

ML - West Windsor

7/25/85

letter - enclosed w/in "clean" copy of  
Proposed Mt Laurel II Compliance Program  
for West Windsor Twp, revised draft,  
12/20/84, marked as Exhibit D-3

and a copy of Ordinance as actually  
introduced by Twp committee w/  
various changes, marked as Exhibit D-4  
+ planning report for proposed Mt Laurel II  
Compliance Program, West Windsor Twp

P 155

ML 000768 E

**RECEIVED**

JUL 26 1985

LAW OFFICES  
SCHRAGGER, SCHRAGGER & LAVINEA PROFESSIONAL CORPORATION  
THE ATRIUM AT LAWRENCE  
133 FRANKLIN CORNER ROAD

JUDGE SERPENTELLI'S CHAMBERS

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LAWRENCEVILLE, NEW JERSEY 08648

July 25, 1985

~~XXXXXXXXXXXXXXXXXXXX~~Honorable Eugene D. Serpentelli, A.J.S.C.  
Ocean County Court House  
CN-2191  
Toms River, New Jersey 08754RE: Affordable Living Corporation, Inc. v. West Windsor Township  
Docket No. L-017812-84 PW

Dear Judge Serpentelli:

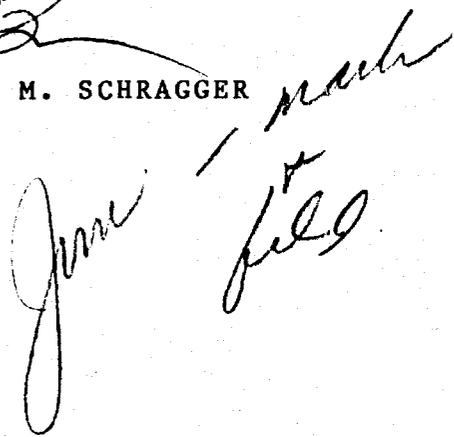
Pursuant to your request at the compliance hearing held on July 22, 1985, I am enclosing herewith a "clean" copy of "Proposed Mount Laurel II Compliance Program for West Windsor Township, New Jersey, revised draft, December 20, 1984" which is to be marked as Exhibit D-3 and a copy of the Ordinance as actually introduced and adopted by the Township Committee which has various changes from that set forth in Exhibit D-3. This Ordinance should be marked as Exhibit D-4.

Thank you for your assistance throughout this matter.

Sincerely,

  
BRUCE M. SCHRAGGER

BMS:ja

CC: Paul A. Sandars, III, Esquire  
Carl S. Bisgaier, Esquire  
James H. Knox, Esquire


RECEIVED

JUL 26 1985

Proposed Mount Laurel II Compliance

Program for

West Windsor Township, New Jersey

JUDGE SERPENTELLI'S CHAMBERS

*marked  
lvid. D-3  
Jef. July 29, 1985*

Revised

D R A F T

December 20, 1984

Raymond, Parish, Pine & Weiner, Inc.  
Planning & Development Consultants  
Princeton, N. J.

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APPENDICES

1. An Ordinance amending the township's zoning and other land development ordinances to implement Mt. Laurel II mandate.
2. An outline for the creation of an Affordable Housing Committee to monitor Mt. Laurel II compliance.
3. An Ordinance amending the township's zoning map designating certain residential districts to require a twenty percent (20%) set-aside for low and moderate income housing.
4. An Ordinance amending the township's municipal fee ordinance permitting certain modifications and fee waivers for developments containing low/moderate income housing units.

I. INTRODUCTION

A settlement agreement entered on July 13, 1984 between West Windsor Township and Affordable Living Corporation, Inc. with Hon. Eugene D. Serpentelli, J.S.C., Superior Court of New Jersey, provided for the following:

1. The Township's zoning ordinance to be amended so as to permit two tracts (hereinafter referred to as Parcels A and B) to be developed at a gross density of 8 dwelling units per acre on Parcel A and a gross density of between 5-6 dwelling units per acre, dependent upon financial feasibility, on Parcel B. Within both parcels, 20% of the total units are to be affordable to low and moderate income households equally distributed between those of low and moderate income.
2. The Township is not obligated for any of the costs related to sewerage Parcels A and B. Sewer extension costs are to be borne proportionately by benefited property owners.
3. The Township's fair share of low and moderate income units to the year 1990 is established at 1,619 units.
4. Should the Court approve any change in the methodology used to establish the Township's fair share number that would reduce the Township's obligation, the Township will have the right to seek a decrease in its fair share. The Township is held harmless from any change that would result in an increase in its obligation.
5. The Township has 90 days from June 13, 1984 to implement the settlement order including the adoption of all necessary amendments to its land use ordinances so as to make realistically possible the realization of its fair share number on lands that will specifically include Parcels A and B which are owned by the Affordable Living Corporation.

6. The Court indicated its intent to appoint an expert to review only the Township's compliance plan for meeting its fair share obligation.
7. Upon satisfactory compliance as approved by the Court, the Township will receive a six year repose against any Mt. Laurel II type litigation including other suits seeking builders' remedies.

This planning report outlines a proposed approach to the Township's compliance with the terms of the settlement order.

The proposal envisions several components: making possible the actual realization of the fair share number; staging; limiting availability of Mt. Laurel II units to eligible households and maintaining their affordability into the future; and affirmative actions. This report outlines these components and where appropriate, provides draft ordinances or suggests such public actions as may be necessary to implement the compliance program.

II. MEETING THE TOWNSHIP'S MOUNT LAUREL OBLIGATION

A. Summary

As indicated in Table 1 below, the Township proposes to achieve its fair share obligation through three major actions: rehabilitation of existing physically deficient housing; provision of senior citizen housing; and readjustment of existing vacant land zoning to provide for low and moderate income housing as part of conventional market rate housing developments.

Table 1

SUMMARY OF LOW AND MODERATE INCOME FAIR SHARE HOUSING THROUGH 1990		
	<u>Low Income Units</u>	<u>Moderate Income Units</u>
1. Establishment of a revolving fund to rehabilitate existing physically deficient housing		37
2. Senior Citizen housing		
o Within PRN (Countryside)	88	87
o Site #5 (see Map A)	50	50
3. Vacant land rezoning (see Table 2)	<u>658</u>	<u>658</u>
Sub-total	796	832
<u>Total</u>		<u>1,628</u>

B. Fair Share Number Compliance Detailed

The West Windsor Township's fair share allocation of Mount Laurel II units has been set at 1,619 by the Court. The following outlines a multi-phased approach toward the satisfaction of the Township's fair share by the year 1990:

1. Housing Rehabilitation - Units identified as physically deficient but not overcrowded by the 1980 U. S. Census are not necessarily in need of total replacement. Unless the unit is physically dilapidated beyond economical redemption, plumbing and heating deficiencies and other structural problems can usually be corrected.

A survey in 1978 of existing housing conditions conducted as part of the Township's Master Plan identified 49 dwelling units containing physical deficiencies warranting a level of rehabilitation. The 1980 Census indicates that there are 37 dwelling units containing physical deficiencies.

It is proposed that the Township be given three years to design and implement a housing rehabilitation revolving fund for low interest loans to improve existing physically deficient housing specifically for moderate income eligible households. Several

potential sources of funding for the revolving fund are available but will take a period of time to materialize. These include: (a) a township bond issue - assuming an average per unit rehabilitation cost of \$15,000 would require an estimated \$555,000; (b) a countywide bond issue administered by the MCIA (Mercer County Improvement Authority) providing funding for municipal rehabilitation needs; (c) application for community revitalization funds from the N. J. Department of Community Affairs Small Cities Program - grant funds limited to \$350,000 per municipality in any year are available through a competitive application annually in September; or (d) some combination of the above.

2. Senior Citizen Housing - The West Windsor Housing Coalition was formed by the Township in 1982 in response to a growing awareness of the need for affordable senior citizen housing. Prior to the coalition's formation, various Township Master Plan proposals and independent Township surveys had established a need for some 250 - 300 low and moderate income senior citizen housing units.

Since the coalition's formation, this need has been reaffirmed. Therefore, this plan advances proposals for two elderly projects totalling 275 units. One project consisting of 175 low and

moderate senior citizen units, would be provided as part of a large scale, planned residential development known as "Countryside". A second project to contain 100 such units would be constructed by a non-profit housing sponsor utilizing Section 202 federal elderly housing development subsidy funds. It is suggested that the Township be given three years within which to establish the necessary non-profit vehicle and to secure funds under the Section 202 program (or any equivalent development financing program should one become available within the prescribed time period).

A preferred outline of action would be for the Township to encourage the creation of a non-profit housing corporation and file for IRS tax-exempt status. During the process of incorporation, the Township should seek out an established non-profit housing sponsor with a proven track record with whom it would be possible to co-venture a Section 202 project in West Windsor. By allowing the established non-profit developer the bulk of the project processing fees, it should be possible to benefit from the sponsor's experience and thus secure an edge in the Section 202 competition which occurs annually in late Winter or early Spring.

In an effort to provide additional economic value to an elderly project, it is suggested that the selected site for elderly housing also permit a limited amount of professional offices. It is intended that the income derived from such offices could help write down the cost of land acquisition for the portion of the site containing elderly housing.

3. Readjusting Vacant Land Zoning - The Township's current Master Plan and Zone Plan call for higher density zoning of lands in its Route 1 corridor. Some of these parcels have already received development approvals while others have not. The largest of these approvals and the only one envisioning a planned unit residential community was granted to "Countryside" in the form of a preliminary "A" Master Plan approval.<sup>(1)</sup>

The "Countryside" project (Site 6) is the largest development in the township and the only one located in a planned unit residential zone covering over 300 acres in one ownership. The current approval, which was granted under Mt. Laurel I guidelines, provides for about 18% low/moderate and least cost units. To enable the development to meet the more stringent Mt. Laurel II mandate, it is proposed that the project's permitted density be increased and that it be required to comply with a twenty

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(1) A preliminary "A" Master Plan approval is an optional form of preliminary approval created by the township to afford flexibility in the design of large scale planned developments. The approval establishes a Master Plan for a large tract of ground which then requires its developer to secure preliminary and final approvals under the process established by the State's MLUL.

percent mandatory set aside for low/moderate income units meeting Mt. Laurel II specifications.

The Township further proposes to adjust the zoning densities and other applicable requirements of vacant parcels currently zoned for a range of densities with the higher end of the range achievable as a bonus for the provision of low/moderate and least cost housing. The proposed adjustments would permit "as of right" a gross density somewhat higher than the lower end density that is now permitted conditionally subject to a twenty percent mandated set-aside for low and moderate income units. These regulations would also apply to Parcels A and B owned by AFFordable Living, Inc.

The current residential zoning in the Route 1 development corridor being adjusted, provides for the construction of 4,121 units. The portion of the Township's Mt. Laurel obligation which must be satisfied through new construction amounts to 1,307 units which, if provided by means of a 20% set-aside, will require a zoned capacity of 6,580 units (see New Zoning column in Table 2). This means that the existing zoning must be amended to increase the zoned capacity of the affected lands a minimum of 2,423 units. Approximately 1,544 units, or 62% of this increment will be satisfied by the granting of the proposed builder's remedy on Sites A and B.

The development capacity of each site was determined after taking into consideration existing flood plains, topography, roadway alignments, and either the availability of water and sewer service or a reasonable expectation of their availability within the next six year time period. The sites were further tested by means of illustrative residential development layouts to ensure that the proposed gross densities could be realized without adverse environmental impact. (See Map A)

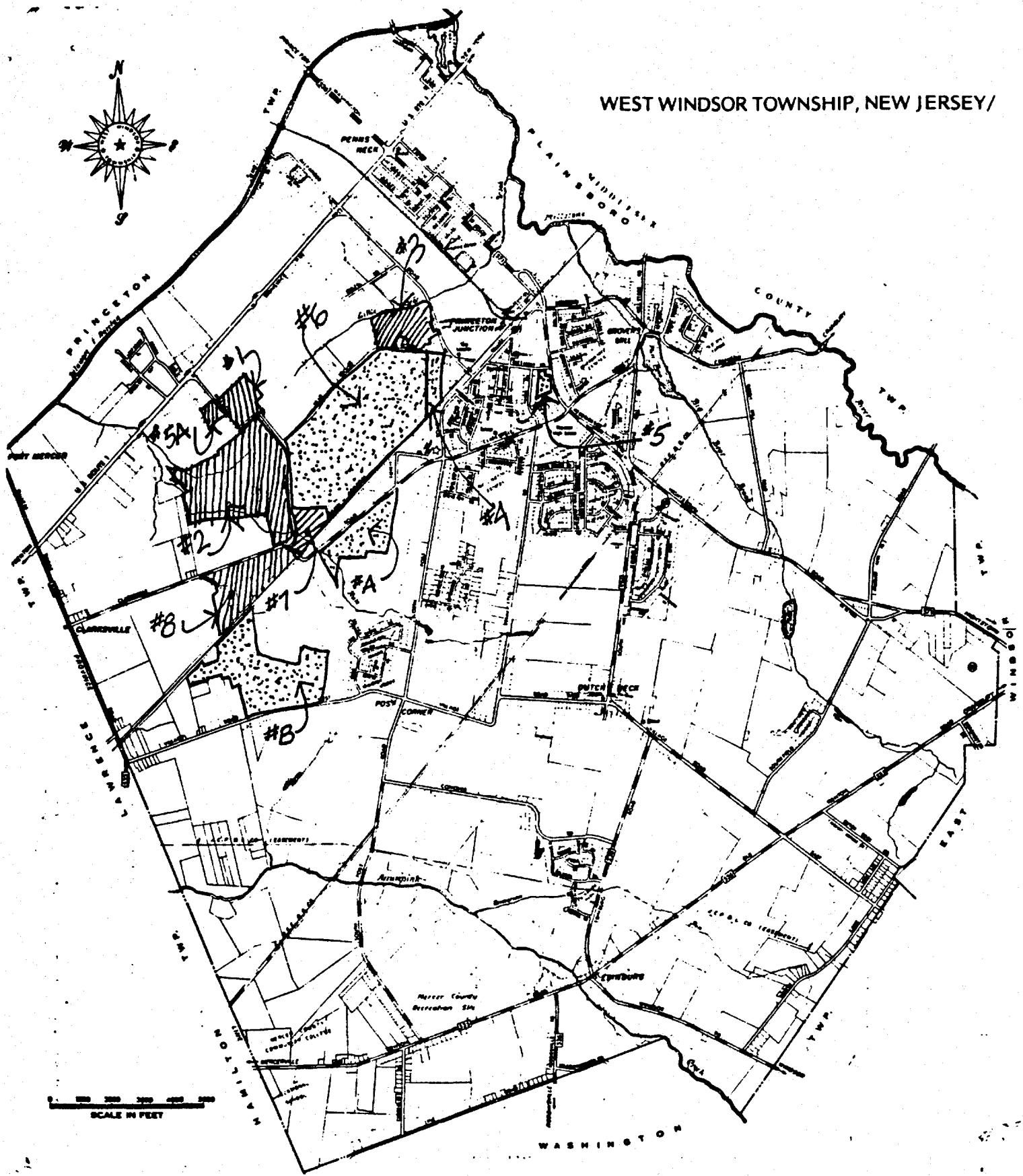
The Township's ability to maintain reasonable gross residential densities on the majority of test sites and to avoid the need

TABLE 2

Test Site	Size	Test Plan Impact			New Zoning	Present Zoning	Possible Zoning Test Plan Low & Moderate Results	
		Total Dwelling Units	Gross Density	Net Density			Low	Moderate
1	50 AC	560 MF	11.2 du/ac	20.3 du/ac	10 du/ac (R-5)	R-2 (10-15 du/ac) - 750 du	50	50
2	210 AC	960 MF 240 TH	5.7 du/ac	11.0 du/ac	6 du/ac (R-4A)	R-3 (3-5 du/ac) - 1050 du	120	120
3	25 AC	100 TH	4.0 du/ac	10.0 du/ac	4 du/ac (R-3A)	R-3 (3-5 du/ac) - 125 du	10	10
	5 AC	--	--	--	PRN-NC	R-3 (3-5 du/ac) - 25 du	--	--
4	20 AC	70 MF 110 TH	9.0 du/ac	12.8 du/ac	PRN (8.5 du/ac)	R-3 (3-5 du/ac) - 100 du	16	16
	10 AC	--	--	--	ROM-2	R-3 (3-5 du/ac) - 50 du	--	--
5	10 AC	100	10.0 du/ac	--	10 du/ac (EH)	R-2 (min. 1 ac)	N/A	N/A
5A	10 AC	100	10.0 du/ac	--	10 du/ac (R-5)	R-5 (10-15 du/ac)	10	10
6	310 AC	2480 units +(175 elderly)	8.5 du/ac	--	PRN (8.5 du/ac)	PRN (5.5 du/ac) - 1705 du	248	248
7	25 AC	234 MF	9.3 du/ac	24.0 du/ac	8.0 du/ac (R-4B)	PRN (5.5 du/ac) - 138 du	20	20
8	50 AC	240 MF 60 TH	6.0 du/ac	--	6.0 du/ac (R-4A)	ROM-1	30	30
A	64 AC	512 units	8.0 du/ac	--	8.0 du/ac (R-4B)	R-1 (.5 du/ac) - 32 du	51	51
B	172 AC	1032 units	6.0 du/ac	--	6.0 du/ac (R-4A)	R-1 (.5 du/ac) - 86 du	103	103
		6698 non-elderly units			6580 non-elderly units	4121 non-elderly units	658	658

MF = Multi-family type units  
 TH = Townhouse type units  
 SF = Single family detached units

WEST WINDSOR TOWNSHIP, NEW JERSEY/



MAP A . PROPOSED SITES FOR REZONING

# Keyed to Table 2.

-  Phase 1 Rezoning
-  Phase 2 Rezoning

to rezone for residential use industrially zoned areas (which provide real estate tax income to offset service costs associated with residential development) is directly related to the proposed increase in the permitted density level of PRN site #6 ("Countryside") from 5.5 to 8.5 dwellings/gross acre. Site #6 already has the necessary sewer capacity. This, combined with the active developer interest evidenced by his having sought and secured preliminary "A" Master Plan approval, increases the likelihood that low and moderate income units will actually be constructed in West Windsor Township within the 1984 - 1990 time period.

Attached, as Appendix 1, is a proposed ordinance that would implement the zoning district adjustments and senior citizen housing proposals suggested by this report.

III. STAGING

In a report entitled Region, Housing Needs and Fair Share Allocation dated May 8, 1984, the Township's expert planner, George M. Raymond, showed that meeting a large fair share number of units by using the 20 percent mandatory set-aside technique results in a vast overzoning for market rate units. The reason for this is inherent in the methodology used to determine the overall regional housing need and in the attempt to meet 39.5 percent of that need, which is assumed to represent the Mount Laurel part thereof, by means of a 20 percent set-aside in otherwise market-rate developments.

The material supplied in the above-referenced report, with certain refinements made possible by further analysis, produced the following results:

1. Prospective 10-year (1980-1990) West Windsor's Five-county Region	= 169,314
2. Mount Laurel Units Needed by 1990 (39.4%)	66,710
3. Total 1980-1990 Market for Unsubsidized Units (1-2)	102,604
4. Number of Unsubsidized Units Assumed to Have Been Built 1980-1984 (40% of 10-year market)	41,042
5. Remaining Market (1985-1990) for Unsubsidized Units (3-4)	61,562
6. Assumed Number of Unsubsidized Units Which Will be Provided in the Form of Low Density Developments and Single-family Homes Without a <u>Mount Laurel</u> Set-aside (100 units/county/year)	3,000
7. Net 1985-1990 Market for Unsubsidized Units (5-6)	58,562

The number derived in this manner is still very high since (a) the assumption that only 100 unsubsidized units per year will be built in each of the 5 very active counties comprising West Windsor's region is unrealistically low; and (b) added to the 39.4 percent of the prospective need are the Mount Laurel units needed to satisfy the indigenous and reallocated excess present needs of the municipalities in the prospective need region.<sup>1</sup> Any conclusion based on this figure is therefore very conservative.

Accepting the Supreme Court's directive that a realistic opportunity for the realization of any specific number of units requires a certain amount of overzoning, and using a generous 50 percent as the appropriate amount of such overzoning, requires the creation of a zoned capacity of  $58,562 + 29,281 = 87,843$  market rate units. This number of market rate units can produce 21,961 Mount Laurel units, or only 32.92 percent of the 66,710 Mount Laurel unit objective derived on the basis of its constituting 39.4 percent of the total prospective regional housing need.

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<sup>1</sup>In regions containing many non-growth municipalities, the number of market-rate units, with or without a Mount Laurel set-aside, that are likely to be built therein despite their SDGP classification will work to further reduce that portion of the unsubsidized housing market which is available toward the satisfaction of the regional Mount Laurel obligation. In the 5 counties comprising West Windsor's prospective need region there are only two such municipalities (Freehold and Rocky Hill Boroughs). The small amount of housing which might be built in the next six years in these municipalities will not affect substantially the conclusion reached below.

Under the Court Order dated July 20, 1984, West Windsor is obligated to provide for 1,619 Mount Laurel units by 1990. Using the consensus methodology, 67 of these represent indigenous need and 68 the Township's fair share of the reallocated excess present need. This leaves 1,484 as the Township's fair share of the prospective need. Since only 32.92 percent of the region's prospective need can be satisfied by 1990 using the 20 percent set-aside technique, West Windsor's fair share of that number is 489 units.

Of the 67 units representing the Township's indigenous need, 37 are physically deficient and thus assumed to be capable of being rehabilitated until proven otherwise. Even though detailed information regarding the nature and extent of overcrowding affecting the other 30 indigenous need units may show the problem to be capable of being resolved by means other than new construction, for the time being it will be assumed that they will need to be "replaced". These, together with the 68 units constituting the Township's fair share of the reallocated excess present need, make up 98 new Mount Laurel units which will have to be supported by an additional 392 market-rate units.

As explained above, 489 Mount Laurel units can be achieved only if provision is made for market-rate units in an amount that results from

a 50 percent overzoning. Adding 98 units represents an increase of 20 percent requiring a corresponding amount of additional overzoning.

Based on the above, the Township's obligation consists of 587 units composed of 489 units representing its fair share of the reasonably realizable prospective need and 98 units representing its non-rehabilitatable indigenous need and its fair share of the reallocated excess present need. The land area required to accommodate this number of units would have a capacity 70 percent or so larger than that required to accommodate West Windsor's fair share of the realizable number of market-rate units.

The above is not intended to suggest that West Windsor's overall Mount Laurel obligation is less than the 1,619 units established in the above-cited Court Order. This analysis does suggest two things, however, as follows:

1. While the regional market is limited by the overall population growth forecast, the market in any single municipality bears no relation thereto. Population growth does not occur in response to fair share or any other formula allocations among the municipalities of the region. Rather, the rate of housing development

will be conditioned by the geographic location of a given municipality in relation to job growth and transportation and -- since the Mount Laurel set-aside concept requires a profit from the market rate portion of the development sufficient to support the required Mount Laurel subsidy -- by the market-rate price range available in that municipality. Based on these considerations, communities in the Princeton housing market - which includes West Windsor - are likely to attract much more than their "fair share" of the region's total housing growth.

2. To achieve a rate of growth reasonably commensurate with its own absorptive capacity and with the rate of growth of other municipalities in the region, West Windsor requires the ability (1) to stage the extent of low and moderate income housing units in relation to the development of market rate housing and (2) to stage development containing Mount Laurel units within the framework of a comprehensive compliance program which provides for the fulfillment of its fair share obligation.

Set forth below is a staging program that is fair to those who need low and moderate income housing as well as to the municipality and the public interest in orderly growth, together with the considerations upon which it is based:

- I. Mount Laurel II clearly authorizes the "phase-in" of the zoning intended to meet the prospective need over the "projection period":

"The Mount Laurel obligation to meet the prospective lower income housing need of the region is, by definition, one that is met year after year in the future, throughout the years of the particular projection used in calculating prospective need. In this sense, the affirmative obligation to provide a realistic opportunity to construct a fair share of lower income housing is met by a 'phase-in' over those years; it need not be provided immediately. Nevertheless, there may be circumstances in which the obligation requires zoning that will provide an immediate opportunity - for instance, zoning to meet the region's present lower income housing need. In some cases, the provision of such a realistic opportunity might result in the immediate construction of lower income housing in such quantity as would radically transform the municipality overnight. Trial courts shall have the discretion, under those circumstances, to moderate the impact of such housing by allowing even the present need to be phased in over a period of years. Such power, however, should be exercised sparingly. The same power may be exercised in the satisfaction of prospective need, equally sparingly, and with special care to assure that such further postponement will not significantly dilute the Mount Laurel obligation" (92 N.J. 218--emphasis supplied).

The above paragraph, by emphasizing that zoning to provide an immediate opportunity may be necessary in certain special circumstances, clearly authorizes phased-in development under circumstances

where "the provision of... (an immediate) realistic opportunity...would radically transform the municipality overnight." In the case of West Windsor, as will be explained below, zoning and other measures that would provide a realistic opportunity for the provision of 1,619 Mount Laurel units through phasing of the development by 1990 related to the phasing of the fair share projection methodology's time frame can in no way be termed a "significant" dilution of its Mount Laurel obligation.

2. Mount Laurel II permits the Township to "phase-in" its compliance "throughout the years of the...projection used in calculating... need." Part of its intended compliance mechanism is the rehabilitation of 37 physically deficient units in preference to their replacement. The Township will submit to the Court a status report in that regard within 36 months following the signing of the Order which will assure it of a six-year repose. If the rehabilitation progress is rejected by the Court, the Township will add zoned capacity sufficient to provide a realistic opportunity for the construction of 37 Mount Laurel units using the 20 percent set-aside technique.

3. West Windsor Township is proposing to satisfy part of its obligation by means of 275 Mount Laurel senior citizen housing units in two separate developments of 175 and 100 units, respectively. The design, financing, and construction of such housing is a time-consuming endeavor and ultimate success is contingent upon the availability of appropriate governmental assistance programs, interest on the part of non-profit organizations in sponsoring such housing, etc. The Township will proceed immediately to take such steps as are currently relevant toward the provision of such housing, and will submit to the Court a status report within three years following signing of the aforementioned order. If the Court will find the Township's progress to be unsatisfactory, the Township will provide additional zoned capacity for the construction via a 20 percent set-aside of all or such portion of the 275 units as may be unattainable by the means it prefers.
  
4. Deducting the 312 units proposed to be satisfied by these means from the Township's total Mount Laurel obligation of 1,619 units leaves 1,307 units that will have to be supplied through new construction. The 1,307 Mount Laurel units equals 267 percent of the number which could be supported by the number of market rate units which a fair distribution of housing among the region's

municipalities would allocate to West Windsor. The provision of this amount of Mount Laurel housing will require the overall development of 6,535 housing units. Spread over a 6-year time period, related to the six-year time period of anticipated repose, the production capacity of the housing market would average 1,089 units per year.

For West Windsor, where its residential growth rate for the 1970-1983 period averaged 80 dwelling units per year, a control mechanism based on a phase-in of residential districts overzoned to contain a Mount Laurel set-aside does not appear unreasonable. This is particularly so when one considers, based on the preceding analysis, that the resultant number over a six-year period is greater than the region's ability to absorb such units.

The phasing plan proposed by the Township is in two segments as outlined below:

- a) Zoning for 100 senior citizen units and implementation of a rehabilitation program to upgrade 37 physically deficient units will be incorporated into a first phase implementation program. Additionally, Sites 4 & 6, A&B (the latter two sites being the builders remedy of Affordable Living Corporation) will be rezoned immediately to enable the development of an additional 835 low/moderate income housing units.

Collectively, Phase I will allow the possibility for 972 low/moderate income units or 60% of the Township's Mount Laurel obligation to be developed.

b) Phase 2 would permit the rezoning of additional lands to satisfy the remainder of the Township's Mount Laurel II obligation after three years from the initial adoption of the Phase I plan. The Township is, however, concerned at the potential for rapid development and its inability to assimilate and plan for the impacts associated with such rapid growth and therefore proposes to the Court that it be able to submit a request for a stay of implementation before the three-year phase period ends, provided that the Township's request can prove that:

- i) Circumstances have changed in which the Township's fair share number is reduced or the Township is unable to absorb the proposed development due to problems it has encountered with the first phase zoning program; or
- ii) the Township has devised an alternate method for achieving compliance with its remaining Mount Laurel II obligations acceptable to the Court.

In the intervening three-year time period, sites designated for rezoning in Phase II would be zoned low density residential to preclude the likelihood for their development in the near term. If it is decided by the Township and agreed to by the Court that it can achieve its Mount Laurel II obligation without overzoning or some combination thereof, then the Township will entertain releasing those sites identified in Phase II and rezoning them to appropriate densities as recommended by the Township's Master Plan in effect at that time.

The phasing plan proposed permits the orderly assimilation of new development in the Township, allowing for infrastructure to be expanded and municipal services as well as school facilities to be efficiently used over time as opposed to hastily increased to accommodate sporadic peaks in demand caused by rapid and unbridled development.

A zoning map amendment is provided at Appendix 3 to implement this phasing program which is contained in Appendix I - Zoning Amendments, Section 22-8.14.

IV. MAINTAINING AFFORDABILITY/AVAILABILITY

In order to maintain affordability and availability of low/moderate income units upon resale or re-rental requires certain controls, otherwise the initial purchase or owner of a rental project will receive a "windfall" profit after the initial occupancy period.

The Township has established the following:

1. For other than units financed by a housing subsidy program oriented toward low/moderate income unit eligibility requirements, developers will be required to provide covenants or other legal mechanisms to ensure housing affordability over a thirty year period. Further, an affirmative marketing plan will also be required.
  
2. Beyond the initial marketing of units which is the responsibility of the developer, a longer term monitoring effort of resales and re-rentals is required. It is therefore suggested that the Township be given one year from the date of the signing of a settlement order granting a six year repose, to refine and implement the "Affordable Housing Committee" proposed at Appendix 2 to ensure the long term affordability of low/moderate income housing units. It is further suggested that a fee be established to help finance the administrative operation of the Committee, both initial start-up and ongoing monitoring of resales and rere rentals. An

initial registration fee will be required by developers of low/moderate income units payable at the time of issuance of a Certificate of Occupancy.

Subsequent resales/rerentals will incur a renewal fee payable at the time of closing in the case of resale or at the time of execution of a rental agreement in the case of a rental unit.

An outline of the Affordable Housing Committee structure, operational rules and procedures is provided as Appendix 2.

V. AFFIRMATIVE ACTIONS

Beyond the affirmative measures implied by the compliance program outlined in this report, the following additional actions are proposed by the Township:

1. Amend Development Application Fee Ordinance to permit a full waiver of development review fees for those portions of projects containing low and moderate income units. Such fee waivers would help offset fee request to finance Affordable Housing Committee operations. (Appendix 4 & 12/19/84 Fee Basis Memo)
2. Review prior "Resolution of Need" passed by Township Committee in the late 1970's to determine its current status -- if it is no longer valid, pass a resolution expressing Township Committee interest to reaffirm a Resolution of Need when requested by a bona fide developer of L/M units contained within zoning districts that permit such units.
3. Grant requests for "tax abatement" for bona fide rental L/M units contained within zoning districts that permit such units. The extent of abatement is limited by law and there is a provision for a payment in lieu of taxes (PILOT) in such projects.
4. Establish a "fast-track" review process for projects containing L/M units. (Appendix 1)

5. Amend Development Inspection Fee to provide for an escrow accounting of inspection services in lieu of a percentage of construction. Also, payment of fee after initial modest escrow commencing deposit would be billed on actual inspection time incurred by the Township.

(Appendix 4)

6. Amend Sewer Permit Fee to provide for projects with low/moderate income units to have a reduced fee of \$600 per dwelling unit.

7. Amend Construction Permit Fees for those portions of projects that are low/moderate income to be waived except that fees incurred by the Township for outside agency or state review will be required.

8. Lobbying for the creation of:

a. County bond sale to create a revolving low-interest rehabilitation loan fund to assist in the rehab of present need units, both local need as well as the reallocated excess present need. Such a program, if details are acceptable to the Court, could help in reducing the extent of vacant land rezoning as such units would be rehabilitated in place.

b. County bond sale through the Improvement Authority for tax-exempt financing issues to be available to developers for those portions of projects providing L/M units.

c. More NJHFA or MFA tax-exempt general bond issues to provide lower interest financing to be available to developers providing L/M units.

9. Through exploration of the above vehicles and others as practicality will permit, the Township intends to explore methods by which it can seek reduction of the extent of overzoning it is required to permit in order to achieve its Mount Laurel II obligation. Exploration and development of such vehicles will take time to materialize; however, the Township is confident that it will be able to devise a program acceptable to the Court before the three-year time period ends, requiring it to rezone the remainder of its Mount Laurel sites.

**APPENDIX 1. Ordinance Amendments**

APPENDIX 1.

REVISED  
D R A F T  
9/7/84  
12/10/84  
12/14/84  
12/20/84

AN ORDINANCE TO AMEND AND SUPPLEMENT THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1979).

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XXII "ZONING"; CHAPTER XXI "SUBDIVISION"; CHAPTER XXIII "SITE PLAN; AND CHAPTER XXIV "PROVISIONS APPLICABLE TO SITE PLANS AND SUBDIVISIONS" OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1979) TO IMPLEMENT VARIED REQUIREMENTS RELATED TO THE PROVISION OF AFFORDABLE HOUSING MANDATED BY MT. LAUREL II.

The Township Committee of the Township of West Windsor ordains that;

Section 1. Chapter XXII, "Zoning" be amended as follows:

1. Section 22-1.3 "Establishment of Zoning Districts" is hereby amended by adding the following districts:

EH	Residence District	(Elderly Housing)
R3A	Residence District	(Affordable Housing)
R4A	Residence District	(Affordable Housing)
R4B	Residence District	(Affordable Housing)

2. Section 22-1.7 "Condition Uses" is hereby amended to read as follows:

Uses listed as a conditional use in a particular district may be permitted by the Planning Board only if it has determined that the development proposal complies with the conditions and standards set forth in this chapter for the location and operations of such use.

3. Section 22-2.0 "Definitions" is hereby amended to delete the definition of "Least Cost Housing" and to amend the following:

"Low and Moderate Income Housing" means dwelling units developed pursuant to Section 22-8.14 herein.

"Low -income household" shall mean a household earning between 0 and 50% of the median income established and adjusted from time to time, for the geographic area in which the township is located, by the U.S. Department of Housing and Urban Development.

"Moderate-income household" shall mean a household earning between 50% and 80% of the median income established and adjusted from time to time for geographic area in which the township is located, by the U.S. Department of Housing and Urban Development.

4. Section 22-3. "Summary Regulations Included; Schedule" is hereby amended to change Table 1 to read as follows:

(see Table 1 attached)

5. Article IV - "Regulations for Residence Districts" is hereby amended by adding Sections on "Use Regulations" and "Bulk and Area Regulations" for a new District R3A to follow Section 22-4.7 "Bulk and Area Regulations-R3" as follows:

22-4.6A Use Regulations - R3A Residence District.

22-4.6A.1 Permitted Uses. In an R-3A district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:

- a. Any permitted use in an R-1 district, subject to the bulk and area regulations of that district.

- b. With sewer and public water: townhouse; patiohouse; or single-family-zero lot line detached dwellings within a planned development, provided that twenty (20%) percent of the total dwelling units that are the subject of a development application shall be low and moderate income dwellings as required by Article VIII, Section 22-8.14 of this chapter.

22-4.6 A.2 Conditional Uses. In an R-3A district, the following uses may be permitted as conditional uses:

- a. Any use permitted by condition in an R-2 district.

- b. Garden apartment dwellings within a planned development containing a minimum of fifty (50) acres.

22-4.7A Bulk and Area Regulations - R-3A District.

The following shall be the standards for the R-3A district:

22-4.7A.1 Tract Development.

- a. Minimum Tract Area: For other than single-family detached dwellings, five (5) acres.

- b. Minimum Tract Frontage: For other than single-family detached dwellings, one hundred fifty (150) feet.

c. Common Open Space. For townhouses and garden apartments only, not less than twenty-five (25%) percent of the tract area designated for a planned development shall contain green space. Individual residential lots or portions thereof shall not be construed as open space. Common open space shall conform to requirements for such open space, except as modified herein, as contained in subsection 22-4.14.3 of this Article.

d. Maximum Permissible Development Density.

(1) The average gross density shall not exceed four (4) dwelling units per acre.

(2) Net density of particular types of dwelling units shall be in accordance with the schedule below. In calculating permitted net densities as outlined herein, the area of land covered by such uses shall include internal local streets, parking areas, and all private yards, but not areas designated as common open space or development collector streets.

(a) The net density of single family, patio homes and zero lot line dwellings shall not exceed five (5) dwelling units per acre.

(b) The net density of town houses shall not exceed ten (10) dwelling units per acre.

(c) The net density of garden apartments shall not exceed twenty-five dwelling units per acre.

e. Residential Unit Type Distribution: There shall be a variety of housing types within a planned development containing fifty (50) or more acres such that at a minimum, two (2) of the permitted housing types shall be provided. Of the housing types provided, no one type shall exceed eighty (80%) of the total market rate dwelling units within the development. This unit type distribution requirement shall not apply to units designated for low and moderate income housing.

f. Maximum Improvement Coverage: Forty (40%) percent.

g. Design: The standards and principles for design set forth in subsection 22-4.14.2d 9 (b) of this Article as well as those applicable provisions contained in the township's Site Plan, Subdivision and Provisions Applicable to Site Plans and Subdivisions Ordinances shall be used in the design of residential uses permitted in this district.

22-4.7A.2 Individual Lots.

	Patio/Zero-Lot Line	Townhouse
a. Minimum lot area (sq. ft.)	5,000	2,000
b. Minimum lot frontage (feet)	50	18
c. Minimum lot width (feet)	50	18
d. Minimum lot depth (feet)	50	--
e. Minimum yards* (feet)		
1. Front	20	20
2. Rear	10	10
3. Side	0,10**	10***

\* Yards abutting arterial streets shall be increased by thirty (30) feet; those abutting collector streets shall be increased by ten (10) feet.

\*\* Ten (10) feet if a patio dwelling unit which may be on one side if also designed as an attached or zero lot line dwelling; one side ten (10) feet if zero lot line dwelling.

\*\*\* At end units only.

22.4.7A.3 Maximum Building Height: Three stories, but not to exceed thirty-five (35) feet.

6. Article IV - "Regulations for Residence Districts" is hereby amended by adding Sections on "Use Regulations" and "Bulk and Area Regulations" for a new District R4A to follow Section 22-4.9 "Bulk and Area Regulations - R4 District" as follows:

22-4.8A Use Regulations - R-4A Residence District.

22-4.8A 1 Permitted Uses. In an R-4A district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:

a. Any permitted use in an R-1 district, subject to the bulk and area regulations of that district.

b. With sewer and public water, patio house; single-family zero lot line detached dwelling; two-family and semi-detached dwelling; townhouse; garden apartment dwelling within a planned residential development provided that twenty (20%) percent of the total dwelling units that are the subject of a development application shall be low and moderate income dwellings as required by Article VIII, Section 22-8.14 of this chapter.

22-4.8A2 Conditional Uses. In an R-4A district, the following uses may be permitted as conditional uses:

- a. Any use permitted by condition in an R-2 district.

22-4.9A Bulk and Area Regulations - R-4A District.

The following shall be the standards for the R-4A district:

22.4.9A 1 Tract Development.

- a. Minimum Tract Area: Five (5) acres.
- b. Minimum Tract Frontage: One hundred fifty (150) feet.
- c. Open Space: For other than patio house, single-family zero lot line detached dwellings, not less than twenty-five (25%) percent of the tract area shall contain green open space. Individual lots or portions thereof shall not be construed as open space. Common open space shall conform to requirements for such open space as contained in subsection 22-4.14.3 of this Article.

- d. Maximum Permissible Development Density.

- (1) The average gross density shall not exceed six (6) dwelling units per acre.

- (2) Net density of particular types of dwelling units shall be in accordance with the schedule below. In calculating permitted net densities as outlined herein, the area of land covered by such uses shall include internal streets, parking areas and all private yards, but not areas designated as common open space or development collector streets.

- (a) The net density of single-family patio homes and zero lot line dwellings shall not exceed five (5) dwelling units per acre.
- (b) The net density of two-family and semi-detached units shall not exceed eight (8) dwelling units per acre.
- (c) The net density of townhouses shall not exceed ten (10) dwelling units per acre.
- (d) The net density of garden apartments shall not exceed twenty-five (25) dwelling units per acre.

e. Residential Unit Type Distribution: There shall be a variety of housing unit types within a planned development such that at a minimum, two (2) of the permitted housing types shall be provided. Of the housing types provided, no one type shall exceed eighty (80%) percent of the total market rate dwelling units within the development. This unit type distribution requirement shall not apply to units designated for low and moderate income housing.

f. Maximum Improvement Coverage: Forty (40%) percent.

g. Design: The standards and principles for design set forth in subsection 22-4.14.2d 9 (b) of this Article as well as those applicable provisions contained in the township's Site Plan, Subdivision and Provisions Applicable to Site Plans and Subdivisions Ordinance shall be used in the design of residential uses permitted in this district.

22-4.9A 2 Individual Lots.

	Patio/Zero lot line	Townhouse	Two-Family Semi-Detached
a. Minimum lot area (sq. ft.)	5,000	2,000	3,200
b. Minimum lot frontage (feet)	50	18	40
c. Minimum lot width (feet)	50	18	40
d. Minimum lot depth (feet)	50	--	--
e. Minimum yards* (feet)			
1. Front	20	20	20
2. Rear	10	10	10
3. Side	0,10**	10***	10***

\* Yards abutting arterial streets shall be increased by 30 feet; those abutting collector streets shall be increased by 10 feet.

\*\* 10 feet if patio dwelling unit; one side 10 feet if zero lot line dwelling.

\*\*\* At end units only.

22-4.9A 3 Maximum Building Height. Three stories but not to exceed thirty-five (35) feet.

7. Article IV - "Regulations for Residence District" is hereby amended by adding Sections on "Use Regulations" and "Bulk and Area Regulations" for a new District R-4B to follow newly revised Section 22-4.9A Bulk and Area Regulations - R-4A District, as follows:

22-4.9B Use Regulations - R-4B Residence District

22-4.9B1 Permitted Uses. In an R-4B district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:

a. Any permitted use in an R-1 district, subject to the bulk and area regulations of that district

b. With sewer and public water: patio house; single-family zero lot line detached dwellings; two-family and semi-detached dwellings; townhouses; and garden apartment dwellings within a planned development provided that twenty (20%) percent of the total dwelling units that are the subject of a development application shall be low and moderate income dwellings as required by Article VIII, Section 22-8.14 of this chapter.

22-4.9B.2 Conditional Uses. In an R-4B district, the following uses may be permitted as conditional uses:

2. Any use permitted by condition in an R-2 district.

22-4.9B Bulk and Area Regulations - R-4B District.

The following shall be the standards for the R-4B district:

22-4.9B.1 Tract Development.

a. Minimum Tract Area: Five (5) acres.

b. Minimum Tract Frontage: One hundred fifty (150) feet.

c. Open Space: For other than patio house or single-family zero lot line detached dwellings, not less than twenty-five (25%) percent of the tract area shall contain green open space; individual residential lots or portions thereof shall not be construed as open space. Common open space shall conform to requirements for such open space, except as modified herein, as contained in subsection 22-4.14.3 of this Article.

d. Maximum Permissible Development Density.

(1) The average gross density shall not exceed eight (8) dwelling units per acre.

(2) Net density of particular types of dwelling units shall be in accordance with the schedule below. In calculating permitted net densities as outlined herein, the area of land covered by given uses shall include internal streets, parking areas and all private yards, but not areas designated as common open space or development collector streets.

- (a) The net density of single-family patio homes and zero lot line dwellings shall not exceed five (5) dwelling units per acre.
- (b) The net density of two-family and semi-detached units shall not exceed eight (8) dwelling units per acre.
- (c) The net density of townhouses shall not exceed ten (10) dwellings per acre.
- (d) The net density of garden apartments shall not exceed twenty-five (25) dwelling units per acre.

e. Maximum Improvement Coverage: Forty (40%) percent.

f. Design: The standards and principles for design set forth in subsection 22-4.14.2d9(b) of this Article as well as those applicable provisions contained in the township's Site Plan, Subdivision and Provisions Applicable to Site Plans and Subdivisions Ordinances shall be used in the design of residential uses permitted in this district.

22-4.9B.2 Individual Lots: The standards for the R-4B district shall be the same as those for the R-4A district.

8. Section 22-4.10 "Use Regulations - R-5 Residence District" and Section 22.4.11 "Bulk an Area Regulations - R-5 District" are hereby amended in their entirety to read as follows:

22-4.10 Use Regulations - R-5 Residence District.

22-4.10.1 Permitted Uses: In an R-5 district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used,, except for one or more of the following uses:

a. Any permitted use in an R-1 district, subject to the bulk and area regulations of that district.

b. With sewer and public water: garden apartments, townhouse or maisonette dwelling units within a planned development, provided that twenty (20%) percent of the total dwelling units that are the subject of a development application shall be low and moderate income dwellings as required by Article VIII, Section 22-8.14 of this chapter.

22-4.10.2 Conditional Uses: In an R-5 district, the following uses may be permitted as conditional uses:

a. Any use permitted by condition in an R-2 district.

22-4.11 Bulk and Area Regulations - R-5 District.

The following shall be the standards for the R-5 district:

22-4.11.1 Tract Development:

- a. Minimum Tract Area: Five (5) acres.
- b. Minimum Tract Frontage: One hundred fifty (150) feet.
- c. Open Space: Not less than twenty-five (25%) percent of the tract shall contain green open space; individual lots of portions thereof shall not be construed as open space. Common open space shall conform to requirements for such open space, except as modified herein, as contained in subsection 22-4.14.3 of this Article.
- d. Maximum Permissible Development Density. The average gross density shall not exceed ten (10) dwelling units per acre. Net densities shall conform to those established for the R-4B district. The net density for a maisonette unit shall not exceed twenty-five (25) dwelling units per acre.
- e. Maximum Improvement Coverage: Forty (40%) percent.
- f. Design: The standards and principles for design set forth in subsection 22-4.14.2d 9 (b) of this Article as well as those applicable provisions contained in the township's Site Plan, Subdivision and Provisions Applicable to Site Plans and Subdivisions Ordinances shall be used in the design of residential uses permitted in this district.

22-4.11.2 Individual Lots. Bulk and area regulations for individual lots shall conform to the regulations for such uses as contained in the R-4 district, Article IV, subsection 22-4.9A.2 of this chapter.

22-4.11.3 Maximum Building Height. Building heights may vary from one (1) to four(4) stories, but in no case shall they exceed forty-five (45) feet.

9. Section 22-4.14 "Use Regulations - PRN-1 Residence District" is amended in its entirety to read as follows:

22-4.14 Use Regulations - PRN-1 Residence District (Planned Residential Neighborhood).

22-4.14.1 Permitted Uses. In a PRN-1 district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:

- a. Any permitted use in an R-1 district, subject to the bulk and area regulations of that district.

22-4.14.2 Conditional Uses. In a PRN-1 district, the following uses may be permitted as conditional uses:

- a. Any use permitted by condition in an R-1 district with the exception of subsection 22-4.1.2, paragraphs a,c, and d.

b. Single-family, zero lot line; two-family, detached; single-family, semi-detached; townhouse; maisonette; garden apartment dwellings; or senior citizen low and moderate income mid-rise dwelling within a planned residential neighborhood provided that twenty (20%) percent of the total dwelling units that are the subject of a development application shall be low and moderate income dwellings as required by Article VII, Section 22-8.14 of this chapter.

A planned residential neighborhood, subject to the following conditions and standards conforming to the requirements for planned developments stipulated in Article VII of this chapter.

1. Minimum development area. One hundred (100) acres in contiguous parcels served by sewer and public water systems. For purposes of this requirement, streets existing prior to the development of a PRN shall not be deemed to divide acreage nor be a part of the acreage.

2. Maximum permissible average gross density. Eight and one-half (8.5) dwelling units per acre shall be the basic average gross density permitted.

3. Neighborhood convenience services. Neighborhood commercial uses, such as stores for retail sales and services, professional offices, restaurants, taverns, and gasoline stations may be permitted if they are designed and intended primarily to serve the residents of the PRN. In no case shall such areas designated for commercial use and accessory uses thereto exceed three (3%) percent of the total planned development.

Bulk controls with regard to FAR and maximum improvements coverage for such designated neighborhood convenience services areas shall conform to those regulations as set forth for the B-1 district, Article V, section 22-5.2 of this chapter.

4. Public services. Public service facilities (e.g., schools, firehouses, etc.) may be located within the designated common open space of an approved PRN provided such uses shall not exceed seven and one-half (7.5%) percent of the total development tract area of a PRN.

5. Minimum frontage. Three hundred (300) feet in total as measured along a public street which provides access to the PRN.

6. Residential unit type, distribution and net density. In the PRN-1 district, there shall be a range of housing types and densities in accordance with the requirements set forth below:

(1) At a minimum three (3) of the permitted housing types shall be provided.

(2) Of the housing types provided, no one type shall exceed eighty (80%) percent of the total dwelling units. This unit distribution shall not apply to units designated for low and moderate income housing; however senior citizen housing may

count as a housing type in meeting the requirement of Section 22-14.14.2(d)6(1).

(3) Senior citizen housing for low and moderate income persons shall be provided equal to one hundred and seventy-five units. These units shall be counted towards satisfaction of the PRN-1 district's twenty (20%) percent low/moderate income setaside requirements.

(4) Net density of particular types of dwelling units shall be in accordance with the schedule below. In calculating permitted net densities as outlined herein, the area of land covered by such uses shall include internal local streets, parking areas, and all private yards, but not areas designated as common open spaces or development collector streets, nor areas that may be occupied by commercial uses.

(a) The net density of single-family zero lot line dwellings shall not exceed five (5) dwelling units per acre.

(b) The net density of semi-detached and two-family units shall not exceed eight (8) dwelling units per acre.

(c) The net density of townhouse, condominium or rental, shall not exceed fifteen (15) dwellings per acre. Fee-simple townhouses shall not exceed ten (10) dwellings per acre.

(d) The net density of garden apartment and maisonette dwelling units shall not exceed twenty-five (25) dwelling units per acre.

(e) The net density of senior citizen mid-rise dwellings shall not exceed forty-five (45) dwelling units per acre.

7. Maximum improvement coverage. Forty (40%) percent of the area of the PRN.

8. Bulk requirements.

(1) Building heights may vary from one (1) to four (4) stories, but in no case shall they exceed forty-five (45) feet. Senior citizen mid-rise apartments may be six (6) stories, but not to exceed seventy (70) feet.

(2) Lot sizes and dimensions, yard sizes and building arrangement may be freely disposed and arranged, provided the PRN conforms to a development plan approved by the planning board pursuant to the applicable provisions contained in the township's Site Plan, Subdivision, and Provisions Application to Site Plan and Subdivisions Ordinances, and in accordance with the following standards:

(a) No portion of a dwelling shall be closer than twenty-five (25) feet to the right-of-way of a local internal road or fifty (50) feet to a collector road, or major thoroughfare as designated by the township's master plan.

(b) Along all boundary lines of any PRN district, except where they coincide with the right-of-way lines of a State or county road, public utility right-of-way, or public parks, the same zoning provisions of the abutting district shall prevail with respect to the side yards, rear yards, screen planting and such other transitional features.

c. Common open space. Common open space subject to the requirements of subsection 22-4.13.3 of this Article.

#### 22-4.14.3 Common Open Space

a. General Requirements. Except as otherwise provided herein, not less than twenty-five (25%) percent of the development area shall be designed as and devoted to common open space for use primarily by the residents of the planned development. Such designated open space shall be in major continuous parcels, having adequate access to public and private roads and consisting of land in a natural state of land developed for specific recreational purposes according to recreational guidelines established in the township's Site Plan Ordinance.

b. Ownership Requirements. Such common open space may be deeded to the township or other governmental agency or dedicated to a homeowner's association or trust, which incorporation and by-laws shall be approved by the Planning Board and by the Township Committee. If common recreation and open space areas are not dedicated and accepted by the township or another governmental agency, the landowner shall provide for and establish an organization for the ownership and maintenance of any common recreation areas and open space and such organizations shall not be dissolved or shall it dispose of any of same by sale or otherwise (except to an organization conceived and established to own and maintain the common recreation areas and development open space) without first offering to dedicate the same to the township or any other government agency.

If the applicant proposes that the open space shall be dedicated to the township, then the Planning Board shall forward each request with its recommendation, prior to granting of preliminary plan approval of a development application containing open space, to the township committee.

If the township committee does not approve such dedication, the applicant may submit a cluster or planned development plan providing only for ownership of common land as outlined herein.

#### c. Open Space Maintenance Requirements.

1. In the event that the organization created for open space

management shall, at any time after the establishment of a planned development, fail to maintain any open space or recreation area in a reasonable order and condition in accordance with the plan, the township may serve written notice upon such organization or upon the owners of the development setting forth the manner in which the organization has failed to maintain said areas in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty-five (35) days thereof and shall set the date and place of a hearing thereon which shall be held within fifteen (15) days of the notice. At such hearing the township may modify the terms of the original notice as to the deficiencies and may give an extension of time not to exceed sixty-five (65) days, within which they shall be cured.

If the deficiencies set forth in the original notice or in modifications thereof shall not be cured within said thirty-five (35) days or any extension thereof, the township, in order to preserve the open space and maintain the same for a period of one (1) year may enter upon and maintain such land. Said entry and said maintenance shall not vest in the public any rights to use the open space and recreation areas except when the same is voluntarily dedicated to the public by the owners.

Before the expiration date of said year, the township shall, upon its initiative or upon the request of the organization theretofore reasonable for the maintenance of said areas, call a public hearing upon fifteen (15) days written notice to such organization and to the owners of the development to be held by the township at which hearings such organization and owners of the development shall show cause why such maintenance by the municipality shall not at the election of the township, continue for a succeeding year. If the township shall determine that such organization is ready and able to maintain said open space and recreation areas in reasonable condition, the township shall cease to maintain said open space and recreation areas at the end of said year if the township shall determine such organization is not ready and able to maintain said open space and recreation areas in a reasonable condition, the township may, in its discretion, continue to maintain said open space and recreation areas during the next succeeding year and, subject to a similar hearing, a determination in each year thereafter. The decision of the township in any such case shall continue a final administrative decision subject to judicial review.

2. The cost of such maintenance by the municipality shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with the assessed value at the time of imposition of the lien, and shall become a lien and tax on said properties and be added to and be a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the Township and in the same manner as other taxes.

#### 22-4.15 Bulk and Area Regulations - PRN-1 District.

The standards for the PRN-1 district shall be the same as those for an R-1 district.

10. Article IV - "Regulations for Residence District" is hereby am adding Section 22-4.16 "Use Regulations" and "Bulk and Section 22.4 Regulations" for a new District EH to follow Section 22-4.15 "Bulk and Area Regulations - PRN-1 District" as follows:

22-4.16 Use Regulations - EH Residence District.

22-4.16.1 Permitted Uses. In an EH district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:

a. Any permitted use in an R-1 district, subject to the bulk and area regulations of the district.

b. With sewer and public water any permitted use in an R-5 district provided such dwellings are for senior citizen low and moderate income housing developed by a bona fide non-profit or limited dividend owner or sponsor as required by Article VIII, Section 22-8.14 of this chapter.

22-4.16.2 Conditional Uses. In an EH district, the following uses may be permitted as conditional uses:

a. Any use permitted by condition in an R-2 district.

b. Professional offices, provided they are part of a senior citizen low and moderate income housing development scheme and do not exceed twenty thousand square feet in gross total floor area. Bulk and area regulations for office use shall be those contained in the "P" district, Section 22-5.8 of this chapter.

22-4.17 Bulk and Area Regulations - EH District

22-4.17.1 Tract Development

a. Minimum Tract Area: Five (5) acres

b. Minimum Tract Frontage: One hundred fifty (150) feet

c. Maximum Permissible Development Density.

(1) The average gross density shall not exceed twenty (20) dwelling units per acre.

(2) The net density for various unit types shall conform to those stipulated for the R-5 district.

(3) Maximum Improvement Coverage: Forty (40%) percent.

(4) Design: The standards and principles for design set forth in subsection 22-4.14.2d 9 (b) of this Article as well as those applicable provisions contained in the township's Site Plan, Subdivision

and Provisions Applicable to Site Plan and Subdivisions Ordinances shall be used in the design of residential uses permitted in this district.

22-4.17.2 Individual Lots: Bulk and area regulations for individual townhouse lots, subject to the regulations for such uses as contained in the R-4 District, Article IV, subsection 22-4.9.2 of this chapter.

22-4.17.3 Maximum Building Height. Two and one-half (2½) stories or thirty-five (35) feet.

11. Article VII "Regulations for Education Districts", Section 22-7.1 "Use Regulations - E Education District" Section 22.7.1.1 b. "Permitted Uses" is hereby amended to read as following:

b. Residences exclusively for the faculty, students and staff of a higher learning educational facility including their families provided, however, that: such uses are related to a college or university, public water and sewer are available, and twenty (20%) percent of such residences are kept low and moderate income dwellings as required by Article VIII, Section 22-8.14 of this chapter.

12. Section 22-8.14, "Application and Interpretation of Low/Moderate Income and Least Cost Housing Provisions" is hereby amended to read:

22-8.14 Application and Interpretation of Low/Moderate Income Housing Provisions.

a. General. The inclusionary housing provisions of this chapter are directed toward increasing the supply of low and moderate income housing and assuring its dispersal throughout appropriate areas of West Windsor Township. These regulations are designed to meet the mandate of Mt. Laurel II. Said units shall be built in all such zones as hereinbefore provided. Each such development shall consist of ten (10%) percent low income housing and ten (10%) percent moderate income housing other than elderly housing which may vary the percent of low versus moderate income in order to comply with applicable funding guidelines of sponsoring governmental financing agency. If privately financed through project internal subsidies, then such housing shall be ½ low income and ½ moderate income housing.

b. Affordability Criteria.

1. For-Sale Dwelling unit: Monthly cost of shelter to include mortgage (principal and interest), taxes, insurance and homeowners or condo association fees, shall not exceed twenty-five and two-tenths (25.2%) percent

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\* In order to ensure that both low and moderate income units are affordable by a range of households within each household size, the income ceiling derived for such households is set at  
(Footnote Continued)

of gross household income as defined and adjusted from time to time for low and moderate income households. There shall be no separate homeowners or condo association created for the low and moderate income component of a development, except the Planning Board may waive this requirement upon proof that project marketability will be jeopardized. Homeowners or condo association fees for low/moderate income units can be increased by an annual percentage not to exceed the CPI - housing component only, for the region in which West Windsor is located unless this requirement is waived by the Planning Board as outlined herein above.

2. For-Rent Dwelling Unit; Monthly cost of shelter including contract rent and utilities (gas, electric, oil, water and sewer) shall not exceed twenty-seven (27%) percent of gross household income as defined and adjusted from time to time for low and moderate income households.

3. For purposes of establishing the permitted sales as well as rental prices for a low or moderate income unit, households of the following size shall be assumed to occupy units of the following size and the sale or rental price shall not be affected regardless of the size of the household actually occupying the unit:

0 Bedroom	1 person
1 Bedroom	2 persons
2 Bedrooms	3.5 persons*
3 Bedrooms	5 persons

\* For purposes of computation, the average of the incomes of three and four member households shall be applied.

c. Distribution and Locational Criteria.

1. In planned residential developments, to the extent reasonably attainable, the low and moderate income units shall be situated so as not to be in undesirable locations, and shall be accessible to the common open space, public facilities, or shopping facilities (if provided).

2. To the extent reasonably attainable, no more than seventy-five (75) low and moderate income dwelling units shall be located in a single cluster, and such clusters shall be dispersed throughout the development unless a waiver is granted by the Planning Board.

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(Footnote Continued)

no higher than ninety (90%) percent of the maximum income (twenty-eight [28%] percent in the case of a sale unit and thirty [30%] percent in the case of a rental unit) for a particular household size.

d. Staging.

1. The low and moderate income units shall be constructed in tandem with the market rate units according to the following schedule:

<u>Market-Rate Unit Percentage</u>	<u>Low and Moderate Income Unit Percentage</u>
Up to 20%	0% (none required)
20% + 1 unit	At least 10%
Up to 50%	At least 25%
Up to 75%	At least 50%
75% + 1 unit	At least 75%
Up to 90%	100%

e. Maintaining Availability.

1. All low and moderate income dwelling units, with the exception of those units which may be developed with federal or state funds in which case that financing program's controls shall govern, shall be required to have covenants running with the land to control the resale price of for-sale units or to employ other legal mechanisms in a form approved by the Township Attorney which will ensure compliance with Section 22-8.14 for a minimum thirty (30) year period.

2. The owner of rental units shall provide legal documentation in a form approved by the Township Attorney to assure that upon re-rental, rents shall be in compliance with Section 22.8.14 for a minimum thirty (30) year period.

3. Upon resale or re-rental, the maximum resale or re-rental price shall be as set forth in Section 22.8.14 of this ordinance.

4. At the end of 25 years from the issuance of a Certificate of Occupancy for the low and moderate income units constructed under the terms and conditions of this Ordinance, the Township Committee shall review the obligation of the Township for the continued maintenance of low and moderate income units and shall establish by Ordinance whether or not all or a portion of the then existing low and moderate units will remain as such for a period in excess of 30 years. In the event the Township Committee shall determine that all or a portion of the said units shall not be maintained as low and moderate income units, it shall determine by Ordinance the disposition of any resale profits in excess of the profit which would be allowed had the units remained as low and moderate income units. Such excess profits shall be applied against the Townships remaining low and moderate income unit obligation at that time. Should the Township Committee determine that it no longer requires the existing units to satisfy its Mt. Laurel obligation, said units will be released from deed restrictions and allowed to be sold without income or recapture requirements, beginning with the twenty-six (26) year.

This section shall be set forth in its entirety in all documents and covenants running with the land in order to insure proper notice of the terms and conditions of this section and shall be in a form approved by the Township Attorney.

5. In the event a developer of low/moderate income units, after documented diligent marketing efforts, cannot conclude a contract of sale or rental agreement of initially constructed units within a sixty (60) day period after receipt of a certificate of occupancy for the low or moderate income unit, the Affordable Housing Committee shall permit the following to occur, provided that subsequent resales or rereental shall remain subject to the maximum resale price or rereental restrictions as set forth elsewhere in this Article:

If upon receipt of documentation indicating continued inability to sell or rent low/moderate income units to qualifying households as outlined under Section 22.8.14 herein, then the unit may be sold to households whose

income exceeds the eligibility range as follows: low income unit may be sold or rented to households of moderate income; and, a moderate income unit (including a low income unit if not sold at moderate income levels) may be sold or rented to households with incomes up to but not exceeding one-hundred and twenty (120%) percent of the median income as defined herein.

6. If within ninety (90) days of notification to the Affordable Housing Committee of an intent to sell, an owner of a low/moderate income unit has not become contractually obligated to sell the unit from a list of potential buyers provided to it by the AHC or through the owners' broker or through the owners efforts, then the Affordable Housing Committee shall permit the resale of the unit as outlined in Section 22.8.14 herein, subject to continued price restrictions as set forth elsewhere in this Article.

7. A developer of low and moderate income units shall formulate in conjunction with the Affordable Housing Committee and implement a written affirmative marketing plan approved by the Planning Board. The plan shall also establish a marketing approach for resale or rental of units; the plan shall provide for advertising within municipalities included within West Windsor's fair share region, for notifying public and private agencies concerned with expanding housing opportunities and be in conformity with all State and federal non-discrimination obligations.

8. An Affordable Housing Committee shall be established by the Township to develop rules and procedures for ensuring implementation of the above availability guidelines and otherwise assist in the equitable administration of initial sale and rentals as well as resale and rentals of low and moderate income dwelling units.

Section 2. Chapter XXI "Subdivision" shall be amended as follows:

1. Section 21-3.1 Exceptions in Applications of Requirements is hereby amended by adding the following new sub-section "e".

e. The Planning Board when acting upon an application which includes provisions for low and moderate income housing, may waive those portions of the design standards that do not create health and safety concerns for the Township or for the future residents of a development based on waiver standards contained in Section 21-3.1a.

2. Section 21-1 Purpose is hereby amended to add the following paragraph:

"... the jurisdiction of West Windsor Township. Application of these subdivision rules, regulations and standards should also encourage cost-performance methods and designs to enable the construction of low and moderate income housing without creating an adverse impact on the public health, safety and general welfare of the Township or for the future residents of the development.

3. Section 21-4.0 General Intent is hereby amended to add the following paragraph:

"... necessary to make a decision. Development applications containing low and moderate income units shall conform to the procedural and plat detail regulations contained herein except as modified by Section 21-4.3 Expedited Review - Low/Moderate Income Developments."

4. Section 21-4.3 (new) Expedited Review - Low/Moderate Income Developments is hereby added as a new section to read as follows:

21-4.3 Expedited Review - Low/Moderate Income Developments

a. A major development application containing low/moderate income units shall be reviewed for completeness and a determination made within fifteen (15) days of its receipt for official processing. Thereafter, forty-five (45) days will be allotted for review of preliminary applications and thirty (30) days for the review of final applications by the appropriate Township agencies and other governmental entities as may be deemed appropriate. Upon completion of the review period, or within sixty (60) days of an application deemed complete for preliminary approval or forty-five (45) days for final approval, a public hearing shall be commenced on the application; it being given priority placement upon the Planning Board's agenda. Applications submitted under this section shall be subject to the municipal land use law maximum approval time periods for preliminary or final applications or combinations thereof with respect to rendering a final decision on the application unless an applicant grants an extension to said time period.

b. A non-binding concept plan review of an application containing low/moderate income units shall be heard by the Planning Board within thirty (30) days receipt of such a request by an applicant.

5. Section 21-4.5.3.f is hereby amended by adding the following:

"In assembling the required data, the applicant shall be required to rely only on existing information available from the Township's master plan documents, natural resource inventory and engineering data available from the Township engineer."

6. Section 21-4.6.3d is hereby amended by adding the following.

"For preliminary applications only, the applicant may rely on existing topographic information on file in the Township's engineer office provided there have been no major changes in the site's topography and that if requested by the Township engineer, specific portions of the site topography will be updated if required, at the applicant's expense, to approve the project's storm water control drainage plan."

7. Section 21-4.6.3 is hereby revised to read as follows:

m. When the development of the subdivision or improvements within the subdivision are contingent upon improvements outside the boundaries of said subdivision, information shall be supplied by the subdivider prior to planning board consideration for preliminary approval that the improvements outside the subdivision shall be installed and shall be

available to the subdivider prior to the issuance of any certificate of occupancy for the project or phase of a project that is the subject of a development application.

8. Section 21-4.6.3.0 is hereby revised to read as follows:

o. When deemed necessary to determine the suitability of the soil to support new construction, the planning board may require as a condition of final approval, test holes or borings to be made by a New Jersey licensed engineer or an approved testing laboratory at the expense of the subdivider under the direction of the Township engineer, prior to the commencement of construction.

9. Section 21-4.6.4 Preliminary Plat Review is hereby revised by adding the following new paragraph.

"Submission of a major development subdivision application shall be reviewed and acted upon by the Planning Board according to Section 21-4.3 Expedited Review herein."

10. Section 21.7.4.e.1 Final Plat Review is hereby amended by adding the following paragraph:

"Submission of a major development subdivision application shall be reviewed and acted upon by the Planning Board according to Section 21-4.3 Expedited Review herein."

11. Section 21-5.1.5 Table of Dimensions - Table A is hereby amended by adding a footnote (4) to paragraph B. Notes to Dimension Table to read as follows:

(4) Within planned developments if private streets are proposed and are to be maintained by a homeowners association, then such streets shall conform to the requirements of Table A "Table of Dimensions" except as amended below for minor/local and minor collector streets only.

	<u>Minor/Local</u>	<u>Minor Collectors</u>
ROW - Right-of-Way	N/A	N/A
Paving widths	24 ' provided no parking on street	30' provided no parking on street
Curb radii at intersections	24'	30'
Length of tangents between reverse curves	0	100'
Minimum radii to center line curves	125'	500'
Straight line maximum at center line	250'	2000'

12. Section 21-5.1.14 Cul-de-Sac is hereby amended by adding the following paragraph c to read as follows:

c. In planned developments, if a cul-de-sac is less than six hundred (600) feet in length, then Section 21-5.1.14a may be amended by the Planning Board to require a right-of-way turnaround radius of fifty (50) feet and a landscaped center island measuring twenty-six (26) feet in diameter.

Section 3. Chapter XXIII "Site Plan" shall be amended as follows:

1. Section 23-1.1 Purposes is hereby amended by adding the following paragraph i to read as follows:

i. Encourage cost-performance methods and designs to enable the construction of low and moderate impact creating an adverse impact on the public health, safety and general welfare of the Township or for the future residents of the development.

2. Section 21.3.1 "Waiver of Site Plan Review Requirements" is hereby amended by adding a new paragraph "c" to read as follows:

c. The Planning Board when acting upon an application which includes provisions for low and moderate income housing, may waive those portions of the design standards that do not create health and safety concerns for the Township or for the future residents of a development, based on waiver standards contained in Section 23-3.2a.

3. Section 23-4.2 Site Plan Review Advisory Board Action is hereby amended by changing its title and adding a new paragraph b. Expedited Review - Low/Moderate Income Developments to read as follows:

23-4.2 Site Plan Review Advisory Board Action - Expedited Review

a. Number first paragraph "a. The site plan advisory board..."

b. Expedited Review - Low/Moderate Income Developments: Development applications containing low/moderate income units shall be subject to Section 21-4.3a Expedited Review procedures and shall not be subject to site plan ordinance review procedures herein which may be conflictatory in nature.

A non-binding concept site plan review of an application shall be permitted subject to the requirements of Section 21-4-3b.

4. Section 23-4.5.3c.7 is hereby amended to add the following sentence:

"Grade elevations may be established from use of township topographical maps."

5. Section 23-5.0 General Purpose is hereby amended by adding the following sentence:

"... for relocation of such certificate." Application of these site plan standards should also encourage cost-efficient methods and designs to enable the construction of low and moderate income housing without creating an adverse impact on the public health, safety and general welfare of the Township or for the future residents of the development in reviewing any site plan, ..."

6. Section 23.6.4 "Site Design and Building Layout" is hereby deleted and replaced to read as follows:

23.6.4 Site Design and Building Layout.

In reviewing site plans, the following site design and building layout principles, where applicable, shall be followed:

23-6.4.1 Minimum Spacing Between Buildings.

a. Between Similar Structures. In development groups (more than one (1) building or structure on a tract) the following distances shall be maintained between structures:

1. End wall (no openings) to end wall: twelve (12) feet minimum.
2. Any building face to street curb: twenty (20) feet minimum.
3. Any building face to parking area: twelve (12) feet minimum.
4. End wall to window wall: thirty (30) feet minimum.
5. Window wall to window wall: seventy-five (75) feet minimum.

The Planning Board shall reduce the above distances by not more than one-third if there is an angle of 20 degrees or more between buildings and if extensive landscaping or buffers are placed between buildings.

**APPENDIX 2. AFFORDABLE HOUSING COMMITTEE OUTLINE**

APPENDIX 2.

REVISED  
D R A F T  
9/7/84  
12/10/84  
12/14/84  
12/20/84

OUTLINE OF "AFFORDABLE HOUSING COMMITTEE"

A separate ordinance creating the "Affordable Housing Committee of West Windsor Township" is suggested for monitoring the long term compliance of the Mt. Laurel II mandate within housing developments containing low/moderate income housing. The committee's responsibilities will be to: establish tenanting/sale policies for use by developers in initial marketing efforts and for individual and owners in subsequent resales or rerentals of low/moderate income units; establish income qualifications, and maximum resale or rental prices; generally enact additional rules and procedures to assure that low and moderate income units constructed in West Windsor remain available to such families for a minimum thirty (30) year period.

1. West Windsor Affordable Housing Committee

Hereinafter the Affordable Housing Committee may also be known as the "AHC".

a. Composition

- (1) The AHC shall consist of seven (7) members, all of whom shall be appointed by the Township Committee; one of whom shall be a member of the Township Committee. One of the remaining six members shall be an occupant of a low/moderate income unit and shall be appointed within one year of issuance of a Certificate of Occupancy for such units. Of the remaining positions, one member may be a developer of low/moderate income housing within the Township.
- (2) The Township Committee may appoint alternate members.
- (3) Attendance by four (4) members or alternates shall constitute a quorum. Passage of any motion requires an affirmative vote by a majority of members present.
- (4) The initial term of office of the AHC shall be three members for one (1) year, three members for two (2) years to be designated when making the appointment, with the Township Committee member appointed for one (1) year. The terms of office shall thereafter be two (2) years with reappointment at the pleasure of the Township Committee. The appointments shall

be made in such a manner so that the terms of approximately one-half (1/2) of the members shall expire each year.

- (5) The Affordable Housing Committee shall elect a chairman, who may not be the Township Committee member or a developer, and a vice-chairman from among its members. Their terms of office shall be one year and they shall be eligible for re-election. The Committee may also elect a secretary, who may not be a member of the Committee, and it may create and fill such other offices as it shall determine. The Township Committee may employ or assign at the request of the AHC such personnel or experts and other staff as it deems necessary, provided such obligations do not exceed compensation it has available for such use.

b. Vacancies; Removal for Cause

The Township Committee may remove any member of the Affordable Housing Committee for cause on written charges served upon the members and after a hearing thereon, at which time the members shall be entitled to be heard either in person or by Counsel. A vacancy in the Committee occurring otherwise than by expiration of the term, shall be filled for the unexpired term in the same manner as an original appointment.

c. Powers

- (1) The Affordable Housing Committee is hereby granted and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this Ordinance, including but not limited to the following:
  - (i) To prepare and forward to the Township Committee of the Township of West Windsor such rules and regulations as it deems necessary or appropriate to implement the purposes of this Ordinance.
  - (ii) to supply information to developers and families of low or moderate income to help them comply with the provisions of this Ordinance;
  - (iii) to hold hearings upon due notice and adjudicate applications of individuals or families who believe themselves to be Families of Low or Moderate Income.
  - (iv) to monitor the Township's housing efforts identifying problems and recommending changes and improvements as experience may suggest.
- (2) The Affordable Housing Committee shall give ten (10) days written notice of hearing to all parties involved, and shall

give all interested persons an opportunity to be heard.

2. Definitions

- a. AHC means the Affordable Housing Committee of West Windsor Township created by ordinance \_\_\_\_\_.
- b. Low Income Household means a household whose gross aggregate annual income, at the time of purchase or rental, does not exceed fifty percent (50%) of the median income established and adjusted from time to time, for the geographic area in which the Township is located by the U.S. Department of Housing and Urban Development.
- c. Moderate Income Household means a household whose aggregate gross annual income, at the time of purchase or rental, is between fifty percent (50%) and eighty percent (80%) of the median income established and adjusted from time to time, for the geographic area in which the Township is located by the U.S. Department of Housing and Urban Development.
- d. Gross Aggregate Household Income means the total gross household income from all sources of all members of the household. In determining the amounts of income to be exclude, the Committee may, in its discretion, consider the number of minor children in the household and such other factors as appropriate, provided they are consistent with federal and state subsidized housing guidelines.
- e. Low and Moderate Income Housing means dwelling units developed pursuant to the Township's Zoning Ordinance and made available to low and moderate income households as established under Section 3 below.

3. Monitoring Program Operation

The following procedures and priorities for dwelling unit initial sales, resales, initial rentals and rereals shall be monitored by the Affordable Housing Committee:

a. Selection Procedures

The AHC shall establish a listing of low and moderate income households and persons based on the below categories; the first such listing shall be compiled within forty-five (45) days of notification by a developer that low and/or moderate income units will be available for occupancy in approximately six (6) months of this notification. This listing, along with any similar such listing conforming to selection categories below compiled by a developer shall form the basis of an initial pool of prospective purchasers or renters for the developer's initial sale/rental program.

Periodically, but at least once a year thereafter during March, the AHC shall provide an updated list, recertifying categories of those households which are likely to be reached in the coming year and who have not obtained a housing unit, making appropriate adjustments for households whose status may have changed since the last certification. Those applicants wishing resale units only shall be so indicated.

The priority categories are as follows:

- (1) Persons who reside or who have resided in West Windsor Township and live or have lived in substandard or overcrowded housing units as defined by "Indigenous Need" category of the Mt. Laurel II mandate or who are displaced from residences within the Township as a result of public action, fire or disaster. Indigenous housing need means households living in units either lacking plumbing, lacking adequate heating, or overcrowded, as defined by the U.S. Census.

Employees of West Windsor Township, West Windsor-Plainsboro Regional School District, local resident volunteers of public safety or rescue organizations or other public agencies or educational facilities located within the Township, living in shared or deficient housing.

Senior citizen residents or immediate relatives of persons identified in paragraph 3a(1) and a(2) above living in substandard or overcrowded housing units located in the "Present Need" region of which West Windsor is a part.

- (2) Households with one or more wage earners working in West Windsor Township and living more than twenty miles from the place of work within West Windsor Township or living in an urban aid municipality as defined by the NJDCA for the Township's "Prospective Need" region and living in substandard housing or suffering from such other housing deficiency as may be defined by the Committee.

Households with one or more wage earners working within a ten-mile distance of West Windsor's municipal boundary and living in substandard or overcrowded units or suffering from such other housing deficiency as may be defined by the Committee.

- (3) All other income eligible households living within either the "Present Need" or "Prospective Need" region of which West Windsor is a part.

b. Income Eligibility

Certification of household income of listed households shall be accomplished by the developer in the case of initial sales rentals/rentals and by the AHC in the case of resales as follows:

- (1) Initial sale/rental and subsequent re-rentals. Developer certifies to the AHC that each prospective purchaser/renter meets the selection categories and is income qualified. A developer shall submit a certification folder on each applicant with appropriate documentation as to income and eligibility according to the selection categories. Documentation of household income shall include:
  - (i) Affidavit/application of applicant certifying income sources are accurate and complete.
  - (ii) Copy of most recent federal income tax return, or other financial papers used to certify income.
  - (iii) Employer certification of current income and employment status.
- (2) Resales. The AHC shall establish household income eligibility based on information to be submitted by a prospective purchaser corresponding to the documentation required under paragraph b(1) of this section. A letter of income eligibility shall be issued to the applicant within ten (10) days of receipt of the required documentation.

The AHC shall review the application submitted under paragraph b(1) or b(2) above and if appropriate shall issue a letter of non-compliance, no later than thirty (30) days from receipt of said information. A finding of non-compliance may lead to the Township seeking a rescission of the sale/rental as provided for in paragraph c(3) herein.

c. Sale and Resale, Rental and Rerental Price Standards

- (1) Units initially sold or rented as low or moderate income shall remain so at resale or rerental. A developer of sale or rental units shall provide the AHC with a listing, by unit type and size, of the maximum selling price of the low and/or moderate income units. The listing shall also show varied sales prices based on varied mortgage interest rates anticipated at the time of sale. If a rental unit is involved, a maximum rental price by unit type and size shall be provided. These sale, rental or rerental levels shall not exceed affordability criteria established in Section 22-8.14 of the Township's zoning ordinance.
- (2) Maximum resale price shall equal the sum of the following:
  - (i) price of unit paid by owner increased by the difference in the CPI-housing component only, for the region in which

West Windsor is located, which shall be measured from the 1st day of July last preceding the year of purchase to the 1st day of July last preceding the year of sale;

(ii) cost of permanent improvements for which a prior approval from the Committee has been issued. Declaration value shall be based on actual documentation of labor and materials at the time of installation or a reasonable estimate by the owner of the improvements valued, subject to verification of building permit data regarding the construction value of the improvements;

(iii) costs of sale to include realty transfer fee, attorneys' fees, brokers' fees, other costs and fees, including points. The Committee shall from time to time establish fee charge guidelines as to allowable charges so as not to jeopardize the affordability of the sale unit to a low or moderate income household;

provided that the purchaser is an eligible low or moderate income household.

- (3) Initial sale, resale, rental and rerelease price restrictions including Township remedies for non-compliance shall be provided for in deed restrictions subject to the Township's attorney review and will not be regulated by the AHC. However any conveyance to an ineligible person or sale/rental price established in excess of the restrictions at the time of occupancy is subject to rescission by the Township. Any Township costs and legal fees in obtaining rescission are to be borne by the seller.
- (4) In the event initial sale, resale, rental or rerelease cannot be concluded after diligent marketing efforts within an established time period, then the variation of eligible household incomes as provided for in Section 22-8.14e(5) of the Township's zoning ordinance shall be operable subject to the requirements stipulated therein.

d. Restriction on Use

Low and moderate income units shall only be sold or rented to income eligible low and moderate income households as may be modified by the AHC according to Section 22-8.14e(5) of the Township's zoning ordinance. Such units shall be the primary residence of the occupant. Purchasers or tenants may lease or sublet such units only to income qualified households and at rent levels not exceeding those established for the unit.

e. Program Reports

Developer of initial sale and rental low/moderate income units as well as rerelease units shall submit quarterly reports to the AHC,

beginning with the first quarter following initial occupancy and continuing to final completion of the project, in the case of sale projects and for the duration of income controls in the case of rental projects, listing by unit type and address the number of units sold or rented.

4. Foreclosure Proceedings

The Committee shall establish written regulations dealing with foreclosure proceedings, extent of price controls continuation and distribution of funds from a foreclosure sale, subject to approval by the Township Committee.

5. Program Fee Requirements

All applicants seeking final approval for development projects containing low and moderate dwelling units shall be required to pay an initial registration fee at the time of issuance of a Certificate of Occupancy.

Upon resale or rerelease of such units, a renewal fee shall be paid at the time of issuance of Certificate of Occupancy in the case of a resale or at the time of execution of a rental agreement in the case of a rental unit.

Such fees collected shall be maintained in an Escrow Account by the Township and expended only in the exercise of the Committee's monitoring duties outlined herein. Fee amounts shall be as established by the Township's Fee Ordinance.

6. Enforcement-Applicability

- a. Developers seeking final approval for projects containing low and moderate income dwelling units shall provide an Affordable Housing Plan for their project that provides necessary declaration of covenants and restrictions in a form acceptable to the Township Attorney including provisions to assure the initial sale or rental as well as subsequent resales and rereleases of dwelling units in accordance with the requirements of this Ordinance and applicable sections of the Township's Zoning Ordinance dealing with such housing.
- b. Developers seeking final approval shall also provide a written affirmative marketing plan indicating how initial sale, rental and rerelease units will be marketed within the procedures and priorities established for such units herein.
- c. In the event an applicant fails to construct and sell or rent his required low and moderate income housing units in accordance with the provisions of his approved Affordable Housing Plan, final approval and this Ordinance, he shall be subject to a revocation of his development permit and cessation of issuances of Certificates of Occupancy until the development is brought into compliance.

Revocation of such permits shall be proceeded by a ten (10) day written notice extending a thirty (30) day time period in such cited non-compliances may be corrected.

**APPENDIX 3. ZONING MAP AMMENDMENT**

APPENDIX 3 - ZONING MAP AMENDMENT

D R A F T - 12/10/84

AN ORDINANCE TO AMEND AND SUPPLEMENT THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1979)

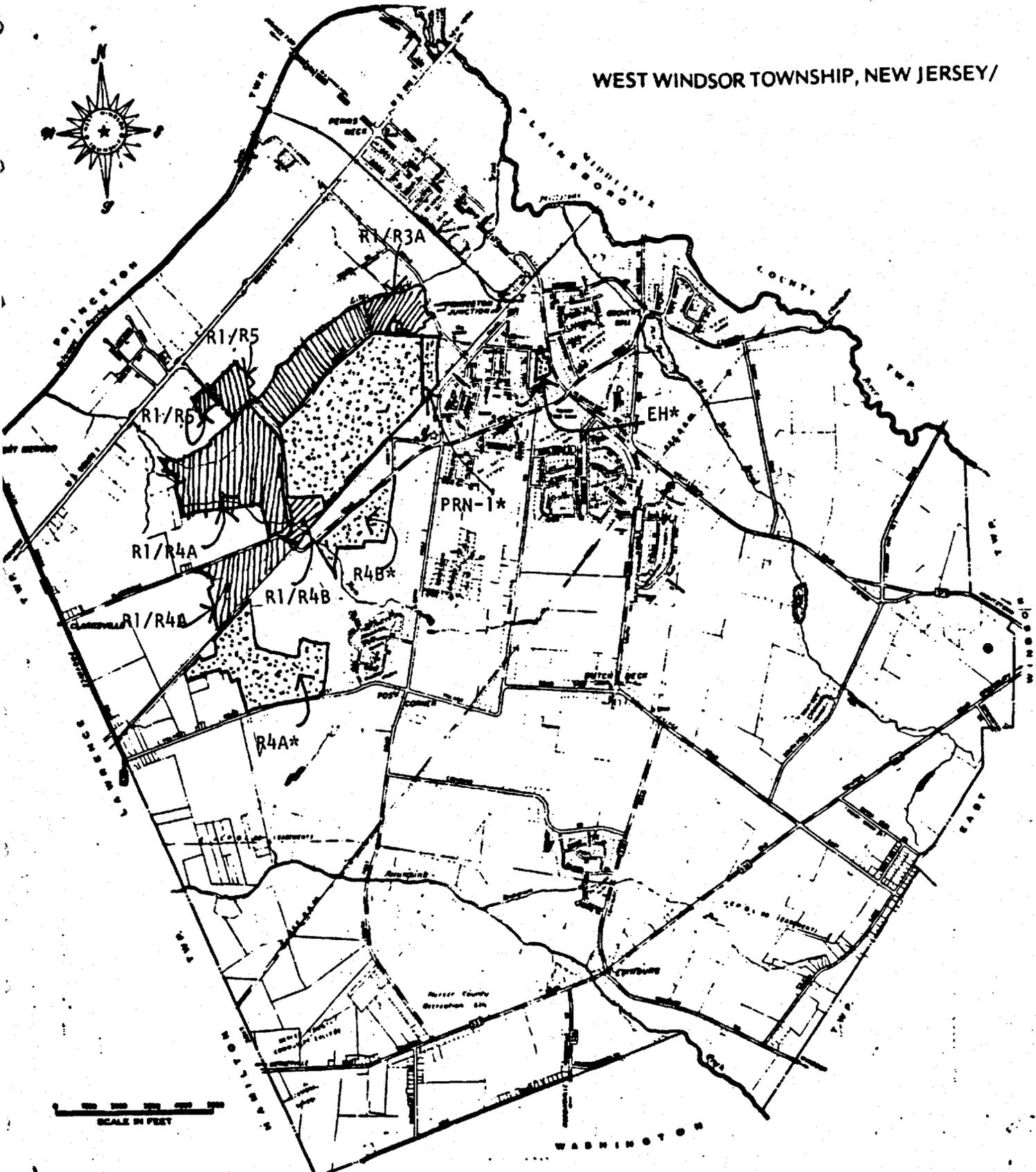
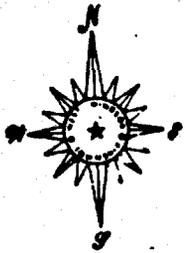
AN ORDINANCE TO AMEND CHAPTER XII - ZONING, ARTICLE 1, SECTION 22-1.4 ZONING MAP OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1979) RE-DESIGNATING CERTAIN RESIDENTIAL DISTRICTS TO REQUIRE A TWENTY (20%) PERCENT SET-ASIDE FOR LOW AND MODERATE INCOME HOUSING.

The Township Committee of the Township of West Windsor ordains that:

Section 1. Chapter XII - Zoning, Article 1, Titles, Purposes, Establishments of Districts, General Conditions, Section 22-1.4 Zoning Map is hereby amended by changing certain residential zoning districts and amending the "Zoning Map, Township of West Windsor" to reflect such district changes.

Section 2. This Ordinance shall take effect upon final passage and publication in accordance with law.

WEST WINDSOR TOWNSHIP, NEW JERSEY/



WEST WINDSOR TOWNSHIP, NEW JERSEY

PHASE 1 REZONING 

PHASE 2 REZONING 

- EH- Elderly Housing
- R4A Residence District
- R4B Residence District
- PRN-1 Planned Residential Neighborhood

- R1/R3A Residence District
- R1/R4A Residence District
- R1/R4B Residence District
- R1/R5 Residence District

See Zoning Ordinance text Section 22-8.14d(3) for explanation of phased rezoning timing.

**APPENDIX 4. FEE ORDINANCE AMMENDMENT**

APPENDIX 4. - DEVELOPMENT FEE AMENDMENTS

D R A F T - 12/20/84 R

AN ORDINANCE TO AMEND AND SUPPLEMENT THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1979)

AN ORDINANCE TO AMEND CHAPTER XX "MUNICIPAL FEES", SECTION 20-4 DEVELOPMENT APPLICATION REVIEW FEE, AND SECTION 20 SEWER CONNECTION FEES TO PERMIT CERTAIN MODIFICATIONS AND FEE WAIVERS FOR DEVELOPMENTS CONTAINING LOW AND MODERATE INCOME HOUSING UNITS.

The Township Committee of the Township of West Windsor hereby ordains as follows:

Section 1. Chapter XX Municipal Fees, Section 20-4 Development Application Review Fee, is hereby amended by adding a new paragraph C. Fee Modifications - Low/Moderate Income Residential Projects, to read as follows:

C. Fee Modifications - Low/Moderate Income Residential Projects

Applications for residential development projects containing low and moderate income dwelling units shall be exempt from paying any application review fees for subdivision and/or site plan review as follows:

1. Subdivision Fees - For the low and moderate income portion of the project only, the per lot fee shall be waived.
2. Site Plan Fees - For the low and moderate income portion of the project only, the per square foot of gross floor area fee shall be waived.

Section 2. Chapter XX Municipal Fees, Section 20-4, paragraph C. Miscellaneous Development Application Fees is hereby amended by revising subparagraph 2. Inspection Fee to read as follows:

2. Inspection Fee - An escrow fund will be established, before construction begins, with the Township and such funds shall be used to pay the fee and costs of professional services employed by the Township to inspect the construction. An initial fee of \$2,500 shall be deposited with the Township upon the issuance of a building permit. The basis for fees to be charged by the Township for inspection services shall be the same fee basis the Township uses to pay for Township-related projects.

A monthly itemized bill will be forwarded to the applicant and upon exhaustion of the initial escrow fee, replenishment of the escrow account shall be in an amount equal to the charges incurred. Payment is due within fifteen days of receipt of such bill. Failure of the applicant to pay inspection fees may lead to the construction being stopped until fees are paid and penalties assessed equal to an interest payment on unpaid bills of 1.5% per month plus Township legal fees and collection charges necessary to retrieve unpaid bills.

Section 3. Chapter XX, Municipal Fees, Section 20-12, paragraph a. Sewer Permit Fee is hereby amended by adding the following:

"For residential projects containing low and moderate income dwelling units, the sewer hook-up fee shall be reduced to Six Hundred Dollars (\$600) per dwelling unit."

Section 4. Chapter XX, Municipal Fees, Section 20-3.1a New Construction Building Permit Fees shall be amended by adding the following:

"Those portions of residential projects which are low and moderate income housing units shall not be charged a fee as outlined herein, except that any incurred fees for state or outside agencies will be required."

Section 5. Chapter XX, Municipal Fees, is hereby amended by adding a new Section 20-16 - Affordable Housing Committee Registration Fee to read as follows:

Section 20-16 - Affordable Housing Committee Registration Fee

An escrow fund shall be established by the Township for the receipt of registration fees to be used in assisting to finance the duties of the Township's Affordable Housing Committee as follows:

- a. Initial Sale/Rental as well as Resale of Low and Moderate Income Units: One Hundred Dollars (\$100) per low/moderate income dwelling unit.
- b. Rerental of Low/Moderate Income Units: Fifty Dollars (\$50) per low/moderate income dwelling unit.
- c. The fee shall be payable as follows:
  - i. Initial Sale/Rental - Upon issuance of Certificate of Occupancy
  - ii. Resale - Upon time of closing
  - iii. Rerental - Upon execution of lease agreement
- d. Failure to pay required fees shall be subject to penalties equal to 1.5% interest per month on unpaid fee plus any legal and collection fees involved in the repayment of the required fee.

Section 6. This Ordinance shall take effect upon final passage and publication in accordance with law.

M E M O R A N D U M

TO: Jay Lynch  
cc: B. Schragger, P. Abeles, C. Bisgaier, M. Pane

FROM: RPPW, Inc. (G. Lenaz)

DATE: December 19, 1984

SUBJECT: Proposed Affordable Housing Committee (AHC Operating Requirements - Fee Basis)

As requested, we have prepared this memorandum outlining the basis for establishing a reasonable fee to help finance the operation of the AHC. While no one can actively predict the level of staff support necessary to operate the AHC, certain assumptions with regard to start-up costs and on-going operation after initial sales are required. The township is prepared to assist in the financing of the committee's operation by providing of free office space, telephone, postage and supplies at no charge to the operation.

This analysis is contained on two tables attached. Table 1 projects the cash operating requirements of the AHC to perform its duty over the six-year-time period of repose. The second table assumes a resale turnover rate added to initial sales/rentals to determine the order of magnitude caseload that the Committee would encounter should all the units come on line within the six-year-time period.

It is assumed that the AHC will have an appointed board who would oversee basic policy phase of development, to insure proper implementation and establishment of efficient processing procedures, the AHC staff will check each application for initial sale/resale as well as resale/rental. With experience it will determine the necessity for continuing this application screening level.

The analysis indicates that for the six-year period a fee of \$100 (rounded) per low/moderate income unit is required to cover operating costs of the AHC. This is based on a total operating requirement of \$154,220. to be spread over an average application caseload of 1,516 low/moderate income units. This average figure includes estimated turnover units for the six-year period. Elderly units are excluded from the AHC fee requirements.

By way of fee comparison the township has offered to waive development review and building permit review fees for low and moderate income units. Using the following assumptions, the development review fee waiver results in a reduction of \$132,025 in fee income to the township:

Memo Jay Lynch

cc: B. Schragger, P. Abeles, C. Bisgaier, M. Pane

December 20, 1984

Page 2

- 1) 1316 L/M units resulting from 20% set aside
  - a) Distribution: 80% flats/20% townhouses
  - b) Unit mix: 1 BR - 10% E 640 SF; 2 BR - 70% E 820 SF;  
3 BR - 20% E 950 SF
  
- 2) 250 L/M elderly units
  - a) Distribution: all flats
  - b) Unit mix: 0 BR - 50% at 550 SF; 1 BR - 40% at 640 SF;  
2 BR - 10% at 810 SF.

Using the same unit distribution building permit fee waivers would result in a reduction of \$237,600 in fee income.

Collectively, the township is waiving \$369,625. in fee income from both development and building permit review fees as compared to the establishment of an AHC monitoring fee of \$154,220. for the same time period of operation.

TABLE 1. AHC Operating requirements

- Assumptions:
1. AHC will eventually need a full-time staff coordinator to develop operating procedures, respond to committee questions, public inquiries, deal with new developers, handle resale/rental inquiries, income, qualify resale/rental households, prepare selection units and recertify, prepare reports to township committee, attend committee meetings and generally monitor overall program. This position would begin part-time, and after a start-up period become full time. Similarly a part-time secretary will be needed to handle typing, telephones, and general clerical work.
  2. Legal/accounting and other professional services would be provided on an as-needed basis during the initial start-up period.
  3. Customary office expenses (eg. rent, telephone, supplies, postage, etc.) will be absorbed by the township.

**TABLE 1 West Windsor Affordable Housing Committee - Annual Operating Requirements 1985-1990**

	1985	1986	1987	1988	1989	1990	TOTAL TO YEAR COST
AH							
Coordinator 1)	\$ 9,000	12,000	18,000				
Secretarial 2)	2,400	4,000	4,000				
Personnel	11,400	16,000	22,000				
Fringes at 18%	2,050	2,880	3,960				
Legal/ Accountant/ Professional Support	5,000	5,000					
Office Rent	0	0	0	0	0	0	
Telephone, Supplies 4) Postage							
TOTAL BASE OPERATING COST	\$18,450	23,880	25,960	27,260	28,620	30,050	\$154,220

3)

- 1) Assumes part-time based on \$18,000 base salary - 1/2 time gradually increasing to full time in 1987.
- 2) Assumes part-time based on \$12,000 base salary - 1/5 time increasing to 1/3 time.
- 3) Assumes base cost increases at 5% per year.
- 4) Provided by Township at no cost.

TABLE 2 - AHC - Estimated Transactions 1985-1990

- Assumptions:
1. There will be no transactions in 1985.
  2. Resales/rental transactions will occur at an assumed annual turnover rate based on a "high" of 10% to a "low" of 3%.
  3. The total transactions include initial units plus an average of the "low" and "high" turnover units.

TABLE 2. AHC - Estimated Transactions - 1985-1990

<u>Transactions</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>Total To Year Period</u>
Initial Sale/Rental	0	263	263	263	263	264	1,316
Resale/ Rental							
Low 1)	0	0	16	24	32	39	111
High 2)	0	0	53	79	105	132	369
Total Low		263	279	287	295	303	1,427
Total High		263	316	342	368	395	1,685

Average turnover = 1,526

- 1) Assumes a low turnover of 3%.
- 2) Assumes a high turnover of 10%.

D-4  
evid. marked  
July 29, 1988

ORDINANCE 85-1

AN ORDINANCE TO AMEND AND SUPPLEMENT THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1979).

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XXII "ZONING"; CHAPTER XXI "SUBDIVISION"; CHAPTER XXIII "SITE PLAN; AND CHAPTER XXIV "PROVISIONS APPLICABLE TO SITE PLANS AND SUBDIVISIONS" OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1979) TO IMPLEMENT VARIED REQUIREMENTS RELATED TO THE PROVISION OF AFFORDABLE HOUSING MANDATED BY MT. LAUREL II.

The Township Committee of the Township of West Windsor ordains that;

Section 1. Chapter XXII, "Zoning" be amended as follows:

- 1. Section 22-1.3 "Establishment of Zoning Districts" is hereby amended by adding the following districts:

EH	Residence District	(Elderly Housing)
R3A	Residence District	(Affordable Housing)
R4A	Residence District	(Affordable Housing)
R4B	Residence District	(Affordable Housing)

- 2. Section 22-1.7 "Condition Uses" is hereby amended to read as follows:

Uses listed as a conditional use in a particular district may be permitted by the Planning Board only if it has determined that the development proposal complies with the conditions and standards set forth in this chapter for the location and operations of such use.

- 3. Section 22-2.0 "Definitions" is hereby amended to delete the definition of "Least Cost Housing" and to amend the following:

"Low and Moderate Income Housing" means dwelling units developed pursuant to Section 22-8.14 herein.

"Low -income household" shall mean a household earning between 0 and 50% of the median income established and adjusted from time to time, for the geographic area in which the township is located, by the U.S. Department of Housing and Urban Development.

"Moderate-income household" shall mean a household earning between 50% and 80% of the median income established and adjusted from time to time for geographic area in which the township is located, by the U.S. Department of Housing and Urban Development.

4. Section 22-3. "Summary Regulations Included; Schedule" is hereby amended to change Table 1 to read as follows:

(see Table 1 attached)

5. Article IV - "Regulations for Residence Districts" is hereby amended by adding Sections on "Use Regulations" and "Bulk and Area Regulations" for a new District R3A to follow Section 22-4.7 "Bulk and Area Regulations-R3" as follows:

22-4.6A Use Regulations - R3A Residence District.

22-4.6A.1 Permitted Uses. In an R-3A district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:

- a. Any permitted use in an R-1 district, subject to the bulk and area regulations of that district.

- b. With sewer and public water: townhouse; patiohouse; or single-family-zero lot line detached dwellings within a planned development, provided that twenty (20%) percent of the total dwelling units that are the subject of a development application shall be low and moderate income dwellings as required by Article VIII, Section 22-8.14 of this chapter.

22-4.6 A.2 Conditional Uses. In an R-3A district, the following uses may be permitted as conditional uses:

- a. Any use permitted by condition in an R-2 district.
- b. Garden apartment dwellings within a planned development containing a minimum of fifty (50) acres.

22-4.7A Bulk and Area Regulations - R-3A District.

The following shall be the standards for the R-3A district:

22-4.7A.1 Tract Development.

- a. Minimum Tract Area: For other than single-family detached dwellings, five (5) acres.

- b. Minimum Tract Frontage: For other than single-family detached dwellings, one hundred fifty (150) feet.

c. Common Open Space. For townhouses and garden apartments only, not less than twenty-five (25%) percent of the tract area designated for a planned development shall contain green space. Individual residential lots or portions thereof shall not be construed as open space. Common open space shall conform to requirements for such open space, except as modified herein, as contained in subsection 22-4.14.3 of this Article.

d. Maximum Permissible Development Density.

(1) The average gross density shall not exceed four (4) dwelling units per acre.

(2) Net density of particular types of dwelling units shall be in accordance with the schedule below. In calculating permitted net densities as outlined herein, the area of land covered by such uses shall include internal local streets, parking areas, and all private yards, but not areas designated as common open space or development collector streets.

(a) The net density of single family, patio homes and zero lot line dwellings shall not exceed five (5) dwelling units per acre.

(b) The net density of town houses shall not exceed ten (10) dwelling units per acre.

(c) The net density of garden apartments shall not exceed twenty-five dwelling units per acre.

e. Residential Unit Type Distribution: There shall be a variety of housing types within a planned development containing fifty (50) or more acres such that at a minimum, two (2) of the permitted housing types shall be provided. Of the housing types provided, no one type shall exceed eighty (80%) of the total market rate dwelling units within the development. This unit type distribution requirement shall not apply to units designated for low and moderate income housing.

f. Maximum Improvement Coverage: Forty (40%) percent.

g. Design: The standards and principles for design set forth in subsection 22-4.14.2d 9 (b) of this Article as well as those applicable provisions contained in the township's Site Plan, Subdivision and Provisions Applicable to Site Plans and Subdivisions Ordinances shall be used in the design of residential uses permitted in this district.

22-4.7A.2 Individual Lots.

	Patio/Zero- Lot Line	Townhouse
a. Minimum lot area (sq. ft.)	5,000	2,000
b. Minimum lot frontage (feet)	50	18
c. Minimum lot width (feet)	50	18
d. Minimum lot depth (feet)	50	--
e. Minimum yards* (feet)		
1. Front	20	20
2. Rear	10	10
3. Side	0,10**	10***

\* Yards abutting arterial streets shall be increased by thirty (30) feet; those abutting collector streets shall be increased by ten (10) feet.

\*\* Ten (10) feet if a patio dwelling unit which may be on one side if also designed as an attached or zero lot line dwelling; one side ten (10) feet if zero lot line dwelling.

\*\*\* At end units only.

22.4.7A.3 Maximum Building Height: Three stories, but not to exceed thirty-five (35) feet.

6. Article IV - "Regulations for Residence Districts" is hereby amended by adding Sections on "Use Regulations" and "Bulk and Area Regulations" for a new District R4A to follow Section 22-4.9 "Bulk and Area Regulations - R4 District" as follows:

22-4.8A Use Regulations - R-4A Residence District.

22-4.8A 1 Permitted Uses. In an R-4A district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:

a. Any permitted use in an R-1 district, subject to the bulk and area regulations of that district.

b. With sewer and public water, patio house; single-family zero lot line detached dwelling; two-family and semi-detached dwelling; townhouse; garden apartment dwelling within a planned residential development, provided that twenty (20%) percent of the total dwelling units that are the subject of a development application shall be low and moderate income dwellings as required by Article VIII, Section 22-8.14 of this chapter.

22-4.8A2 Conditional Uses. In an R-4A district, the following uses may be permitted as conditional uses:

- a. Any use permitted by condition in an R-2 district.

22-4.9A Bulk and Area Regulations - R-4A District.

The following shall be the standards for the R-4A district:

22.4.9A 1 Tract Development.

- a. Minimum Tract Area: Five (5) acres.
- b. Minimum Tract Frontage: One hundred fifty (150) feet.
- c. Open Space: For other than patio house, single-family zero lot line detached dwellings, not less than twenty-five (25%) percent of the tract area shall contain green open space. Individual lots or portions thereof shall not be construed as open space. Common open space shall conform to requirements for such open space as contained in subsection 22-4.14.3 of this Article.

d. Maximum Permissible Development Density.

(1) The average gross density shall not exceed six (6) dwelling units per acre.

(2) Net density of particular types of dwelling units shall be in accordance with the schedule below. In calculating permitted net densities as outlined herein, the area of land covered by such uses shall include internal streets, parking areas and all private yards, but not areas designated as common open space or development collector streets.

- (a) The net density of single-family patio homes and zero lot line dwellings shall not exceed five (5) dwelling units per acre.
- (b) The net density of two-family and semi-detached units shall not exceed eight (8) dwelling units per acre.
- (c) The net density of townhouses shall not exceed ten (10) dwelling units per acre.
- (d) The net density of garden apartments shall not exceed twenty-five (25) dwelling units per acre.

e. Residential Unit Type Distribution: There shall be a variety of housing unit types within a planned development such that at a minimum, two (2) of the permitted housing typed shall be provided. Of the housing types provided, no one type shall exceed eighty (80%) percent of the total market rate dwelling units within the development. This unit type distribution requirement shall not apply to units designated for low and moderate income housing.

f. Maximum Improvement Coverage: Forty (40%) percent.

g. Design: The standards and principles for design set forth in subsection 22-4.14.2d 9 (b) of this Article as well as those applicable provisions contained in the township's Site Plan, Subdivision and Provisions Applicable to Site Plans and Subdivisions Ordinance shall be used in the design of residential uses permitted in this district.

22-4.9A 2 Individual Lots.

	Patio/Zero lot line	Townhouse	Two-Family Semi-Detached
a. Minimum lot area (sq. ft.)	5,000	2,000	3,200
b. Minimum lot frontage (feet)	50	18	40
c. Minimum lot width (feet)	50	18	40
d. Minimum lot depth (feet)	50	--	--
e. Minimum yards* (feet)			
1. Front	20	20	20
2. Rear	10	10	10
3. Side	0,10**	10***	10***

\* Yards abutting arterial streets shall be increased by 30 feet; those abutting collector streets shall be increased by 10 feet.

\*\* 10 feet if patio dwelling unit; one side 10 feet if zero lot line dwelling.

\*\*\* At end units only.

22-4.9A 3 Maximum Building Height. Three stories but not to exceed thirty-five (35) feet.

7. Article IV - "Regulations for Residence District" is hereby amended by adding Sections on "Use Regulations" and "Bulk and Area Regulations" for a new District R-4B to follow newly revised Section 22-4.9A Bulk and Area Regulations - R-4A District, as follows:

22-4.9B Use Regulations - R-4B Residence District

22-4.9B1 Permitted Uses. In an R-4B district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:

a. Any permitted use in an R-1 district, subject to the bulk and area regulations of that district

b. With sewer and public water: patio house; single-family zero lot line detached dwellings; two-family and semi-detached dwellings; townhouses; and garden apartment dwellings within a planned development provided that twenty (20%) percent of the total dwelling units that are the subject of a development application shall be low and moderate income dwellings as required by Article VIII, Section 22-8.14 of this chapter.

22-4.9B.2 Conditional Uses. In an R-4B district, the following uses may be permitted as conditional uses:

2. Any use permitted by condition in an R-2 district.

22-4.9B Bulk and Area Regulations - R-4B District.

The following shall be the standards for the R-4B district:

22-4.9B.1 Tract Development.

a. Minimum Tract Area: Five (5) acres.

b. Minimum Tract Frontage: One hundred fifty (150) feet.

c. Open Space: For other than patio house or single-family zero lot line detached dwellings, not less than twenty-five (25%) percent of the tract area shall contain green open space; individual residential lots or portions thereof shall not be construed as open space. Common open space shall conform to requirements for such open space, except as modified herein, as contained in subsection 22-4.14.3 of this Article.

d. Maximum Permissible Development Density.

(1) The average gross density shall not exceed eight (8) dwelling units per acre.

(2) Net density of particular types of dwelling units shall be in accordance with the schedule below. In calculating permitted net densities as outlined herein, the area of land covered by given uses shall include internal streets, parking areas and all private yards, but not areas designated as common open space or development collector streets.

- (a) The net density of single-family patio homes and zero lot line dwellings shall not exceed five (5) dwelling units per acre.
- (b) The net density of two-family and semi-detached units shall not exceed eight (8) dwelling units per acre.
- (c) The net density of townhouses shall not exceed ten (10) dwellings per acre.
- (d) The net density of garden apartments shall not exceed twenty-five (25) dwelling units per acre.

e. Maximum Improvement Coverage: Forty (40%) percent.

f. Design: The standards and principles for design set forth in subsection 22-4.14.2d9(b) of this Article as well as those applicable provisions contained in the township's Site Plan, Subdivision and Provisions Applicable to Site Plans and Subdivisions Ordinances shall be used in the design of residential uses permitted in this district.

22-4.9B.2 Individual Lots: The standards for the R-4B district shall be the same as those for the R-4A district.

8. Section 22-4.10 "Use Regulations - R-5 Residence District" and Section 22.4.11 "Bulk an Area Regulations - R-5 District" are hereby amended in their entirety to read as follows:

22-4.10 Use Regulations - R-5 Residence District.

22-4.10.1 Permitted Uses: In an R-5 district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used,, except for one or more of the following uses:

a. Any permitted use in an R-1 district, subject to the bulk and area regulations of that district.

b. With sewer and public water: garden apartments, townhouse or maisonette dwelling units within a planned development, provided that twenty (20%) percent of the total dwelling units that are the subject of a development application shall be low and moderate income dwellings as required by Article VIII, Section 22-8.14 of this chapter.

22-4.10.2 Conditional Uses: In an R-5 district, the following uses may be permitted as conditional uses:

a. Any use permitted by condition in an R-2 district.

22-4.11 Bulk and Area Regulations - R-5 District.

The following shall be the standards for the R-5 district:

22-4.11.1 Tract Development:

a. Minimum Tract Area: Five (5) acres.

b. Minimum Tract Frontage: One hundred fifty (150) feet.

c. Open Space: Not less than twenty-five (25%) percent of the tract shall contain green open space; individual lots or portions thereof shall not be construed as open space. Common open space shall conform to requirements for such open space, except as modified herein, as contained in subsection 22-4.14.3 of this Article.

d. Maximum Permissible Development Density. The average gross density shall not exceed ten (10) dwelling units per acre. Net densities shall conform to those established for the R-4B district. The net density for a maisonette unit shall not exceed twenty-five (25) dwelling units per acre.

e. Maximum Improvement Coverage: Forty (40%) percent.

f. Design: The standards and principles for design set forth in subsection 22-4.14.2d 9 (b) of this Article as well as those applicable provisions contained in the township's Site Plan, Subdivision and Provisions Applicable to Site Plans and Subdivisions Ordinances shall be used in the design of residential uses permitted in this district.

22-4.11.2 Individual Lots. Bulk and area regulations for individual lots shall conform to the regulations for such uses as contained in the R-4 district, Article IV, subsection 22-4.9A.2 of this chapter.

22-4.11.3 Maximum Building Height. Building heights may vary from one (1) to four(4) stories, but in no case shall they exceed forty-five (45) feet.

9. Section 22-4.14 "Use Regulations - PRN-1 Residence District" is amended in its entirety to read as follows:

22-4.14 Use Regulations - PRN-1 Residence District (Planned Residential Neighborhood).

22-4.14.1 Permitted Uses. In a PRN-1 district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:

a. Any permitted use in an R-1 district, subject to the bulk and area regulations of that district.

22-4.14.2 Conditional Uses. In a PRN-1 district, the following uses may be permitted as conditional uses:

a. Any use permitted by condition in an R-1 district with the exception of subsection 22-4.1.2, paragraphs a,c, and d.

b. Single-family, zero lot line; two-family, detached; single-family, semi-detached; townhouse; maisonette; garden apartment dwellings; or senior citizen low and moderate income mid-rise dwelling within a planned residential neighborhood provided that twenty (20%) percent of the total dwelling units that are the subject of a development application shall be low and moderate income dwellings as required by Article VII, Section 22-8.14 of this chapter.

A planned residential neighborhood, subject to the following conditions and standards conforming to the requirements for planned developments stipulated in Article VII of this chapter.

1. Minimum development area. One hundred (100) acres in contiguous parcels served by sewer and public water systems. For purposes of this requirement, streets existing prior to the development of a PRN shall not be deemed to divide acreage nor be a part of the acreage.

2. Maximum permissible average gross density. Eight and one-half (8.5) dwelling units per acre shall be the basic average gross density permitted.

3. Neighborhood convenience services. Neighborhood commercial uses, such as stores for retail sales and services, professional offices, restaurants, taverns, and gasoline stations may be permitted if they are designed and intended primarily to serve the residents of the PRN. In no case shall such areas designated for commercial use and accessory uses thereto exceed three (3%) percent of the total planned development.

Bulk controls with regard to FAR and maximum improvements coverage for such designated neighborhood convenience services areas shall conform to those regulations as set forth for the B-1 district, Article V, section 22-5.2 of this chapter.

4. Public services. Public service facilities (e.g., schools, firehouses, etc.) may be located within the designated common open space of an approved PRN provided such uses shall not exceed seven and one-half (7.5%) percent of the total development tract area of a PRN.

5. Minimum frontage. Three hundred (300) feet in total as measured along a public street which provides access to the PRN.

6. Residential unit type, distribution and net density. In the PRN-1 district, there shall be a range of housing types and densities in accordance with the requirements set forth below:

(1) At a minimum three (3) of the permitted housing types shall be provided.

(2) Of the housing types provided, no one type shall exceed eighty (80%) percent of the total dwelling units. This unit distribution shall not apply to units designated for low and moderate income housing; however senior citizen housing may

count as a housing type in meeting the requirement of Section 22-14.14.2(d)6(1).

(3) Senior citizen housing for low and moderate income persons shall be provided equal to one hundred and seventy-five units. These units shall be counted towards satisfaction of the PRN-1 district's twenty (20%) percent low/moderate income setaside requirements.

(4) Net density of particular types of dwelling units shall be in accordance with the schedule below. In calculating permitted net densities as outlined herein, the area of land covered by such uses shall include internal local streets, parking areas, and all private yards, but not areas designated as common open spaces or development collector streets, nor areas that may be occupied by commercial uses.

(a) The net density of single-family zero lot line dwellings shall not exceed five (5) dwelling units per acre.

(b) The net density of semi-detached and two-family units shall not exceed eight (8) dwelling units per acre.

(c) The net density of townhouse, condominium or rental, shall not exceed fifteen (15) dwellings per acre. Fee-simple townhouses shall not exceed ten (10) dwellings per acre.

(d) The net density of garden apartment and maisonette dwelling units shall not exceed twenty-five (25) dwelling units per acre.

(e) The net density of senior citizen mid-rise dwellings shall not exceed forty-five (45) dwelling units per acre.

7. Maximum improvement coverage. Forty (40%) percent of the area of the PRN.

8. Bulk requirements.

(1) Building heights may vary from one (1) to four (4) stories, but in no case shall they exceed forty-five (45) feet. Senior citizen mid-rise apartments may be six (6) stories, but not to exceed seventy (70) feet.

(2) Lot sizes and dimensions, yard sizes and building arrangement may be freely disposed and arranged, provided the PRN conforms to a development plan approved by the planning board pursuant to the applicable provisions contained in the township's Site Plan, Subdivision, and Provisions Application to Site Plan and Subdivisions Ordinances, and in accordance with the following standards:

(a) No portion of a dwelling shall be closer than twenty-five (25) feet to the right-of-way of a local internal road or fifty (50) feet to a collector road, or major thoroughfare as designated by the township's master plan.

(b) Along all boundary lines of any PRN district, except where they coincide with the right-of-way lines of a State or county road, public utility right-of-way, or public parks, the same zoning provisions of the abutting district shall prevail with respect to the side yards, rear yards, screen planting and such other transitional feature.

c. Common open space. Common open space subject to the requirements of subsection 22-4.13.3 of this Article.

#### 22-4.14.3 Common Open Space

a. General Requirements. Except as otherwise provided herein, not less than twenty-five (25%) percent of the development area shall be designed as and devoted to common open space for use primarily by the residents of the planned development. Such designated open space shall be in major continuous parcels, having adequate access to public and private roads and consisting of land in a natural state of land developed for specific recreational purposes according to recreational guidelines established in the township's Site Plan Ordinance.

b. Ownership Requirements. Such common open space may be deeded to the township or other governmental agency or dedicated to a homeowner's association or trust, which incorporation and by-laws shall be approved by the Planning Board and by the Township Committee. If common recreation and open space areas are not dedicated and accepted by the township or another governmental agency, the landowner shall provide for and establish an organization for the ownership and maintenance of any common recreation areas and open space and such organizations shall not be dissolved or shall it dispose of any of same by sale or otherwise (except to an organization conceived and established to own and maintain the common recreation areas and development open space) without first offering to dedicate the same to the township or any other government agency.

If the applicant proposes that the open space shall be dedicated to the township, then the Planning Board shall forward each request with its recommendation, prior to granting of preliminary plan approval of a development application containing open space, to the township committee.

If the township committee does not approve such dedication, the applicant may submit a cluster or planned development plan providing only for ownership of common land as outlined herein.

#### c. Open Space Maintenance Requirements.

1. In the event that the organization created for open space

management shall, at any time after the establishment of a planned development, fail to maintain any open space or recreation area in a reasonable order and condition in accordance with the plan, the township may serve written notice upon such organization or upon the owners of the development setting forth the manner in which the organization has failed to maintain said areas in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty-five (35) days thereof and shall set the date and place of a hearing thereon which shall be held within fifteen (15) days of the notice. At such hearing the township may modify the terms of the original notice as to the deficiencies and may give an extension of time not to exceed sixty-five (65) days, within which they shall be cured.

If the deficiencies set forth in the original notice or in modifications thereof shall not be cured within said thirty-five (35) days or any extension thereof, the township, in order to preserve the open space and maintain the same for a period of one (1) year may enter upon and maintain such land. Said entry and said maintenance shall not vest in the public any rights to use the open space and recreation areas except when the same is voluntarily dedicated to the public by the owners.

Before the expiration date of said year, the township shall, upon its initiative or upon the request of the organization theretofore reasonable for the maintenance of said areas, call a public hearing upon fifteen (15) days written notice to such organization and to the owners of the development to be held by the township at which hearings such organization and owners of the development shall show cause why such maintenance by the municipality shall not at the election of the township, continue for a succeeding year. If the township shall determine that such organization is ready and able to maintain said open space and recreation areas in reasonable condition, the township shall cease to maintain said open space and recreation areas at the end of said year if the township shall determine such organization is not ready and able to maintain said open space and recreation areas in a reasonable condition, the township may, in its discretion, continue to maintain said open space and recreation areas during the next succeeding year and, subject to a similar hearing, a determination in each year thereafter. The decision of the township in any such case shall continue a final administrative decision subject to judicial review.

2. The cost of such maintenance by the municipality shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with the assessed value at the time of imposition of the lien, and shall become a lien and tax on said properties and be added to and be a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the Township and in the same manner as other taxes.

#### 22-4.15 Bulk and Area Regulations - PRN-1 District.

The standards for the PRN-1 district shall be the same as those for an R-1 district.

and Provisions Applicable to Site Plan and Subdivisions Ordinances shall be used in the design of residential uses permitted in this district.

22-4.17.2 Individual Lots: Bulk and area regulations for individual townhouse lots, subject to the regulations for such uses as contained in the R-4 District, Article IV, subsection 22-4.9.2 of this chapter.

22-4.17.3 Maximum Building Height. Two and one-half (2½) stories or thirty-five (35) feet.

11. Article VII "Regulations for Education Districts", Section 22-7.1 "Use Regulations - E Education District" Section 22.7.1.1 b. "Permitted Uses" is hereby amended to read as following:

b. Residences exclusively for the faculty, students and staff of a higher learning educational facility including their families provided, however, that: such uses are related to a college or university, public water and sewer are available, and twenty (20%) percent of such residences are kept low and moderate income dwellings as required by Article VIII, Section 22-8.14 of this chapter.

12. Section 22-8.14, "Application and Interpretation of Low/Moderate Income and Least Cost Housing Provisions" is hereby amended to read:

22-8.14 Application and Interpretation of Low/Moderate Income Housing Provisions.

a. General. The inclusionary housing provisions of this chapter are directed toward increasing the supply of low and moderate income housing and assuring its dispersal throughout appropriate areas of West Windsor Township. These regulations are designed to meet the mandate of Mt. Laurel II. Said units shall be built in all such zones as hereinbefore provided. Each such development shall consist of ten (10%) percent low income housing and ten (10%) percent moderate income housing other than elderly housing which may vary the percent of low versus moderate income in order to comply with applicable funding guidelines of sponsoring governmental financing agency. If privately financed through project internal subsidies, then such housing shall be ½ low income and ½ moderate income housing.

b. Affordability Criteria.

1. For-Sale Dwelling unit: Monthly cost of shelter to include mortgage (principal and interest), taxes, insurance and homeowners or condo association fees, shall not exceed twenty-five and two-tenths (25.2%) percent

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\* In order to ensure that both low and moderate income units are affordable by a range of households within each household size, the income ceiling derived for such households is set at  
(Footnote Continued)

of gross household income as defined and adjusted from time to time for low and moderate income households. There shall be no separate homeowners or condo association created for the low and moderate income component of a development, except the Planning Board may waive this requirement upon proof that project marketability will be jeopardized. Homeowners or condo association fees for low/moderate income units can be increased by an annual percentage not to exceed the CPI - housing component only, for the region in which West Windsor is located unless this requirement is waived by the Planning Board as outlined herein above.

2. For-Rent Dwelling Unit; Monthly cost of shelter including contract rent and utilities (gas, electric, oil, water and sewer) shall not exceed twenty-seven (27%) percent of gross household income as defined and adjusted from time to time for low and moderate income households.

3. For purposes of establishing the permitted sales as well as rental prices for a low or moderate income unit, households of the following size shall be assumed to occupy units of the following size and the sale or rental price shall not be affected regardless of the size of the household actually occupying the unit:

0 Bedroom	1 person
1 Bedroom	2 persons
2 Bedrooms	3.5 persons*
3 Bedrooms	5 persons

If the number of low/moderate income units to be provided includes a fraction, the number shall be rounded up. If the number of market rate units permitted includes a fraction, the number shall be rounded down. If structural configuration of a dwelling unit(s) requires a greater percentage of market-rate units, the Planning Board may adjust the percentage variations contained herein at the time of granting a final development approval.

2. Phasing in of the Township's, low and moderate income housing obligation, to be satisfied by zoning containing a twenty (20) percent setaside requirements, shall be accomplished as follows:

(i) On the effective date of this ordinance, zoning districts contained within Section 22-4.8A(R-4A Residence District); Section 22-4.9B(R4B Residence District); Section 22-4.14(PRN-1 Residence District); and, Section 22-4.16(EH Residence District) and as shown on the Township's zoning map with a single asterisk after the district designation, shall enter into immediate force and effect. Those districts designations preceded by an R-1 symbol on the zoning map shall be zoned R-1 Residence District until such time as Section 22-8.14d(3)ii and d(3)iii become operative.

(ii) On the last day of the month, three calendar years following the effective date of this ordinance, zoning districts contained within Section 22-4.6A(R3A Residence District); Section 22-4.10(R5 Residence District) and those districts previously adopted but not mapped as containing a single asterisk shall enter into full force and effect unless the Township has applied for, and been granted, judicial relief or a stay of implementation in an appropriate forum from the obligation to zone for the construction of low and moderate income housing as set forth in the hereinabove sections.

Such application by the Township to the Court may be based on;

(a) changed circumstances, by way of example but not limited to, a lowering of the Township's fair share obligation, extent of development occurring or approved to occur in the Township and the Township's ability to absorb such additional developments in an orderly fashion, and other relevant matters pertaining to the Township's capacity to achieve the remainder of its fair share obligation by 1990.

(b) The existence of alternative means for achieving the Township's fair share housing obligation.

(iii) If, the Township determines that the remaining sites designated to be zoned to satisfy the Township's low and moderate income housing obligation, in whole or in part, are not needed because of an alternate plan to achieve its remaining fair share obligation, then such sites shall be released from their low/moderate income requirements upon approval in an appropriate forum.

e. Maintaining Availability.

1. All low and moderate income dwelling units, with the exception of those units which may be developed with federal or state funds in which case that financing program's controls shall govern, shall be required to have covenants running with the land to control the resale price of for-sale units or to employ other legal mechanisms in a form approved by the Township Attorney which will ensure compliance with Section 22-8.14 for a minimum thirty (30) year period.

2. The owner of rental units shall provide legal documentation in a form approved by the Township Attorney to assure that upon re-rental, rents shall be in compliance with Section 22.8.14 for a minimum thirty (30) year period.

3. Upon resale or re-rental, the maximum resale or re-rental price shall be as set forth in Section 22.8.14 of this ordinance.

4. At the end of 25 years from the issuance of a Certificate of Occupancy for the low and moderate income units constructed under the terms and conditions of this Ordinance, the Township Committee shall review the obligation of the Township for the continued maintenance of low and moderate income units and shall establish by Ordinance whether or not all or a portion of the then existing low and moderate units will remain as such for a period in excess of 30 years. In the event the Township Committee shall determine that all or a portion of the said units shall not be maintained as low and moderate income units, it shall determine by Ordinance the disposition of any resale profits in excess of the profit which would be allowed had the units remained as low and moderate income units. Such excess profits shall be applied against the Townships remaining low and moderate income unit obligation at that time. Should the Township Committee determine that it no longer requires the existing units to satisfy its Mt. Laurel obligation, said units will be released from deed restrictions and allowed to be sold without income or recapture requirements, beginning with the twenty-six (26) year.

This section shall be set forth in its entirety in all documents and covenants running with the land in order to insure proper notice of the terms and conditions of this section and shall be in a form approved by the Township Attorney.

5. In the event a developer of low/moderate income units, after documented diligent marketing efforts, cannot conclude a contract of sale or rental agreement of initially constructed units within a sixty (60) day period after receipt of a certificate of occupancy for the low or moderate income unit, the Affordable Housing Committee shall permit the following to occur, provided that subsequent resales or re-rental shall remain subject to the maximum resale price or re-rental restrictions as set forth elsewhere in this Article:

If upon receipt of documentation indicating continued inability to sell or rent low/moderate income units to qualifying households as outlined under Section 22.8.14 herein, then the unit may be sold to households whose

income exceeds the eligibility range as follows: low income unit may be sold or rented to households of moderate income; and, a moderate income unit (including a low income unit if not sold at moderate income levels) may be sold or rented to households with incomes up to but not exceeding one-hundred and twenty (120%) percent of the median income as defined herein.

6. If within ninety (90) days of notification to the Affordable Housing Committee of an intent to sell, an owner of a low/moderate income unit has not become contractually obligated to sell the unit from a list of potential buyers provided to it by the AHC or through the owners' broker or through the owners efforts, then the Affordable Housing Committee shall permit the resale of the unit as outlined in Section 22.8.14 herein, subject to continued price restrictions as set forth elsewhere in this Article.

7. A developer of low and moderate income units shall formulate in conjunction with the Affordable Housing Committee and implement a written affirmative marketing plan approved by the Planning Board. The plan shall also establish a marketing approach for resale or rerelease of units; the plan shall provide for advertising within municipalities included within West Windsor's fair share region, for notifying public and private agencies concerned with expanding housing opportunities and be in conformity with all State and federal non-discrimination obligations.

8. An Affordable Housing Committee shall be established by the Township to develop rules and procedures for ensuring implementation of the above availability guidelines and otherwise assist in the equitable administration of initial sale and rentals as well as resale and rentals of low and moderate income dwelling units.

Section 2. Chapter XXI "Subdivision" shall be amended as follows:

1. Section 21-3.1 Exceptions in Applications of Requirements is hereby amended by adding the following new sub-section "e".

e. The Planning Board when acting upon an application which includes provisions for low and moderate income housing, may waive those portions of the design standards that do not create health and safety concerns for the Township or for the future residents of a development based on waiver standards contained in Section 21-3.1a.

2. Section 21-1 Purpose is hereby amended to add the following paragraph:

"... the jurisdiction of West Windsor Township. Application of these subdivision rules, regulations and standards should also encourage cost-performance methods and designs to enable the construction of low and moderate income housing without creating an adverse impact on the public health, safety and general welfare of the Township or for the future residents of the development.

3. Section 21-4.0 General Intent is hereby amended to add the following paragraph:

"... necessary to make a decision. Development applications containing low and moderate income units shall conform to the procedural and plat detail regulations contained herein except as modified by Section 21-4.3 Expedited Review - Low/Moderate Income Developments."

4. Section 21-4.3 (new) Expedited Review - Low/Moderate Income Developments is hereby added as a new section to read as follows:

21-4.3 Expedited Review - Low/Moderate Income Developments

- a. A major development application containing low/moderate income units shall be reviewed for completeness and a determination made within fifteen (15) days of its receipt for official processing. Thereafter, forty-five (45) days will be allotted for review of preliminary applications and thirty (30) days for the review of final applications by the appropriate Township agencies and other governmental entities as may be deemed appropriate. Upon completion of the review period, or within sixty (60) days of an application deemed complete for preliminary approval or forty-five (45) days for final approval, a public hearing shall be commenced on the application; it being given priority placement upon the Planning Board's agenda. Applications submitted under this section shall be subject to the municipal land use law maximum approval time periods for preliminary or final applications or combinations thereof with respect to rendering a final decision on the application unless an applicant grants an extension to said time period.

- b. A non-binding concept plan review of an application containing low/moderate income units shall be heard by the Planning Board within thirty (30) days receipt of such a request by an applicant.

5. Section 21-4.5.3.f is hereby amended by adding the following:

"In assembling the required data, the applicant shall be required to rely only on existing information available from the Township's master plan documents, natural resource inventory and engineering data available from the Township engineer."

6. Section 21-4.6.3d is hereby amended by adding the following.

"For preliminary applications only, the applicant may rely on existing topographic information on file in the Township's engineer office provided there have been no major changes in the site's topography and that if requested by the Township engineer, specific portions of the site topography will be updated if required, at the applicant's expense, to approve the project's storm water control drainage plan."

7. Section 21-4.6.3 is hereby revised to read as follows:

- m. When the development of the subdivision or improvements within the subdivision are contingent upon improvements outside the boundaries of said subdivision, information shall be supplied by the subdivider prior to planning board consideration for preliminary approval that the improvements outside the subdivision shall be installed and shall be

available to the subdivider prior to the issuance of any certificate of occupancy for the project or phase of a project that is the subject of a development application.

8. Section 21-4.6.3.0 is hereby revised to read as follows:

o. When deemed necessary to determine the suitability of the soil to support new construction, the planning board may require as a condition of final approval, test holes or borings to be made by a New Jersey licensed engineer or an approved testing laboratory at the expense of the subdivider under the direction of the Township engineer, prior to the commencement of construction.

9. Section 21-4.6.4 Preliminary Plat Review is hereby revised by adding the following new paragraph.

"Submission of a major development subdivision application shall be reviewed and acted upon by the Planning Board according to Section 21-4.3 Expedited Review herein."

10. Section 21.7.4.e.1 Final Plat Review is hereby amended by adding the following paragraph:

"Submission of a major development subdivision application shall be reviewed and acted upon by the Planning Board according to Section 21-4.3 Expedited Review herein."

11. Section 21-5.1.5 Table of Dimensions - Table A is hereby amended by adding a footnote (4) to paragraph B. Notes to Dimension Table to read as follows:

(4) Within planned developments if private streets are proposed and are to be maintained by a homeowners association, then such streets shall conform to the requirements of Table A "Table of Dimensions" except as amended below for minor/local and minor collector streets only.

ROW - Right-of-Way	<u>Minor/Local</u>	<u>Minor Collectors</u>
Paving widths	N/A 24 ' provided no parking on street	N/A 30' provided no parking on street
Curb radii at intersections	24'	30'
Length of tangents between reverse curves	0	100'
Minimum radii to center line curves	125'	500'
Straight line maximum at center line	250'	2000'

12. Section 21-5.1.14 Cul-de-Sac is hereby amended by adding the following paragraph c to read as follows:

c. In planned developments, if a cul-de-sac is less than six hundred (600) feet in length, then Section 21-5.1.14a may be amended by the Planning Board to require a right-of-way turnaround radius of fifty (50) feet and a landscaped center island measuring twenty-six (26) feet in diameter.

Section 3. Chapter XXIII "Site Plan" shall be amended as follows:

1. Section 23-1.1 Purposes is hereby amended by adding the following paragraph i to read as follows:

i. Encourage cost-performance methods and designs to enable the construction of low and moderate impact creating an adverse impact on the public health, safety and general welfare of the Township or for the future residents of the development.

2. Section 21.3.1 "Waiver of Site Plan Review Requirements" is hereby amended by adding a new paragraph "c" to read as follows:

c. The Planning Board when acting upon an application which includes provisions for low and moderate income housing, may waive those portions of the design standards that do not create health and safety concerns for the Township or for the future residents of a development, based on waiver standards contained in Section 23-3.2a.

3. Section 23-4.2 Site Plan Review Advisory Board Action is hereby amended by changing its title and adding a new paragraph b. Expedited Review - Low/Moderate Income Developments to read as follows:

23-4.2 Site Plan Review Advisory Board Action - Expedited Review

a. Number first paragraph "a. The site plan advisory board..."

b. Expedited Review - Low/Moderate Income Developments: Development applications containing low/moderate income units shall be subject to Section 21-4.3a Expedited Review procedures and shall not be subject to site plan ordinance review procedures herein which may be conflictatory in nature.

A non-binding concept site plan review of an application shall be permitted subject to the requirements of Section 21-4-3b.

4. Section 23-4.5.3c.7 is hereby amended to add the following sentence:

"Grade elevations may be established from use of township topographical maps."

5. Section 23-5.0 General Purpose is hereby amended by adding the following sentence:

"... for relocation of such certificate." Application of these site plan standards should also encourage cost-efficient methods and designs to enable the construction of low and moderate income housing without creating an adverse impact on the public health, safety and general welfare of the Township or for the future residents of the development in reviewing any site plan, ..."

6. Section 23.6.4 "Site Design and Building Layout" is hereby deleted and replaced to read as follows:

23.6.4 Site Design and Building Layout.

In reviewing site plans, the following site design and building layout principles, where applicable, shall be followed:

23-6.4.1 Minimum Spacing Between Buildings.

a. Between Similar Structures. In development groups (more than one (1) building or structure on a tract) the following distances shall be maintained between structures:

1. End wall (no openings) to end wall: twelve (12) feet minimum.
2. Any building face to street curb: twenty (20) feet minimum.
3. Any building face to parking area: twelve (12) feet minimum.
4. End wall to window wall: thirty (30) feet minimum.
5. Window wall to window wall: seventy-five (75) feet minimum.

The Planning Board shall reduce the above distances by not more than one-third if there is an angle of 20 degrees or more between buildings and if extensive landscaping or buffers are placed between buildings.

Section 4. This Ordinance shall take effect upon final adoption, publication in accordance with the law, and the granting of a six year Judgement of Repose by the New Jersey Superior Court.

Introduction:	January 14, 1985
Public Hearing:	February 25, 1985
Adoption:	February 25, 1985

AN ORDINANCE TO AMEND AND SUPPLEMENT THE  
REVISED GENERAL ORDINANCES OF THE  
TOWNSHIP OF WEST WINDSOR (1979)

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER II,  
"ADMINISTRATION," OF THE REVISED GENERAL ORDINANCES  
OF THE TOWNSHIP OF WEST WINDSOR (1979)  
PROVIDING FOR THE CREATION OF AN  
AFFORDABLE HOUSING COMMITTEE

The Township Committee of the Township of West Windsor ordains that:

Section 1. Chapter II, Administration, is hereby amended by adding thereto the following:

2.20 Affordable Housing Committee

2-20.1 Preamble

In conjunction with its efforts to meet its Mt. Laurel II obligation, the Township hereby creates the "Affordable Housing Committee of West Windsor Township" (AHC) to monitor the long term compliance of the Mt. Laurel II mandate within housing developments containing low/moderate income housing. The committee's responsibilities will be to: establish tenanting/sale policies for use by developers in initial marketing efforts and for individual and owners in subsequent resales or rerentals of low/moderate income units; establish income qualification, and maximum resale or rental prices; generally enact additional rules and procedures to assure that low and moderate income units constructed in West Windsor remain available to such families for a minimum thirty (30) year period.

2-20.2 Membership; Terms of Office

- a. The AHC shall consist of seven (7) members, all of whom shall be appointed by the Township Committee; one of whom shall be a member of the Township Committee. One of the remaining six members shall be an occupant of a low/moderate income unit and shall be appointed within one year of issuance of a Certificate of Occupancy for such units. Of the remaining positions, one member may be a developer of low/moderate income housing within the Township.
- b. The Township Committee may appoint alternate members.

- c. Attendance by four (4) members or alternates shall constitute a quorum. Passage of any motion requires an affirmative vote by a majority of members present.
- d. The initial term of office of the AHC shall be three members for one (1) year, three members for two (2) years to be designated when making the appointment, with the Township Committee member appointed for one (1) year. The terms of office shall thereafter be two (2) years with reappointment at the pleasure of the Township Committee. The appointments shall be made in such a manner so that the terms of approximately one-half (1/2) of the members shall expire each year.
- e. The Affordable Housing Committee shall elect a chairman, who may not be the Township Committee member or a developer, and a vice-chairman from among its members. Their terms of office shall be one year and they shall be eligible for re-election. The Committee may also elect a secretary, who may not be a member of the Committee, and it may create and fill such other offices as it shall determine. The Township Committee may employ or assign at the request of the AHC such personnel or experts and other staff as it deems necessary, provided such obligations do not exceed compensation it has available for such use.

2-20.3 Vacancies; Removal for Cause

The Township Committee may remove any member of the Affordable Housing Committee for cause on written charges served upon the members and after a hearing thereon, at which time the members shall be entitled to be heard either in person or by Counsel. A vacancy in the Committee occurring otherwise than by expiration of the term, shall be filled for the unexpired term in the same manner as an original appointment.

2-20.4 Powers

- a. The Affordable Housing Committee is hereby granted and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this Ordinance, including but not limited to the following:

1. to prepare and forward to the Township Committee of the Township of West Windsor such rules and regulations as it deems necessary or appropriate to implement the purposes of this Ordinance;
  2. to supply information to developers and families of low or moderate income to help them comply with the provisions of this Ordinance;
  3. to hold hearings upon due notice and adjudicate applications of individuals or families who believe themselves to be families of Low or Moderate Income;
  4. to monitor the Township's housing efforts identifying problems and recommending changes and improvements as experience may suggest.
- b. The Affordable Housing Committee shall give ten (10) days written notice of hearing to all parties involved, and shall give all interested persons an opportunity to be heard.

2-20.5 Definitions

- a. AHC means the Affordable Housing Committee of West Windsor Township created by ordinance 85-2.
- b. Low Income Household means a household whose gross aggregate annual income, at the time of purchase or rental, does not exceed fifty percent (50%) of the median income established and adjusted from time to time, for the geographic area in which the Township is located by the U.S. Department of Housing and Urban Development.
- c. Moderate Income Household means a household whose aggregate gross annual income, at the time of purchase or rental, is between fifty percent (50%) and eighty percent (80%) of the median income established and adjusted from time to time, for the geographic area in which the Township is located by the U.S. Department of Housing and Urban Development.
- d. Gross Aggregate Household Income means the total gross household income from all sources of all members of the household. In determining the amounts of income to be excluded, the Committee may, in its discretion, consider the number of minor children in the household and such other factors as appropriate, provided they are consistent with federal and state subsidized housing guidelines.

- e. Low and Moderate Income Housing means dwelling units developed pursuant to the Township's Zoning Ordinance and made available to low and moderate income households as established under Section 3 below.

2-20.6 Monitoring Program Operation

The following procedures and priorities for dwelling unit initial sales, resales, initial rentals and rere rentals shall be monitored by the Affordable Housing Committee:

a. Selection Procedures

The AHC shall establish a listing of low and moderate income households and persons based on the below categories; the first such listing shall be compiled within forty-five (45) days of notification by a developer that low and/or moderate income units will be available for occupancy in approximately six (6) months of this notification. This listing, along with any similar such developer shall form the basis of an initial pool of prospective purchasers or renters for the developer's initial sale/rental program.

Periodically, but at least once a year thereafter during March, the AHC shall provide an updated list, recertifying categories of those households which are likely to be reached in the coming year and who have not obtained a housing unit, making appropriate adjustments for households whose status may have changed since the last certification. Those applicants wishing resale units only shall be so indicated.

The priority categories are as follows:

- (1) Persons who reside or who have resided in West Windsor Township and live or have lived in substandard or overcrowded housing units as defined by "Indigenous Need" category of the Mt. Laurel II mandate or who are displaced from residences within the Township as a result of public action, fire or disaster. Indigenous housing need means households living in units either lacking plumbing, lacking adequate heating, or overcrowded, as defined by the U.S. Census.

Employees of West Windsor Township, West Windsor-Plainsboro Regional School District, certified local resident volunteers of public safety or rescue organizations or other public agencies or educational facilities located within the Township, living in shared or deficient housing.

Senior citizen residents or immediate relatives of persons identified in paragraph 3a(1) and (2) above living in substandard or overcrowded housing units located in the "Present Need" region of which West Windsor is a part.

- (2) Households with one or more wage earners working in West Windsor Township and living more than twenty miles from the place of work within West Windsor Township or living in an urban aid municipality as defined by the NJDCA for the Township's "Prospective Need" region and living in substandard housing or suffering from such other housing deficiency as may be defined by the Committee.

Households with one or more wage earners working within a ten-mile distance of West Windsor's municipal boundary and living in substandard or overcrowded units or suffering from such other housing deficiency as may be defined by the Committee.

- (3) All other income eligible households living within either the "Present Need" or "Prospective Need" region of which West Windsor is a part.

b. Income Eligibility

Certification of household income of listed households shall be accomplished by the developer in the case of initial sales rentals/ rerelements and by the AHC in the case of resales as follows:

- (1) Initial sale/rental and subsequent rerelements. Developer certifies to the AHC that each prospective purchaser/renter meets the selection categories and is income qualified. A developer shall submit a certification folder on each applicant with appropriate documentation as to income and eligibility according to the selection categories. Documentation of household income shall include:

(2) Maximum resale price shall equal the sum of the following:

- (i) price of unit paid by owner, increased by the difference in the CPI-housing component only, for the region in which West Windsor is located, which shall be measured from the 1st day of July last preceding the year of purchase to the 1st day of July last preceding the year of sale;
- (ii) cost of permanent improvements for which a prior approval from the Committee has been issued. Declaration value shall be based on actual documentation of labor and materials at the time of installation or a reasonable estimate by the owner of the improvements valued, subject to verification of building permit data regarding the construction value of the improvements;
- (iii) cost of sale to include realty transfer fee, attorneys' fees, brokers' fees, other costs and fees, including points. The Committee shall from time to time establish fee charge guidelines as to allowable charges so as not to jeopardize the affordability of the sale unit to a low or moderate income household;

provided that the purchaser is an eligible low or moderate income household.

(3) Initial sale, rental and rereental price restrictions including Township remedies for non-compliance shall be provided for in deed restrictions subject to the Township's attorney review and will not be regulated by the AHC. However any conveyance to an ineligible person or sale/rental price established in excess of the restrictions at the time of occupancy is subject to rescission by the Township. Any Township costs and legal fees in obtaining rescission are to be borne by the seller.

(4) In the event initial sale, resale, rental or rereental cannot be concluded after diligent marketing efforts within an established time period, then the variation of eligible household incomes as provided for in Section 22-8.14e(5) of the Township's zoning ordinance shall be operable subject to the requirements stipulated therein.

d. Restriction on Use

Low and moderate income units shall only be sold or rented to income eligible low and moderate income households as may be modified by the AHC according to Section 22-8.14e(5) of the Township's zoning ordinance. Such units shall be the primary residence of the occupant. Purchasers or tenants may lease or sublet such units only to income qualified households and at rent levels not exceeding those established for the unit.

e. Program Reports

Developer of initial sale and rental low/moderate income units as well as rere rental units shall submit quarterly reports to the AHC, beginning with the first quarter following initial occupancy and continuing to final completion of the project, in the case of sale projects and for the duration of income controls in the case of rental projects, listing by unit type and address the number of units sold or rented.

2-20.7 Foreclosure Proceedings

The Committee shall establish written regulations dealing with foreclosure proceedings, extent of price controls continuation and distribution of funds from a foreclosure sale, subject to approval by the Township Committee.

2-20.8 Program Fee Requirements

All applicants seeking final approval for development projects containing low and moderate dwelling units shall be required to pay an initial registration fee at the time of issuance of a Certificate of Occupancy.

Upon resale or rere rental of such units, a renewal fee shall be paid at the time of issuance of Certificate of Occupancy in the case of a resale or at the time of execution of a rental agreement in the case of a rental unit.

Such fees collected shall be maintained in an Escrow Account by the Township and expended only in the exercise of the Committee's monitoring duties outlined herein. Fee amounts shall be as established by the Township's Fee Ordinance.

**2-20.9 Enforcement-Applicability**

- a. Developers seeking final approval for projects containing low and moderate income dwelling units shall provide an Affordable Housing Plan for their project that provides necessary declaration of covenants and restrictions in a form acceptable to the Township Attorney including provisions to assure the initial sale or rental as well as subsequent resales and rerentals of dwelling units in accordance with the requirements of this Ordinance and applicable sections of the Township's Zoning Ordinance dealing with such housing.
- b. Developers seeking final approval shall also provide a written affirmative marketing plan indicating how initial sale, rental and rerental units will be marketed within the procedures and priorities established for such units herein.
- c. In the event an applicant fails to construct and sell or rent his required low and moderate income housing units in accordance with the provision of his approved Affordable Housing Plan, final approval and this Ordinance, he shall be subject to a revocation of his development permit and cessation of issuances of Certificates of Occupancy until the development is brought into compliance. Revocation of such permits shall be proceeded by a ten (10) day written notice extending a thirty (30) day time period in such cited non-compliances may be corrected.

**Section 2** This ordinance shall take effect upon final adoption, publication in accordance with law, and the granting of a six year Judgment of Repose by the New Jersey Superior Court.

Introduction: January 14, 1985

Public Hearing: February 25, 1985

Adoption: February 25, 1985

ORDINANCE 85-3

AN ORDINANCE TO AMEND AND SUPPLEMENT THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1979)

AN ORDINANCE TO AMEND CHAPTER XII - ZONING, ARTICLE 1, SECTION 22-1.4 ZONING MAP OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1979) RE-DESIGNATING CERTAIN RESIDENTIAL DISTRICTS TO REQUIRE A TWENTY (20%) PERCENT SET-ASIDE FOR LOW AND MODERATE INCOME HOUSING.

The Township Committee of the Township of West Windsor ordains that:

Section 1. Chapter XII - Zoning, Article 1, Titles, Purposes, Establishments of Districts, General Conditions, Section 22-1.4 Zoning Map is hereby amended by changing certain residential zoning districts and amending the "Zoning Map, Township of West Windsor" to reflect such district changes.

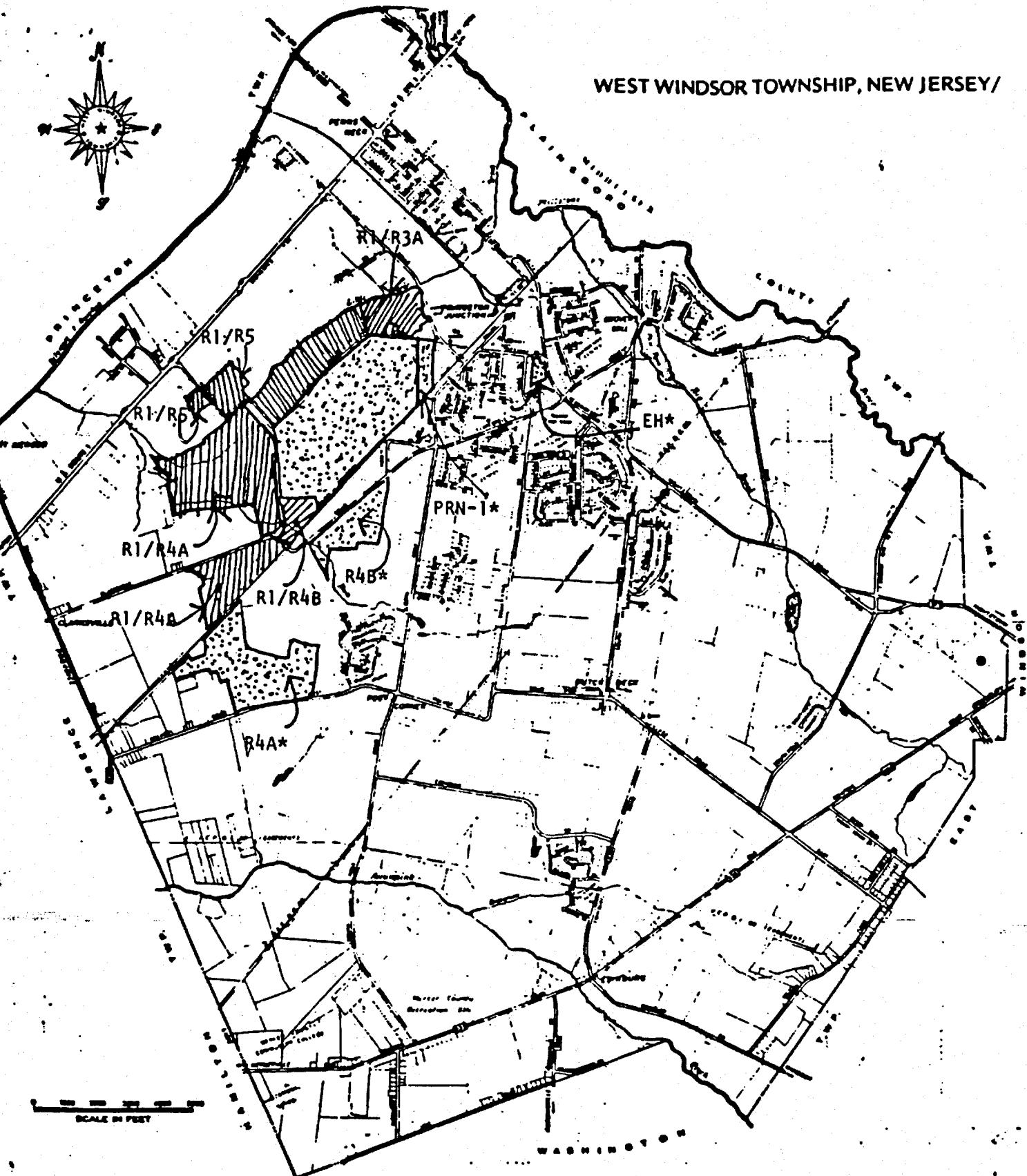
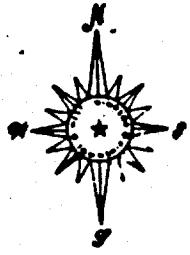
Section 2. This Ordinance shall take effect upon final passage and publication in accordance with law, and the granting of a six year Judgement of Repose by the New Jersey Superior Court.

Introduction: January 14, 1985

Public Hearing: February 25, 1985

Adoption: February 25, 1985

WEST WINDSOR TOWNSHIP, NEW JERSEY/



SCALE IN FEET

WEST WINDSOR TOWNSHIP, NEW JERSEY

PHASE 1 REZONING 

PHASE 2 REZONING 

- EH- Elderly Housing
- R4A Residence District
- R4B Residence District
- PRN-1 Planned Residential Neighborhood

- R1/R3A Residence District
- R1/R4A Residence District
- R1/R4B Residence District
- R1/R5 Residence District

ORDINANCE 85-4

AN ORDINANCE TO AMEND AND SUPPLEMENT THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR (1979)

AN ORDINANCE TO AMEND CHAPTER XX "MUNICIPAL FEES", SECTION 20-4 DEVELOPMENT APPLICATION REVIEW FEE, AND SECTION 20 SEWER CONNECTION FEES TO PERMIT CERTAIN MODIFICATIONS AND FEE WAIVERS FOR DEVELOPMENTS CONTAINING LOW AND MODERATE INCOME HOUSING UNITS.

The Township Committee of the Township of West Windsor hereby ordains as follows:

Section 1. Chapter XX Municipal Fees, Section 20-4 Development Application Review Fee, is hereby amended by adding a new paragraph C. Fee Modifications - Low/Moderate Income Residential Projects, to read as follows:

C. Fee Modifications - Low/Moderate Income Residential Projects

Applications for residential development projects containing low and moderate income dwelling units shall be exempt from paying any application review fees for subdivision and/or site plan review as follows:

1. Subdivision Fees - For the low and moderate income portion of the project only, the per lot fee shall be waived.
2. Site Plan Fees - For the low and moderate income portion of the project only, the per square foot of gross floor area fee shall be waived.

Section 2. Chapter XX Municipal Fees, Section 20-4, paragraph C, Miscellaneous Development Application Fees is hereby amended by revising subparagraph 2. Inspection Fee to read as follows:

2. Inspection Fee - An escrow fund will be established, before construction begins, with the Township and such funds shall be used to pay the fee and costs of professional services employed by the Township to inspect the construction.

An initial fee of \$2,500 shall be deposited with the Township upon the issuance of a building permit. The basis for fees to be charged by the Township for inspection services shall be the same fee basis the Township uses to pay for Township-related projects.

A monthly itemized bill will be forwarded to the applicant and upon exhaustion of the initial escrow fee, replenishment of the escrow account shall be in an amount equal to the charges incurred. Payment is due within fifteen days of receipt of such bill. Failure of the applicant to pay inspection fees may lead to the construction being stopped until fees are paid and penalties assessed equal to an interest payment on unpaid bills of 1.5% per month plus Township legal fees and collection charges necessary to retrieve unpaid bills.

Section 3. Chapter XX, Municipal Fees, Section 20-12, paragraph a. Sewer Permit Fee is hereby amended by adding the following:

"For residential projects containing low and moderate income dwelling units, the sewer hook-up fee shall be reduced to Six Hundred Dollars (\$600) per dwelling unit."

Section 4. Chapter XX, Municipal Fees, Section 20-3.1a New Construction

Building Permit Fees shall be amended by adding the following:

"Those portions of residential projects which are low and moderate income housing units shall not be charged a fee as outlined herein, except that any incurred fees for state or outside agencies will be required."

Section 5. Chapter XX, Municipal Fees, is hereby amended by adding a new Section 20-16 - Affordable Housing Committee Registration Fee to read as follows:

Section 20-16 - Affordable Housing Committee Registration Fee

An escrow fund shall be established by the Township for the receipt of registration fees to be used in assisting to finance the duties of the Township's Affordable Housing Committee as follows:

- a. Initial Sale/Rental as well as Resale of Low and Moderate Income Units: One Hundred Dollars (\$100) per low/moderate income dwelling unit.
- b. Rerental of Low/Moderate Income Units: Fifty Dollars (\$50) per low/moderate income dwelling unit.
- c. The fee shall be payable as follows:
  - i. Initial Sale/Rental - Upon issuance of Certificate of Occupancy
  - ii. Resale - Upon time of closing
  - iii. Rerental - Upon execution of lease agreement
- d. Failure to pay required fees shall be subject to penalties equal to 1.5% interest per month on unpaid fee plus any legal and collection fees involved in the repayment of the required fee.

Section 6. This Ordinance shall take effect upon final passage and publication in accordance with law, and the granting of a six year Judgement of Repose by the New Jersey Superior Court.

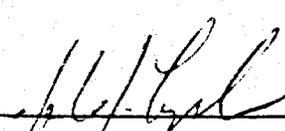
Introduction: January 14, 1985  
Public Hearing: February 25, 1985  
Adoption: February 25, 1985

**PLANNING REPORT**

**PROPOSED MOUNT LAUREL II COMPLIANCE PROGRAM**

Township of West Windsor, Mercer County, New Jersey

April 2, 1985

  
Prepared by: John J. Lynch, PP #19, AICP

**INTRODUCTION**

This report is prepared at the request of the Honorable Eugene D. Serpentelli, J.S.C., who appointed me to serve as a Master in the matter of Affordable Living v. West Windsor, Docket No. L-017812-84 PW. I am a Professional Planner.

This report describes the way in which I have performed my function for the Court; it describes the major elements of the proposed ordinance and their relationship to the settlement agreement of July 13, 1984 and the objectives of the Mount Laurel II decision; and it offers comments on the reports prepared on behalf of Maneely, Inc., which raise certain issues about the proposed ordinance.

The effectiveness of the proposed ordinance is the major focus of this report. West Windsor's fair share of the region's low and moderate income housing needs was decided prior to my involvement in this matter.

**MASTER'S ROLE**

My perception of the role of a Master in a case of this type is to review planning proposals offered by the township, taking into consideration any issues

which may be raised by the plaintiff. At the same time, all concepts advanced by either party to the suit had to be weighed against the mandates of the Mount Laurel II decision.

In the context of a settlement, I attempted to keep in mind the importance of satisfying not only the issues raised by the parties to the suit, but the necessity of protecting the interests of others not a party to the suit who may be interested in producing low and moderate income housing. In other words, the terms of the compliance ordinance had to meet the test of not being so structured that they benefited Affordable Living to the exclusion of other development interests.

In carrying out my function, I met frequently with counsel and planners representing the two parties, offering comments on proposed ordinance changes, most of which were incorporated in the final product. Over the course of my involvement, I also responded to several phone calls from parties who were interested in the outcome of the Mount Laurel II compliance ordinance.

In addition to the above, I met with representatives of Maneely, Inc. to discuss the concerns they had about the direction in which the compliance ordinance was proceeding. It was their perception at the time of the meeting, and elaborated upon in subsequent expert reports, that the inclusion of their land as a part of the compliance ordinance was not appropriate for reasons which will be discussed in later sections of this report.

During the course of my work sessions with the parties to the suit, I was guided to a great extent by the principle that site selection and zoning standards are a matter of local prerogative as long as they are based on sound concepts, and that they are flexible enough to provide a realistic opportunity for the construction of low and moderate income housing.

Based on a cooperative and constructive working environment with the professionals representing the township and Affordable Living, it was not considered necessary for me to meet directly with either the Planning Board or

governing body in the course of carrying out my role for the Court. If either party felt it would have been productive for me to do so, or if in my judgment it would have improved the prospects of reaching agreement on an appropriate compliance ordinance, then I would have requested such a meeting.

In accordance with general guidance from the Court, it should be noted for the record that I have not communicated any conclusions I may have reached or problems which evolved to the Court either verbally or in writing to this date. Aside from a preliminary briefing session with Judge Serpentelli, at which time we discussed my role as a Master and not any substantive issues of this case, this document represents the only communication I have had with the Court on the proposed compliance ordinance and the related issues raised by the Maneely interests.

#### PROPOSED COMPLIANCE ORDINANCE

This review of the proposed compliance ordinance is based not only on the ordinance language itself, but on the report prepared by the planning consultants to the township, Raymond, Parish, Pine & Weiner, Inc., entitled "Proposed Mount Laurel II Compliance Program for West Windsor Township, New Jersey", dated December 20, 1984. That report sets forth not only the ordinance itself, but the general approach used by the township in addressing its Mount Laurel II obligations.

In summary form, the compliance program calls for the township meeting all of its fair share needs by 1990 in a phased program. Most of its needs will be met through new construction, using a 20% setaside for low and moderate income units. The balance will be met through anticipated participation in subsidized housing programs, and through a housing rehabilitation approach designed to meet the Indigenous Need. In accordance with the settlement agreement, the two parcels controlled by Affordable Living Corporation, Inc. are included in the program, and both are in the first development phase. Aside from phasing and the identification of specific sites for Mount Laurel II housing, the compliance program also establishes affordability controls, establishes an Affordable Housing Committee, and provides modifications in certain standards and fees related to developments which provide low and moderate income housing.

The number of units which will be accommodated under the compliance program is set forth on page 3 of the RPPW report. It indicates that 37 units will be rehabilitated, and that the funds for rehabilitation will come from either the township, county or state, or some combination of the three sources. They have requested three years to develop such a program, which appears reasonable in the context of the time period of the requested repose. All 37 units are to be counted as Moderate Income units, which is appropriate given the funding sources indentified.

37 units  
rehab

An additional 275 units are to be developed as senior citizen housing. Of these, 100 are to be developed under the Section 202 HUD Program and the remainder are to be built as a part of the Countryside development on lands controlled by Maneely, Inc. If these two concepts are to be applied to the township's compliance program, they require some modification in Table 1. All of the units to be counted from the 202 Program should be in the Low Income column. Those within Countryside can continue to show a 50/50 split between low and moderate. As noted in the RPPW report, funding for the 202 Project is not certain, and it is my experience that competition for these funds is intense.

275  
S.C.

However, credit is only requested by the township for a three year period, and if the project does not secure a financing commitment by that time, other opportunities would have to be provided to make up for these units. Based on my extensive experience with the 202 Program, the site selected by the township for this purpose is approvable by HUD, and with the identification of an experienced nonprofit sponsor, it should be competitive. In fact, at a recent briefing session at the HUD offices in Newark, it was disclosed that in the ranking criteria used to select 202 projects, up to 5 out of a total of 100 ranking points can be given to a project if it is being provided as a result of settlement of litigation.

and

As noted on page 11 of Appendix 1 of the RPPW report, in the section dealing with ordinance standards for the PRN-1 District in which Countryside is located, the 175 units of senior citizen housing to be provided will be considered a part of the 20% setaside. However, Table 1 and Table 2 do not accurately reflect the unit count if this is the case since it shows a 20% setaside based on 8 units

man

per acre, with the additional 175 elderly units provided on top of that amount. As shown in Tables 1 and 2, Countryside would be allowed a total of 2,655 units, of which 671 would be low and moderate. However, based on 8.5 units per acre, the 310 acre site should yield a total of 2,635 units. A 20% setaside of the full unit count produces a low and moderate total of only 527 units, which is 144 units below the projected count.

Phasing: In order to place the count in its proper context, the township has proposed a phasing program. In my opinion, phasing is warranted based on the magnitude of the fair share number, and the significant potential for major impact on the township generated by the construction of the related market-rate housing units.

*[Inadequate]*  
The phasing program calls for full compliance within the time period of the fair share formula, which is the year 1990. Phasing is carried out in two distinct phases. The first phase covers three years from the effective date of the ordinance, with the second phase built into the ordinance at that time unless there are changes in circumstances which warrant reexamination of the second phase. Such circumstances could include development of a new formula for fair share, administration of the program of low and moderate income housing compliance through a State agency, development of an effective housing subsidy program which would obviate the need for zoning for an excessive number of market-rate units, or any of a number of other potential changes in the approach to this problem. In any event, the township is committed to the second phase as a part of the ordinance adopted, unless it can show to the satisfaction of the Court that the second phase should not be enacted.

During the course of the discussion on the phasing concept, I urged the township to avoid phasing which would limit development to a certain number of units per year. With competitive development interests, it would not allow sufficient predictability for each developer if they each had the potential of their units for a given year being usurped in whole or in part by another developer. This lack of predictability would undoubtedly have a negative influence on potential sources of construction financing, particularly in those cases where extensive

front-end costs would have to be amortized as quickly as possible through early sales of market-rate units.

The relationship between the phasing program and the shortfall noted above with respect to the Countryside development is as follows. The first phase calls for the rehabilitation of 37 housing units, but notes that it will take up to three years to firm up such a program. This somewhat jeopardizes their inclusion in the first phase, but the important concept to note in this regard is that the RPPW report confirms that if the township is unsuccessful in coming up with a workable rehabilitation program in the first three years, it will rezone for the units on a setaside basis after the three year program period.

Also included in the first phase is the 100 unit Section 202 project. This is essentially in the same category as the rehabilitation units in that there is a three year program development period, after which alternate approaches would have to be put in place if the program was determined to be unworkable. In that context, it is necessary to include these as part of the first phase since zoning and administrative actions are necessary early in the compliance program in order to give both programs every opportunity to succeed.

The majority of the first phase is based on the zoning of four parcels of land at varying densities. These are identified on Table 2 and Map A in the RPPW report as Parcels A, B, 4 and 6. Parcel A is one of the builder's remedy sites owned by Affordable Living. It is 64 acres in size and carries a proposed density of 8 units per acre, for a total unit yield of 512 units, 20 percent of which is 102 units of low/moderate. Parcel B is the second Affordable Living site. It is 172 acres in size and shows a density of 6 units per acre, yielding a total of 1,032 units, of which 206 would be low/moderate. Parcel 4 adjoins Countryside and is 20 acres in size. At a density of 8.5 units per acre, it would generate a total of 170 units, of which 34 would be low/moderate. The remaining parcel is Countryside. It has 310 acres and an allowable density of 8.5 units per acre, which yields 2,635 units in total, and 527 low/moderate units.

In summary, therefore, Phase 1 has a total unit yield of 1,006 units, of which 37 would be in the rehabilitation program, 100 in the Section 202 Program, and 869 in the setaside of units in Parcels A, B, 4 and 6. This count is somewhat higher than the projected yield shown in the RPPW report on page 19, which is 972 low/moderate units.

*what  
assumes  
these  
sites  
will  
be  
built*

The second phase consists entirely of setaside units on the six remaining sites identified in Table 2 and Map A. Sites 1 and 5A have a total of 60 acres and a density limit of 10 units per acre, for a low/moderate yield of 120 units. Sites 2 and 8 have a combined total of 260 acres and a density maximum of 6 units per acre, which yields a total of 312 units of low/moderate. Site 7 has 25 acres and a density limit of 8 units per acre, which yields 40 low/moderate units, and Site 3 has a density limit of 4 units per acre, which applied to its 25 acre site will yield 20 units of low/moderate. Phase 2, therefore, will yield a total of 492 units.

*no  
overground*

Combined, Phases 1 and 2 provide for a total of 1,498 units, which is 121 units shy of the fair share total of 1,619 units set forth in the settlement agreement. However, with the first phase providing for more than half the fair share number, and the fact that the number is within 7.5% of the total allocation, it is recommended that no modification in the compliance ordinance be imposed on the township at this time, but be delayed until the implementation of the second phase. At that time, a determination can be made of any shortfall in the first phase production schedule which may be related to physical limitations of the sites, and the balance of 121 units can be addressed at the same time as any Phase 1 shortfall.

As a participant in the process of reviewing the details of this compliance program, this 121 unit shortfall is clearly not intentional on the part of the township. It has only come to light in the process of rechecking the unit yields as a part of the preparation of this report. While a shortfall nevertheless exists, the first phase program provides for many more units than the second phase, and some consideration should be given to that aspect of the compliance program in placing this shortfall in context.

Affordability Criteria: The ordinance contains language which assures some reach into the low and moderate income groups by setting the affordable housing level at 90% of the low and moderate income levels established for the region. It should be noted that the ordinance uses the published HUD income limits for the Section 8 Program as applied to Mercer County. While calculations can be made of the theoretical HUD income limit of a larger region (say the Prospective Need Region), the advantages of such an approach in terms of purported accuracy or fairness are outweighed by the disadvantage of having to recalculate the income limits each time they are published, which is about once a year. Without the corresponding updated information on household counts in each of the geographic areas covered by the limits, the effective use of such information in the later years of the decade is questionable considering the time which will have elapsed since the last Census.

In the case of West Windsor, most of the other counties in the Prospective Need Region have higher income limits than Mercer County. The only exception is Burlington County. The reason for raising this issue is that it was raised in one of the expert reports for Maneely, Inc. as a problem. If the township reaches out to define income based on a larger region, the higher income limits in other parts of the region will have the effect of increasing the cost of housing to low and moderate income households. By retaining Mercer County income limits as the standard, lower priced housing will be assured, and there will generally be a greater reach into the affordability range for lower income households than if higher income limits are used.

With respect to affordability and the relationship between unit size and household size, the township has established in the ordinance that a two bedroom unit sale or rental price should be based on a household of 3.5 persons. While I do not have a major problem with this concept, it is my understanding that this is not consistent with the approach developed at the time of working out the consensus formula. I am also not aware of any ruling the Court may have made in this regard. My understanding is that a two bedroom housing unit is to have its rental or sales price based on the income limits for a 3 person household.

good

Why did we  
change?  
How is  
it justified

One aspect of the ordinance provisions which should be reviewed in detail is the Affordable Housing Committee structure. Two elements are of some concern, including fees and selection criteria, not because of any particular problem I have with them, but because they seem to deal with relatively untested concepts.

Fees are established for the operation of the committee, and they are related to the low and moderate income units being built and recycled. The township takes the position that the fees are nominal, and that they are necessary for the effective functioning of the committee. I agree that they are nominal, but an issue has been raised by the Maneely interests that this structuring of the fees has inherent weaknesses because it is cost-generative. My position is that I do not feel strongly one way or the other. I can understand the need for a fee structure, and I can understand the township wanting to directly relate it the pace of development of lower income units. While it adds nominal cost to the units, it adds back nowhere near the cost of fees waived by the township as part of the application and development process. A suggestion was made during the work sessions that such a fee could be related to the market-rate units in the development or to nonresidential development in the township. A valid point was made that if it were related to the market-rate residential units rather than the low/moderate units, it would not change the overall financial picture of the development, but simply shift the obligation from one part of the budget to another. On the imposition of the cost of operating the committee on the nonresidential development interests in the township, that point was discussed and rejected by the township as an approach they were not interested in pursuing. It is my opinion that this is an area in which some flexibility should be afforded municipalities in developing their own responses to the requirement for a long-term monitoring mechanism, and the proposal advanced by the township appears reasonable.

The selection criteria are set forth in Appendix 2 of the RPPW report. While they do not appear to be particularly onerous, addressing the needs of only a small group of disadvantaged citizens of the township and region, it is clear that it places another element of control over the occupancy of lower income units in the township. After reviewing several drafts of this selection cri-

*what  
are we  
talking  
about?*

*good  
thing!*

teria concept, it is my opinion that the proposed criteria are fair and reasonable, and do not jeopardize principles of fairness by unduly benefiting present residents of the township to the exclusion of other needy persons in the region. If that were the case, the ordinance would not be particularly responsive to the goals of the Mount Laurel II decision to provide housing opportunities for those who had been excluded from the municipality by adverse zoning policies.

#### MANEELY, INC. REPORTS

As a way of concluding this report, the following paragraphs address issues raised in three expert reports prepared on behalf of the Maneely interests, the owners of the development known as Countryside. Each of the reports is considered separately, and some of the points raised in each of the reports are addressed for the first time herein because they raise certain issues which are normally raised only in an adversarial setting. Since my basic role in this case is to monitor the development of the compliance ordinance arising from the settlement agreement between Affordable Living and the township, I am offering comment on the three Maneely reports as they relate to that ordinance.

The reports are prepared by a planner, an engineer and a builder, and they are addressed in that order. I have asked Mr. Knox, who represents Maneely, Inc., to forward copies of the referenced reports directly to the Court in order to assist in its review.

Hintz-Nelessen Report: Carl E. Hintz, PP, AICP, ASLA, prepared a report entitled "Report on Mt. Laurel Compliance Program, West Windsor Township", dated March 7, 1985. As noted in the opening paragraph of the Hintz report, he contends that the proposed compliance ordinance is "...contrary to sound planning principles, and will not result in the actual construction of Mt. Laurel Housing..." He proceeds to provide a point by point explanation of the basis for his conclusion. My reaction to his points is as follows, with each of the points briefly paraphrased to provide a reference point for my comments.

Point 1: He comments that there should be higher density housing sites located closer to existing employment centers in the Princeton Junction - Hightstown corridor.

*good.*

Comment: The contention that there are other sites which are suitable for housing in the township does not appear to be relevant to my function as a Master, unless the township took the position that they could not accommodate their fair share of lower income housing needs either because of insufficient vacant land or environmental limitations. It is noted that part of this eastern section of the township is in the Limited Growth Area as designated in the State Development Guide Plan. The reference in Point 1 to nonresidential zoning in the eastern portion of the township should indicate that it lies only in the extreme easterly portion abutting East Windsor, and is apparently in response to nonresidential zoning in that township. In this context, it is reasonable zoning, but again not a matter of concern in my role as a Master. In my view, the township is within its rights selecting a section of the community for low and moderate income housing based on a setaside. The area selected is near the employment centers in the Route 1 corridor, and a large part of it is intended to be served by a new sewer line, with the timing related to the construction of Phase 2. I do not agree with the comment that development should be encouraged in the Limited Growth Area of the township because it is "...in the path of inevitable development." Development will only be inevitable if the township zones for it.

Point 2: The ordinance continues to provide significant opportunities for nonresidential development rather than rezoning such lands to higher density residential.

Comment: My understanding of the Mount Laurel II decision is that there is no obligation on the part of any municipality to reduce the amount of land zoned for nonresidential development in favor of higher density residential uses. As noted in my comment on Point 1, if the township were to contend that it had insufficient land on which to zone for its fair share, and retained large quantities of undeveloped land in nonresidential zoning, that would present a major problem for that to be considered a reasonable response to Mount Laurel II. In the case

of West Windsor, it has provided what appears to be sufficient capacity for the development of its fair share of lower income housing, and I do not agree that it has an obligation to zone additional lands simply because they are nonresidential and may be suitable for higher density residential. One additional point on this issue is that the township may be aware that its fair share number, at least under the consensus formula, is tied in part to employment levels in the township as compared to the region. By continuing to encourage development of nonresidential uses, they are in all likelihood setting the stage for an increased fair share number upon expiration of the repose period six years hence. This should remain a local prerogative.

Point 3: The lands selected are the least suitable from an environmental point-of-view, disregarding the Maneely tract. The uses are inconsistent with earlier plans of the township.

Comment: While there are portions of the selected sites which are environmentally sensitive, as described in the Natural Resource Inventory, I have been guided to a large extent on the evaluation of site suitability performed by the township's planning consultants, Raymond, Parish, Pine and Weiner. Each of the proposed Mount Laurel II housing sites was examined in detail, with consideration given to areas of environmental sensitivity. Test layouts were designed, and they were used to develop the zoning density criteria applied to the various sites. I am satisfied that the work performed was professional in quality, and a reasonable exercise to test the overall capacity of the various sites. It is my recommendation, in response to this issue of environmental sensitivity, that if any of the designated sites do not yield the total number of units called for in Table 2, that the unmet need be addressed by the township either at the time of implementation of Phase 2 of the ordinance, or in subsequent fair share zoning if the problem arises in Phase 2. The issue raised about seasonal high water table in my view is reflected in the determination of gross density for each site. The areas indicated as having high aquifer recharge poten-

tial should be considered in the context of the localized nature of the wells served by the Stockton Sandstone or Wissahickon Schist aquifers. In my view, recharge potential can be considered to some extent in the design of the site development plan, but the problems to be addressed in this relatively minor aquifer have far less regional consequence than if development occurred in prime recharge areas over the very important Raritan-Magothy formation in the easterly part of the township.

Point 4: This part of the report identifies several sites which Hintz feels are superior to the sites selected by the township, and makes a related point concerning the issue of vested rights by Maneely, Inc. based on a Preliminary A approval issued by the township.

Comment: The representation that alternate sites exist which can accommodate Mount Laurel II housing is not my understanding of the essence of this case. As I understand it, the township is obligated to make zoning decisions related to the Affordable Living sites, and to provide sufficient additional zoning capacity to accommodate the fair share number determined by the Court. In my opinion, this has been accomplished, and I do not view my role as a Master as one which involves recommending other sites unless I am convinced that the sites which the township has selected cannot be used for their intended purpose. Based on the site specific test plans prepared by RPPW, it is clear that on the basis of preliminary information, including the Natural Resources Inventory, the units can be accommodated. At the risk of being repetitious, it is recommended that if it is found in the course of detailed site plan development there is insufficient capacity on the sites to accommodate the number of units projected in the compliance program, then the township should be obligated to rezone additional lands for that purpose. On the issue of vested rights by Maneely, Inc. based on Preliminary A approval, this appears to be a matter for legal argument and not something on which my opinion would carry much weight.

Point 5: This point expresses concern about the concept of mandatory setaside, and the likelihood that it will be unsuccessful unless the property receives a significant increase in density, with an example given of the advantage of acquiring property which has two acre residential zoning and having it rezoned to multifamily, providing sufficient economic benefit through rezoning to cover the loss component related to internal setasides.

Comment: As a planner, I have often expressed concern about the concept of internal subsidies to generate low and moderate income housing. These concerns were expressed by me long before the Mount Laurel II decision, which effectively sanctioned such an approach. However, in the absence of government subsidies, there are not many options open to municipalities which will enable them to realistically address this issue, so the concept of setasides and internal subsidies remains one of the more commonly used techniques for meeting the Mount Laurel II obligation. However, in spite of the problems I have had over the years with the use of internal subsidies to generate low and moderate income housing, I have an even greater problem with the second premise of Point 5 relating to seeking out very low density zoning areas for the purpose of rezoning them to very high density. If this approach is used extensively as a basis for realizing the economic benefits called for to make internal subsidies work, than we had better resign ourselves to short term planning and be prepared to ignore the history of planning and zoning in our developing communities. It is interesting to note that among the sites suggested in Point 4 of the Hintz report are sites which are zoned for nonresidential development. There does not seem to be a concern about the economic return generated by rezoning on those tracts as related to the provision of internal subsidies. I am strongly opposed to the establishment of any zoning concept under the Mount Laurel II decision which undermines basic planning principles, one of which is that you should not encourage land speculation by making it enormously profitable to acquire very low density rural and agricultural land in the hope that multiple dwellings will generate significant economic benefit. If only low density zoned areas

are to get the benefit of new multifamily zoning, what is to happen to those areas which have been zoned multifamily over the years but have not been developed? Should they be rezoned to rural low density zoning levels so their value can be depreciated, only to ripen their chances for a future rezoning to multifamily once all the value has been stripped away? Many of the sites chosen by the township for Mount Laurel II housing have been zoned for medium to high density residential in recent years. It would seem to be appropriate to look at those areas as the prime candidates for multifamily development since the planning history of the township already has considered them appropriate for such development. If all the Mount Laurel II development were to occur on other sites, then these sites would have to be rezoned so they would not be unduly competitive, which appears to be a long-term zoning approach which will cause many problems if broadly applied. On the issue of a mandatory setback compared with a density bonus, which is another technique available to municipalities, it is my view that a mandatory setback provides a much more predictable result, allowing credit to be given to all tracts so zoned, rather than having to make assumptions on the rate at which density bonuses will be utilized. This is important in calculating the unit yield in determining compliance.

Point 6: This element of the report raises concerns about the lack of specific regulation related to the low and moderate income units, and notes the absence of controls on unit size, unit mix, the region used for calculating income, the upper limits of the low/moderate range, and the assumptions used on downpayments.

Comment: Sizes of low and moderate income units are not regulated in the compliance ordinance, either on the basis of maximums or minimums. The burden is placed on the developer to come up with a unit size which is marketable at the prices which must be charged. Since the township has not regulated unit sizes, and in my opinion does not have to regulate them, the private marketplace is free to operate absent zoning

regulation. My understanding of zoning case law is that it is inappropriate to regulate housing unit size through the establishment of minimum floor areas, unless specifically related to minimum health standards. The mix of housing units based on the number of bedrooms is inappropriate for many of the same reasons as cited above for regulation of floor area. This mix concept was used largely during the 1960's and early 1970's as a way of assuring that units would not be so large that they would attract school children, and therefore encourage higher levels of municipal expenditures. While that is apparently not the concept of concern in the Hintz report, I still do not feel a regulation on unit mix is needed. I understand some ordinances require a certain percentage of 3 bedroom units in order to assure that some larger households are accommodated, but I do not feel strongly that this should be a matter of municipal regulation. The concept of identifying the region used as a basis for calculating median household income has been addressed in the ordinance. It indicates that the published HUD income limits for the Section 8 program as applied to West Windsor Township are the limits which should apply. The upper limits of the low and moderate income range are also spelled out in the ordinance. They are indicated to be at the same levels as the HUD Section 8 Program, but in order to provide a reach into both the low and moderate income groups, the percentages used for calculating the income base have been adjusted to 90%. Therefore, housing prices will be based on 90% of published income limits, but occupancy will be based on 100%. The ordinance is silent on downpayment percentages to be used in calculating sale prices, but it is a performance-based ordinance. It relies to a large extent on the successful marketing of lower income units to eligible households. If unduly high down payments are required, then the developer will be unsuccessful in marketing those units to the target population, and will be unable to progress through the balance of the development program established for the project.

Point 7: PRN zoning is established as a conditional use, rather than a zone of right. Approvals should be streamlined in order to foster housing pro-

duction. Specific standards should be set forth in the ordinance in order to provide predictability for developers.

Comment: My understanding of the conditional use procedure is that it is indeed a right which exists provided the applicant complies with the conditions of the ordinance. I am aware that the Supreme Court expressed concern about the use of the conditional use procedure as a delaying tactic or roadblock to development, and I agree it should not be used in that fashion. However, with the fast-track provisions built into the ordinance to speed up processing, and the fact that improvement times are no longer for a conditional use than they are for normal major subdivision or site plan review, I do not feel that a conditional use procedure per se is a problem. It provides one significant advantage over reliance on a conventional site plan review procedure if there is no subdivision of lots, and that is that it requires a public hearing. Of course, if there were a major subdivision involved, notice for a public hearing would be required under the Municipal Land Use Law. Mr. Hintz raises a point which I did not consider in reviewing the ordinance. He suggests that the PRN-1 provisions are devoid of standards, implying that there is little predictability afforded the applicant prior to appearing before the Planning Board. I agree that may be a problem, particularly with respect to C. 40:55D-67a., which calls for "...definite specifications and standards which shall be clearly set forth with sufficient certainty and definiteness to enable the developer to know their limit and extent." I read the PRN-1 provisions of the ordinance as an attempt to provide density guidelines, but as much design flexibility as possible by leaving many of the standards unstated. This is an area which may need to be given further consideration by the Court as to whether the desired flexibility by the township violates the above-cited provision of the Municipal Land Use Law.

Point 8: This relates to the source of funding to cover the administrative functions to be performed by the Affordable Housing Committee.

Comment: This was addressed in an earlier part of this report. The position taken by Hintz is that this should be a township function and should not fall on the shoulders of the developers of low and moderate income housing, or on subsequent resales and rentals. I am not overly concerned about this fee. I had suggested on initial development that it be imposed on the market units, but in reconsidering it was made aware that the effect is the same as imposing it on the lower income units. Stated another way, a 100 unit development with 20 lower income units would not have a budget difference for the total project if the fee is viewed as 20 units @ \$100 = \$2,000, or 80 market-rate units @ \$25 = \$2,000. The resale fee is somewhat more troubling since that clearly has to be borne either by the low or moderate income seller or buyer. The rental fee in a rental development could continue to be budgeted into the overall project operating budget and shared by other tenants who are above moderate income levels.

Point 9: Raises concerns about cost-generative provisions in the ordinance, and cites fast-track procedures in place in East Brunswick as an example of a more effective way of handling environmental reviews.

Comment: The fast-track issues have been addressed in the ordinance, and I believe they have been addressed in a satisfactory manner. There was extensive input provided by experts retained by Affordable Living about cost-generating aspects of the ordinance, and through extensive discussion, and some modification in the provisions of the ordinance, it was agreed between the township and the plaintiff that with the provisions suggested in the compliance ordinance, lower cost housing could be built on a setaside basis.

Point 10: This point raises a concern about the Transportation Improvement District ordinance in place in the township which requires developers to contribute to a road improvement program. It also expresses the view that since adjoining municipalities are invoking a developer's fee for assisting in the production of lower income housing, then West Windsor should do the same in the interest of establishing a regional policy which is consistent.

✓ Comment: Off-tract improvements are permitted under certain conditions in the Municipal Land Use Law. I am not familiar with the TID ordinance referred to above, but if it is not waived as it relates to the low and moderate income component of a development, then it probably should be. On the issue of a developer's fee, which is generally applied to nonresidential developments as a way of having them share in meeting the housing needs of low and moderate income households, I agree that such a fee can be useful and desirable. Our firm has recommended it on occasion. However, I feel as a Master in this case, that it is inappropriate to treat that concept as anything more than a local prerogative. It should not be mandated based on practices in adjoining municipalities. The concept of using a fee for nonresidential developments was discussed during the development of the compliance ordinance, and it was felt rather strongly by the township that such an approach was not in the township's best interests. I feel that conclusion should be respected, and that as long as they have developed a reasonable approach to addressing their Mount Laurel II obligation, then there should be no obligation to pursue additional approaches.

✓ Based upon the points raised and comments offered above, I cannot agree with the conclusion reached in the Hintz report that the township should be obliged to reconsider and redraft the entire ordinance in accordance with the principles set forth in his report. In fact, with only a few minor exceptions, I feel the ordinance as proposed by the township is responsive to Mount Laurel II, is sensitive to the planning history of the township, is near employment, adequately addresses issues of environmental sensitivity, and was developed in good faith by the township.

The suggestion that several sites selected by Hintz could be brought into production sooner than those selected ignores the fact that two of the first four sites are controlled by Affordable Living, which has expressed a readiness to proceed to construction as soon as authorized by the Court. The largest of the remaining two sites in the first phase is that of Maneely, Inc., and the position they take with respect to this process could result in early production at

a higher density than they now enjoy, or removal of the land from active development potential. If they receive approval to proceed based upon a Preliminary A approval by the township, then in my opinion, additional opportunities should be created for first phase development so that adequate capacity exists in the ordinance to make up for the units projected for Countryside.

The suggestion that political expediency has been placed ahead of sound public planning principles is a particularly harsh description of the rezoning of lands which have had a history of medium to high density housing permitted, and have been designated to have that zoning continued, with sufficient modifications in the ordinance to assure that lower income housing has a reasonable chance of being built. The fact that the designated areas for multifamily housing are located between the employment centers along the Route 1 corridor and the large lot single family and rural development in the easterly part of the township indicates on the face of it that sound public planning policies have not been violated. When this is coupled with the fact that builder's remedies were awarded to two sites in the immediate vicinity of Countryside and the other parcels selected for Mount Laurel II compliance, it gives further support to the conclusions drawn by the township.

Henderson and Bodwell Report: This report makes specific suggestions on removing unduly cost-generative provisions of the ordinance. It was signed by Russell H. Bodwell and is dated March 5, 1985. At the risk of appearing to take the suggestions contained in the report lightly, it should be considered in the context of the considerable time devoted to removal of cost-generative provisions in the ordinance during the negotiation phase between Affordable Living and the township. The modifications proposed generally consist of a loosening of standards without any indication given of the impact of those changes on the cost of producing housing. There are general guidelines built into the ordinance that refer to encouraging cost-efficient construction techniques. In my view, this has been addressed thoroughly through adversarial proceedings conducted in my presence as a part of the development of the compliance ordinance.

Lanidex Corporation Report: This report, dated March 20, 1985, was prepared by a real estate developer of considerable size and experience. It points out the

problems faced by developers who proceed to build housing without looking at all aspects of development cost, simply relying on the strength of the market or their own hard work to make the project a success. I expressed concern to representatives of the Maneely interests at the meeting I had with them in January that I did not feel zoning decisions should be based on builders budgets. One of the reasons for this position is that it is very easy to be drawn into the details of the budget to pick apart this or that aspect of it, only to find that a one percent change either way in the mortgage interest rates can so affect affordability and the pace of housing construction that all the other assumptions pale into insignificance.

In spite of this reservation to address specific budget approaches, I feel compelled to comment on some of the concepts contained in the Lanidex budget.

1. On pages 7-8, the affordability formula is established. It indicates that for sales housing, the 28% of income figure has to include principal, interest, taxes, maintenance and utilities. That is not correct. It is supposed to include principal, interest, taxes, insurance and condominium fees, if any. Utilities and maintenance other than those covered in condo fees are not to be included in the 28% figure.
2. The \$35/sq.ft. figure for construction cost is apparently supported by a 10 unit building budget appended to the report. However, the total floor area of the 10 units averages almost 1,000 square feet per unit, whereas it is generally agreed that low and moderate income housing should be much smaller in size in order to keep the costs of such housing to a minimum.
3. The report offers the same position as that taken in the Hintz report that consideration should be given to zoning for Mount Laurel II housing on tracts with a more modest present value, i.e. those which have low density zoning. This was addressed extensively in my comments on the Hintz report.

4. Appendix A shows the so-called Mount Laurel Loss for 200 units of low income housing. Apparently, the assumption built into this table is that the 200 units would be two-thirds one bedroom and one-third two bedroom. While it gives a range of incomes based on household size, it does not relate the sizes of households to housing unit size. Looking at the two person household as the size for a one bedroom unit, and assuming that the one bedroom units and two bedroom units would be built to HUD Minimum Property Standards (which generate a unit size of about 540 square feet for a one bedroom and 700 for a two bedroom) the average unit size would be 100 square feet smaller than that shown on the chart, or 593 square feet on the average as compared to 693 square feet. At \$35 per square feet construction cost, this 100 square foot saving could reduce the average cost per unit by \$3,500 down to \$40,755. Another adjustment needed in the table is to show a cost figure for insurance, estimated at \$10 per month, and delete the costs for maintenance and utilities. This means the deductions for taxes and insurance would reduce the available monthly costs by only \$60 rather than \$150. It is assumed for the purpose of this analysis that there would be no condo fees associated with this development. Applying these principles to both the two and three person households, and relating them to the unit mix, reduces the loss for 200 units from \$4,966,500 to \$3,253,923.
  
5. Appendix B sets forth the Mount Laurel Loss for moderate income housing. It also sets forth the assumption that there would be a total of 200 units, but that they would average 950 square feet in size. There is no reason why the moderate income units should be any larger than the low income units, so the same cost of production should be used as that described in paragraph 4 above. Assuming the same mix of one and two bedroom units built into Appendix A, and modifying the deductions to reflect \$60 for taxes and \$15 for insurance, the moderate income units do slightly better than break even, showing a surplus of revenue over expenses of \$83,161, as compared with a projected loss by Lanidex of \$3,191,666. Therefore, based on the few assumptions set

forth herein which modify the Lanidex budgets, the projected Mount Laurel Loss would total about \$3.2 million. Since the loss is based on a total of 400 units, there would be 1,600 market units which would have to share the loss. This comes to an average share of \$2,000.

I would like to reiterate to the Court that I continue to be uncomfortable with the approach of looking at budget numbers as a way of determining density, and that I do not feel confident that the changes I made to the budget are any more valid in the overall scheme of things than those developed by Lanidex. With many pages of computer printouts attached to the Lanidex report, there is a tendency to get lost in the details of the budget.

For the purpose of my role as the Master in this case, however, I suggest to the Court that there was a very simple concept embodied in the upgrading of density on the Countryside parcel. With existing zoning at 5.5 units per acre, in order to establish a basis for a 20% setaside, it would be desirable to increase density. By adding about 55% to the site development potential, new low and moderate income units could be added without site cost, and in fact there would be about as many additional market rate units added without site cost to provide additional economic incentive to produce the lower income units. I do not believe the so-called Mount Laurel Loss will be as high as suggested in the Lanidex report, particularly if attention is given to more modest housing unit sizes.

#### CONCLUSION

In my opinion, the proposed ordinance of the Township of West Windsor should be approved by the Court, with attention given to the following possible modifications:

1. Reduce the household size to be used as the basis for a two bedroom units to 3 persons from 3.5 persons in order to retain consistency with the consensus formula. While I personally do not have a problem with 3.5 persons as the basis, it does appear to conflict with other positions taken to date on this issue.

2. Incorporate a provision in the ordinance that if the housing production anticipated on Table 2 of the RPPW report is not realized, either through developers opting for lower density development, or because of environmental constraints not fully apparent at this time, or because of valid preliminary approvals with a lower yield of low and moderate income units, then the township is obliged to zone additional lands to make up for the units not achieved.
3. Provide more specific standards for conditional uses in the PRN-1 zone in order to assure compliance with the terms of the Municipal Land Use Law. This should be weighed against the potential flexibility afforded by the standards as written. As long as that flexibility provides increased opportunity for the development interests in the township to effect cost-savings and more imaginative design solutions, and the township is bound by the fast-track processing mechanism, it may not be desirable or necessary to amend this section.
4. Consider the efficacy of the fee structure related to the Affordable Housing Committee, particularly those provisions related to resale and rental.

\* \* \*

~~What about phase 1 by  
site? Was George Raymond  
involved in approval?~~