages" of housing types, but fails to provide a sensible alternative or even define what "arbitrary" means to him.
- (4) Excessive paperwork should be cut down as a cost saving measure, however, local planning boards and zoning boards of adjustment cannot abdicate their responsibility to the whims of a developer. Local controls must be maintained.
- (5) Lower income families require more support services and services nearer their homes than do their above median income counterparts, therefore, it is unreasonable on the part of the author to assume that suburban developments to accommodate MLO families do not have or require non-residential uses, such as , day care centers; drug stores; bus shelters; and the like. In fact, more may be necessary.

- (6) In suburban or rural fringe areas, where there is little or no sewerage capacity to support multi-family housing, it may be necessary to assemble large tracts of land to accommodate treatment methods such as, spray irrigation. The author shows little thought about this situation, especially in Morris County where 35% of its 1980 Census housing units are now using on site disposal.
- (7) The author fails to indicate what reasonable development densities are.
- (8) The author fails to provide justification for the selection of "reasonable open space" percentages.
- (9) The author fails to define what he thinks "excessive improvement standards" are. He apparently failed to consider proper cartway widths for emergency vehicles, snow removal or garbage collection. The report is supposed to contain "explicit standards" with which to evaluate Morris County zoning ordinances, but does not.
- (10) In suburban areas it may not be possible to locate lower income housing near existing infrastructure. The author fails to consider the bonding capacity of local governments to provide new infrastructure. Title 40:55D-42 recognizes a developer's responsibility to pay a pro rata share of "reasonable and necessary" off site infrastructure. Does the author wish it repealed?

In his next section the author continues to look at developments containing the mandatory set aside by recommending certain incentives.

- (1) There is no problem with local government facilitating applications for housing subsidies, however, it must be realized that ex-urban communities, with part time governments may not have the "in house" capability of generating sophisticated applications.

- (2) The suggestion of tax abatement to any developer "as a matter of course" cannot be accomplished without the help of the New Jersey Legislature or the imposition of the Blight Act, but the author fails to mention this. The Fox/Lance formula has been applied in urban areas under redevelopment and usually in conjunction with rental subsidies. It is doubtful if tax abatement alone, without rental subsidies, could carry a project.
- (3) Contrary to the author's wishes, the Governor of New Jersey has declared that economic development, and not housing, be the top priority of Small Cities Community Development Block Grant Funds. Until that philosophy changes, this incentive is moot.
- (4) This is a sensible incentive.
- (5) It is not a sound planning or capital budgeting process to extend infrastructure or utility grid systems into virgin areas as long as there are plenty of "open spaces" within those grids. If existing systems are underutilized, it is cost ineffective to extend those systems. No matter who pays for them.

The author's final section dealing with the mandatory set aside provision contains the following statement:

If, however, a municipality is seeking to meet its fair share obligation through an inclusionary zoning ordinance, that municipality may not zone other parts of the community for development at standards or densities comparable to those of the inclusionary districts, but without an inclusionary requirement. (p 8)

It appears to me that the Court, let alone the buying public, would not be adverse to having the price of housing generally lowered through the use of cost saving techniques. Nevertheless, he treats the subject inconsistently when on page 10 he writes

Be consistent across zones; i.e., the same standard for a unit of a given number of bedrooms should apply in all zones.

The final section of the report is the most successful attempt to provide the explicit standards necessary as criteria for the evaluation of zoning ordinances. The author mentions the elimination of various cost generators in construction, however, some of these costs have been eliminated through the Uniform Construction Code Act and others can be eliminated through additions to the Code.

When speaking to the issue of garden apartments the author suggests that the development zones have neither minimum nor maximum number of units. It would seem highly impractical from a standpoint of planning for schools, public services or any future municipal need, to have zones with unidentified development potentials.

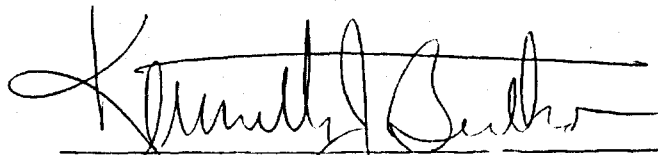
CONCLUSION OF THE ANALYSIS:

The report has substantially failed to provide "explicit standards", but rather provides mostly generalized guidelines which are apparently open to a good deal of subjective interpretation. The report relies upon a 20% mandatory set aside on new construction projects in order to satisfy a MLO. The report fails to consider alternative approaches to new construction. The mandatory set aside approach adopted by the author requires five (5) times the number of new low and moderate units to be built. This method may not be "sensible" when the required total units are weighed against such things as infrastructure capacity of a municipality, which the report has failed to do. The Court, itself, recommends that this approach not be used until less restrictive approaches have been tried and have failed. Some government agencies such as the Division of Coastal Resources, which have used a 10%/10% low/moderate set aside requirement in CAFRA, are currently in the process of reanalyzing their policy in the face of less than anticipated results.

CONCLUSION OF THE ANALYSIS:

The creation of standards for low and moderate income housing production should be left to the Legislature and the Executive Branch of the New Jersey State Government and not to ad hoc and highly subjective presentations. Cost reducing construction standards should be incorporated into the Uniform Construction Code, while site planning standards should be written into the Municipal Land Use Law where both can be applied on a statewide basis and not dealt with on a case to case system. Standards should be explicit and measurable and have some relation to empirical analysis and thought before recommendations are made. It is impossible to give fair play to the analysis of local zoning ordinances in the absence of clear cut and objective criteria.

THIS REPLY REPORT WAS PREPARED FOR ROXBURY TOWNSHIP BY QUARRY HILL ASSOCIATES OF YARDLEY, PENNSYLVANIA, AND CONTAINS SEVEN PAGES NUMBERED CONSECUTIVELY.



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