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Site Suitability Analysis: Prepared in Defense of Colts Neck Township's  
Response to Mt. Laurel II

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## SITE SUITABILITY ANALYSIS

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#### Summary of Conclusions

Given the conditions in Colts Neck and the town's status within the region, it is concluded the township's planning and zoning provides more than a reasonable opportunity for meeting the township's fair share of the regional housing need. It is concluded the township's solutions are consistent with the maintenance of its agricultural patterns, its existing low density residential development, the delineation of the growth area, and a more than reasonable opportunity to provide its fair share of lower income housing in the designated growth area.

The township's Master Plan and ordinances are consistent with Mt. Laurel II and the goals of all regional plans. These plans call for low density in Colts Neck. They identify agricultural pursuits and indicate the negative influences which development has on agriculture. Providing new infrastructure is discouraged. The regional plans all have goals to harness sprawl development by channeling it into designated corridors. State-wide policies for preserving open space and agriculture have advanced from providing open space under the Green Acres Program on the one hand, to farmland preservation on the other. The farmland programs have gone from the 1964 Farmland Assessment Act to the 1983 Agriculture Retention and Development Act and Right to Farm Act. In short, as concerns over the need to provide lower income housing in "growth areas" continued to emerge, planning and legislative goals have also been advancing ways in which to protect farmland.

The township's ordinance establishes an overall low density, but identifies areas within the SDGP growth area for higher density housing. These areas are a combination of higher density by right in order to produce the lower income housing, as well as a transfer option in order to encourage greater blocks of contiguous acreage for agriculture preservation. The ordinance also proposes very low densities in the agriculture districts with incentives to transfer or cluster the development in order to maximize agriculture preservation. The capacity of the ordinance provides for more than the township's fair share of lower income housing in order to more reasonably assure its development.

The actions of the township have been timely given the sequence of events under the earlier Mt. Laurel I appeal and the resulting changes and remand under Mt. Laurel II. The township's appeal under its "Mt. Laurel I" decision was at a time when the courts had held there was to be no specific determination of a fair share number and the SDGP had no formal recognition. The township's appeal was from the decision to provide for all types of housing while retaining an overall density of 0.5 unit/acre. That appeal was remanded under a new set of rules decided in Mt. Laurel II. Because of the difference between the county's Growth Management Guide (GMG) showing no growth area in the township, and the

State Development Guide Plan (SDGP) showing about 450 acres or only 2 percent of the township in the growth area, the question of whether there was any growth area in the township had to be resolved. If there was a growth area (as was later determined by the court), the township had an obligation for a portion of the region's need. If not, there was no regional need. To have planned and zoned for something that might not have been would have been misleading to effected property owners and could have set into motion land use patterns the township felt inappropriate. While the growth area issue was being heard, the township acted to meet its indigenous need through appropriations for rehabilitating deteriorated units occupied by lower income families. It also acted to provide opportunities for accessory units on farms to relate housing needs to low and moderate income farm employees. Upon the court's decision on the delineation of the growth area, the township updated its Master Plan and adopted an implementing ordinance to meet its obligations in the growth area while strengthening its policies on agriculture preservation.

It is the conclusion of this report that Colts Neck has provided a framework in which agriculture has been reasonably protected while providing opportunities to meet its fair share of the lower income housing need. It has done both while complying with Mount Laurel II, regional plans, state farm legislation, and the Municipal Land Use Law.

### Summary of Regional Planning Reports

The literature is filled with references and conclusions that Colts Neck is part of a larger area for low density development (Tri-State and the County GMG), limited growth (SDGP), and agriculture (County GMG and County Agriculture Board). The literature is also filled with references that sprawl development is wasteful, costly, and contributes to the demise of agriculture.

The township's 1984 Master Plan and ordinance amendments identify six agricultural areas. These areas reflect existing agricultural activities and are delineated in a way that some 80 percent of their perimeters do not directly abut residential developments.

When farmland is purchased and development occurs on that land, the loss is direct. After the development of that farm, the nuisances of the farm upon the residents and vice-versa have all too often caused another farmer to cease operations and sell to another developer. The accumulation of several developments causes further farmland loss, and a repeat of the cycle.

"Productive farmlands are a vital natural resource, yet they are privately owned and managed. Like any business enterprise, farming needs a positive atmosphere conducive to profitable operations in order to sustain itself. As a resource, farmland in the United States has been in abundant supply. In the 1970s, however, concern emerged as the conversion of prime farmland to non-agricultural uses in certain places was occurring at a precarious rate." .... "Land use trends have intensified the rural/urban conflict in the State, giving rise to a priority among farmers for specially authorized 'right-to-farm' freedom. These trends also jeopardize the 'critical mass' features vital to sustaining farm operations." (Grassroots: An Agriculture Retention and Development Program for New Jersey, N.J. Department of Agriculture, October 31, 1980, p.11)

The concern involves the preservation of the space as well as the ability to continue the farming operation. It is the intent of the township's Master Plan and Development Regulations Ordinance in designating large blocks of land for agriculture along with separate areas for residential development that the separation of one from the other will foster a longer-term, positive atmosphere for the industry of farming.

" 'In public debate, often little distinction is drawn between the objectives of saving farmland and saving farming. In fact the debate is generally confused even more by including saving open space or saving the environment as an objective. It is perfectly possible that all the prime farmland in a region could be saved but that farming would cease' (Robert E. Coughlin, Methods of Protecting Agricultural Land, Library of Congress workshop paper, February 8, 1977)' " (Grassroots, p.16)

The Grassroots report also cited that agriculture needed to be viewed simultaneously as a land use and a business and that agricultural profitability alone

cannot be seen as a guarantee of agricultural preservation. In separating the agriculture districts in Colts Neck from residential areas, it is similar to separating housing from the manufacturing districts and shopping areas in more urban towns. "Land use conflicts abound in the nation's most densely populated state, especially along the suburban/rural fringe."

The Grassroots report made the general observation that virtually no rural areas exist that are not within reach of residential subdivision growth pressures. The point is that any site-by-site evaluation will likely identify individual farms suited for development. Most farms are reasonably level, cleared of trees, and in an attractive surrounding. However, the problem with piece-meal evaluations and developments is that they accumulate in groups or scattered locations and frustrate the regional goals of directing growth into logical corridors as well as preserving farmland operations. The township's planning and zoning have been done in accordance with regional considerations as mandated in Mt. Laurel II (at 238). The township's planning and zoning fits in with the regional goals to develop interrelationships between towns, counties, regions and the state. The consistency of these plans removes the individual biases that may have otherwise emerged.

Once growth starts, "nuisance complaints by new suburban residents in neighboring areas to farm operations present a frightening signal to a farmer who must make large capital investments to maintain competitive efficiencies in the marketplace. The perception of an oncoming nuisance problem ... and the sheer lure of divesting valuable property are often pivotal factors in decisions affecting the continuation of a farm enterprise." (Grassroots, p.16)

Grassroots also makes observations about the unfolding of regional land use goals and the "quiet revolution in land use control". The report stated the "conversion of farmland in the urban/rural fringe into other more intensive uses was accelerated by a number of socio-economic factors" and that the general public policy toward a "growth ethic" led to large expenditures in suburban infrastructure, while the loss of farmland "was not a major national concern". (at p.17).

Of particular significance to Colts Neck, the "urban dweller in the Northeast is especially interested in preserving farmland for more than locally produced food; since the rural landscape provides a reprieve from the densely populated urban and rural areas". (Grassroots at p.18)

Many of the issues raised in the Grassroots report were implements in the Right to Farm Act and the Agriculture Retention and Development Act (4:1C-1). The Legislative Findings include recognition that retaining agricultural activities serve the best interest of all citizens of the state by insuring numerous social, economic and environmental benefits accruing from agriculture; that there is a need to encourage a positive agricultural business climate; and there is a need to protect commercial farm operations from nuisance action. In addition, the Legislative Findings in the Farmland Preservation Bond Act of 1981 concluded that the action by the legislature and the citizens demonstrated the importance of strengthening the agricultural industry and preserving farmland; directing state departments and agencies to encouraging the maintenance of agricultural production and a positive business climate; and creating state and

county organizations to coordinate farmland preservation programs within identified areas "where agriculture will be presumed the first priority use of the land" (4:1C-12). In Monmouth County, the Agriculture Development Board designated all of Colts Neck as part of their "proposed agricultural development areas" in May 1984.

In addition to the issue of saving farmland, the literature cites examples of how continued development of farmland not only consumes a valuable resource, but is expensive and wasteful in the process. "The energy implications of compact versus sprawl development have been well documented. So, too, have the fiscal implications. Sprawl costs money, and it costs nonrenewable resources." (ASPO, Planning Advisory Service Report No.333, Saving Farms and Farmlands: A Community Guide, 1978, by William Toner, p.3). "The whole development process seemed nothing more than a series of self-fulfilling prophecies - first you project substantial population growth in an agricultural area, then you build roads and water and sewer lines to accommodate the growth, then you switch the zoning from agriculture to residential, and presto! subsidies in place, population follows." (at p.2) Mr. Toner compares the industry of farming with other businesses by stating that "Unlike other footloose industries, such as defense industries, agriculture is rooted to soil in a specific time and a specific place" (at p.4) and suggests, in the legislative intent of a model ordinance, that "agriculture is threatened by rapid expanding growth and urban development" and that "urbanization of high-quality agricultural land is detrimental to the health and safety" of the citizens. (at p.27).

In the case of Colts Neck, the unique mixture of sand and clay is ideal for horse and cattle as well as the supporting grain crops. Whether utilities are extended with public or private funds, the extended service into rural areas will attract more investments in services and further frustrate local and regional plans.

The fact that suburbanization (regional sprawl) has been an economical alternative to farmers cannot be disputed. Much of the country's open space that is unprotected by government ownership or regulation is privately held farmland. "Because it is cheap and flat and mostly unforested, farmland invites the bulldozer. When it sits on the urban fringe or near the interstate freeway, it attracts the speculator. And so it has come to pass that while the nation has more than a billion acres of farmland some states may soon have none." (Saving Farmland, The Center for Analysis of Public Issues, March, 1975, p.2).

The same report goes on to criticize Farmland Assessments as a haven for speculators, but ultimately seeks to encourage preservation techniques. "There are strong arguments in favor of saving New Jersey's farmland. ... There are, first of all, the aesthetic and ecological benefits of open space and the existence of a future land reserve" (at p.32). Other benefits are cited such as agricultural production close by, employment, tax revenues, and a consistency with the public's votes on preserving open space through three Green Acres Bond Issues and the 1964 Farmland Assessment Act. Since the publication of that report, the legislature has passed the 1983 Agriculture Retention and Development Act and the Right to Farm Act (4:1C-1 et seq) and the voters approved a \$50 million bond issue to begin to implement the program.



Agriculture Retention and Development Policies for New Jersey, by the Middlesex Somerset Mercer Regional Study Council, Inc., December, 1980, drew similar conclusions. Aside from economic values (agricultural land pays taxes and demands few services) this report indicates again the value of the agriculture landscape. "[A]griculture creates the New Jersey landscape. Without agriculture, the countryside would disappear. This rural landscape, as New Jersey residents and businesses agree, has a real economic value for the state." (at p.2)

This report also states "The pattern of land development in suburban and rural parts of the state is more devastating to agriculture than the absolute numbers of acres of farmland loss suggest. Post-war suburban development in New Jersey has been characterized as 'sprawl.' It has proven wasteful of land resources and costly for communities to service." In addition, the report states that "Post-war patterns of land development have proven devastating to New Jersey agriculture for several reasons. First, suburban development has been interspersed with agricultural operations -- and the two are usually not compatible. Farmers frequently have to stay off roads, curtail spraying and irrigation schedules and otherwise change their normal agricultural practices in response to complaints from suburban newcomers." (at p.4) The report cites the need for vigilance against vandalism of crops and expensive machinery as well as the nuisances of dust, noise and odors to suburban newcomers, and the secondary changes development brings in terms of more development, traffic patterns and land speculation. The Colts Neck Master Plan and Development Regulations Ordinance have sought to diminish these conflicts by selecting agricultural districts having 80 percent of their boundaries separated from residential development by streets, streams, reservoir or other types of public open space. The Sea Gull site has such a separation. The Orgo site does not.

The Regional Development Guide (Tri-State Regional Planning Commission, September, 1981, pp.16-17) indicates the township is in the "Open-Land Areas" at a density of less than 0.5 unit per net acre. The township is in that part of the region intended to conserve environmentally sensitive lands and, as open land, to "keep urban development concentrated and to hold back urban sprawl". These areas are proposed to remain "... as agriculture, or with development only at very low densities". The report concludes that these areas generally do not have the supporting services for development and that other areas within the region "designated for urban expansion are sufficient to accommodate the planned and balanced growth of jobs and housing in each subregion for the foreseeable future". The report suggests 3-10 acres per dwelling unit "and even lower densities if possible" but encourages no higher density than 2 acres per unit (or a density of 0.5 unit/acre). They urge that public works such as roads and sewers not be provided in these areas and that while small clusters of development may be found in these areas, "Expanding growth around them is not recommended". The report goes on to indicate that "the absence of new subdivisions encroaching on agricultural areas will not create an incentive for the conversion of farmlands to urban uses" and the "small population levels that would result will help to channel the bulk of future growth into urban areas". Perhaps the most direct statement regarding the establishment of public policy and long-range planning in this area is the statement that "Water and sewer systems, local roads and highway interchanges are prime stimulants to development. Often mere proposals of these are enough to start land speculation. These publicly financed facili-

ties should not be planned or constructed in the open land areas. Instead, these investments should be channeled to the existing and planned urban areas only." The possible extension of Monmouth Consolidated's water service to the Orgo site is in direct conflict with this statement as well as similar positions in the county's GMG and the SDGP.

The State Development Guide Plan (SDGP) sets forth the same regional plan for development as the Tri-State Plan except that some 450 acres in the southwest corner of the township are shown in the "growth area". The remaining 19,900 acres of the township (98% of the township) is in the "limited growth area".

The major goals of the SDGP are directed at avoiding more regional sprawl development into areas such as the middle of Colts Neck and the Orgo site. Its goals speak of protecting various natural resources and correcting past misuses, preserving open space for a quality environment, maintaining a viable agricultural economy, enhancing the quality of life with special priority for revitalizing older urban areas, clustering the settlement pattern in the state and fostering efficient use of the State's facilities, and providing opportunities for economic expansion and new employment. (SDGP at pp.21-25)

The major growth management strategies include a suitable balance between conservation and growth; conserving areas of prime agricultural soils, water supply resources, and other natural resources; concentrating development and supporting public investments in older urban centers and areas currently developed or in proximity to development; and neither encouraging nor discouraging development where either conservation or development priorities have not been established. (SDGP at pp.26-27)

The SDGP growth areas are those generally having supporting services and existing development. "Substantial quantities of vacant land still remain within the suburban areas and around rural centers. ... If properly channeled, this growth could result in more amenable and energy efficient patterns of development than would occur with continued low density sprawl or scattered residential concentrations in semi-rural areas." (SDGP at 48) The "rural centers" are specifically designated around the state (p.50) and Colts Neck Village is not one of them.

The SDGP states that significant levels of new growth in the limited growth areas "would require major public investments in services and facilities and an energy-inefficient pattern of scattered development would be continued." This holds true whether the investments are made with public or private funds. Resources directed to limited growth areas would divert the resources from urban areas. Specifically, public resources are proposed to be directed to "other areas where growth can be accommodated more readily". (SDGP at pp.71-72)

The county's Growth Management Guide (GMG) strikes a similar theme. Colts Neck is entirely in the Agriculture/Conservation area. The exception is Colts Neck Village. The 1984 report by the Monmouth County Agriculture Development Board also designated Colts Neck as an "agriculture development area". The County Planning Board supported the adoption of the 1984 Master Plan.

In the GMG, the agriculture/conservation areas are proposed for innovative land conservation techniques such as agricultural clustering and/or districting, den-

sity transfers, and purchase of development easements. Designating agricultural zones is encouraged to prevent haphazard residential development and to preserve large, contiguous tracts of farmland. (GMG, p.53). The township's Master Plan and Development Regulations Ordinance establish agriculture districts, allow clustering and transfers, and deals with large blocks of contiguous acreage.

The village is identified as a small node of residential development. Colts Neck village is one of eight in the county identified to serve surrounding rural agricultural areas with limited services. The villages are characterized as appropriate for limitation to "a maximum of 200 single-family homes on small lots" and within that context are proposed as focal points for development in order to discourage encroachment into agricultural areas. (GMG, pp.56-57) The township's Master Plan and Development Regulations Ordinance limit the village area and nearby commercial zoning to areas of existing development.

Other plans outside the township and beyond Monmouth County express the same goals. The Regional Development Guide for the Delaware Valley, Delaware Valley Regional Planning Commission (DVRPC), 1982, states that "...the [Year 2000 Land Use and Open Space Plan] contains seven land use categories, four of which concern future development. The growth area category is especially important, since new development and supporting public services would occur in these designated areas." (at p.1-7) As part of its growth area discussion, the DVRPC states the growth area exceeds the acreage required to accommodate growth through the year 2000 (p.3-25). Its growth pattern is directed to be in and around existing centers, as in-fill of existing urban areas, and located contiguous with the urban fringe (p.3-26). "A compact growth pattern can reduce the miles of roads, sewer, powerline, storm water, water main, telephone line, etc. which are costly to provide when vacant land must be skipped over to serve dispersed patterns. By encouraging a compact growth pattern, the plan strives to make the best use of existing infrastructure and systems and to minimize the need for new systems." (p.3-26)

Mount Laurel II (92 NJ 158)

The previous excerpts are not definitive. They do, however, represent a consistent theme in state, regional, county and local planning goals. This theme states and restates that new development should be directed to logical corridors of more compact development in order to stop sprawl development, reduce costs of developing and maintaining infrastructure, and provide areas in which agriculture and open spaces can be retained as an integral part of the state's and region's diversified land use pattern.

Every parcel, no matter how well situated or capable it may individually be for development, might not fit these broader goals. While this may run counter to some individual plans, the designated areas for low density, agriculture, and open space uses are part of the needs of the larger region. Upholding these plans serves to encourage more efficient development in growth corridors while retaining rural resources as more than a land bank for speculators. It also serves to discourage the thrust of wasteful sprawl and leap-frog development into rural areas leading to the need for more support services that attract more growth that repeats the cycle.

These themes are articulated in numerous ways in Mt. Laurel II, but consistently the tone is that growth should be compatible with the SDGP, sound planning, meeting the mandate for fair share, and not encouraging more sprawl into limited growth and non-growth areas.

A builder who finds it economically feasible to provide decent housing for lower income groups will no longer find it governmentally impossible, but parks, farms and conservation areas are not a land bank for speculators. (at 211)

If sound planning allows the rich and middle class, it must also realistically and practically allow the poor. And if an area will accommodate factories, it must also find space for the workers. The specific locations will continue to depend on sound local planning. (at 211)

The obligation to provide a realistic opportunity for a fair share of the region's present and prospective low/moderate income housing need extends to every municipality designated in the SDGP as a "growth area", but does not extend to areas where the SDGP discourages growth, i.e. open spaces, rural areas, prime farmland, conservation areas, limited growth areas, parts of the Pinelands, and certain coastal zone areas. The obligation now depends on rational long-range land use planning rather than sheer economic forces that previously dictated whether a town was "developing". (at 215)

Municipalities consisting largely of conservation, agricultural, or environmentally sensitive areas will not be

required to grow because of Mt. Laurel. No forests or small towns need be paved over and covered with high-rise apartments as a result of the decision. (at 219)

Once a community has satisfied its fair share obligation, other measures such as large-lot and open area zoning will not be restricted in order to "maintain its beauty and communal character". (at 219/220)

"We ... reassure all concerned that any changes brought about by this opinion need not be drastic or destructive. Our scenic and rural areas will remain essentially scenic and rural, and our suburban communities will retain their basic suburban character. But there will be some change, as there must be if the constitutional rights of our lower income citizens are to be protected." (at 220)

Some areas fitting the "developing" municipality criteria should not yield to "inevitable growth" and the unacceptable demands to extend infrastructure. This includes prime agricultural land, open spaces and areas of scenic beauty. (at 224)

In establishing the regional planning as a "satisfactory alternative", the court said the State Development Guide Plan (May 1980) promulgated pursuant to N.J.S.A. 13:1B-15.52, provides a statewide blueprint for future development. Its remedial use in Mount Laurel disputes will ensure fair share obligations will coincide with the State's regional planning goals and objectives. (at 225)

The court pointed out that the SDGP was "substantially similar, in concept and approach, to various regional documents by other entities" and the "SDGP resulted from an intensive study of all aspects of New Jersey's current growth and development considered in conjunction with the 'physical assets' of the state" such as farmland, infrastructure, present intensive development, employment centers, and community facilities. "By using proven and sound planning concepts the Division... developed a master plan ... for the purpose of guiding the future growth and development of this state." (at 225/226)

The housing obligation should coincide with the State's plan for future development, therefore the obligation should apply in these "growth areas" and only in these areas. (at 226)

A detailed review of the Municipal Land Use Law in conjunction with the authority for the SDGP lead to the

conclusion again that "These considerations, founded in sound public policy relating to comprehensive planning, are compelling in favor of a remedial solution that imposes the Mount Laurel obligation only in those areas designated as 'growth areas' by the SDGP." (at 236)

Zoning in accordance with regional considerations is not only permissible, it is mandated as noted above. (at 238)

There is no reason today not to impose the Mt. Laurel obligation in accordance with sound planning concepts, no reason in our Constitution to make every municipality a microcosm of the entire state in its housing pattern, and there are persuasive reasons based on sound planning not to do so. (at 238)

The Constitution ... does not require bad planning. It does not require suburban spread. It does not require rural municipalities to encourage large scale housing developments. It does not require wasteful extension of roads and needless construction of sewer and water facilities for the out-migration of people from the cities and the suburbs. There is nothing in our Constitution that says we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently. (at 238)

It will be the unusual case that concludes the housing obligation is different than found in the SDGP. .... Only those municipalities containing "growth areas" as shown on the concept map of the SDGP (or any official revision thereof) shall be subject to the Mount Laurel prospective need obligation. (at 240)

The developing/nondeveloping distinction is no longer relevant and the conclusion that "developed" towns have no obligation is no longer valid. It is expected the towns' obligations can be met without placing lower income projects in the middle of established middle or upper income neighborhoods. The occasional conflicting situation may at times require creativity and cooperation. (at 240, Note 15)

A substantially rural town that allows an industry or a fairly large residential subdivision may or may not constitute a substantial change depending on circumstances, but further development of its infrastructure and additional employment and residential development should probably change its SDGP classification. (at 242)

the municipality and planners in redesigning the zoning ordinance. In that connection, the revised ordinance should obviously be tailored to encourage lower income housing only in the "growth" area. (at 329)

If a town permits an industry outside a "growth area" creating significant employment, that is sufficient for a court to impose a fair share remedy as if that portion of town had previously been in a growth area. The same holds true if the town attempts to attract residential, commercial and industrial development outside the "growth area". (at 243)

All municipalities must provide some share of the need. Those in growth areas must participate in alleviating the regional need by providing housing for persons living outside the municipality itself. In non-growth areas, the present need generated within the municipality must be met, but no more since it would induce development that would conflict with the SDGP. (at 244)

It is our intention by this decision generally to channel the entire prospective lower income housing need in New Jersey into "growth areas". It is clear that that is what the SDGP intends and there is nothing to indicate that those areas are not more than sufficient to accommodate such growth for the foreseeable future. (at 244)

Once a municipality has revised its land use regulations and taken steps affirmatively to provide a realistic opportunity for the construction of its fair share of lower income housing, this decision requires it to do no more. (at 259)

Once having complied, restrictive provisions incompatible with lower income housing will not be invalid under Mount Laurel. Examples given were large lot zoning, bedroom restrictions, and prohibiting mobile homes. (at 260)

On remand the trial court should determine whether the fair share can be accommodated completely in the growth areas. If it can, then

## Township Master Plan

The 1984 Master Plan proposes several basic changes from earlier plans. It directs concentrated residential development into the designated growth area in the southwest corner. This area is proposed for not only the township's fair share of lower income housing, but as a receiving district for those exercising the option to transfer development out of the agriculture districts. The agriculture districts are also new. They have been delineated around the large blocks of contiguous land currently undeveloped and used for agriculture. The bulk of the boundaries of these areas are physically separated from abutting residential areas to remove, or at least minimize, the conflicts between these two uses.

In addition, the Plan reduces the commercial area along Rt. 34 and eliminated the earlier Plan's proposal for "low density research and development" uses at the old airport site and around the Rt. 18/34 interchange. The area west of Rt. 34, south of Delicious Orchards' has had no commercial development even though having been zoned that way for many years. It has now been placed in the agriculture district.

The agriculture areas have also had a significant reduction in density in keeping with the court's earlier decision and the recommendations of various regional planning groups that the overall density of the township be retained at 0.5 unit/acre. The agriculture district allows on-site development in 10-acre flag lots or farmettes, as well as density development of single family homes at 0.2 unit/acre. The units developed under this latter concept must be built on lots clustered down to approximately 1.25 acre lots (or such larger lots as wells and septic systems may require) as long as at least 65% of the farm is set aside in contiguous acreage for continued farm use. The final option is one of transferring the development to the southwest corner's receiving area. This option offers the highest density at 0.3 unit/acre in an effort to encourage even more land in the agriculture district to be set aside for agriculture.

Along with these basic changes, road classifications and new alignments have been reduced to more fitting levels consistent with an agricultural and low density community. The previous alignments proposed west of Willow Road, between Boundary Road and Hillside Road, the southern extension of Hillside Road to Dutch Lane Road, the realignment of Dutch Lane Road at Conover Road, the connection between Hewlett and Montrose Roads, and the southern extensions of Laird and Muhlenbrink Roads that curve westward to Rt. 34 have all been deleted. With regard to county and regional highway proposals, that portion of the Tinton Falls by-pass in Colts Neck has been deleted and the State DOT's southwest connection from Rt. 18 to Mt. Holly has been deleted consistent with the State's own revised plan removing this proposal.

The classifications of roads have also been changed. Some roads have been downgraded such as Dutch Lane Road now being a secondary arterial road (not primary) and Willow Brook Road being a secondary collector road instead of a primary arterial road. All of Laird Road went from a major collector to a secondary collector. Boundary road north of Dutch Lane went from a secondary arterial classification to primary collector.



## Development Regulations Ordinance

The September 1984 amendments implement the mandates of Mt. Laurel II. Those amendments direct the lower income opportunities to the growth area in a new A-4 District. In addition, they incorporate the recommended agriculture districts with low density options for either on-site development in farmettes or clustered units, or the option to transfer the units to the receiving districts, also in the growth area. The receiving districts comprise some 227 acres.

The growth area (A-4 District) includes an additional 154 acres which, at a den-

Six roads were upgraded to collector status to offset the elimination of new road proposals and the downgrading of other roads. Clover Hill, Crine, and Heyers Mill Roads, the east end of Cedar Drive, as well as Long Bridge Road and Water Street were upgraded to either primary or secondary collector roads. The federal highway was upgraded to a primary arterial road.

As a result of declining school enrollments together with the reduction in density in the agricultural areas, the previously proposed school site along Hockhockson Road has been removed from the plan. The only proposed school site is on Laird Road on a site acquired for that purpose some years ago. It is uncertain when, or if, that site will be needed.

the agriculture areas into the growth area consistent with the efforts to direct growth in concentrated corridors of development and to reduce sprawl.

It has provided a new section on Lower Income Housing (§619.1) mandating participation in the production of lower income housing for developers in the A-4 District; fixing a 20-30% setaside responsibility; attaching the responsibility to produce the housing to the land in order to avoid increased land costs after receipt of the density bonus; assigning the lower income limits to the most recently published HUD Family Income Limits; requiring half the lower income units to be low income and the other half moderate income with a spread among the income limits in each category; requiring income qualification for eligibility for one of the units; requiring a deed restriction on each unit set aside for lower income housing; and enforcement responsibility resting with the township administrator.

The A-4 District (§707.1) is a new district allowing the higher density in order to provide the lower income units. The units allowed are varied with no specific mix of units set forth although a mix is required. There are no unit size controls and no limits on the ratio of rental vs owner-occupancy.

The A-4 District (§707.1H) specifies areas where design waivers may be permitted. Waivers are permitted provided the result will not create health and safety concerns and that the construction cost savings are passed on in the form of reduced housing costs. The areas in which waivers are allowed include curbs and gutters, piped storm water systems, street and other lighting, landscaping in parking areas, curbing in parking areas, "compact car" parking areas, shade tree planting and landscaping outside parking lots, sidewalk installation, and street paving widths.

### Site Evaluations

The Orgo site is considered inappropriate for the higher density development needed to provide the township's lower income housing obligation.

It is a site that violates virtually every planning goal set forth in state, regional, county and local planning publications including the need to extend or develop infrastructure, leap-frogging away from logical growth corridors into rural areas, misdirecting resources that could otherwise be used to enhance development in areas better equipped and intended to accommodate growth, placing higher densities in an area that is not a job center, and dramatically changing the character of the area to the disadvantage of the region's agricultural interests and the general public's desire to retain small villages and rural and scenic areas as a relief from the urban corridors nearby.

The fact that the development of this site may be feasible physically and from a financial and engineering point-of-view is beside the point. Sound planning at all levels suggests it be retained for low density, agricultural use. The Mt. Laurel obligation can be met elsewhere, as it should be.

In conjunction with the capacity of the Master Plan and ordinance to adequately meet its fair share, the higher density development proposed on this site would be a major deviation from the trial court's earlier decision that the Township maintain an overall density of 0.5 unit/acre and a major deviation from the goals of every regional planning study and the SDGP as well.

It would violate the concept of the SDGP that the area be preserved as a future land bank and that "Older districts should be maintained, but future growth is not seen as reinforcing the classic concept of concentrated centers." (SDGP p.126)

Orgo's proposal that its concept of enlarging the Village of Colts Neck is taking a reasonable planning concept and expanding it beyond reasonable bounds. This project would not only inundate the village, it would create an urban setting and impact the entire town. It would set in motion the basis for overturning both the SDGP and the County's GMG at the same time by leapfrogging almost to the mid-point between both growth corridors shown in the regional plans. It would require new infrastructure and have secondary impacts on traffic flow and future agriculture interests.

The proposed density of about 6/acre is 12 times that anticipated by the trial court. It would produce some 1,100 units in a town whose entire history has produced 2,200 units. It would place a dense development in the largest agricultural block in the Township where the density was only 0.02 unit/acre in 1979 and has not changed measurably since. Orgo's proposal for 6 units/acre is therefore 300 times that which exists in the southeast quadrant of town. It is adjacent to an agricultural operation with no physical separation between them as has been sought in the Master Plan's delineation of agriculture areas.

It would place 1,100 units in a town which is not a job center (one-third of the jobs in 1979 were part-time). With some 200 low/moderate units (assuming 20% of

the total) added to some 300 "least cost" units for a total of 500 such units as offered, the project would add about as many "least cost" dwelling units as there were full-time jobs in 1982. With this small a job base, the new lower income residents would largely have to commute out-of-town for work.

The Orgo site is also almost equal distant between the two "growth areas" located to the east and west of the Township and therefore most removed from any reasonable effort to locate the higher density Mt. Laurel response in the growth area.

It is in the midst of a prime agricultural area that, if developed as proposed, would foster the greatest impact on the future of that industry in the Township. Other sites on the fringe of the Township are in less significant agricultural areas both in terms of existing farm operations as well as prime farm soils. The ability to locate higher concentrations of housing in these fringe areas allows the housing to be better separated from agricultural operations.

The Sea Gull site should be planned for development according to the allowable density in the ordinance. It is located in the growth area. The abutting farm is separated from the site by a creek and its flood plain. It is in an area already developed in Freehold Township. Although the development in Freehold is at a lower density, it is nevertheless developed residentially rather than being farmland. In addition, the potential for water and sewer service from Freehold needs to be addressed by others, but from a geographic perspective the service is convenient. It need not be brought through miles of undeveloped farmland to the site. With convenient access to Rt. 18, jobs at NAD Earle are accessible without travelling through the intersection of Rts 34 and 537. Jobs north and west are more convenient than from other areas of the township. Jobs east in Tinton Falls and Eatontown are accessible via Rt. 18 (Exiting on Wayside Road, the Parkway southbound, and the planned connection to Rt. 36). This will avoid having to pass through the Rt 34/537 intersection in Colts Neck as well as the congestion in the Village of Tinton Falls.

The Sea Gull site occupies about half the A-4 District, yet can produce close to two-thirds the township's fair share. For example, it is conceivable that at an average of 5.5 units/acre (allowing for deductions for the flood plain and a small area of steep slopes) that this 76.9 acre site could generate about 425 units. This would produce 85-105 lower income units (20-25% of the total) or 65-80% of the township's fair share of 125-150 units proposed to be handled through new construction. The A-4 District's remaining 73 acres would be available for the remaining lower income units.

Should the proposal for housing include some designated senior citizen units, the density could go higher while the population impact would be similar. However, with the same percentage of the project being lower income units, the larger project would result in more of the township's fair share being produced.

### Compliance with the Municipal Land Use Law

In addition to complying with the Mt. Laurel doctrine, it is my opinion the township's planning and zoning comply with sound planning as well as the objectives of the Municipal Land Use Law.

The importance of adhering to sound planning concepts were repeatedly stated in Mt. Laurel II:

While directing compliance, the court indicated that specific locations will continue to depend on sound local planning (at 211).

That the obligation does not extend to areas where the SDGP discourages growth (at 215).

The obligation depends on rational long-range land use planning rather than sheer economic forces (at 215).

Even in the granting of a builder's remedy, the awards are to be located and designed in accordance with sound zoning and planning concepts (at 218).

The court recognized the potential impact and indicated the obligation may be phased in over those years included in the projection and used to calculate the need (at 218).

The court's acceptance of the SDGP and sound planning was related to its shift from the "developing" municipality concept of Mt. Laurel I when it concluded in Mt. Laurel II that certain towns should not yield to inevitable growth and the unacceptable demands to extend infrastructure, including agricultural land, open spaces and areas of scenic beauty (at 224). The township's plan and ordinance are designed to direct higher density development into the SDGP growth area, protect agricultural operations, maintain compatible low density development to avoid extending infrastructure, and to protect the beauty of its rural character.

The court mandated local zoning consider regional considerations (at 238) and that the prospective lower income housing need be channeled into the SDGP "growth areas" (at 244). The township's plan and ordinance considered and implemented regional considerations and directs its lower income housing to the growth area.

It is my opinion the township's ordinance successfully merges the Mt. Laurel doctrine with sound local planning and regional considerations, as well as the purposes of the Municipal Land Use Law.

The location of the higher density solutions are in the growth area consistent with county, state and Tri-State objectives. As such, the ordinance encourages municipal action for appropriate uses or development of all lands in the State in a manner promoting the public health, safety, morals and general welfare (40:55D-2a).

The areas designated are sufficient to accommodate the township's fair share at appropriate densities and related design standards as well as being placed according to the county's and Tri-State's long-range planning, both of which suggest low density development throughout the township. The results secure safety from fire, flood, panic and other disasters while providing adequate light, air and open space and promoting appropriate population densities and concentrations contributing to the well-being of persons, neighborhoods, communities and regions and preservation of the environment. (40:55D-2b, c, and e)

In absorbing its fair share of the region's housing need, and placing it in the SDGP growth area near two major highways with utility service in adjacent Freehold, the township has considered the development and welfare of neighboring municipalities, the county and State as a whole. (40:55D-2d)

The ordinance provides a variety of uses according to 40:55D-2g and directs the higher density development into the regional growth corridor where there is access to the two major highways and away from the major agriculture areas. The Plan has reduced several street functions in the township in order to promote the free flow of traffic while discouraging routes that will result in congestion and blight (40:55D-2h).

The ordinance and Master Plan combine the policy of agriculture preservation and meeting its fair share housing obligation in a manner that conserves open space and valuable natural resources (farmland) while preventing urban sprawl outside the growth area and degradation of the environment through improper use of land near the reservoir and throughout prime farmlands in the delineated agriculture districts. (40:55D-2j).

The ordinance has specific provisions for higher density senior citizen housing in order to encourage senior citizen housing construction (40:55D-2 l).

By directing higher density housing into the growth area, reducing densities in the agriculture areas, providing for accessory housing on farms for low/moderate farm employees, downgrading street classifications, and appropriating funds to assist in rehabilitating deteriorated housing occupied by lower income families, the township has encouraged the coordination of various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land. (40:55D-2m).

The ordinance has given reasonable consideration to the character of each district and its peculiar suitability for particular uses and has encouraged the most appropriate use of land by orienting agriculture preservation to the existing agricultural areas and directing the higher density housing to the regional growth area. This will absorb the township's fair share on the least amount of land in an area adjacent to utility service, major highway access, and greater compatibility with the character of development, while being the least disruptive to agriculture, traffic and the issue of extending infrastructure. (40:55D-62a):