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Master's Report re: Hills Development Corp. v. Township
of Bernards, prepared for Judge Serpentelli

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JUDGE SERPENTELLI'S CHAMBERS

Master's Report

Re: Hills Development Corporation v. Township
of Bernards

Prepared for
Hon. Eugene D. Serpentelli, J.S.C.
New Jersey Superior Court
Ocean County Court House
Toms River, New Jersey 08753

June 12, 1985

by
George M. Raymond, AICP, AIA, P.P.
Chairman
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June 12, 1985

PATRICIA KELLY
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The Honorable Eugene D. Serpentelli, J.S.C.
Superior Court of New Jersey
Ocean County Court House
Toms River, New Jersey 08753

Re: Hills Development Corporation v. Township of Bernards

My dear Judge Serpentelli:

Pursuant to your Order dated 19 December, 1985 appointing me as special master to review the Amended Land Use Ordinance of Bernards Township as to its compliance with Mount Laurel II and to assist in the resolution of any outstanding issues, I am pleased to report as follows:

1. Fair Share

- a. Indigenous Need - In calculating its indigenous need in accordance with the consensus methodology,¹ the Township used 82 percent of the 1980 deficient and overcrowded units as constituting those likely to be occupied by lower income households.² The Rutgers

¹The Township's Fair Share Analysis and Compliance Package was set forth in a memorandum addressed to me from Harvey S. Moskowitz, P.P., the Township's planning consultant, dated March 29, 1985, and hereinafter referred to as the Moskowitz Memorandum (see Appendix A).

²Ibid., p.3.

University refinement of the methodology, using the actual percentage of deficient units that are occupied by income-eligible households in the North Somerset County sub-region established 50 percent as appropriate for use in Bernards Township. This reduces the indigenous need from 42 to 26 units. Of these, 8 units are overcrowded.

- b. Prospective Need - I concur with the Township's determination of 1,314 units.

- c. Present (reallocated) Need - I concur with the Township's determination of 506 units, with 169 units to be provided within the six-year projection period.

The total resulting fair share amounts to 1,509 units. Relying upon prior Court-sanctioned 20 percent fair share reductions in cases of voluntary settlement, the Township has requested a reduction which, using the revised fair share would amount to 302 units.³ A further reduction of 141 units is made pursuant to a

³ Ibid., p. 10.

prior Court order.⁴ This brings the Township's total obligation down to 1,066 units. I have accepted these adjustments in reviewing the adequacy of the proposed compliance package.

2. Compliance Package

The Township has offered the following package toward the satisfaction of its fair share:

(a) Rehabilitation of Heating- and Plumbing-Deficient Units

The Township is willing to undertake the rehabilitation of those units which the 1980 Census reported to be in that condition.⁵ Using the revised method for determining the indigenous need, of the 35 deficient units only 50 percent are deemed to be occupied by income-eligible households. The Township's responsibility would thus be to find and rehabilitate 18 such units. I recommend that the Court allow the Township one year in which to develop a realistic program to that end, including an identification of sources of funding.

⁴ Ibid., p. 10.

⁵ Ibid., p. 13.

(b) New Construction⁶

The Township has rezoned or otherwise provided incentives to developers sufficient to assure the production of 839 units, as follows:

(1) Hills Development Co. The Hills owns 1,046 acres of land in the Township of which 501 acres are located in the Raritan River Basin and 545 acres are located in the Passaic River Basin. The Township has rezoned the Raritan Basin lands, which are located in its Growth Area, to permit a total of 2,750 units with a 20 percent, or 550-unit, Mount Laurel set aside.

(2) Hovnanian (Society Hill). The 130-acre Hovnanian tract has been rezoned to permit 830 units with a 12 percent set aside for moderate income units, only. This project will therefore produce 101 units of that type. The Township has not imposed a full 20 percent set aside requirement and has

⁶Ibid., p. 13-14.

not required the developer to provide any low income units in this instance because the land had been rezoned for 6.5 units per acre before Mount Laurel II in response to the Mount Laurel I doctrine which was in effect at the time. The retrofitting of this development with a full Mount Laurel II set aside requirement would have required an additional density bonus which the Township felt would be excessive, particularly since adjacent developments, which were granted their 6.5 unit/acre zoning subsequent to Mount Laurel II, are quite able to provide a full low/moderate set aside of 20 percent.

In the abstract, I would normally view a density limit somewhat above 6.5 units per acre to be acceptable. In this instance, however, I believe the proposed maximum to be justified. The market rate portion of this particular development is designed to sell in the \$70-100,000 range, which will serve a lower segment of the above-moderate income class than any of the several other developments that have been built or are programmed to be built in the Township (see Table 2). As such, the ability of the market-rate

portion of the development to provide the subsidies required for the economic feasibility of low-income units is limited, at best.

To achieve the 12 percent moderate income housing set aside without a density bonus that the Township has given the developer substantial inducements in the form of waivers of fees and standards.⁷

- (3) Several other tracts located in the same vicinity as the Hovnanian tract were mapped in the same zoning district, which permits 6.5 units per acre, subsequent to Mount Laurel II for the express purpose of helping the Township satisfy its enhanced housing obligation. Consequently, these tracts are all subject to the full 20 percent lower income housing set aside, evenly split between low- and moderate-income units. These include the following:

⁷See Mount Laurel II Fair Share Analysis for Bernards Township, Somerset County, N.J., Harvey S. Moskowitz, July 1, 1984, pp. 23-25.

Tract	Total Capacity	Set Aside	
		Low	Moderate
Kirby	510	51	51
Weymouth Capital	100	10	10
Wagner	162 (a)	16	16
Geyer	172 (a)	17	17

(a) These two tracts were rezoned along with the Kirby and Weymouth sites but were inadvertently not counted in the Moskowitz Memorandum. The capacity of the Geyer property was adjusted to reflect the presence of major wetlands on the tract.

In summary, the total provision which has been made for the production of new lower income housing in Bernards Township amounts to the following:

Development	Lower Income	
	Low	Moderate
Hills	275	275
Hovnanian	--	101
Kirby	51	51
Weymouth Capital	10	10
Wagner	16	16
Geyer	17	17
Sub-Total	369 units	470 units
Total	839 units	

Of the above developments, Hovnanian is under construction, Hills has made a preliminary conceptual plan submission (which cannot be processed prior to settlement), and Kirby is undergoing conceptual review. Every indication, therefore, points to the probable

realization of some 753 units as soon as permitted by the area's market rate housing dynamics.

Deducting that portion of the 1,066 unit fair share which will be satisfied through rehabilitation and the new construction offered by the Township leaves a 209-unit balance. Part of this deficiency will be satisfied by an increase in the 550-unit lower income housing set aside on the Raritan River Basin lands of the Hills Development Corporation by 68 units to a total of 618.

Hills' Passaic Basin lands, which are located in a Limited Growth Area, are zoned for 0.5 units per acre, with a capacity of 273 units. These lands, which are unsewered, cannot be developed with on-site septic tanks due to poor soil conditions. Hills has requested that the Township permit the sewerage of this area by including it in an expanded Environmental Disposal Corporation franchise area. The Township originally refused to allow this out of concern that its acquiescence in the provision of sewers in a portion of its Limited Growth Area may eventually be used by other developers of adjacent vacant lands as a wedge to undermine the integrity of the remainder of the Limited

Growth designation. In response to Hills's request that I intervene I stated that the sewerage of a tract zoned for single family houses on lots averaging more than two acres was outside the area of my concern. I suggested, however, that an offer by Hills to expand its Mount Laurel set aside in the Raritan Basin by 25 percent of the number of units it proposes to build in the Passaic Basin would bring that portion of the project within the Mount Laurel orbit.

Hills has subsequently offered to build an additional 68 lower income units on its Raritan Basin lands in exchange for the Township's support of the application for expansion of the EDC franchise area.

It should be noted that this solution would avoid the placement of densely developed housing outside the SDGP Growth Area and would retain the existing zoned density of the Hills lands in the SDGP Limited Growth Area. It would also be environmentally superior to the sewerage of the single family houses by means of individual septic tanks. At the same time, it would help the Township reduce substantially its deficit in meeting its fair share obligation.

The additional 68 units would increase the overall density on the Raritan Basin tract from 5.49 to 5.62 units per acre. To permit this to occur the current zoning of this area, which was enacted as part of the Township's effort to comply with Mount Laurel II, and which now limits density to a maximum of 5.5 units per acre, would have to be slightly adjusted.

The Township's concerns regarding the potential use by others of the sewer lines provided in the Limited Growth Area to service the Hills development could be resolved through the sizing of pipes to avoid the creation of excess capacity and through legal instruments acceptable to the Township.

In recognition of the rapid rate of growth which Bernards Township will experience in response to Mount Laurel II I recommend that these additional 68 lower income units be permitted to be phased in during the period 1991-1994.

Credits vs. Phasing

The above modification in the new construction portion of the compliance package would reduce the unsatisfied portion of the Township's fair share obligation to 141

units. I believe that the Township should be credited for the following prior housing initiatives in an amount sufficient to satisfy this portion of the overall lower income housing need.

Ridge Oak Section 8 Senior Citizen Project. This large, 248-unit project was completed in 1977 in response to Mount Laurel I. It serves exclusively lower-income households in compliance with the applicable guidelines of the U.S. Department of Housing and Urban Development. This project is experiencing an annual turnover of between 15 and 18 units.

Market Rate Multi-Family Developments Permitted in Response to Mount Laurel I. In 1979-1980, the Township rezoned 1,480 acres of land which has led to the development of projects with an ultimate capacity of 1,820 units of "least cost" multi-family housing at varying densities, as follows:

Table 1

MOUNT LAUREL I "LEAST COST" DEVELOPMENTS
 Bernards Township, New Jersey

Development	Area (In Acres)	Capacity (in Units)		Status ⁽¹⁾ (as of 5/85)
		Before Rezoning	After Rezoning	
The Ridge		20	104	104 B.P. 70 C.O.
The Barons		25	132	82 B.P. 51 C.O.
Countryside Manor		30	150	150 B.P. 150 C.O.
Lord Stirlingville Vill.		15	150	120 B.P. 1 C.O.
Maple Run		20	64	breaking ground
Spring Ridge		190 ⁽²⁾	1,220	256 B.P. No C.O.
Total		300	1,820	612 B.P. 272 C.O.

(1) B.P. = Building Permit.
 C.O. = Certificate of Occupancy

(2) Probable maximum capacity based on environmental considerations.

While none of these units meet the Mount Laurel II test of affordability (see Table 2, below), they do constitute evidence of the Township's cooperative attitude in meeting its obligations under Mount Laurel I, which was the law applicable at the time.

Table 2

SALES PRICES
Mount Laurel I "Least Cost" Developments
Bernards Township, New Jersey

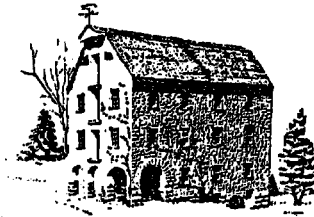
<u>Development</u>		<u>Unit Sales Prices</u>
The Ridge		\$140,000-160,000
The Barons		\$180,000-280,000
Countryside Manor	88 units @	\$100,000-125,000
	62 units @	\$125,000-150,000
Lord Stirling Village		\$170,000-200,000
Maple Run		\$200,000+
Spring Ridge	610 units @	\$100,000-125,000
	610 units @	\$125,000+

Source: Bernards Township.

In recommending that the Township be given credit for its prior efforts as described above I am also cognizant that, in attempting to meet its housing obligation, the Township has already rezoned a grand total of 1,480 acres which, after density adjustments in response to Mount Laurel II, make realistically possible the construction of 4,518 multi-family units. The 273 low density market rate units on Hills's Passaic Basin land and the accompanying 68 Mount Laurel units in the Raritan Basin will also have been made possible by a Mount Laurel-motivated expansion of EDC's franchise area. (See map following.)



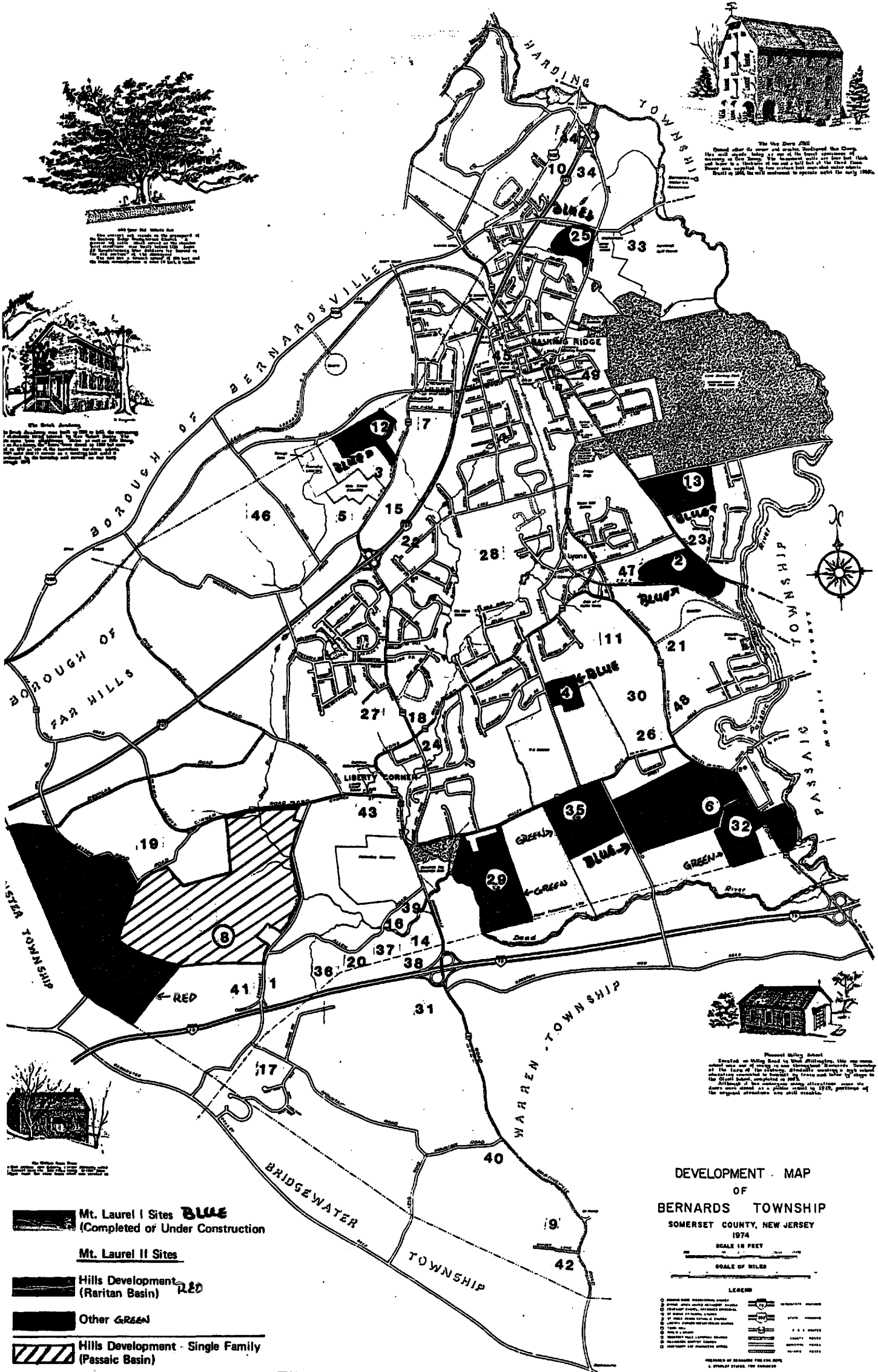
1870 Stone Mill
 This mill was built by the late John H. ...
 It was used for grinding grain and was ...
 It was destroyed by fire in 1890.



The Old Stone Mill
 This mill was built by the late John H. ...
 It was used for grinding grain and was ...
 It was destroyed by fire in 1890.



The Old House
 This house was built by the late John H. ...
 It was used as a residence and was ...
 It was destroyed by fire in 1890.



Present Utility Plant
 Located on this site is the present utility plant ...
 It was built in 1910 and was used for ...
 It was destroyed by fire in 1915.

- Mt. Laurel I Sites **BLUE**
(Completed or Under Construction)
- Mt. Laurel II Sites
- Hills Development (Raritan Basin) **RED**
- Other **GREEN**
- Hills Development - Single Family (Passaic Basin)

DEVELOPMENT MAP OF BERNARDS TOWNSHIP
 SOMERSET COUNTY, NEW JERSEY
 1974

SCALE IN FEET
 SCALE OF MILES

LEGEND

	STATE ROAD
	COUNTY ROAD
	TOWNSHIP ROAD
	LOCAL ROAD
	WATERWAY
	WETLAND
	FOREST
	OPEN SPACE
	AGRICULTURAL LAND
	RESIDENTIAL
	COMMERCIAL
	INDUSTRIAL

PREPARED BY GEORGE T. ...
 1. STREET ...

At 2.5 persons per household, this number of units will house approximately 12,000 persons. This will almost double the Township's 1980 population of 12,920. As the Court noted (Allan-Deane v. Township of Bedminster, at p.8), while

"numbers alone cannot justify a finding of radical transformation...the statistics do provide some broad guidance in assessing the projected growth rates. The Supreme Court demonstrated its concern for the quantity of construction which could occur within a short time (at 219). Thus the numbers can play some role in the court's determination."

According to the U.S. Census, since 1960 only six of the 146 New Jersey communities with 10,000 or more residents doubled in population over a ten year period (see Table 3). All of these experienced this extraordinary growth rate between 1960 and 1970. Only one of the six, Willingboro Township, was in Bernards Township's 10,000-15,000 population class, and its growth was due to the establishment of Levittown in response to the location in the area of a major steel plant in the early post-World War II period of universal seriously pent-up housing demand.

Table 3

POPULATION GROWTH
Selected Municipalities with 10,000+ Population

<u>Municipality</u>	<u>1960</u>	<u>1970</u>	<u>% Growth</u>
Brick Township (Ocean Co.)	16,299	35,057	115%
Cherry Hill Township (Camden Co.)	31,522	64,395	104%
Dover Township (Ocean Co.)	17,414	43,751	151%
Old Bridge Township (Middlesex Co.)	22,772	48,715	114%
Parsippany-Troy Hills Twp. (Morris Co.)	25,557	55,112	116%
Willingboro Township (Burlington Co.)	11,861	43,386	266%

Note: No municipality in the State of New Jersey with a population in excess of 10,000 persons experienced a growth rate of 100% or more during the 1970s.

I wish to emphasize that the basis for my recommendation that credit for prior programs be given is not the actual eligibility of any of the resulting units toward the satisfaction of any portion of the housing need as defined in Mount Laurel II and as derived according to the AMG methodology. Rather, based on reasoning similar to that which underlies a 20 percent reduction in the local fair share in recognition of a municipality's willingness to comply voluntarily, I feel that a municipality which, prior to Mount Laurel II and unlike its neighbors, did as much as Bernards Township to help alleviate the housing

problem of the less affluent, is entitled to judicial recognition of its efforts.⁸

I wish to emphasize also that, in my opinion, such recognition is only justified now, during the initial round of implementation of Mount Laurel II. After 1990, the only units which should be considered for credit should be those, if any, that have been constructed or authorized since Mount Laurel II in excess of the local obligation for the particular projection period. In cases of future overloads (i.e. disproportionate rates of growth that would result from the accommodation of the full fair share in one projection period) it would seem to me appropriate to resort to phased compliance rather than reduced fair shares.

⁸ The ineligibility, on a unit for unit basis, of housing, which does not meet pricing eligibility requirements or the affordability of which is not guaranteed into the future, is clear. I am also particularly wary of qualifying turnover in existing eligible housing built prior to the commencement of the need projection period. If such turnover in units built before 1980 were to be considered eligible now, logic would require that turnover in Mount Laurel II units built in the 1980s be considered eligible toward the satisfaction of future Mount Laurel obligations. But even apart from the latter consideration, existing lower income units, by definition, serve a need that is already present in the municipality. As a unit becomes vacant, an already present eligible household can be assumed to need it. In the calculation of fair share, except for the narrowly defined indigenous need, the AMG methodology includes only units that are needed to accommodate income-eligible households that are not yet living in the municipality.

Supplementary Apartments. The Township also proposed to use the apartments which will result from its recent amendment of Section 405C.10 of its zoning ordinance to allow accessory apartments as conditional uses in one-family dwellings in all districts. The Township estimates that such apartments may be created in 3 percent, or 114, of the existing 3,785 one family detached units. No detailed method of assuring the affordability of these apartments, initially and over time, has been proposed. In addition, in my opinion it would be unrealistic to expect that such units, which would be located in private homes, can be assured of being eligible and available on the open basis contemplated by Mount Laurel II short of their becoming part of the low/moderate income housing supply administered by the municipality. It is my further view that the ability of the municipality to impose its affordable housing program standards on those homeowners who may initially wish to participate in the program on the terms that would make the units eligible is most doubtful.

For these reasons, I do not believe that this type of apartment would meet the standards of Mount Laurel II

even if the initial affordability issue were to be resolved.

2. The Land Development Ordinance

On November 12, 1984, the Township Committee adopted Ordinance #704 (see Appendix B) which embodies the Township's effort to bring its Land Development Ordinance into compliance with Mount Laurel II. I find the ordinance to be acceptable with a few exceptions, as follows:

Article 1100

Section 1103. The Use Regulations in the R-5 and R-8 Zones as Part of the PRD-2 and PRD-4 Options permit "Planned Development." The definition of "planned development" in Article 200 includes both "planned employment development" which is intended to accommodate "employment uses" and "planned residential development" which is intended to include the type of development contemplated in fulfillment of the Township's Mount Laurel obligation. The reference to "Planned Development" should be modified to preclude the use of any of the lands zoned as part of the Township's compliance package for "employment uses."

Section 1104. The compliance package assumes that all lands zoned for higher density housing will be used for residential purposes. The ordinance should clarify that the number of units on each tract will not be affected should the Township approve the use of any of the tract area for permitted non-residential purposes (i.e., schools, municipal facilities, retail and service commercial uses, etc.).

Section 1110. E. Sale and Resale and Rental of Lower Income Housing

Subsection 5. The ordinance requires each developer to

"formulate and implement a written affirmative marketing plan acceptable to the Planning Board. The affirmative marketing plan shall be realistically designed to ensure that lower income persons of all races and ethnic groups are informed of the housing opportunities in the development, feel welcome to seek or buy or rent such housing, and have the opportunity to buy or rent such housing. It shall include advertising and other similar activities."

Since the Township's compliance package includes a number of potential developments, it would appear desirable that more precise guidelines for such a marketing plan be laid down by the Township. At the

least, such a plan should be required to include advertising in newspapers of general circulation serving metropolitan centers and lesser urban and municipalities in the Township's present need region.

Sub-Section 6. There seems to be no good reason why conversion of rental units to condominium ownership should be prohibited for 15 years following their construction so long as the pricing of such units follows the Mount Laurel guidelines.

Section 1112.

Sub-Section A. Drainage. The development's drainage system should not be required to accommodate storm or natural drainage water which originates outside the boundaries of the tract if such water would continue to flow over undeveloped portions thereof.

The ordinance has been in effect for more than six months and has been applied to Mount Laurel set aside developments in the conceptual planning stage without raising objections on the part of the developers involved. It has also been reviewed thoroughly by the Hills Development Corporation's professional advisers who have found it to be reasonable and free of unnecessarily cost generating provisions.

I recommend that the Court accept Ordinance #704 if amended as set forth above.

3. Administration of the Affordable Housing Program

Ordinance #704 places the responsibility for the direction and administration of occupant selection procedures upon a Housing Administrator to be appointed annually by the Township Committee. Despite the fact that the first development which will produce Mount Laurel units has broken ground, such an official has not been appointed as yet and no rules to govern the process--including the establishment of priorities, if any, among applicants--have been formulated.

I understand that the Township has considered the possibility of using the Bedminster Hills Housing Corporation but has found it preferable to devise a different vehicle for the purpose. An ordinance to that effect is currently being prepared. According to the Township Administrator, the marketing of the Mount Laurel units in the first development expected to materialize (Hovnanian) will commence in August, 1985. I recommend, therefore, that the Court require that the Township establish the necessary administrative structure within 30 days and that it submit to the Court the rules and

regulations intended to govern the administration of the affordable housing program and a report on the provisions made for financing the operating expenses connected therewith by July 31, 1985.

4. Fee Waivers and Relaxation of Design and Construction Standards

As an inducement for acceptance by Hovnanian of a 12 percent moderate income housing set aside without the benefit of a density bonus, the Township offered the following (in addition to a relaxation of design and construction standards that have since been incorporated into Ordinance #704):

1. Fast tracking of applications
2. Waiver of fees

The same consideration is appropriate in the case of projects that are granted a density bonus but that offer a full 20 percent set aside that includes low- as well as moderate-income units.

I, therefore, recommend that the Court require the Township to adopt the following application processing schedule:⁹

<u>ACTIVITY</u>	<u>TIMETABLE</u>
1. Application made to the Planning Board	0 day
2. Planning Board provides developer with written determination as to whether application is complete.	14 days
3. Developer furnishes the Planning Board with required additional material. Planning Board forwards copy of applications to municipal agencies. Application is deemed complete.	14 days*
4. Interested municipal agencies file their reports with the Planning Board. All documentation is made available to the public.	21 days
5. Planning Board holds public hearing.	14-28 days
6. The Planning Board grants or denies preliminary approval.	7 days
Total Time	95 days

*In the event that the required additional material is not submitted within the prescribed time period, the Planning Board should be entitled to stop the timetable "clock" until five working days following the date of receipt thereof.

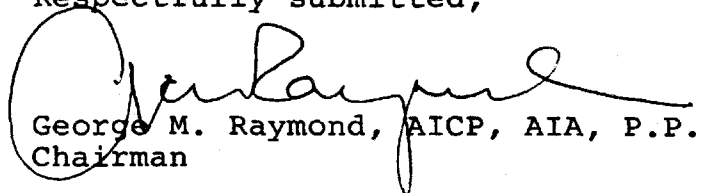
⁹This schedule was determined to be appropriate by the Court in Urban League of Essex County v. Township of Mahwah on the basis of extensive expert testimony from both the plaintiff developer and the Township.

Honorable Eugene D. Serpentelli, J.S.C.
June 12, 1985
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Waiver of Fees

The Planning Board application fees should be waived for all low- and moderate-income units, whether provided as a set aside or separately from any other units.

Respectfully submitted,


George M. Raymond, AICP, AIA, P.P.
Chairman

GMR:kfv

cc: Henry A. Hill, Esq.
James E. Davidson, Esq.

APPENDIX A

TO: George Raymond, P.P., Court Appointed Master, Bernards Township

RE: Bernards Township Fair Share Analysis and Compliance Package

DATE: March 29, 1985

Introduction and Summary of Findings

This memorandum summarizes Bernards Township's fair share obligation and compliance strategy. It indicates that the total 1990 fair share obligation using the consensus methodology is 1,525 lower income units. A multi-faceted compliance strategy has been prepared; most of it is in place at this time. In all, credits for 1,701 lower income units is requested.

Compliance includes rezoning to provide density bonuses and mandatory set-asides, rehabilitation of substandard units, supplementary apartments, credit for Mt. Laurel I compliance, turnover in existing subsidized units, and customary credits for voluntary settlement. The background material and complete analysis is contained in Final Report, Mt. Laurel II Fair Share Analysis for Bernards Township, Somerset County, N.J., July 1, 1984, by Harvey S. Moskowitz, Ph.D.

Fair Share Obligation

The methodology used to analyze the Township's existing and prospective fair share obligation is the consensus methodology developed in a series of seminars attended by approximately 16 planners convened by the Honorable Eugene E.

Serpentelli, J.S.C., to determine an acceptable common methodology for the Urban League of Greater New Brunswick v. Carteret, et al., case. The procedures and techniques to compute region, indigenous need, and present and future recommended fair share by the experts appears to be the methodology of choice, at least for those cases argued before Judge Serpentelli. Since Somerset County is within the Mt. Laurel II judicial district of Judge Serpentelli, that methodology has been used to determine Bernards Township's low and moderate income housing obligation.

Using the consensus methodology, Bernards Township's total Mt. Laurel housing obligation is 1,862 units of low and moderate cost housing. Of this total, 1,525 is the 1990 obligation.¹ These figures are derived as follows:

¹Reduced by phasing in the present reallocated housing need; one-third of 506, or 169 units by 1990.

Indigenous Need: Bernards Township

Overcrowded units:	16 units
Units lacking complete plumbing for exclusive use:	5
Units lacking adequate heating system:	30
Total Indigenous Need:	<u>51</u>
Adjusted Indigenous Need (82%):	42 units
<u>Prospective Need:</u>	1,314 "
<u>Present Housing Need:</u>	506
1/3 in place by 1990:	<u>169</u> "
Total Mt. Laurel Obligation by 1990:	<u>1,525</u> units

The following describes the methodology used to obtain the three components of the Mt. Laurel housing obligation.

Indigenous Housing Need

This is a measure of the substandard housing within the municipality, based on data in the 1980 U.S. Census. It includes three indicators of substandard conditions: overcrowded housing, housing lacking complete plumbing for a household's exclusive use, and units lacking an adequate heating system. The data used have been chosen to eliminate double counting. The Mt. Laurel housing need is assumed to be 82 percent of the total indigenous need, based on a study of the New York metropolitan region which established that 82 percent of households living in such housing are low and moderate income.

Indigenous Need: Bernards Township

Overcrowded units:	16 units
Units lacking complete plumbing for exclusive use:	5 "
Units lacking an adequate heating system:	30 "
Total Indigenous Need:	51 units
<u>Adjusted Indigenous Need (82%):</u>	42 units

Prospective Housing Need

Prospective need is the Township's share of the housing need resulting from employment growth, household changes, and other factors which generate a demand for new housing. This housing need is forecast for the period 1980-1990, for a housing market region established for Bernards. The region consists of those counties in New Jersey which are entirely or partly within a 30-minute commuting trip by automobile from the Township. This region includes Somerset, Morris, Middlesex, Hunterdon, Union and Essex counties. (See Map No. 1 on following page.)

Within this six county region, household growth was projected for the period 1980-1990, using population projections by county for 1990 which were issued in 1983 by the New Jersey Department of Labor & Industry. Of total household growth projected for the region, it is assumed that 39.4 percent will be low and moderate income households, based on the percentage in the state in 1980. This constitutes the region's Mt. Laurel

housing need. This total is then increased by 3 percent, to account for anticipated housing units lost during the period, and additional units needed to provide the vacancy rate needed for a normal housing market. The total prospective Mt. Laurel need for the six county region is 50,484 units.

This total prospective Mt. Laurel housing need was allocated among the region's municipalities, excluding municipalities with no designated growth areas in the State Development Guide Plan, and those state Urban Aid municipalities which already have a disproportionate share of the region's substandard housing.

The allocation formula weights four factors: (1) the Township's share of the region's growth area on the State Guide Plan; (2) the Township's share of the region's employment (private sector jobs in 1982); (3) the Township's share of the region's average annual employment growth (growth in private sector jobs between 1972 and 1982, using a linear regression analysis technique designed to more accurately reflect annual changes); and (4) a financial component based on the ratio of Bernards median household income compared to the region's median household income.

Bernards fair share allocation of the region's prospective Mt. Laurel housing need is 2.169 percent, calculated as follows:

Growth Area

Bernards	10,694 acres
Prospective Need Region	490,825 acres
Fair Share Allocation	2.179 percent

Employment, 1982

Bernards	6,284 jobs
Prospective Need Region	734,998 jobs
Fair Share Allocation	0.855 percent

Average Annual Employment Growth, 1972-82

Bernards	+624 jobs
Prospective Need Region	+21,961 jobs
Fair Share Allocation	2.841 percent

Financial Factor

Average of Growth Area, Employment, & Employment Growth

$$\frac{2.179 + 0.855 + 2.841}{3} = 1.958 \text{ percent}$$

Median Household Income (1980)

Bernards	\$35,522	=	1.43
Prospective Need Region	\$24,893		

$$1.958 \times 1.43 = 2.80 \text{ percent}$$

Weighted Fair Share Allocation (4 factors)

$$\frac{2.179 + 0.855 + 2.841 + 2.80}{4} = 2.169 \text{ percent}$$

The consensus group has also recommended that each municipality's fair share allocation should be increased by 20 percent to account for municipalities in the region which have no vacant land to provide their allocated share of the housing need, and to provide for some measure of overzoning for market

purposes. The total prospective need allocation for Bernards is therefore calculated as follows:

Total Prospective Regional Housing Need:	50,484 units
Fair Share Allocation, Bernards:	1,095 units
Adjusted Fair Share Allocation (+ 20%):	1,314 units

Present Housing Need

The Mt. Laurel II decision stipulated that no municipality should be required to provide a disproportionate share of its indigenous housing need; that is, municipalities which already house substantial numbers of the region's low and moderate income families, and which therefore have a large share of the region's indigenous housing need, should not be assigned an equally large Mt. Laurel housing obligation as a consequence. The regional component of present housing need is generated from municipalities whose indigenous need is a larger percentage of their total housing than the percentage in the region as a whole.

For purposes of calculating and allocating present need, four regions have been established in the state. Bernards is in an eleven-county region which includes all of the counties in New Jersey north of Monmouth and Mercer. (See Map No. 2 on following page.) In this region, 6.4 percent of all housing was substandard, as measured by the Census indicators described above. This percentage is therefore the maximum indigenous need

which a municipality is required to provide. If a municipality's substandard housing (indigenous need) is more than 6.4 percent of its total housing, the "surplus" over 6.4 percent is part of the regional present need. Total "surplus" present need for the 11-county region is 35,014 units. With a 3 percent vacancy rate, the figure becomes 36,064. The total "surplus" present need is then allocated to all the growth area municipalities in the region, excluding those Urban Aid municipalities which already have a disproportionate share of the region's substandard housing.

The formula for allocating "surplus" present need in the region uses three of the four factors in the prospective need allocation formula: share of the region's growth area, share of the region's jobs (as of 1982, the most recent year for which municipal employment data is available), and the financial factor. Bernards Township's fair share of the region's "surplus" present need is 1.169 percent, calculated as follows:

Growth Area

Bernards	10,694 acres
Present Need Region	704,633 acres
Fair Share Allocation	1.518 percent

Employment, 1982

Bernards	6,284 jobs
Present Need Region	1,247,601 jobs
Fair Share Allocation	0.504 percent

Financial Factor

Average of Growth Area and Employment

$$\frac{1.518 + 0.504}{2} = 1.011$$

Median Household Income (1980)

Bernards	\$35,522	=	1.47
Present Need Region	\$24,177		

$$1.011 \times 1.47 = 1.486 \text{ percent}$$

Weighted Fair Share Allocation (3 factors)

$$\frac{1.518 + 0.504 + 1.486}{3} = 1.169 \text{ percent}$$

As with prospective housing need, the final allocation is increased by 20 percent, to account for municipalities which lack vacant land to provide the housing allocated to them and to provide for some measure of overzoning. Bernards' fair share of the "surplus" present housing need is therefore calculated as follows:

Total Present Regional Housing Need:	36,064 units
Fair Share Allocation, Bernards:	422 units
Adjusted Fair Share Allocation (+ 20%):	506 units

Since present need was built up over a long period of time, the consensus group recommended a gradual rather than immediate implementation schedule. The present need is recommended to be met over three six-year periods, and that only one-third of the total need, or 169 units, must be met by 1990.

Compliance

The following measures represent Bernards Township's compliance package. It consists of credit for existing housing constructed or approved as part of Mt. Laurel I, rehabilitated units, supplementary apartments, and rezoning to provide for density bonuses and mandatory set-asides. At the outset, however, the Township is requesting a 20 percent reduction in its overall fair share figure as an inducement to settle. This reduces the total obligation to 1,220 units. In addition, in conferences with Judge Serpentelli, a further reduction of 141 units was indicated in return for settling the case brought by Spring Ridge. This further reduces the overall obligation to 1,079 units.

Credit for Existing Housing and Turnover. Ridge Oak, a 248-unit, senior citizen housing complex, was constructed in

1976-1977. The rents are controlled and meet HUD Section 8 guidelines. Almost all of the units are now low income occupied. The executive director of the complex estimates that 16 to 18 apartments become available annually.

The experts assembled by Judge Serpentelli did not discuss existing subsidized housing units constructed prior to 1980. (Those constructed after 1980 were counted as credit against a municipality's fair share figure.) While some might argue that existing subsidized housing does not increase the housing supply, some recognition of this resource is warranted, particularly since Ridge Oak was constructed in 1976-1977 as part of the Township's willingness to provide lower income housing in response to Mt. Laurel I. Ridge Oak was in addition to rezoning for 600 least cost housing units in five developments to provide a variety of housing types at densities of six (6) units per acre.

The 248 units was the Township's response to an existing or present need and therefore should be credited against the Township's present need allocation of 506 units, bringing the total down to 258 units of which one-third, or 86, are required to be in place by 1990.

In addition to a credit against the Township's present need, the annual turnover of 16-18 units per year in the complex constitutes a prospective or future need resource. The average

figure of 17 units per year for the decade, or 170 units, was applied to the Township's prospective need.

Balanced Residential Complexes. In 1977, in settlement of a suit filed under Mt. Laurel I, Bernards Township rezoned five areas in the Township to allow construction of 600 multi-family units. All of the complexes have been granted final approval, and their present status is as follows:

<u>Name</u>	<u>Total</u>	<u>Occupied</u>	<u>Under Construction</u>	<u>Approved</u>
The Ridge	104	70	34	-
The Barons	132	51	81	-
Countryside Manor	150	133	17	-
Lord Sterling Village	150	1	120	29
Maple Run	<u>64</u>	<u>-</u>	<u>-</u>	<u>64</u>
Total:	600	255	252	93

While there are no qualifications in terms of occupancy and the units are sold at market levels, the rezoning did comply with Oakwood at Madison in the sense that they represented least cost housing appropriate to Bernards Township. Moreover, the new density of six (6) dwelling units per acre was a significant increase over the previous densities of one (1) dwelling unit per one acre for four of the sites and one (1) dwelling unit per two acres for one site. The multi-family units were also the first in the Township.

We propose that a percentage of the 600 units be applied against the Township's present need since they were constructed in response to an existing (pre-1980) demand.

Rehabilitated Units. The Township's indigenous share of substandard housing (exclusive of overcrowded units) is 35 units. Assuming 82 percent are occupied by Mt. Laurel II households, 29 units would be eligible for rehabilitation credits. Using community development grant funds or local resources if necessary, Bernards will rehabilitate the 29 units by 1990.

Supplementary Apartments. The Township recently amended its zoning ordinance (Section 405C.10) to allow for accessory or supplementary apartments as conditional units in all residential zones. The previous provisions allowed accessory apartments but restricted their occupancy to immediate family members -- mother, father, son, daughter, brother or sister. The new amendment removes the restriction. The new amendment (adopted as part of the compliance package) also permits such units in outbuildings.

The total number of potential apartments is 3 percent of the 3,785 single-family detached dwellings in the Township, or 114 units. This is not unreasonable. Studies in Nassau and Suffolk counties indicate as many as 10 percent of the single-family units have supplementary apartments.

New Construction. The Township has amended its zoning ordinance to eliminate all cost generating features not related to health and safety, provide for fast tracking of Mt. Laurel applications, increase densities, require mandatory set-asides for lower income units, and reduce bulk standards.

The amendment also rezoned several areas of the Township to provide low and moderate income units as follows:

	<u>Total Units</u>	<u>Low & Moderate</u>
Hills Development	2,750	550
Hovnanian	850	101*
Kirby	510	102
Weymouth Capital	<u>100</u>	<u>20</u>
Total	4,210	773

*All moderate income.

The status of the applications are as follows:

- a. Hovnanian: Final approval; construction expected to begin shortly.
- b. Kirby: Application for conceptual approval filed; public workshop scheduled for April 30th.
- c. Hills: Conceptual plans being prepared.
- d. Weymouth Capital: Nothing submitted as of this date.

Of the 773 low and moderate income units projected from the rezonings, 101 will be under construction in 1985, an additional 102 will be approved in 1985, and 550 will be approved after settlement of this lawsuit.

Summary of Compliance Measures

The Township of Bernards has moved expeditiously to meet its Mt. Laurel II obligation. All zoning amendments are in place, and the Township has granted final approval to the first project providing lower income units (Hovnanian). All but one of

the other proposed lower income units to be constructed by builders are in the pipeline.

The full compliance strategy as applied to the Township's Mt. Laurel II obligation provides for a significant degree of overcompliance, as follows:

Mt. Laurel Obligation (1990)		1,525 Units
Credits:		
20% Settlement:	305	Units
Spring Ridge Settlement:	141	"
Rehabilitated Units:	29	"
Subsidized Housing Turnover:	170	"
Mt. Laurel I Compliance, Ridge Oak Balanced Residential Complexes	-- 169*	"
Supplementary Apartments:	114	"
Rezoning, Hills	550	"
Hovnanian	101	"
Kirby	102	"
Weymouth Capital	<u>20</u>	"
Total:		1,701 Units

*Total of 848 Mt. Laurel I units (600 balanced residential complex units plus 248 subsidized units) credited against Township's total 169 present reallocated need, or a 20% credit.

Additional Comment

Attached as Appendix A is a report dated March 11, 1985 entitled, Fair Share Figures Using Rutgers CUPR Methodology. It indicates that the Township's fair share figure, using a probable Rutgers CUPR methodology would be somewhere between 900-1,000 units.

APPENDIX A

TO: Bernards Township Planning Board and Township Committee
RE: Fair Share Figures Using Rutgers CUPR Methodology
DATE: March 11, 1985

1. The Legislature is now considering a bill which would establish an Affordable Housing Council. They in turn would develop a fair share formula based on fixed regions. (We presently use a commutershed for prospective share and a fixed region for present need.)

2. The methodology would probably be based on the broad parameters suggested in the Rutgers Center for Urban Policy Research report, Mt. Laurel II: Challenge and Delivery of Low-Cost Housing. We have recalculated Bernards Township's Mt. Laurel obligation based on those guidelines and found that the Township's obligation is 1,004 units.

3. As the Board may recall, our fair share number under the consensus methodology is 1,272 units. This is a net figure, however, and includes deductions for Ridge Oak, including the original 248 units and the annual turnover. If those credits were permitted to be applied to the Rutgers methodology, it would reduce the number to approximately 746 units. (The 248 units that we have taken credit for with respect to Ridge Oak was applied only to the present need. Under the Rutgers formula, that present need is only 88 units to begin with, so this is the maximum credit we could get for the original Ridge Oak construction.)

Bernards Township, Somerset County
West Central (Region 3)

Rutgers CUPR Mt. Laurel Analysis

Present Regional Housing Need

(includes indigenous and reallocated present need)

8,520 Units: 1980 Present Need
2,812 Phased in Need (1980 X .33)

Prospective Regional Housing Need (1980-1990)

22,002 Units

Total Need by 1990 (present plus prospective)

24,814 Units

Allocation Factors*

Employment, 1982

Bernards:	6,284				
Hunterdon	20,492	-	6,987	=	13,505
Middlesex	240,832	-	32,322	=	208,510
Somerset	82,957	-	161	=	82,796
Warren	24,632	-	5,385	=	<u>19,247</u>

Net Employment: 324,058

Bernards as a Percent of Region 3:

$\frac{6,284}{324,058} = .01939 = 1.939\%$

*Deductions are made for non-growth and selected urban aid municipalities.

Growth Area

Bernards: 10,694 Acres

Hunterdon	26,759	-	0	=	26,759
Middlesex	154,110	-	6,432	=	147,678
Somerset	100,455	-	0	=	100,455
Warren	23,047	-	0	=	<u>23,047</u>

Net Growth Area: 297,939

Bernards as a Percent of Region 3:

$$\frac{10,694}{297,939} = .03589 = 3.589\%$$

Employment Growth (72-82)
(Linear Regression)

Bernards: +624

Hunterdon	601	425
Middlesex	5,932	7,040
Somerset	3,067	3,071
Warren	208	<u>61</u>

Net Employment Growth: 10,597

Bernards as a Percent of Region 3:

$$\frac{624}{10,597} = .05888 = 5.888\%$$

Modified Wealth Factor: Aggregate Regional Wealth

HUNTERDON:

$$\frac{1980 \text{ Mean Household Income}}{\$27,979} \times \frac{1980 \text{ Households}}{28,515} = \$797,821(1,000's)$$

Deduct Non-Growth Municipalities:

Alexandria	27,359	X	877	23,994(1,000's)
Bethlehem	28,704		918	26,350
Bloomsbury	24,117		308	7,428
Califon	25,143		352	8,850
Delaware	29,301		1,263	37,007
East Amwell	27,660		1,134	31,366
Franklin	28,489		752	21,424
Frenchtown	19,040		586	11,157
Glen Gardner	18,623		278	5,177
Hampton	20,722		557	11,542
Holland	25,218		1,485	37,449
Kingswood	23,882		922	22,019
Lambertville	17,879		1,613	28,839
Lebanon Twp.	27,297		1,719	46,924
Milford	19,101		484	9,245
Stockton	19,782		252	4,985
Tewksbury	54,753		1,285	70,358
Union	37,823		1,053	39,828
West Amwell	25,144		775	19,487

Deduction Total: 463,429

\$797,821
-463,429

Net Aggregate
County Wealth:

\$334,392(1,000's)

MIDDLESEX:

<u>1980 Mean</u>		<u>1980</u>	
<u>Household Income</u>	X	<u>Households</u>	=
\$25,023	X	196,708	\$4,922,224(1,000's)

Deduct Urban Aid Municipalities:

New Brunswick	16,965	X	13,244	224,684(1,000's)
Perth Amboy	17,003		13,617	<u>231,530</u>

Deduction Total: 456,214

\$4,922,224
-456,214

Net Aggregate
County Wealth: \$4,466,010(1,000's)

SOMERSET:

<u>1980 Mean</u>		<u>1980</u>	
<u>Household Income</u>	X	<u>Households</u>	=
\$30,278	X	67,368	\$2,039,768(1,000's)

Deduct Non-Growth Municipalities:

Rocky Hill	30,614	X	267	<u>8,174(1,000's)</u>
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Deduction Total: 8,174

\$2,039,768
-8,174

Net Aggregate
County Wealth: \$2,031,594(1,000's)

WARREN:

<u>1980 Mean</u> <u>Household Income</u>	X	<u>1980</u> <u>Households</u>	=	
\$21,330	X	29,406		\$627,230 (1,000's)

Deduct Non-Growth Municipalities:

Allamuchy	33,887	X	969	32,837 (1,000's)
Belvidere	20,149		935	18,839
Blairstown	27,567		1,380	38,042
Franklin	24,598		741	18,227
Freylinghuysen	24,718		456	11,271
Hardwick	22,052		287	6,329
Hope	23,189		494	11,455
Knowlton	20,541		682	14,009
Liberty	21,669		574	12,438
Oxford	18,311		570	10,437
Pahaquarry	14,779		13	192
White Twp.	22,418		921	<u>20,647</u>

Deduction Total: 194,723

\$627,230
-194,723

Net Aggregate
County Wealth: \$432,507 (1,000's)

REGION 3 NET WEALTH (1,000's)

Hunterdon:	\$334,392
Middlesex:	4,466,010
Somerset:	2,031,594
Warren:	<u>432,507</u>

\$7,264,503 (1,000's)

BERNARDS SHARE OF REGIONAL WEALTH

Bernards Mean Income X Households
Net Regional Wealth

$$\frac{\$40,331 \times 3,711}{\$7,264,503} = \frac{149,668}{7,264,503} = .02060 = 2.060\%$$

MODIFIED CONSENSUS ALLOCATION

Present Need*

$$\frac{\text{Employment Factor} + \text{Growth Area Factor} + \text{Modified Wealth Factor}}{3} \times$$

Regional Phased Present Need = Present Need

$$\frac{.01939 + .03589 + .02060}{3} = .02529 \times 2,812 = 71 \text{ Units}$$

71 X 1.2 (land availability in region) =

85 X 1.03 (vacancy factor) = 88 Units Total
Present Need

*Includes reallocated surplus and indigenous need.

MODIFIED CONSENSUS ALLOCATION

Prospective Need

$$\frac{\text{Employment Factor} + \text{Growth Area Factor} + \text{Employment Growth Factor} + \text{Modified Wealth Factor}}{4}$$

X Regional Prospective Need = Prospective Need

$$\frac{.01939 + .03589 + .05888 + .02060}{4} = .03369$$

.03369 X 22,002 = 741 Units

741 X 1.2 (land availability factor) =

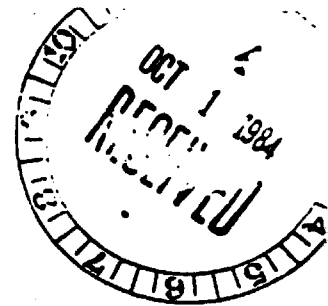
889 X 1.03 (vacancy factor) = 916 Units Total
Prospective Need

Total Obligation by 1990:

Prospective Need:	916
Present Need:	<u>88</u>
	<u>1,004 Units</u>

APPENDIX B

ORDINANCE #704



AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF BERNARDS AMENDING THE
LAND USE ORDINANCE OF THE TOWNSHIP OF BERNARDS

BE IT ORDAINED by the Township Committee of the Township of
Bernards in the County of Somerset and State of New Jersey
that:

WHEREAS, the Supreme Court of New Jersey, in the case known
as Mount Laurel II, has announced a rule of law requiring that
every municipality in New Jersey must provide a realistic
opportunity for the construction of its fair share of a regional
need for low and moderate income housing; and

WHEREAS, litigation is pending against the Township of
Bernards in which it is alleged that the present Land
Development Ordinance of the Township of Bernards fails to
comply with the mandates of Mount Laurel II, and

WHEREAS, through prior enactments the Township of Bernards
has provided density bonuses to developers and has otherwise
provided a realistic opportunity for the construction of low and
moderate income housing, and

WHEREAS, it is found to be in the best interests of the
Township of Bernards to amend its Land Development Ordinance so
as to further ensure the actual construction and availability of
a fair share of low and moderate income housing in the Township
of Bernards.

NOW THEREFORE, BE IT ORDAINED that the Land Development

Ordinance of the Township of Bernards be amended as follows:

*Introduced 10-2-84
Public Hearing 10-22-84*

*Copies to T.C.
Admin.
✓
Bell. Sol*

1. There is added to said Land Development Ordinance a new Article 1100, as set forth in Appendix A to this amendatory Ordinance.

2. Section 202, Definitions, is amended in the following manner:

(A) Inserting, after Subsection 122, Lot Width, the following new subsections:

122.A Lower Income Household: A household meeting the income eligibility limits for a household designated as low and very low contained in H.U.D. Section 8 Rental Assistant Program Income by Family Size for the appropriate housing region for various size households, or other generally accepted state or federal agency standards.

122.B Lower Income Housing: Those dwelling units, which are affordable to purchase or rent by a lower income household using not more than 28 percent of the family income for sales housing and 30 percent for rental housing.

(B) Inserting, after Subsection 180, Retail Sales and Service, the following new Subsection:

180.A Reviewing Body: The Planning Board, except where otherwise required by N.J.S.A. 40:55 D-1 et seq.

3. Section 405, Conditional Uses, Subsection C, Specific Requirements, paragraph 6, Commercial Development - PRD-4 only, is amended by deleting paragraph f. and replacing the same with the following:

f. The maximum development shall be limited to 30,000 square feet of gross leasable floor area for the first 600 dwelling units of the PRD-4 and 1000 square feet of gross leasable floor area for each additional 20 dwelling units of the PRD-4 thereafter, not to exceed an overall total of 50,000 square feet of gross leasable floor area, and provided that the Board shall find that the intent of the proposed commercial uses, singularly and in combination, serve a local and not a regional market.

4. Section 405, Conditional Uses, Subsection 10, Apartment within a single family residence, is amended in the following manner:

(A) Deleting paragraph a. in its entirety, and replacing the same with the following:

a. The number of apartments within a single-family residence shall be limited to one, and shall be located within the principal building or an out-building existing at the time of passage of this amendment.

(B) Deleting paragraph b. in its entirety.

(C) Deleting paragraph e. in its entirety, and replacing the same with the following:

e. The exterior appearance of the principal structure shall not be substantially altered or its appearance as a single-family residence changed.

f. The minimum size of apartments shall conform to FHA minimum unit size by bedroom count.

5. The Zoning Map of the Township of Bernards, Somerset County, New Jersey, dated June 2, 1980, and revised through December 14, 1982, Map 1 of 2, is hereby amended in the manner shown in the attached Appendix B to this amendatory ordinance, and the map attached as said Appendix B is hereby adopted and is declared to be part of the Land Development Ordinance of the Township of Bernards.

BE IT FURTHER ORDAINED that if any part of this Ordinance is declared invalid, such invalid part shall not affect or invalidate the remainder of this Ordinance, PROVIDED, however, that in the event that any provision for a mandatory set-aside, as specified in Section 1110.A., is declared invalid all property owners to whom such provision was intended to apply shall nonetheless be required to include a reasonable number of lower income dwelling units as part of any development on such property.

BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately upon final passage and publication, provided, however, that the provisions of this Ordinance shall expire one year from its effective date, unless further extended by ordinance, unless on or before such expiration date a Mt. Laurel II judgment of repose is entered by the Law Division of the Superior Court of New Jersey with respect to the Land Development Ordinance of the Township of Bernards.

APPENDIX A

ARTICLE 1100 - REGULATIONS APPLICABLE TO THE R-5 AND R-8 ZONING DISTRICTS TO PROVIDE LOW AND MODERATE INCOME HOUSING

1101. Purpose

The purpose of this Article 1100 is to establish procedures for approving PRD developments in the R-5 and R-8 zoning districts in order to comply with the provisions of Mt. Laurel II. The regulations and controls contained in this Article shall be interpreted to assure the construction of lower income housing which meets the standards and guidelines set forth in Mt. Laurel II. Any provisions of any other ordinances or Articles in conflict with this Article 1100 and which imposes restrictions or limitations not related to health and safety shall be inapplicable to developments under this Article 1100.

It is also the intent of this Article to provide a realistic opportunity for the construction of a variety of housing types and income levels in the Township, including housing for lower income households; and to encourage the development of such lower income housing, and other housing, by providing specific land use regulations addressing those needs. These regulations are designed to meet the mandate of Mt. Laurel II.

1102. Regulations Applicable to the R-5 and R-8 Zones as Part of the PRD-2 and PRD-4 Options

A. Application Procedure

1. Applicant shall submit required plans and documents to the Planning Board for review and approval. The Planning Board shall distribute the plans to those agencies required by law to review and/or approve development plans and to Township agencies which normally review development plans.

2. The Planning Board shall hold a public hearing in accordance with N.J.S.A. 40:55D-46.1 on the application. The initial hearing shall be held not less than thirty (30) days nor more than forty-five (45) days from the date of submission of a complete application.

3. Applicants with 10 or more acres may elect to submit a Concept Plan in accordance with Section 707 as part of a PRD application in any R-5 or R-8 zone. In the alternative, applicant may follow procedures for subdivision and site plan approval set forth elsewhere in this ordinance. Once a GDP is approved, applicant shall proceed as provided in this ordinance for subdivision and/or site plan approval.

- 1103. Use Regulations

A. Permitted Uses

1. Dwelling, One-Family
2. Townhouse
3. Dwelling, Two-Family
4. Dwelling, Multi-Family
5. Public parks, playgrounds, conservation areas, and municipal facilities
6. Common Open Space
7. Planned Development

B. Accessory Uses

1. Personal recreational facilities
2. Accessory buildings
3. Off-street parking and garages
4. Fences
5. Signs

C. Conditional Uses

1. Essential Services
2. Nursery schools
3. Private recreation uses with lights
4. Retail and service commercial under PRD-4 option in accordance with Section 405 requirements

1104. Minimum Tract Size and Gross Density

1. **Minimum Tract Size.** The minimum tract size for other than single or two-family development in either zone shall be 10 acres.

2. The maximum number of dwelling units shall be as follows:

R-5; PRD-2: 5.5 dwelling units/acre on lands defined as Drylands in Article 200 and 1.0 dwelling unit per acre on lands defined as lowlands in Article 200, which is transferable pursuant to this ordinance and subject to a maximum of 6.5 dwelling units/acre of dry land.

R-8; PRD-4: 5.5 dwelling units/acre, up to a maximum of 2,750 dwelling units in the zone.

- 1105. Minimum Tract Setback

All development shall maintain a 50-foot minimum buffer to all exterior property lines. Said buffer shall be bermed or landscaped and remain unoccupied except for entrance roads or utilities. Buffers may include minimum yard requirements for all single-family, two-family and townhouse development.

1106. Schedule of Area, Bulk and Yard Requirements

Permitted Uses	Minimum Lot Area (sq. ft.)	Minimum Lot Width	Minimum Yards			Maximum Building Coverage	Maximum Height
			Front	Side one/both	Rear		
Dwelling, One-Family	5,000	50'	25'	10'/15'	25'	20%	35'
Townhouse	N/A	16'	25'	N/A	20'	60%	35'
Dwelling, Two-Family (horizontally separated)	6,000	60'	25'	10'/15'	25'	40%	35'
Dwelling, Two-Family (vertically separated)	3,000/unit	30'	25'	0/10'	25'	40%	35'
Dwelling, Multi-Family	N/A	N/A	N/A	N/A	N/A	35%	35'

1107. Distance Between Buildings

The minimum distance between townhouses and multi-family buildings shall be as follows:

- A. Windowless wall to windowless wall 20 feet
- B. Window wall to windowless wall 30 "
- C. Window wall to window wall
 - Front to front 75 "
 - Rear to rear 50 "
 - End to end 30 "
- D. Any building face to right-of-way 25 "
- E. Any building face to collector street curb 40 "
- F. Any building face to arterial street curb 50 "
- G. Any building face to common parking area 12 "

The Planning Board may reduce the above distances by not more than 20 percent if there is an angle of 20 degrees or more between buildings and if extensive landscaping and buffers, which provide necessary screening and shielding, are placed between buildings, and further provided that the reductions assist in meeting the objectives of this Article and do not create any adverse negative impacts.

1108. Minimum Off-Street Parking Requirements

1. Off-street parking shall be provided as follows:

Dwelling unit with one (1) bedroom or less: 1.5 spaces

Dwelling unit with two (2) bedrooms or more: 2.0 spaces

2. An additional ten (10) percent (of that computed in #1 above) off-street parking shall be provided for visitors.

3. All common off-street parking shall be located within 300 feet of the dwelling unit served.

1109. Minimum Floor Area for Dwelling Units

1 bedroom: 550 square feet

2 bedroom: 660 square feet

3 bedroom: 850 square feet

1110. Lower Income Housing Requirements

A. Number of Lower Income Dwelling Units Required

All developments on contiguous parcels of land totalling ten (10) acres or more as of 10/2/84 in the R-5 and R-8 zones shall be developed in accordance with the PRD requirements and

shall be required to provide twenty (20) percent of all dwelling units to be affordable for lower income households, except as provided below:

1. A minimum of 15 percent moderate income housing only shall be required in developments which have received conceptual approval prior to July 1, 1984, and which have not received preliminary or final approval.

2. A minimum of 12 percent moderate income housing only shall be required in developments where the maximum sales price of any housing unit will not exceed \$100,000 per unit (in 1983 dollars).

As used in this Section A, a parcel is considered "contiguous" even though it is traversed by one or more roadways, so long as the land on both sides of the roadway is in common ownership. Lands acquired after 10/2/84 may not be combined to form a new contiguous parcel and may not be added to, or considered a part of, a contiguous parcel which existed on or before that date.

B. Eligibility Standard

1. Except as provided above, one-half of all lower income units shall meet HUD Section 8, or other assisted housing programs, eligibility requirements for very low income and one-half shall meet HUD eligibility requirements for lower income.

2. Applicant may substitute alternate comparable standards (other than HUD) where appropriate and to the satisfaction of the Planning Board.

C. Housing Cost Component

In computing the eligibility of purchasers or renters for sales or rental housing, not more than 30 percent of family income may be used for rent and not more than 28 percent of family income may be used for purchase of sales housing. The following costs shall be included:

Rental Units: Gross Rent

Sales Units: Principal and Interest

Insurance

Taxes

Condominium or homeowners association fees

D. Subsidies

Government subsidies may be used at the discretion of the applicant to fulfill the requirements of the section. The lack of said subsidies shall in no way alter or diminish the lower income requirements of this ordinance.

E. Sale and Resale and Rental of Lower Income Housing

1. All lower income dwelling units shall be required to have covenants running with the land to control the sale or resale price of units or to employ other legal mechanisms which shall be approved by the Planning Board Attorney and will, in his opinion, ensure that such housing will remain affordable to persons of lower income.

2. The owner of all rental units shall provide legal documentation to be approved by the Planning Board Attorney to assure that rental units will remain affordable to persons of lower income.

3. In the event no low or moderate income purchaser is found within 60 days from the day a unit is offered for sale or resale, the low income unit may be sold to a moderate income purchaser or, if none is available, to any interested purchaser, and the moderate income unit, to any interested purchaser at a price which meets the eligibility requirements as described above. Resale controls shall remain in effect for any subsequent resales.

4. The Township and the applicant may develop reasonable qualifications for occupants of lower income housing. Selection procedures shall be directed and administered by a Township official appointed each year as the Housing Administrator by the Township Committee. The Township Committee may arrange for third party administration of resale, and tenant selection of lower income housing.

5. The developer shall formulate and implement a written affirmative marketing plan acceptable to the Planning Board. The affirmative marketing plan shall be realistically designed to ensure that lower income persons of all races and ethnic groups are informed of the housing opportunities in the development, feel welcome to seek or buy or rent such housing, and have the

opportunity to buy or rent such housing. It shall include advertising and other similar outreach activities.

6. Sales prices and rents may be increased in accordance with the annual Metropolitan New York Regional Consumer Price Index for Housing of the Department of Labor plus reimbursements for documented monetary outlays for reasonable improvements and reasonable costs incurred in selling the unit.

7. Rental units may be converted to condominium units after 15 years, but the sales price shall meet Mt. Laurel II guidelines and be priced to allow persons meeting low and moderate income eligibility standards to purchase such unit.

F. Phasing of Lower Income Housing

1. Lower income housing shall be phased in accordance with the following schedule:

<u>Percentage of Total Dwelling Units</u>	<u>Minimum Percentage of Lower Income Dwelling Units</u>
25	0
50	25
75	100
100	-

The above percentages shall refer to the percentage of total dwelling units having certificates of occupancy.

2. Any development in the R-5 and R-8 zoning districts for which a conceptual plan, subdivision, or site plan has been approved shall be considered a single development for purposes of this paragraph "F" regardless of whether parts or sections are sold or otherwise disposed of to persons or legal entities other than the one which received approval. All such approvals and conditions of approvals shall run with the land.

G. Waiver of Fees

Notwithstanding any ordinance requirement of the Township of Bernards, the applicable approving agency shall waive the following fees for every unit designated as lower income housing in the R-5 zoning district:

1. Subdivision and site plan application fees;
2. Building permit fees, except State and third party fees;
3. Certificate of occupancy fees;
4. Pro-rated part of the engineering fees, applicable to lower income housing;
5. Off-tract improvement fees.

In addition, the applicable approving agency shall waive off-tract improvement fees for every unit designated as lower income housing in the R-8 zoning district.

1111. Common Open Space Requirements

A. A minimum of twenty (20) percent of the land area of any development other than single or two-family housing and which may include environmentally restricted land, shall be designated for conservation, open space, recreation and/or other common open space.

B. All property owners and tenants shall have the right to use the common open space.

C. Common open space may be deeded to the Township, if accepted by the Governing Body, or to an open space organization or trust, or to a private non-profit organization charged with the provision of recreation activities for the residents of the development.

D. All common open space deeded to an open space organization, trust, or private organization, shall be owned and maintained as provided for in N.J.S.A. 40:55D-43.

1112. Engineering and Construction Design

A. Drainage

1. Where non-structural means of controlling surface runoff, such as swales, is feasible and adequate such non-structural means shall be considered.

2. The system shall be adequate to carry off the storm water and natural drainage water which originates not only within the lot or tract boundaries but also that which originates beyond the lot or tract boundaries at the time of development. No storm water runoff or natural drainage water shall be so diverted as to overload existing drainage systems or create flooding or the need for additional drainage structures on other private properties or public lands without proper and approved provisions being made for taking care of these conditions.

3. Techniques for computing water runoff shall be as indicated in Sections 511 and 613 of the Bernards Township Land Development Ordinance.

4. Where required by the Township and as indicated on an improved development plan, a drainage right-of-way easement shall be provided to the Township where a tract or lot is traversed by a system, channel or stream. The drainage right-of-way easement shall conform substantially with the lines of such watercourse and, in any event, shall meet any minimum widths and locations as shown on any official map and/or master plan.

B. Lighting

1. Street lighting shall be provided for all street intersections, parking areas, and anywhere else deemed necessary for safety reasons.

2. Any outdoor lighting such as building and sidewalk illumination, driveways with no adjacent parking, the lighting of signs, and ornamental lighting, shall be shown on the lighting plan in sufficient detail to allow a determination of the effects upon adjacent properties, roads, and traffic safety from glare, reflection, and overhead sky glow in order to recommend steps needed to minimize these impacts.

3. The maximum intensity of lighting permitted on roadways shall be as required in Section 612 of this Ordinance.

C. Sanitary Sewers

Where required and where a public or private treatment and collection system is provided, the developer shall design and construct such facilities in accordance with the N.J.D.E.P. permit requirements and in such a manner as to make adequate sewage treatment available to each lot and structure within the development from said treatment and collection system. If a public or private treatment and collection system is included as part of a development application, the developer shall install sewers, including connections to each home to be constructed.

D. Streets

1. All developments shall be served by paved streets in accordance with the approved subdivision and/or site plan, all such streets shall have adequate drainage.

2. Local streets shall be planned so as to discourage through traffic.

3. The minimum public street right-of-way and cartway and the minimum private street cartway shall be in accordance with the following schedule:

	R.O.W.	Cartway
a. Collector street (no parking on either side)	50'	26'
b. Local street with parking on one side only	50'	26'
c. Local street with no on-street parking	40'	24'
d. Local street with on-street parking on both sides	50'	30'

4. Street design and construction standards shall be as required in Sections 509, 607, and 608 of this Ordinance except as noted below:

a. Cul-de-sacs shall be no more than 1,250 feet in length and shall provide access to no more than 80 dwelling units. A turnaround shall be provided at the end of the cul-de-sac with a paved turning radius of 40 feet and a R.O.W. radius in the case of public streets of 50 feet.

b. The pavement standard for all roads shall be a base course of four (4) inches of Bituminous Stabilized Base, Mix No. 1 placed on a compacted, unyielding subgrade, with a surface course of two (2) inches of Bituminous Concrete, type F.A.B.C. - 1, Mix #5 applied in accordance with State highway specifications. If sub-base material is unsatisfactory, four (4) inch stone, sub-base material may be required.

B. Water Supply

Where public water is available, adequate water service, in terms of adequacy of flow and pressure, shall be made

available to each lot or building within the development. The system shall be designed and constructed in accordance with the requirements and standards of the agency or authority having water supply jurisdiction.

1113. Waivers

Notwithstanding any provisions set forth elsewhere in this Article, the Planning Board may waive any engineering and construction design requirements contained in this Article, in order to achieve the objectives of this Article, provided that the Planning Board shall be satisfied that such a waiver does not jeopardize the public health and safety, and the same is consistent with the intent and purpose of this ordinance.