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- Housing Handbook for New Jersey Municipalities

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# HOUSING HANDBOOK FOR NEW JERSEY MUNICIPALITIES

by the

HOUSING DEMONSTRATION PROGRAM  
DIVISION OF HOUSING AND URBAN RENEWAL

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# I. INTRODUCTION

In the past several years, two divergent trends have been developing that affect housing in New Jersey. On the one hand, the courts, culminating with the Mount Laurel decision, have increasingly insisted on the responsibility of municipalities not to exclude--and, in fact, to provide for-- low- and moderate-income housing. On the other hand, changing federal policies concerning housing subsidies, coupled with an inflated yet depressed economy, have made it increasingly difficult to provide this housing.

This publication, prepared by the Department of Community Affairs, is intended to assist municipal officials, citizen groups, and developers who wish to promote development of low- and moderate-income housing. It points up the close relationship between economic feasibility and zoning and other municipal land-development practices, and the desirability of considering them together to achieve construction of low- and moderate-income housing. Current thinking and opportunities for financing and regulating the inclusion of low- and moderate-income housing are summarized.

New Jersey's housing needs, of course, will be met in a variety of ways, including rehabilitation and neighborhood preservation. This discussion is confined to new construction in developing communities. It is acknowledged that, as the housing crisis in New Jersey has deepened, middle-income people also have found it increasingly difficult to find the kind of housing they want at prices they can afford. The focus of this report, however, will be primarily on the low- and moderate-income sector.

For purposes of this discussion, "low and moderate income" are defined according to the present definition of the U.S. Department of Housing and Urban Development (HUD), as not greater than 50 percent and 80 percent, respectively, of median income. For example, for a family of four in, say, the Hunterdon County area, where median income in 1974 was about \$14,300, "low income" would be not greater than \$7,150 and "moderate income" would be not greater than \$11,450. "Low- and moderate-income" housing will be used interchangeably with "below-market" housing.

Chapter II discusses briefly the planning and policy framework needed to establish criteria for selecting appropriate development control techniques and for reviewing development proposals, and suggests ways to hold down the cost of new housing construction.

Chapter III discusses various implementation mechanisms, such as conditional use, planned development, and incentive zoning. Several inclusionary ordinances that require low- and moderate-income housing are summarized.

Chapter IV suggests methods by which low- and moderate-income housing may be financed. Available external (government) subsidies and the possibilities of an internal subsidy are discussed.

Chapter V describes the types of agencies that can provide housing and how such agencies can be created if they do not already exist in the community.

## II. PLANNING AND POLICY FRAMEWORK

In making provision for low- and moderate-income housing, communities will want to reexamine their policies and practices in light of their social and environmental objectives.

The municipality will want to establish the setting in which low- and moderate-income housing will be provided, in order to establish criteria for the selection of an appropriate development control technique and for reviewing development proposals.

In addition, many municipal practices affect the cost of housing. Since low- and moderate-income housing is below-market housing and cannot be built today without some kind of subsidy, it is important to keep the cost of such housing down to reduce the amount of subsidy required. A municipality may wish, therefore, to alter some of its established regulations as discussed below.

### A. Social and Environmental Objectives

In preparation for choosing a development control technique, some basic information must be gathered and objectives identified. Several steps are indicated:

1. Housing need must be analyzed in terms of income groups, household sizes, and ages to be accommodated.
2. An analysis of present housing stock and vacancy rate must be made to determine how much is standard and substandard, how much can be rehabilitated, how much must be replaced, and how much must be constructed to take care of the need.
3. An inventory and analysis of vacant land in the community will indicate the areas in which new development of various densities can be built as well as the kinds of environmental considerations that need to be incorporated into criteria and requirements for development. (Location of transportation routes, utilities, and commercial facilities should also be considered.)
4. A policy decision must be made concerning the manner in which low- and moderate-income housing will be incorporated into the overall development of the community: Will it be interspersed with higher-income housing, or built free-standing in specified locations? Will it be required as a condition of approval to build higher-income housing, or will the community rely on housing authorities or nonprofit housing sponsors to build individual projects?

With the answers from these four undertakings, a community will be in a position to decide on the distribution of new housing according to sizes (number of bedrooms), types (high-rise, mid-rise, garden apartment, town houses, two-family,

and single-family detached), income levels, and location, which will form the basis of the zoning and related ordinances.

As a result of the land analysis, the community will now also be equipped with the basic ingredients for the development review criteria and requirements regarding such matters as ecological considerations, landscaping, surface water drainage, traffic effects, noise, and many others in order to regulate the impact of individual developments on the total community.

It has been suggested\* that a municipality will, at this point, wish to adopt a Housing Policy Statement which could serve as a yardstick to measure any proposals for changes in regulations and to determine whether the municipality is, in fact, carrying out its declared policies. Such a statement would include (a) a declaration that the municipality intends to encourage new housing with a variety of types and cost, (b) a schedule of the pace and extent of such development that the municipality regards as reasonable, and (c) the types of area or areas where proposals for such development will be sympathetically considered, and why those areas have been chosen. It should emphasize the community's desire to encourage and support a policy of balanced community growth. The construction of new low- and moderate-income housing should be related to existing and anticipated new middle- and upper-income housing.

Federal assistance through the Section 701 program (administered in New Jersey through the Local Planning Assistance Unit in the Department of Community Affairs) is available to municipalities for the kind of comprehensive planning indicated above. Activities that may be funded are those necessary (1) to develop and carry out a comprehensive plan as part of an ongoing planning process, (2) to develop and improve the management capability to implement such plan or part thereof or related plans or planning, and (3) to develop a policy-planning-evaluation capacity so that the recipient may more rationally (a) determine its needs, (b) set long-term goals and short-term objectives, (c) devise programs and activities to meet these goals and objectives, and (d) evaluate the progress of such programs in accomplishing those goals and objectives. A comprehensive plan developed with such funds must include a housing element and a land-use element. Under the 701 program, the applicant pays one-third of the cost of the work.

The Housing and Community Development Act of 1974 also authorizes Community Development Block Grants for activities necessary (a) to develop a comprehensive community development plan, and (b) to develop a policy-planning-management capacity. In some cases, such grants may be used jointly with 701 funds.

#### B. Keeping Housing Costs Down

The effect on housing cost of requirements for large minimum lot sizes, large minimum floor-area ratios, deep setbacks, etc. is well known. These and other regulations have made it virtually impossible for low- and moderate-income

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\*Richard F. Babcock and Fred P. Bosselman, Exclusionary Zoning: Land Use Regulation and Housing in the 1970s (New York: Praeger Publishers, 1973).

people to afford conventional single-family detached houses and have made it difficult even for middle-income people to purchase such a house. Given the high cost of land in most of New Jersey, it is doubtful that even reducing lot size and other requirements can bring the cost down within reach of low-income and most moderate-income families. According to the New Jersey Builder's Association, it is not possible under today's conditions to build even a stripped-down conventional single-family detached house for less than about \$32,500. The rural housing program of the Farmer's Home Administration does provide for low-cost single-family homes on small lots in eligible municipalities and the Section 235 home-ownership program of the Department of Housing and Urban Development provides mortgage assistance to moderate-income purchasers of single-family units (both of which are described in Chapter IV). But with these exceptions, low- and moderate-income housing has come to mean multi-family housing, and it is to multi-family housing that the following remarks are mainly addressed. Mobile homes are discussed in Chapter VI as a possible alternative for lower cost single-family homes.

The major elements of housing cost, most of which are affected by municipal practices, are:

- Land Acquisition
- Land Improvement
- Structure and Labor
- Overhead (including mortgage interest,  
taxes, and profit).

All of a municipality's codes relating to land use should be reviewed to ensure that they do not increase costs through overly restrictive regulations.

#### Land Acquisition

Density: If land can be used for higher density housing, the per dwelling unit cost of the land is, of course, reduced. The higher the density, the lower the per unit cost can be. It is desirable, therefore, to allow as high densities as possible, consistent with other objectives.

Premapping: The designation of land for higher density housing will not of itself bring about low- and moderate-income housing. In fact, if the land is premapped, often the reverse will occur because the potential for increased profit will create inflated land prices, and low- and moderate-income housing will be priced out.

The importance of avoiding this effect will be examined in more detail in Chapters III and IV, in the discussion of internal subsidy.

#### Land Improvement

Development pattern: The pattern in which development takes place directly affects the cost of associated roads and utilities. It has been demonstrated\* that substantial savings in on-site and off-site improvement costs can be achieved through clustering and planned development.

\*Real Estate Research Corporation, The Costs of Sprawl (Washington, D. C.: Superintendent of Documents, April 1974).

Subdivision regulations: The cost of land improvements, which represents an amount about equal to the cost of the land itself, bears a direct relationship to the specifications in subdivision and related ordinances for streets, walks, curbs, utilities, etc. Such specifications should be reexamined to remove unnecessarily costly requirements and to insure that they contain only those requirements needed to protect the public health and safety.

Amenities: It has become customary for municipalities to require certain amenities or facilities to be provided by a developer when higher density housing is built. Some communities ask for dedication of open space, for example, or of school sites. The developer himself often provides recreational facilities and other amenities as part of his development. The costs accruing to these practices are, of course, passed on to the consumer, and must be balanced against the objective of getting low- and moderate-income housing.

### Structure and Labor

Building codes: A proliferation of building codes as well as outmoded requirements have contributed to raising the cost of construction. In New Jersey, implementation of the newly adopted Uniform Statewide Construction Code should result in the realization of substantial savings.

Minimum room size: Many municipalities, even when they allow multi-family housing to be built, require excessively large minimum room sizes. Minimum room size should reflect a realistic concern for public health and safety.

### Overhead

Taxes: Although municipalities do not have the power to influence many of the costs associated with overhead, they can affect the amount of taxes to be paid by a development. Tax abatement (total or partial) may be granted for low- and moderate-income units. A common practice has been to require 15 percent of gross shelter rent in lieu of taxes.

Administrative delays: Very often responsibility for administering land-use controls is divided among several municipal agencies, requiring the applicant to go back and forth from one to another. Criteria for approval may be vague, resulting in delays which increase the applicant's costs. To avoid such delays and to provide equitable treatment of applicants, administration should, whenever possible, be vested in a single public agency and the system of approvals should be clearly spelled out. The Municipal Land Use Law which became effective August 1, 1976 addresses some of these problems and simplifies the application and approval process.



### III. IMPLEMENTATION MECHANISMS

The orderly and systematic implementation of housing policy starts with the housing-plan and land-use elements of a municipality's Master Plan in compliance with the Municipal Land Use Law. Based on an appropriate statement of policy in the Master Plan, a zoning ordinance would implement the housing policy by providing for specific mechanisms and densities of land use required to effectuate the policy.

Pending the adoption of such a Master Plan and zoning ordinance, the initiative of developers may be expected to select sites with profit potential for housing development. If such sites are not already zoned appropriately, the developer has one of two routes:

#### Use Variance\* and Site-Specific Rezoning

A use variance is granted by the Board of Adjustment for a use that is not permitted in the district in which it is sought, provided there are "special reasons for granting the variance" and the variance can be granted "without substantial detriment to the public good" and will not "substantially impair the intent and purpose of the zone plan and zoning ordinance." It is through the use variance that most of the multi-family housing in suburban New Jersey has been provided in the past.\*\*

Site-specific rezoning is a device by which specific sites for residential or multi-family uses are rezoned in response to individual development proposals.\*\*\*

It is doubtful that either the variance or rezoning is a valid long-term basis for an inclusionary housing program, but their use can be made more effective by the adoption of a Housing Policy Statement, as discussed in Chapter II, which indicates clearly the community's willingness to receive proposals for low- and moderate-income housing.

#### Inclusionary Mechanisms

An inclusionary zoning ordinance is defined here as one which makes positive provision for low- and moderate-income housing through the use of one or more of the following techniques.

\*See Subsection 57d and Section 8 of the Municipal Land Use Law (MLUL), P. L. 1975, c. 291 (c. 40:55D-1 et seq.), effective August 1, 1976.

\*\*Many of these variances have been legally invalid but have survived for lack of a challenge.

\*\*\*Such a rezoning is open to attack as "spot zoning"--a label for the unreasonable exercise of the zoning power. If there are other sites in the area which are substantially similar in character for land use and which are not rezoned, the courts may set aside the site-specific rezoning as a denial of equal protection of the laws or as exceeding the powers delegated by the zoning enabling act.

### Incentive Zoning

This technique offers a developer economic incentives through relaxation of various restrictions of an ordinance in exchange for certain public benefits (such as below-market housing or open space). In the context of this report, a major economic incentive would be in the form of a density bonus--that is, an increase in density in return for the provision of a certain number of low- and moderate-income units. This can be an important component of an inclusionary ordinance, to increase the economic feasibility of below-market units and to avoid a charge of "taking" of property without just compensation.

### Mandatory Requirement

One of the provisions of an inclusionary ordinance may be the requirement that developers include a minimum amount of subsidized or below-market housing in their developments. The requirement may or may not be accompanied by a density bonus or other incentives. There are various ways in which this mandatory requirement may be satisfied. Some ordinances require that the below-market units be subsidized by government subsidy programs and exempt the developer if government funds are not available. Others allow the requirement to be met with or without government subsidy. Still others consider the requirement met if the developer makes land available to a public housing authority or nonprofit housing sponsor for housing to be built by them with government funds.

### Conditional Use\*

The conditional use technique, in the framework of conventional zoning with mapped districts, has been widely used to permit churches, schools, country clubs, etc. in residential districts. The zoning ordinance authorizes a particular use under predetermined stated conditions, in zoned areas where that use would not otherwise be permitted.

Although the conditional use concept has been utilized previously in terms of particular uses, the concept is broad enough to accommodate a mixture of housing types and other uses as well. Such conditional use in a low-density residential district might be multifamily low- and moderate-income housing or a multi-family development that includes a percentage of low- and moderate-income housing, with or without an added density bonus.

Criteria for the granting of such conditional uses should be clearly spelled out.

### Mapped Special District

This is similar to conventional mapped districts but has more sophisticated goals. For example, a special district might be created to mix townhouses and apartments and/or to require a percentage of low- and moderate-income housing. Or a district could be created to provide maximum flexibility for obtaining a range of multi-

\*See Section 54 and Section 3 of MLUL.

family housing based on broad design parameters, with each proposal examined as it arises for its merits and compatibility with adjacent residential areas.

#### Planned Development (PD)\*

The American Society of Planning Officials defines Planned Development as:

...a land development project comprehensively planned as an entity via a unitary site plan which permits flexibility in building sites, mixtures of housing types and land uses, usable open spaces, and the preservation of significant natural features.... A site plan review process, guided by a combination of specific design standards and performance criteria, replaces the self-executing ordinance. Administrative discretion and negotiation are increased as well as opportunities for development incentives.

Planned Development differs from conventional districting in that it regulates use of whole tracts rather than individual building lots.

This concept is well suited to implement an inclusionary policy: it can accommodate a mix of housing types; it may be mapped or unmapped; it may include density bonus incentives in exchange for lower-income housing and/or mandatory requirements for low- and moderate-income units.\*\*

The PD concept has sometimes been criticized because it entails considerable negotiation between the municipal agency and the developer. A clearly written ordinance, with well-formulated objectives and well-defined standards and conditions incorporated in it, can avoid undue pressure or strains on the administrative agency. It is important, also, for a community to use the services of experienced professional staff in order to conduct meaningful site reviews and be able to bargain effectively with developers to achieve community objectives.

\*See Subsection 52d, Subsections 29.1b and c, and Section 3.3, MLUL.

\*\*The differences between PD and conditional use under the new MLUL are essentially as follows: PD must include residential clusters with common open space. This open space can be either maintained by an association or dedicated to the municipality. The planning board must also make certain specific findings required by the statute before approving a PD. PD also permits the timing of development within a particular PD. There are no such requirements for a conditional use.

In choosing an appropriate implementation mechanism from those listed above, communities should bear in mind the warning of many zoning authorities that mapping of districts for multi-family housing may jeopardize the possibility of low- and moderate-income housing in those districts. If only a limited number of sites are zoned for multi-family uses, market pressures will tend to drive up the price of such raw land and make those sites too expensive for lower-income housing. Under such conditions, high cost housing might be likely to be built where lower-income housing or a mix were desired. Babcock and Bosselman\* go so far as to say that "In no event should a community seek to designate specific sites on its zoning map for higher density if it expects those sites to be developed for low- and moderate-income housing." This admonition is especially pertinent where a municipality expects a developer to assume the cost of below-market units through an internal subsidy, as discussed in Chapter IV.

It has been assumed here that the public health and safety and environmental quality will be protected in any implementation mechanism chosen as well as in other ordinance provisions such as subdivision and site review.

As mentioned in Chapter II, all municipal codes relating to land use should be reviewed, and revised if necessary, to assure that their requirements are not so stringent as to make unattainable the goals of whatever implementation mechanism is selected.

#### Associated Mechanisms

Timing of development has for some time been recognized as a legitimate goal of land-use regulation. Development timing, in the context of a policy intended to establish priorities or favorable conditions for a full range of housing, can achieve more orderly and equitable growth at the same time. Its essential element is a plan and commitment for public investment in utilities, roads, etc. to accommodate growth.

In the PD provision of the MLUL, there is specific authorization for control of the sequence and timing of the various types of development within a particular planned development. It is conceivable that development timing controls could be built into some of the other zoning mechanisms discussed above. Any system that uses availability of public facilities as the controlling device must be sure to apply this control evenly for all types of development to avoid possible exclusionary effects.

\*Richard F. Babcock and Fred P. Bosselman, *Exclusionary Zoning: Land Use Regulation and Housing in the 1970s* (New York: Praeger Publishers, 1973).

Transfer of development rights (TDR) is being much discussed in New Jersey at the present time. It is intended to be used in conjunction with a zoning ordinance developed within a comprehensive planning process. Its aim is to encourage preservation of some areas as open land while allowing development of others in a manner that is equitable to all landowners.

Provision of below-market housing is outside the scope of TDR. Any requirement for below-market housing would be included in the zoning ordinance on which the system of development rights is based. Little is yet known of the economic effect of TDR on land values. Since areas for higher density development would have to be delineated for any TDR scheme, and such delineation tends to price land beyond the reach of below-market housing, the implications of TDR for an inclusionary housing policy should be carefully explored.

#### Maintaining Low Rent and Purchase Price

One of the problems created by reliance on an internal subsidy, whereby a developer reduces the price of some units for sale or rental without benefit of a governmental subsidy, is how to ensure that the price of the low- and moderate-income units remains low over time. To deal with this problem, the ordinance of Cherry Hill Township (Camden County) requires that there be "regulations which reasonably assure that the dwelling unit will be occupied by families or individuals whose incomes would otherwise be insufficient to permit them to occupy housing of equivalent quality and size." Franklin Township (Somerset County) allows an applicant to satisfy all or part of the low- and moderate-income dwelling unit requirement without utilizing a government subsidy program provided, however, that prior to tentative plan approval, the applicant clearly demonstrates and warrants in writing that the proposal will benefit the same number of families at the same income levels, and for the same rentals or prices, which the low- and moderate-income dwelling unit requirements are intended to assure.

Attorney William Miller, in his work for the Princeton Regional Planning Board, has advised that precedents for such control may be found in the experience with disposition agreements in urban renewal. Such agreements, in the form of covenants running with the land, can be used effectively to control the resale price of for-sale units and rental price of rental units, but they pose two practical problems. First is the problem of denying buyers both the usual growth in value due to inflation and the speculative value created by community development. Second is the administrative problem with buyers and renters of dealing reasonably with the inflation factor "across the board."

Both problems, Mr. Miller suggests, could be resolved by establishing a public trust to which the developer would give an exclusive irrevocable agency to sell or rent the controlled units. The trustees would have power to adjust prices and rents over the years so as to maintain the units at all times in the relative position of low- or moderate-income housing, as the case may be. Such a device could be used with conventional titles, condominium or other forms of ownership within each development. The trust is also an excellent vehicle to administer any form of governmental subsidy (such as Section 8) that might become available.

An outline of a public trust and sample disposition covenants is included in Appendix C.

#### Inclusionary Ordinances in New Jersey Municipalities

Several New Jersey municipalities have adopted or are preparing ordinances that either have a mandatory requirement for the inclusion of low- and moderate-income housing in certain kinds of developments, or offer an option to include such housing.

##### Cherry Hill (Camden County)

The Cherry Hill ordinance creates a multi-family residential zone (R-5) in specified areas for the development of townhouses or garden apartments in developments of less than 25 acres; a mix of townhouses and garden apartments in development of 25 acres or more; and a mix of townhouses, garden apartments, and mid-rise apartments in developments of 50 acres or more. Retail commercial and professional facilities may be permitted which serve the development and its residents exclusively. About 400 acres are zoned R-5.

The maximum average gross residential density allowed is 10 units per acre. At least 25 percent of the gross site area must be in common open space.

Within each R-5 multi-family development, 5 percent of the total number of units are required to be low- or middle-income housing units, publicly or privately subsidized through federal, state, local, or private housing programs. A low- or middle-income housing program is defined as one under which (1) the rental or purchase costs of housing are reduced by direct grant, by below-market interest rates, or by continuing direct subsidy payments for rent or interest, and (2) there are regulations which reasonably assure that the dwelling units will be occupied by families or individuals whose incomes would otherwise be insufficient to permit them to occupy housing of equivalent quality and size. The Township Council is charged with the responsibility for determining whether proposed subsidy programs qualify under the ordinance. No density bonus is offered to the developer.

Three multi-family developments are currently under construction, totalling 1300 units, which will yield 65 low- and middle-income units; an additional 1700 units (85 low- and middle-income) are now being processed.

##### East Windsor Township (Mercer County)

The East Windsor Township ordinance takes a comprehensive approach to providing for a spectrum of housing types and sizes for a full range of income levels. Of special interest here are the following provisions:

1. A Small Lot District, in which single- or two-family dwellings are permitted on a minimum lot area of 5,000 and 6,000 sq. ft., respectively.

2. A Medium Density Residential District in which multi-family development in clusters is permitted on tracts of a minimum of 10 acres at a maximum gross density of 12 dwellings/acre.

A conditional use authorized is development for low- and moderate-income housing that is subsidized by a state or federal agency, provided that the owner or sponsor is a bona fide non-profit owner or sponsor of low- and moderate-income housing. Minimum requirements (such as for development area, common open space, and coverage) are reduced, and maximum gross density is increased to 16 dwellings/acre. No more than 20 acres in the District may be developed by conditional use.

3. A Planned Development District, which permits developments consisting of single-family detached dwellings including mobile homes and multi-family dwellings including townhouses, garden apartments and apartment buildings. Minimum development area is 400 acres. Maximum average gross density is 5 units/acre; minimum common open space is 50 percent with the provision that for each percent by which common open space exceeds the minimum, the permissible average density will be increased by 3 percent.

Any Planned Development must contain a mix of housing types, densities, costs, and rents, in accordance with a schedule of net densities ranging from a minimum of 2 units/acre to 24 units/acre. At least 5 percent and not more than 10 percent of the dwelling units must be for low-income families; at least 10 percent and not more than 15 percent must be for moderate-income families. The low- and moderate-income housing requirements may be met with or without government subsidy.

Industrial and commercial uses are allowed in this district. A density bonus is provided if a developer of a Planned Development will simultaneously develop a separate tract in the Industrial-Office District and develop the Planned Development as residential with only neighborhood commercial.

4. A provision in the Planned Unit Development District allows completed PUDs to be extended (subject to certain conditions) into adjoining zones by later additions of contiguous land in parcels not to exceed 50 acres, and requires that any such extension must take into account low- and moderate-income housing needs at the time of such extension.

In addition to the above four districts, there are an Agriculture District and other residential districts ranging from low to high density. All districts are mapped.

## Franklin Township (Somerset County)

One of the stated objectives of Franklin Township's Planned Community Development Option is "to provide a variety of housing types associate to the age and income levels of residents and the expected population growth of this Township."

Developers are given a choice in three districts (R-40, R-40(1) and H-D\*) of building according to the planned unit development option rather than according to the regular district regulations. In the R-40 and R-40(1) zones, a considerable residential density advantage accrues to the developer using the Planned Community Development Option, and commercial and industrial facilities are also permitted. In the H-D district, the developer is allowed to include single-family detached houses on small lots.

Every planned development must include dwelling units for families of low- and moderate-income. The PUD developer must provide, or cause others to provide, low-income units in an amount not less than 5 percent of the total number of dwelling units, and moderate-income units in an amount which, when added to the number of low-income units, is not less than 15 percent of the total number of dwelling units.

The average number of bedrooms for the low- and moderate-income units must reflect generally the average number of bedrooms per dwelling unit for the planned community as a whole.

The developer may provide the low- and moderate-income dwelling units in a number of ways: 1) by selling land and selling and/or leasing units to a nonprofit or limited-dividend development corporation; 2) by providing evidence of a rent supplement or other plan to provide low- and moderate-income units; 3) by using an internal subsidy, provided that prior to tentative plan approval, the developer clearly demonstrates and warrants in writing that the same number of families at the same income levels, and for the same rentals or prices, will be served as those which the low- and moderate-income dwelling unit requirement is intended to assure.

The Franklin Township Planning Board has given tentative approval of two developments under the PUD option, which would result in the provision of approximately 170 units of low-income and 340 units of moderate-income housing.

## Raritan Township (Hunterdon County)

Planned Residential Development is permitted in all R-30 (low-density residential) zones served by public sewer and public water. The purpose of the PRD provision is to allow a variety of housing types on the premise that a percentage of the Township's future housing supply should be in other than single-family detached housing to meet the needs of single- and two-person households of all ages and income levels.

Minimum acreage for PRD is 50 acres. Uses permitted include single-family detached, single-family attached (townhouses), and multi-family structures. Retail and service uses are also permitted, not to exceed 5 percent of the total land area.

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\*Highway Development



Density allowed is expressed in terms of number of bedrooms: The maximum number of all bedrooms in a PRD shall not exceed 8 bedrooms times the number of acres in the tract (8 bedrooms per acre). Not more than 50 percent of all bedrooms may be in single-family attached or multi-family units; single-family detached houses shall contain not less than 3 bedrooms.

At least 10 percent of the PRD tract is required to be set aside for formal recreation facilities and space suitable for the inhabitants of the PRD.

The maximum number of bedrooms permitted (8 times the number of acres) may be exceeded by up to 10 percent, provided that the additional 10 percent (or portion thereof) is planned, constructed, and maintained as housing for the elderly or for low- and moderate-income families. The bonus provisions may be applied to any housing type. The resulting units must be financed, constructed, leased, or sold only under a recognized state or federal subsidy program.

The Raritan Township Planning Board has before it an application for a PRD which proposes to include 1500 bedrooms, or about 600 units. In accordance with the bonus provision, an additional 90 units are being planned for senior citizen housing. In this case, the developer has given an option to purchase 8.6 acres for \$86,000 to the Citizens Housing Corporation of Raritan Township, a nonprofit corporation, which hopes to build the units with Farmers Home Administration subsidy. This parcel will eventually be subdivided from the remainder of the PRD, but for planning and review purposes, it is being considered as part of the total development. The developer would bring road and sewer lines up to the property line.

#### South Brunswick Township (Middlesex County)

Two zones, PRD-5 and PRD-7, are established in the South Brunswick ordinance in which "Green Villages" may be built. Purposes of the ordinance are, in part, to meet the Township's "responsibilities to bear its fair share of the need to provide housing" and to "permit greater flexibility in design, layout and construction in housing development."

Minimum tract size is 100 contiguous acres. Maximum gross density for PRD-7 is 7 dwelling units per acre; for PRD-5, 5 dwelling units per acre. Dwelling unit types permitted are single-family detached, townhouses, and two-story garden apartments, but not mid-rise or high-rise. Commercial uses may be permitted, not to exceed 5 percent of the total tract area in the PRD-5 zone; in PRD-7, the area for commercial use shall be not less than 5 percent nor more than 20 percent. Minimum open space is 40 percent of the total tract area.

Every planned residential development must provide dwelling units for families of low and moderate income, including senior citizens. A developer must provide low-income units in an amount not less than 5 percent of the total number of dwelling units, and moderate-income units which, when added to the number of low-income units, shall not be less than 10 percent of the total number of dwelling units. The ordinance also provides that this ratio may be adjusted by the Planning Board upon appropriate study, examination, and findings that the need is greater

or less than 10 percent. The ordinance does not specify how the subsidy for these low- and moderate-income units is to be provided, nor how the units will remain within reach of these income groups over time.

The South Brunswick Township Planning Board now has before it the first application for a Planned Residential Development under this ordinance. The application includes 585 dwelling units, of which 61 would be for low- and moderate-income families.

Pertinent portions of the above ordinances are included in Appendix C.

#### Princeton Borough and Township (Mercer County)

The ordinance contemplated by the Princeton Regional Planning Board to implement its proposed housing policy is intended to accomplish several purposes:

- 1) require the provision of low- and moderate-income housing as a condition of approval of higher-density development;
- 2) maximize competition among landowners;
- 3) provide an internal subsidy for at least some of the below market units by capturing as much as possible of the induced increase in land value;
- 4) provide for a variety of housing types, sizes, and costs to be developed in a mix, in "villages".

The ordinance would be based on the Planned Development provisions of the Municipal Land Use Law. A PRD ordinance would be superimposed on the existing zoning pattern to implement, under specified criteria and standards, the village development concept of the housing plan. The community would be divided into five large sectors within each of which planned residential development would be permitted subject to the standards, criteria, and conditions of the ordinance. Permitted uses would be detached, attached, and multi-family dwellings and some non-residential uses to serve the residents of the villages, in an appropriate mix. A minimum of 25 percent of the total land area would be required in open space.

A site rating system would be established with the stipulation that the Planning Board may not approve a village development with respect to any proposed site which is evaluated by the Board with less than 35 development points according to a specified rating schedule.

An application for village development would be required to include a minimum percentage of low- and moderate-income housing units within the total number of units proposed. A density bonus would encourage below-market units in excess of the minimum standard.

In order to assure that the below-market units would remain available to low- and moderate-income families, units would be encumbered by the developer to establish and maintain prices and rentals of such units in their relative market position.

For additional information on Princeton's proposed implementing ordinances, see The Princeton Proposal: A Strategy to Achieve Balanced Housing Without Government Subsidy, available from the Housing Demonstration Program, Division of Housing and Urban Renewal, Department of Community Affairs.

## STATE PROGRAMS

### New Jersey Housing Finance Agency (HFA)

The New Jersey Housing Finance Agency was created in 1967 with authority to sell tax-exempt revenue bonds and to use the proceeds for making long-term, low-interest mortgage loans to finance construction and rehabilitation of "middle-income" housing. The Agency today serves families with yearly incomes of up to \$26,850.

Loans made by HFA can cover construction and permanent financing of housing developments and related facilities. There is no legal limit on the size or number of developments the Agency can finance.

HFA makes mortgage loans for up to 50 years to limited-dividend and nonprofit sponsors. Private developers and builders, church groups, well-established civic associations, and labor unions are among those who have received HFA loans.

Nonprofit groups may borrow up to 100 percent of development costs. Limited-dividend sponsors may borrow up to 90 percent of development costs and are permitted to earn up to 8 percent per year on their equity in cash return. By statute, a municipal resolution of need is required to qualify sponsors to apply.

Nonprofit groups are also eligible for pre-construction ("seed money") loans from the HFA from the Revolving Housing Development and Demonstration Grant Fund. Such loans can be used for land options, site analysis, preliminary drawings, and other pre-construction costs.

Most of HFA's loans in the past have been made for projects that also made use of federal programs, such as Section 236 interest reduction and Section 101 rent supplement.

### HFA Role in Section 8 Program

The HCDA of 1974 encourages the financing of Section 8 new construction and substantial rehabilitation by state housing finance agencies, and an annual allocation is set aside for their use. These "set asides" may be used only for projects that receive permanent financing from the State agency. In this case, applicants deal directly with the HFA, rather than with HUD. Regulations as to maximum rents to owners, contract terms, owner responsibilities, etc. are substantially the same as those outlined earlier. The HFA is responsible for working out the contract with the applicant and for its administration, and for supervision of the maintenance and management of the units. The Agency, in turn, submits proposals worked out with the applicants to HUD for approval.

Section 8 contracts with HFA for new construction have a maximum term of 40 years, as contrasted with 20 years for contracts with HUD, and HUD has no authority to decrease the term.

There are several additional provisions that favor state agency projects:

1. Under state agency regulations, the contract with the owner may include a financing cost contingency which allows increases in contract rents if permanent financing cost is higher than anticipated.
2. HFA makes the determination that contract rents are reasonable, and so certifies to HUD, although discretion to exceed fair market rents by 10 percent to 20 percent still rests with HUD.

Section 802 of the HCDA of 1974 authorizes federal guarantees and up to 1/3 interest rate subsidies for HFA taxable obligations. The latter would allow HFA's to go into the corporate bond market or to insurance companies, pension funds, and the like. It is estimated that if HFA were able to sell taxable obligations at about 10 percent, the current conventional mortgage rate on multi-family projects and if HFA's were to receive a 3.3 percent interest rate subsidy from HUD, they would then be able to provide mortgages of 7-7.5 percent interest for Section 8 projects. If HFA's tax-exempt obligations were backed by federal guarantees, of course, it would make it much easier for them to sell their obligations in what is now a very tight market. Section 802 is just now being implemented by HUD.

#### New Jersey Mortgage Finance Agency (MFA)

This Agency was created in 1970 to supply additional funds for residential mortgages, primarily for single-family homes in New Jersey. The MFA has the power to issue revenue bonds and to use the proceeds to make loans to qualified mortgage lending institutions with the requirement that the institutions re-lend the money for single-family residential mortgages. These funds can be used for both existing and new construction within certain prescribed limits. Legislation has just been passed that will allow the Agency to purchase home improvement loans.

#### Housing Demonstration Program

The Revolving Housing Development and Demonstration Grant Fund was established in the Department of Community Affairs in 1967. There are two principal uses of the Fund. One has been to provide "seed money" loans to nonprofit sponsors for the planning of housing developments, as discussed on page 25. Its other use has been to provide flexible funding, both loans and grants, for the demonstration, testing, and reporting of new and innovative ways to provide housing, and to eliminate slums and blighted areas. Municipalities, nonprofits, and citizen groups may submit proposals for demonstration projects.

#### MUNICIPAL ACTIONS TO PROVIDE SUBSIDIES

Tax abatement is the most common form of municipal subsidy for low- and moderate-income housing. Low-cost public housing is by federal law exempt from paying taxes and pays, instead, an amount equal to 10 percent of the yearly gross shelter

rents. Tax abatement has often been granted for federally-subsidized Section 236 projects and is usually required to achieve economic feasibility.

Land Acquisition. It has been suggested\* that a municipality might acquire sites with a federal CD grant or with regular municipal funds and transfer such sites at reduced or no cost to another public entity for development of partially or totally subsidized housing. Following are examples of two New Jersey municipalities which are in the process of using municipally-purchased land for such purposes.

The governing body of Parsippany-Troy Hills (Morris County) set up a nonprofit housing corporation charged with a mandate to build senior citizen housing, and a sum of \$2,000 was appropriated to get it started. The corporation has met on a regular basis and evaluated some 13-15 sites. A tract of 11 acres was selected and approval received from HFA. At that point, there was no seed money available to secure the site, so the corporation asked the governing body to buy the land and hold it. The governing body, which owned part of the site, negotiated purchase first of four adjacent acres and then of an additional three acres. When HFA and municipal approvals (variances) have been received, the nonprofit corporation will either lease the land for an annual payment of a percentage of gross revenues, or buy it at conditional public sale for the purchase price plus carrying cost.

In Somerville (Somerset County), a nonprofit housing corporation is planning to build on municipally-owned land, 1 1/2 acres of which were recently purchased by the Borough to complete a 3-acre site in response to an appeal from the housing corporation. The corporation will lease the land from the Borough under an agreement which calls for initial payment of a lump sum of \$150,000 and annual payments, based on a percentage of gross revenues, which will be lower than would be the case if the initial lump sum were not paid. The \$150,000 will become part of the mortgage and will be amortized over 40 years. The lease agreement has been drawn up and is awaiting Borough and HFA approval.

Land Banking. The original concept of land banking was to enable a municipality to buy land cheaply (on the fringes of development) and then sell it later, using the profits for public purposes. The purpose for which the land was to be kept or for which the profits would be used was usually undefined.

Often the device has been used simply to keep land out of development. There is no state enabling legislation for land banking for an undetermined purpose and, therefore, this concept does not appear to be legal in New Jersey.

If, however, a land bank were set up by a municipality for a specific authorized purpose, such as helping to implement a low- and moderate-income housing program, it appears that the device could be used legally in New Jersey.

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\*Herbert M. Franklin, David Falk, Arthur J. Levin, In-Zoning: A Guide for Policy-Makers on Inclusionary Land Use Programs (Washington, D.C.: The Potomac Institute, December, 1974).

Such factors as the projected timing of the housing program, the amount of housing contemplated, and the funding program, would have to be established before a municipality could float general obligation bonds or use municipal revenues for land banking. With these stipulations, the concept seems to lend itself to the use of government spending power to acquire and hold strategic sites for housing at advantageous prices.

The bonding power of municipalities could be used, if it were permitted by state enabling legislation, either for financing municipal housing programs or for financing developments to be owned by other sponsors, private or public. Such efforts in connection with Section 8 would be susceptible to the same financing problems discussed earlier, but several suggestions have been made\* as to how these problems might be overcome. As a practical matter, it is doubtful that use of the bonding power for this purpose would be attractive to municipalities in the present context of the state fiscal structure, and such use is not now authorized in enabling legislation. Local public housing authorities, of course, do have such authorized bonding power and ways are being investigated to use it for housing programs other than conventional public housing.

#### MISCELLANEOUS FINANCING

Leasehold mortgage financing is the method by which a ground lease permits land to continue under the ownership of one party while another retains the right to use the property and own the improvements placed on it. Under such an arrangement, a housing developer would pay ground rent for use of the land and obtain a leasehold mortgage to build housing on it, based on the independent value resulting from the operating income of that housing.

Several advantages accrue to a developer in this type of arrangement. The developer needs to borrow only the funds required to construct the project. If the landowner agrees to allow his land to serve as additional security for the mortgage, the developer may be able to get a larger loan and be able to provide a more extensive project. In addition, for profit-making and limited-dividend developers, ground rent payments are fully deductible for tax purposes, while under outright purchase of land, only the interest portion is deductible.

Tax incentives to encourage investment in federally-assisted or low-income housing were favored in the Tax Reform Act of 1969. The provisions of that Act offer higher-income investors in Section 236, Section 202 or similar projects the benefits of accelerated depreciation, construction write-offs, and reinvestment rollover. This whole area of tax advantages is very complex, and the advice of competent tax counsel is suggested. This caution is emphasized by the fact that the House Ways and Means Committee has been considering limitations on tax incentives for investment in multi-family housing, including low-income housing. It now looks as if this action will be deferred for another year, which would give developers time to find out whether multi-family construction under Section 8 can be packaged as an attractive investment.

\*Thomas A. Duvall and Edward White, Jr., Answers to Questions on Section 8, Lower Income Housing Assistance under the HCDA of 1974: A Guidebook, (Washington, D. C.: National Association of Housing and Redevelopment Officials, 1975).