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EXPERT REPORT ON CRANBURY TOWNSHIP MOUNT LAUREL II  
COMPLIANCE PROGRAM

Prepared on behalf of the Civic League of Greater New  
Brunswick

Alan Mallach  
Roosevelt, New Jersey

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INTRODUCTION AND OVERVIEW

On July 27, 1984, the Hon. Eugene D. Serpentelli, J.S.C. signed an order requiring Cranbury Township to revise its zoning ordinance and other land use regulations in order to meet its fair share of regional housing need, which number was determined to be 816 low and moderate income housing units by the year 1990. In December 1984, after an extensive series of meetings and hearings, the Township adopted a compliance program, which was referred by the Court to the court-appointed master, Philip B. Caton. Mr. Caton, after reviewing the compliance program, submitted his report to the Court in April 1985. The Court subsequently scheduled a hearing in this matter, and instructed the parties to submit such additional reports as they considered appropriate. This report is submitted by the planning and housing expert on behalf of the Urban League plaintiffs with regard to Cranbury Township's proposed approach to compliance with Mount Laurel II.

It should be noted that the focus throughout this report is on the report of the master, rather than directly on the Township's earlier submission, although we have sought to distinguish those areas where the two differ. In particular, the report deals with the major questions of site suitability and development phasing, the two major policy-related issues involved in Cranbury's compliance program. Since almost every conceivable issue is addressed in some detail, either in the Township report or the Caton report, this report will seek to be succinct, and (after a brief overview) limit its comments to specific points, to a statement either of agreement or disagreement with the Caton report or the Township report, and a short statement of the reasons for any disagreements.

This report is grounded in the same fundamental policy propositions which animate both the Township report and the Caton report: first, that the Mount Laurel II decision unequivocally requires that the provision of lower income housing be effectively integrated with sound planning and environmental principles; and second, that the objectives of historic preservation and farmland preservation are both legitimate and significant planning objectives, worthy of

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careful consideration. We further agree that Cranbury is both a clearly appropriate community in which to apply the phasing rationale of Mount Laurel II. Therefore, while there are differences expressed below with the specific conclusions of the Caton report, with regard to site suitability and phasing, they are differences of degree, and differences in the manner in which information is interpreted. The differences do not embody any fundamental difference in what planning principles are considered most appropriate to apply, or any disagreement with the proposition that, to the extent reasonably feasible, the Mount Laurel compliance process should be integrated with the ongoing efforts of the Township to maintain farmland, and to preserve the historic character of Cranbury village.

### SITE SUITABILITY

The Caton report deals with the suitability of the four plaintiffs' sites (at 29 to 34), as is done below. These are sites 1, 6, 7 and 9 as shown in the Township compliance plan. The other sites that have been offered by non-plaintiffs are not formally evaluated here, as it will remain within the Township's discretion to determine whether or not to rezone those sites, after the determination has been made with regard to the four sites of the builder-plaintiffs. It should be noted, however, that, with regard to these other sites, we do not question that sites 2 and 3 are suitable for multi-family development, including a setaside of lower income units. At issue, with regard to the builder-plaintiff sites, is not only whether the sites are suitable for some amount of multifamily development, but the number of units, or density, that should be permitted on each suitable site.

#### 1. Site 1 (Garfield)

There is no disagreement by any party over the suitability of this site for multifamily development. With regard to the number of units or density to be provided, the Township has proposed, and the Caton report concurred in, a reduction in gross density from 9.2 units/acre to 7 units/acre, or from 2,000 units to 1,530 units on the site.

The appropriate density of a site, particularly one which is made up of nearly flat farmlands such as Site 1, is in the final analysis a matter of judgment, and a matter of balancing factors. We consider it highly unlikely that the economic feasibility of developing this site, with a 20 percent setaside of lower income units, is at all problematic at a density of 7 units per acre. Furthermore, there are certain planning reasons to support reducing density on this

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site, including its proximity to the New Jersey Turnpike and the need for extensive buffering, and the need to set aside land for open space, and for community and commercial facilities onsite. We concur, therefore, with the proposed designation of this site for Mount Laurel development at the density of development recommended by the township/1.

### 2. Site 6 (Zirinsky)

There is substantial disagreement with regard to this site. The developer is seeking 1152 units on 144 acres (a density of 8 units/acre) while the Township has recommended that it not be rezoned at all. The Caton report has recommended that approximately 60-70 acres of the site be rezoned at an overall density of 4 to 5 units per acre. This represents, in general terms, that part of the site between the village and the roadway proposed by the developer. While that roadway, in the developer's scheme, would be intended for internal circulation within the development, the Caton report sees it as an opportunity to create a "hard edge" to the village, and a buffer between the development of Site 6 and the farmland to the west.

We believe that the position of the Caton report is sound. The Township does not support its arguments that any development on this site is violative of the historic character of the village; indeed, there are many examples where new development at medium density is effectively integrated into historic settings not unlike this one. Thus, we believe that it is suitable for some multifamily development. Furthermore, the concerns raised in the Caton report, with regard both to the scale and the character of development on this site, are compelling. While a historic village can often accommodate additional development, such development must be carefully scaled and designed so that it does not distort the balance of the local environment. We believe that at the scale, and with the density gradient, proposed in the Caton report, this development can take place in a way that will strengthen rather than harm the historic character of the community.

A factor that should be given careful consideration is the actual design of the project, an element as or more important to the ultimate success of the project than the site density at which it will be developed. If this project is to take place, it is essential not only that a highly

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1/Notwithstanding this conclusion, it should be noted that there is no reason to believe that the 9.2 units per acre proposed by the developer cannot be achieved on the site, or is clearly unsuitable from a planning or environmental standpoint.

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qualified architect, with demonstrated sensitivity to historic preservation, be hired, but that Cranbury Township enact and implement an ordinance providing for thoroughgoing design review procedures in the village area, and establish a design review panel made up of highly qualified individuals.

On its face, the recommendation that no more than 300 units be permitted on this site does not appear to raise overwhelming feasibility questions. 300 units is a large development, with ample opportunity for separate clusters and reasonable economies of scale. Furthermore, the site will benefit from its proximity to the village, from a standpoint both of the enhanced marketability of the development as well as potentially lower offtract improvement costs.

It should be noted, however, that we have yet to see any expert reports that the developer may plan to submit on this issue, or hear any testimony that will be brought forth. In the event that such reports or testimony raise serious doubts regarding the feasibility of the development as proposed in the master's report, we believe that it may be possible to accomodate a modest increase in the number of units to be built on the site while maintaining full consistency with the planning objectives and criteria set forth in the master's report.

### 3. Site 7 (Toll)

Both the Township report and the Caton report found this site to be not suitable for multifamily development. We concur in this finding.

### 4. Site 9 (Cranbury Land)

Both the Township report and the Caton report found this site as well to be not suitable for multifamily development, based on certain planning considerations. In this case, however, we differ to some extent with their conclusion. Again, it is not a fundamental difference of perspective, but rather one of interpretation and assessment of the same information.

The argument, in essence, is grounded in highly judgmental concerns; namely, the extent to which development of Site 9 represents sprawl, and the extent to which, if developed, it will have a negative effect on the efforts to preserve farming in the area designated by the Township for agricultural preservation, generally the farming belt west of the village. It is our conclusion that the potential negative effects of this site, or the deficiencies of this site from a planning standpoint, are not so severe as to justify finding

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it to be unsuitable, although, as is discussed below, we do consider it appropriate to reduce the scale of development on this site below what is presently proposed by the developer.

In essence, the manner in which this site is evaluated is a function of the extent to which it is considered an intrusion into the farmland belt as distinct from an extension of existing development. We believe that not enough weight has been given to the Shadow Oaks development, both existing and approved for development. By the time that development is complete, the bulk of the land west of the village and south of Old Trenton Road will have been developed, as well as a substantial section north of Old Trenton Road. It has been argued, not without good reason, that the approval of Shadow Oaks was unfortunate, and inconsistent with current planning goals of the community. This is undoubtedly true, but largely irrelevant, since it exists. While there are those who would disagree, we do not consider large lot single family development such as Shadow Oaks any more compatible with farmland than a well-planned multifamily development at moderate density.

The existence of the section of Shadow Oaks north of Old Trenton Road (23 large houses) has substantially reduced the extent to which Old Trenton Road can be seen as a true boundary of Cranbury's agricultural area. Thus, from the standpoint of farmland preservation, if perhaps not from the perspective of the visual effect experienced by those driving along Old Trenton Road, the impact of extending development along the northern side of that road up to its intersection with Ancil Davison Road does not appear to be that significant<sup>2</sup>. It has also created a situation in which development in that immediate area is at least to some reasonable degree the extension of existing development, rather than intrusion into a new and undeveloped setting.

A further consideration is that of the future course of the proposed S-92, which is anticipated to pass through Cranbury, through the western part of Site 9, and cross from

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<sup>2</sup>/It should be noted that, while the visual element of farmland preservation; i.e., the ability of others to find pleasure by driving through farming areas, may be a significant factor in generating public support for preservation activities, it is not a significant factor in whether the farming activities actually survive. Their survival is dependent, of course, on a host of economic factors, most of which are beyond the control of a single municipality. Indeed, given the relatively small area of this farming preservation area, and the extent to which its farms are leased rather than owner-operated, we fear that the prognosis, on a long-term basis, is not likely to be positive.

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there into East Windsor Township/3. It is hard to tell what the effect of the S-92 alignment will be on the farmland area, but it is unlikely to be a positive one, particularly in the area immediately around that highway's interconnection with Old Trenton Road. That would suggest that a reasonable boundary for the farmland area could easily lie some extent to the north of Old Trenton Road. This could lead to an effort to establish the boundaries of the farming area along the northern boundaries of the development north of that road, and beyond that point, along Ancil Davison Road. Assuming that development on that part of Site 9 east of Ancil Davison Road is carefully handled, a point discussed immediately below, we see no reason why its development is incompatible with any rational program for preservation of the farmland preservation area.

As was the case with other sites, while we find it suitable for multifamily development, we believe that such development should be limited in order better to conform to the planning goals of the community, as well as better to blend into the character of the area. As was implicit in the comment above, we believe that development of this site should be limited to that part of the site east of Ancil Davison Road/4. Second, we believe that the density of development on that part of the site should be substantially reduced, in order to make possible the retention of substantial amounts of open space within the development, and the creation of appropriate transitions to the farming areas and the adjacent single family development. Development at a density of approximately 5 units per acre, resulting in approximately 300 units on the site, should be permitted.

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3/The proposed developers of Site 9 have argued strenuously that the proximity of this site to East Windsor Township, and the development that has taken place on the other side of the Millstone River floodplain, is a significant consideration in supporting its development. We do not find this argument to be persuasive. It should be noted, however, that depending on the final decision that is made with regard to the precise alignment and design of S-92, its construction across the Millstone River in this location could significantly reduce the extent to which that river and its banks now act as a natural barrier between the two communities.

4/The Caton report notes that "in terms of relative site suitability, a distinction should be drawn which recognizes the eastern parcel as relatively more suitable than the parcel west of Ancil Davison Road" (at 33)



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### PHASING OF DEVELOPMENT

Both the Township report and the Caton report recommend that Cranbury's fair share obligation be phased over a more extended period than the six-year period which has come to be seen as customary. The justification for permitting such phasing is set forth cogently in the Caton report (at 42-48), a justification which we find completely reasonable. It is hard to imagine any community in New Jersey that would be more radically transformed than Cranbury by development of the magnitude that is at least theoretically possible. We accept, therefore, the recommendation that the fair share obligation be phased over a period longer than six years.

It remains necessary to arrive at specific numbers which reflect this general principle. This includes determining first, the total fair share number to be phased; second, the period over which it is to be phased; and finally, the distribution of units between the different phases of the overall schedule. In this regard, we differ to some extent with the specific proposal set forth in the Caton report.

The Caton report sets forth an extensive rationale for incorporating only 6/10 of the prospective need determined under the Warren methodology into any municipality's fair share obligation to be satisfied over the next six years. In essence, the rationale is that since the prospective need is based on a 10 year projection, and since the compliance period is to be six years, then it is only reasonable to require that only 6/10 of the projection be achieved during that six year period. That proposition, which does have some logical basis, also raises certain questions and problems. Fortunately, however, for reasons discussed immediately below it is not necessary to reach a conclusion on its reasonableness, nor is any such conclusion presented here.

The logic of the proposal made in the Caton report, in our view, tends to dissipate when the intent of a community is to meet its fair share goals over a longer than six year period, which is what is proposed here. The reduction of the fair share goal to 6/10 is inextricably interwoven with the six year timetable, which is 6/10 of the projection period. Since, however, the period during which Cranbury will carry out its fair share goal will indeed be longer than ten years, there is no apparent reason for reducing the percentage of prospective need to be met below the amount (the "10/10ths") dictated by the Warren methodology. Thus, in our opinion, the total fair share allocation to be phased should remain at the level of 816 established by the Court.

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With regard to the second question, we agree with the Caton report that a twelve year period is an appropriate one for purposes of phasing. That will provide for two target periods, one from 1985 through 1990, and the second from 1991 through 1996.

Given the two periods, we believe that the logic of phasing dictates that more units be provided in the second period than in the first, since the population and housing base for the second period will be larger than it is at present/5. In that manner, the growth curve, reflecting the rate of increase, will not vary too widely from one period to the other. We believe, as a rule of thumb, that a target which, if achieved, would result in 40% of the total fair share goal being achieved during the first period through 1990 is a reasonable one. That, in turn, suggests a goal of 320 to 340 lower income units through 1990.

Achievement of this goal appears possible without drastic modification of the detailed scheme set forth in the Caton report (at 51-54). With regard to the Garfield proposal, the timetable shown at 52 appears reasonable. With regard to both the Zirinsky and Cranbury Land projects, it appears reasonable to expect, assuming the sites are rezoned as recommended in this report, that both would be developed in full during the first period, through 1990. Neither site is large enough to be reasonably phased over a longer period, and furthermore, permitting both these sites to be developed during the initial six year period would appear to be consistent with the general thrust of Mount Laurel, which seeks to make development by builder-plaintiffs economically attractive.

Applying these propositions, and factoring in the projected contributions from rehabilitation and from development by Cranbury Housing Associates into the picture, we obtain the phasing schedule given on the following page. This schedule contains, of course, one major question mark; i.e., the category "additional sites/projects". It is our position that Cranbury should have the greatest possible latitude to determine the manner in which the additional units are to be provided, within the parameters set down in the Mount Laurel decision. How best to do so, of course, raises questions. While there are additional sites in the Township which are suitable for multifamily development, and could be so zoned now, such zoning could trigger more units during the first six year period than the already large number dictated by the phasing plan set forth above.

It is our understanding that there are certain sites (other than the builder-plaintiff sites) which are considered by the Township to be clearly more suitable for future

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multifamily development than the balance of the vacant land in the municipality. One option with regard to those sites, which could be given consideration, would be to zone them for very low density development or for agricultural use (which is their present use) at present, but with an automatic rezoning "trigger" to medium or high density multifamily housing that would become effective in 1991. In this manner it may be possible to retain those sites for future multifamily development, rather than see them consumed by large lot subdivisions between now and 1991, but without triggering additional immediate development.

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 PROPOSED PHASING OF FAIR SHARE GOAL FOR CRANBURY TOWNSHIP

	LOWER INCOME UNITS	MARKET RATE UNITS
PERIOD 1: 1985-1990		
Garfield	94	556
Zirinsky	60	240
Cranbury Land	60	240
Rehabilitation	21	0
Cranbury Housing Associates	100	0
	<u>335</u>	<u>1036</u>
PERIOD 2: 1991-1996		
Garfield	212	668
Cranbury Housing Associates	100/1	0
Additional Sites/Projects	169	NA
	<u>481</u>	<u>668+</u>

1/Depending on feasibility considerations, availability of subsidies, etc., this number could increase.

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 This question does not have to be resolved in this report, since it is a legal issue as much as it is a planning question. It will, however, have to be addressed by Cranbury Township in its compliance program, at the appropriate time.

In closing, we believe that the Township report and the Caton report represent, separately and together, a highly desirable movement toward the achievement of fair share goals in Cranbury Township. With the modest adjustments recommended in this report, we believe they represent the basis for an outstanding Mount Laurel program, balancing the goal of decent housing for all with important and complex planning goals.