

ML - General

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Lerman's answers to questions posed ~~to~~ by Judge  
Serpentelli

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I. Region

A. Question: I note that you have recognized the relationship of the Newark area in terms of distribution of its excess fair share to counties in the south metro portion of the region which you have described. Because of that relationship and the other significant interrelations of the counties south of Essex, would it be appropriate to expand the south metro region to include Essex and Hudson?

A. Answer: If the portion of the New York Metropolitan area which is in New Jersey is to be a basis for the Mt. Laurel region, the alignment of the Core Area (Hudson, County and the City of Newark) for allocation purposes, with either North Metro or South Metro, presents serious problems.

The Core Area has a significant relationship with both the northern and southern parts of the Greater Metropolitan Region, regardless of inclusion of the outermost counties. Because the relationship of the Core Area is so close to both sub-regions, and because the present housing need is so disproportionately great in the Core, it was determined that each sub-region bore some responsibility for the excess need found in the Core. For this reason, the Core Area actually stands alone for purposes of determining present need and allocating that need.

The formulas that were used for allocation of Core Area excessive need were based on characteristics of the subregions, minus Hudson County and the City of Newark

(p. 28 Lerman). Those two units are not expected to provide additional lower income housing units in the forecast period of this report. The remainder of Essex County, however, is anticipated to provide its fair share of prospective need.

There are three major reasons why I think that Essex and Hudson should be included in the North Metro subregion.

- 1) Although there is substantial commuting traffic between the Core Area and the Greater Metropolitan Region (not including commuters using the Core as a transportation hub) the slightly heavier weighting is from the Core Area to the North Metro subregion. In 1980, 105,700 workers commuted daily between Essex/Hudson and South Metro (not including commuters between Essex and Hudson), while 138,500 workers commuted between Essex/Hudson and North Metro. Therefore in terms of housing markets the connection between the Core and the North Metro subregion appears stronger (Hudson and North Metro exchanged over 48,000 workers; Hudson and South Metro exchanged 21,000 workers. 2) An effort was made to create subregions that experienced both need and the potential for meeting the need. The Urban Centers Needs Index, developed in the State Development Guide Plan, identified and ranked urban centers by eight criteria of need. The relatively even weighting of need between North Metro and South Metro was verified against this needs index. When Hudson and Essex are included in North Metro, six of the highest ranking (poorest) urban centers are in North Metro, five are in South Metro. Four of the urban centers of the next ranked group are found

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in both North Metro and South Metro. 3) Although Essex County does not have a large amount of vacant developable land, the Statewide Housing Allocation Report for N.J. (1978) allocated over 5000 additional units to Essex County in communities that were determined to have an adequate supply of vacant land. If a fair share allocation were to be done in a North Metro municipality, the excess from Newark and Hudson County would be allocated to all municipalities based on the subregion's level of need, including the excess Core Area allocation. For this purpose, the potential in the remainder of Essex County (less East Orange) would serve to absorb some of the Core Area excess need, as well as providing some of the resources for needed additional units for prospective need.

The overall present need in the Greater Metropolitan Region is 5.7%, including the Core Area. The allocation of the Core Area's excess over that amount is divided between both regions, according to the economic growth and vacant developable land found in each subregion. The allocation to each municipality is based on the proportion of present need in that particular subregion, after the allocation of the Core Area's excess need. The percent of present need in South Metro, by coincidence, is the same number as that of the Greater Metropolitan Region. This is not the case for North Metro, where the subregion's percent of present need, after allocation of the Core's excess need, is 4.1%. In North Metro as in South Metro, no municipality will be expected to provide for a greater percentage of present need than the percentage for its subregion. Therefore

any municipality in North Metro whose present need exceeds 4.1 percent will have that excess need distributed to the remainder of North Metro where present need is less than 4.1 percent.

The assignment of Essex and Hudson to North Metro facilitates the realistic allocation of present need from the remainder of Essex, for municipalities where that exceeds the subregional rate, and for the allocation of the prospective need to parts of western Essex where there is capacity to meet some of the prospective need.

I. Region

B. Question: It has been suggested that Mercer County constitutes a region in and of itself because of the strong relationship between employment and residency within that county. I would appreciate your comments in that regard. If you do not agree, would you feel that it is appropriate to place Mercer County in some other regional configuration and, if so, what would that configuration be?

B. Answer: Mercer County has a geographically pivotal position in the state, which presents some interesting problems in assignment to a region for Mt. Laurel purposes.

Mercer has a major concentration of the jobs in state government (47%) which results in that "industry" being a significant part of the employment base. Twenty six percent of the jobs in Mercer are in state government. It is also important to note that the number of covered jobs in this county far exceeds the number of employed residents. Over 38 percent of the covered jobs in Mercer County are held by non-residents of the county. Based on available census data, it appears that a significant number of those workers are out of state residents.

Although the high rate of employed residents who work in Mercer County might suggest a concept of a self-contained region, the Supreme Court warned against "undue restriction of the pertinent region" (51:p. op. at 88, citing 72 N.J. at 541). Although more extensive study would be required to fully understand the "live/work" re-

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relationship, the impact of many low to moderate income jobs in state government and the administrative restriction against living out of state for state employees could be factors.

In previous planning designations, Mercer County has been placed in the Delaware Valley Regional Planning area (Burlington, Camden, Gloucester and Mercer Counties). For certain planning considerations, this is a designation that is appropriate. The Delaware Valley region is oriented to the Philadelphia region and, although Mercer County is not part of the Philadelphia SMSA, in terms of rail transportation and job commuting it can relate to Philadelphia as easily as New York City. This fact actually adds to the pivotal nature of this county.

For the purposes of a housing market and Mt. Laurel principles, however, it is necessary to confine regions to New Jersey and it is necessary to define regions in terms of areas with need and with resources to meet the need. The housing market for Mercer County will logically relate to the increasing development northward along the Route 1 corridor between Trenton and New Brunswick.

In the interest of developing a consistent approach to regional definitions it is worthwhile to note that in the Fair Share Housing Allocation Study for the Tricounty (Burlington, Camden and Gloucester) Region prepared by Alan Mallach (August 1983), Mercer County was not even considered for inclusion in that region, as the housing, labor and transportation factors create a clearcut tri-county region.

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If Mercer County is to be part of a region, as described by Justice Pashman in Mt. Laurel I, which includes an independent housing market, significant patterns of communication, major public facilities and which provides resources to meet the housing need, it should not be treated as a one-county region.

Finally, South Metro is defined as a subregion of the Greater Metropolitan Region in an attempt to develop a housing market region that will have the potential for consistency. The Middlesex municipalities being considered in case of *The Urban League of Greater New Brunswick v. Carteret et al* are part of a housing and employment market that includes Mercer County. This market is a dynamic one and the relationships have strengthened since the 1980 census with increasing development in the Route 1 area.

Although persuasive arguments can be made for including Mercer in the Delaware Valley regional group for certain planning purposes, for the realistic achievement of the Mt. Laurel goals, I believe the arguments are more persuasive for including it with the five counties to the north.



I. Region

C. Question: You apparently feel that there is a strong interrelationship of all 13 northern counties and a natural buffer area at the southern boundary of Monmouth and Mercer counties as they abut Burlington and Ocean counties. Would it be reasonable to create a 13 county region, or in the absence thereof, exclude certain outlying counties such as Warren, Sussex, Hunterdon and Mercer, which are substantially removed from the core area?

C. Answer: The 13 county Greater Metropolitan region is strongly related by virtue of transportation and employment patterns, particularly to, and through, the Core Area. This entire region, however, is too large for a housing market region. The distance from northern Bergen or Passaic to Monmouth (75 miles) is too great for those fringes to relate to each other, although they all relate to the concentrated Core Area and to the dense area immediately around the Core.

For purposes of the overall economic and population characteristics, and for purposes of distribution, <sup>of</sup> excess need from the Core, however, the 13 county region is the most logical delineation. For purposes of developing a housing market this 13 county region must be subdivided to a more workable size, both in terms of population and in geography.

The exclusion of Mercer County from this region has been addressed in the previous question. The exclusion of Sussex, Warren and Hunterdon, however, are considered here separately.

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If the region is to be based on economic interdependence, there must be evidence that such interdependence does exist. Hunterdon and Sussex Counties show a strong and distinct commuting relationship to the two subregions, defined as South Metro and North Metro.

Hunterdon County does not provide a significant job source for the South Metro subregion. Of its approximate 25,000 jobs in 1980, 77% were held by Hunterdon County residents, leaving only 5,750 for out of county workers. However, over 31% of the employed residents of Hunterdon worked in the remainder of South Metro, while 5.6% worked in North Metro.

In Sussex County, nearly 21,000 of the 24,000 jobs were held by county residents. There are, however, more than double the number of employed residents than jobs in the county, and nearly 43% of those residents work in North Metro, while 2.5% work in South Metro. These two counties show a strong economic and commuting interdependence with their respective subregions.

Warren County, is included in the Allentown, Pennsylvania SMSA. A surprising 19% of its residents are recorded as working "elsewhere". This county has the fewest employed residents of the 13 counties in the Greater Metropolitan Region. Other than the 55% who work in their own county, the next largest commuting group is the 10% who work in Morris County. A little less than 8% work in each of Hunterdon County and Pennsylvania. The commuting ties that exist are strongest to North Metro, although this clearly is an "outlying" county.

In the interest of consistency, and facing the reality of future pressure for growth as the Route 80 corridor increases in development activity, this county should not be considered its own region. It will continue to relate in terms of jobs and development to Morris County. For this reason, it is considered most logical to include it in the North Metro subregion.

II. Present Need

A. Question: In light of the comments of the Court in footnote 8, can you justify not using the SMSA to determine median income?

A. Answer: In footnote 8 the Court appeared to open the way for use of another basis for determining median income as long as the official data was being used. The simplification referred to in the footnote would be justified if the SMSA happened to coincide with the region defined for this purpose. In the case in point, the SMSA is Middlesex County which has a higher median income than all the other counties, except Hunterdon. If this median income were used it would create a standard of "affordability" above the limit for most of the lower income families in the region. In order to establish goals for housing that will meet the income standards of most of the region, it is essential to use the median income for the entire region. This approach has the merit of reflecting the lowest and highest county medians in the region.

Actually the SMSA is the basis for determining median income, as set forth by the Department of Housing and Urban Development. The only issue here is whether to use the median income of one county or the entire region. As one county could distort the actual regional income level, it is felt that averaging the median incomes for the SMSAs in the region, as well as those counties that are not in SMSAs, gives the most accurate and useful income levels for the purposes of the Mt. Laurel goals.

## II. Present Need

B. Question: Do you feel that it is appropriate to analyze median income in terms of family and fair share in terms of household - or do I misunderstand your analysis in that regard?

B. Answer: The median income data provided by HUD, as proposed to be used in footnote 8, whether for one SMSA or a group of SMSAs, is a "family income" figure, based on the family median income for the particular area, adjusted for household size. This figure is adjusted for families from one person to eight persons, in order to assign income limits for different HUD programs. The significance of a one-person income limit as compared to a five person income limit can be seen in Middlesex County, where the income limits between those household sizes vary by 54 percent. A one person "family", for purposes of HUD's income limits, is a single person household by U.S. Census definition. Therefore, the median family income for a four person family becomes, in effect, a median household income when adjusted for a one person household.

It is essential to evaluate proposals for Mt. Laurel housing in terms of **size** of units to be provided and relevant income limits, as used by HUD for assisted housing programs for the appropriate household or family size (See p. 21 of Fair Share Allocation Report).

Appendix Table 13 in the Fair Share Allocation Report shows this breakdown, as compiled in April, 1983. HUD

continuously updates these income categories by applying an inflation factor by family size and geographical area.

In summary, the projected household size, which with projected population is the basis for the prospective housing need, includes the impact of the one and two person households and their increasing incidence in the range of households. Separate projections for each household size were not made for this Fair Share Allocation Report so an average household size was projected, reflecting single person households and family households.

The median income data is derived from HUD's income limits, based on the median income for a family of four, and adjusted for each size of household. This derivation thereby includes household median income. HUD does not distinguish in its assistance programs between a household of related individuals (a family by Census standards) or unrelated individuals, as long as they are living together as a unit and are income eligible as a unit.

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It should be noted here that the report recently released by Rutgers Center for Urban Policy Research Mount Laurel: Challenge and Delivery of Low Cost Housing, does project numbers of households by three size categories, which is a useful projection. It would be even more useful to have projections by age, of one and two person households, as single persons households who are not 62 years of age or older and who are not handicapped are not eligible for housing assistance from HUD. As they ~~appear~~ to represent a significant portion of the prospective need, special housing planning should be considered for this group.

II. Present Need

C. Question: Do you believe that the opinion justifies the use of figures relating to dilapidated or overcrowded housing as opposed to a straight income criteria?

C. Answer: Although the primary concern addressed in the opinion is the nature of the land use regulations that will govern future development, it is stated emphatically that "every municipality's land use regulations should provide a realistic opportunity for decent housing for at least some part of its resident poor who now occupy dilapidated housing." (slip op. cit 26) (Emphasis added.)

Again, in slip opinion at 72, referring to a municipality's obligation to provide the opportunity for new construction of "their fair share of the region's present lower income housing need generated by present dilapidated or overcrowded lower income units, including their own". The opinion is quite specific regarding physical deficiencies in housing as a basis for measuring present needs.

The present and prospective housing needs to be evaluated and provided for, by virtue of Mt. Laurel II, are all income related, in that they are to represent the lower income households in the state, defined as below 50% and between 50% and 80% of median income. However, the opinion does not appear to assume that all of those households are representative of the present housing need. Conversely, however, assumptions are necessary regarding the proportion of deficient housing units occupied by lower income house-

holds. It is generally assumed that those people who are not income deficient will not live in physically deficient housing unless they choose to. This might be for reasons of location, or economy choosing to spend money in another way. In any case, it is a very small minority who make this choice.

Therefore, it is generally assumed that most deficient housing units are occupied by people with lower incomes. Determining the number of physically deficient housing units that represents a reasonable level of present need is, therefore, more reflective of the direction in the opinion than using income criteria alone.



III. Allocation of Present Need

A. Question: Do you believe that the SDGP growth classification is a true measure of vacant developable land or is there some other standard which would be more precise? Would the Housing Allocation Report be preferable? Would you also consider a reallocation of fair share based upon the absence of vacant developable land?

A. Answer: In reviewing the methodology used in the development of the maps used for measurement of vacant land in each category of the SDGP, it appears that considerable care and thought was given to excluding areas which would not be considered "developable", and confirming measurements of uses wherever possible. However, the maps, prepared on a county basis, were completed in the mid-'70's and some parts were based on data from the early '70's. Extensive development has taken place in some parts of the region during the last decade, and it is unlikely that the areas measured ten years ago still accurately reflect available vacant land.

The Housing Allocation Report contains measurements that, according to the methodology described in the report, have excluded fewer uses than the SDGP. In considering a municipality's development limit, vacant land in both the "Growth" and "Limited Growth" areas were counted and considered for development; all areas were measured that did not exceed 12% slope, were not public lands and were not Wetlands or qualified farmlands.

The HAR does include a measurement for each municipality, by county. An updating is necessary for continued use, but as the Governor's Executive Order has rescinded the HAR, there is little likelihood that an updating is possible.

Some County Planning Boards have compiled data on vacant land in their county based on existing land use data in Master Plans. This responsibility could be made more specific and could be prepared in cooperation with the Department of Community Affairs and the Department of Environmental Protection.

For the Fair Share Allocation Report for Urban League of Greater New Brunswick v. Carteret, where estimates of vacant developable land in growth areas in seven towns were necessary, two maps prepared by the Middlesex County Planning Board on existing land use and extent of developed area were compared, the limited growth areas scaled on to those maps and the vacant areas in growth areas measured. This produced figures more conservative than the HAR, which would be expected, as extensive limited growth areas which were included in the HAR measurements were not included in this Fair Share Report.

The Fair Share allocation, based on two parts economic growth and one part available land, must in any case be examined for feasibility. If a municipality can demonstrate that there is insufficient appropriate vacant land to provide the number of units allocated, then the allocation should be reduced and the excess units reallocated to municipalities, according to their fair share percentage.

The standard proposed by Allan Mallach in his Fair

Share Report for this case is an interesting ~~one~~ and should be considered. In the private developer proposals to date in the Mt. Laurel cases, 20% of the units seems to be the maximum number that can be produced for low and moderate income, and still have the development maintain its financial feasibility. Therefore a ratio of 2 units of low and moderate income housing per acre based on 10 units per acre would seem reasonable, but only where there is a clear responsibility to provide low and moderate income housing to that extent. An overall development standard of ten units per acre is considerably higher than the generally accepted 4 units per acre for a "development limit." Therefore it should only be used when the obligation of the municipality is such that there is little alternative, and if it can be done with sound planning principles.

Two of the seven municipalities might be considered for reallocation of the excess of their fair share if this procedure were followed; Piscataway and South Plainfield. This fair share allocation is relevant until 1990. At that time the availability of land should be re-evaluated, and with it the original allocation, for possible further compliance if land availability has changed.

III. Allocation of Present Need

B. Question: You use a three factor approach in arriving at an allocation of present and prospective need. Would it make sense to treat those factors in two phases? The first phase would involve dividing the factors of ratables and employment by two and multiplying the ratio obtained against the present and prospective need. The second stage would compare that figure against the fair share of the municipality and eliminate any excess share based upon some accepted density ratio. The excess share would then be reallocated to the other municipalities which would accommodate the need.

B. Answer: The factors that represent economic gains and financial capacity and the factor for development capacity can be weighted in several combinations: it has been suggested that the opinion gave the greatest emphasis to benefits according to a town because of ratables and employment and that those factors could be doubled; similarly, if there are two economic factors, one could double weight the vacant land factor.

Doubling the economic factors might have the effect you suggest, but I am concerned that a "fair share" that is not tied directly to available developable land will lose its authority. I tried the formula you suggest on a few municipalities and the result is a 50% (or more) greater fair share, where vacant land is already a problem.

After a good deal of reflection, I think a formula might

be developed in the future based on a number of planning factors, such as amount of land now used for residential commercial, and industrial, master plan proposals for residential areas, special environmental conditions, impact of water discharge areas, current densities, etc. These factors might then be combined with available vacant land in order that the development factor would support sound planning as well as housing for low and moderate income people.

IV. Prospective Need

A. Question: You have utilized an adjustment factor of 2.5% for vacancies. I have seen the figure of 4% used. Is there an accepted norm? Is your figure based upon some particular standard?

A. Answer: The vacancy factor of 2.5% combines the 1.5% vacancy factor for sales and the 5% vacancy factor for rental, proportioned to reflect the percentage of each housing type in the sub region. It was then weighted slightly to reflect an increasing trend in new construction to sales units. This is evident also in proposals being made at this time for Mt. Laurel developments.

B. Question: Do you believe that your prospective need should be adjusted based upon the number of units lost from the housing market?

B. Answer: Meeting the present need implies providing replacement housing for many deficient units that are pre-1940 housing units. These are the units with the highest correlation with occupancy by lower income households. If the goal is to provide replacements (or corrections) for a portion of 90,000 presently deficient housing units by 1990, or even 2000, it is reasonable to assume that this number of units includes a substantial portion of pre-1940 units, which will be rehabilitated or replaced by new units.

With increasing numbers of small families and single person households, it is expected that conversions of existing single family houses will continue to increase, having a dampening effect on net losses in old housing stock. Additionally, the trend towards "gentrification" in older urban areas, that would have been the site of much of the demolition during the last few decades, is expected to continue into the next decade at least. Although this trend does not produce housing for lower income families, it does reduce the loss from the housing stock of many pre-1940 housing units.

In view of these two factors - the inclusion in the present need count of many of the housing units that might be demolished or destroyed by 1990, and the dampening impact of increased conversions and gentrification (the recent pattern is to maintain renovated structures as multi-family, albeit not for lower income) on the rate of demolitions - it appears that a straight count of units anticipated to be removed from the housing supply will result in a substantial overcount.