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- Mt. Land general

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Plantiff's brief - appendix

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SUPERIOR COURT OF NEW JERSEY
 APPELLATE DIVISION
 DOCKET NO. A-5014-77

SOUTHERN BURLINGTON COUNTY N.A.A.C.P.; :
 CAMDEN COUNTY C.O.R.E.; CAMDEN COUNTY :
 N.A.A.C.P.; ETHEL LAWRENCE; THOMASINE :
 LAWRENCE; CATHERINE STILL; MARY E. SMITH; :
 SHIRLEY MORRIS; JACQUELINE CURTIS; GLADYS :
 CLARK; BETTY WEAL and ANGEL PEREZ; on :
 behalf of themselves and all others :
 similarly situated, :

Plaintiffs-Appellants,
 Cross-Respondents,

and

DAVIS ENTERPRISES,

Plaintiff-Intervenor,

-v-

TOWNSHIP OF MOUNT LAUREL, et al.,

Defendants-Respondents,
 Cross-Appellants.

Civil Action

ON APPEAL FROM THE DECISION
 OF THE SUPERIOR COURT, LAW
 DIVISION, BURLINGTON COUNTY

Sat Below:
 WOOD, J.S.C.

PLAINTIFFS' BRIEF APPENDIX

FAIR SHARE PLANS

Mt. Laurel was ordered by the Supreme Court to provide a realistic housing opportunity for a fair share of its region's low and moderate income households. Mt. Laurel, supra, 67 N.J. at 192. As discussed previously in this brief, the undisputed proofs clearly demonstrate that the defendant has failed to provide any realistic housing opportunity, both qualitatively and quantitatively, for persons of low and moderate income. Even assuming that the three new zones could result in 131 least cost units, that opportunity (quantitatively) is clearly unreasonable as measured against the township's own growth rates, projections and overall zoning scheme. Therefore, the issue of what is the defendant's numerical fair share need not be reached. An actual enumeration of the defendant's "fair share" is not essential to this Court's finding that the defendant has failed to meet its constitutional obligation to provide a realistic opportunity for low and moderate income housing. In rezoning only 23 acres of land for 131 units, the defendant has clearly failed to make:

. . . bona fide efforts toward the elimination or minimization of undue cost-generating requirements in respect of reasonable areas of (the township) . . . Madison, supra, 72 N.J. at 449.

Although the quantification of the defendant's "fair share" of the regional housing need is not a pre-requisite to this declaration, the Court may choose to critique the various fair share plans presented at trial as another measure of the defendant's compliance. The Supreme Court has already articulated in Madison a reasonableness standard by which such an evaluation may be done. In Madison the Court stated that:

If the existing municipal proportions correspond at least roughly with the proportions of the appropriate region the formula would appear prima facie fair. Madison, supra, 72 N.J. at 543.

A fair share plan for Mt. Laurel would be reasonable then if it projected a low and moderate income population for the township roughly equivalent to the region's percentage of low and moderate income persons.

Four plans were presented below: the defendant's, the D.C.A. State-wide Plan, the Burlington County Interim Plan and the plaintiffs' plan specifically prepared pursuant to the Madison guideline. The defendant's plan prepared in 1976 was essentially jettisoned by Mt. Laurel at trial in deference to the statewide or countywide plans which were prepared and released subsequent to its own. The township's planner conceded that:

. . . eventually we would end up with a statewide or countywide set of allocations that would be more equitable to each township, in that, at that time, the township should defer in essence, of getting some co-ordination to a higher agency. Glass, 26T 58-22 to 25.

Accordingly, plaintiffs submit that only the two regional plans and plaintiffs' plan admittedly need be reviewed by the Court and evaluated.¹

An evaluation of these plans pursuant to the Madison reasonableness test, indicates that the plaintiffs' plan most closely approximates the proportion of low and moderate income families residing in the Mt. Laurel region. This plan would result in a low and moderate income population in Mt. Laurel in the year 2000 of 42.0%. The D.C.A. plan "adjusted" for

¹ However, a detailed analysis of the uncontroverted testimony regarding all of the plans is presented herein.

comparability purposes¹ would result in a low and moderate income population in Mt. Laurel of 28.8%. Finally, the Burlington County Interim Plan results in a decline in the proportion of low and moderate income families in Mt. Laurel from 25.5% to 18.1% and in Burlington County as a whole. Exhibit P-20 at JA-173a.

Upon a review of the undisputed testimony regarding these plans as measured against the Supreme Court's standard, this Court, should it decide to rely upon a fair share plan, must decide between:

- 1) accepting the plaintiffs' plan as the most reasonable plan as measured against the percentage test set forth in Madison or
- 2) accepting the D.C.A. statewide plan as the most reasonable regionally-approved plan as measured against the percentage test set forth in Madison.

Plaintiffs present below a general review of fair share planning, followed by a comprehensive, uncontroverted analysis of each element of these plans as an aid to this Court in its evaluation of these plans.

A. Fair Share Planning

A fair share plan is a planning tool in which a region's need for housing affordable to persons of low and moderate income is assessed and then allocated to the municipalities within that region on a rational and fair basis. The goals of such a plan are to expand the supply and choice of least cost and assisted housing opportunities throughout a region for

¹ As explained below, D.C.A.'s plan was adjusted to make the plan comparable to the plaintiffs, defendant and Burlington County Plans. The moderate income ceiling was adjusted from \$8,567 to \$10,000 and the planning year extended from 1990 to 2000.

persons of low and moderate income.¹ By quantifying that objective for each municipality (through an assessment and allocation of the housing need), a fair share plan is a tool by which the provision of housing opportunities for persons of low and moderate income can be pursued.²

1. Evaluating A Fair Share Plan: The Supreme Court has endorsed a test by which the reasonableness of a fair share plan can be evaluated. In Madison, the Court determined that a fair share plan was prima facie reasonable if the resulting percentage of low and moderate income persons within a particular municipality was roughly equivalent to the regional percentage of low and moderate income persons residing in the region.³

This test was reviewed by plaintiffs' expert Mary Brooks⁴ who found the test to be a fair guideline to use in determining the reasonableness of a fair share plan.⁵ By identifying as an objective guideline the proportion of low and moderate income households that exist within a region for comparison, this test seeks to measure:

- 1) the extent to which housing choice has been made available within a given municipality, and
- 2) the extent to which persons of low and moderate income have an opportunity to share in a municipality's growth.⁶

¹ Brooks, 8T 6-19 to 22, 8T 18-23 to 25, 8T 108-11 to 19.

² Brooks, 8T 18-16 to 22; Mallach, 7T 142-19 to 25.

³ Madison, supra, 72 N.J. at 543; Brooks, 8T 14-25.

⁴ Ms. Brooks is the leading, national authority on "fair share" methodologies as was noted by the Supreme Court in Madison, supra, 72 N.J. at 533, n. 40. Her extensive credentials appear at 7T 151 through 7T 156. The defendant's planner reviewed and referred to her work on fair share planning in preparing Ordinance 1976-5 and his testimony for this case. Glass, 25T 26-8.

⁵ Brooks, 8T 9-6 to 8, 8T 19-7 to 9.

⁶ Brooks, 8T 14-2 to 5, 8T 19-14 to 19; Mallach, 5AT 27-9 to 19.

Presumably, the municipal and regional percentages of low and moderate income households would be comparable absent discriminatory practices that preclude such housing opportunities.¹

2. Low and Moderate Income Population: A low and moderate income population for purposes of fair share planning is defined as:

those low and moderate income people of the region economically unable to afford suitable housing in developing municipalities of the region because of their highly cost-generating zoning restrictions. Madison, supra, 72 N.J. at 494.

Since these persons cannot economically compete on the open market for housing, their housing needs are not being met by housing being produced under conventional market mechanisms.² Their proportion of the overall population of a given region may shift over time given changes in income patterns and housing costs.³

In 1970, the annual income of these households in the Mt. Laurel region (comprised of Burlington, Camden and Gloucester Counties) was approximately \$10,000 and below.⁴ In this tri-county region in 1970, 42.5% of the total number of families⁵ reported annual incomes of \$10,000 or less.⁶ All witnesses agreed that under existing (1977) zoning

¹ Mallach, 7T 135-14 to 25, 7T 136-1 to 5.

² Brooks, 8T 18-11 to 31; Mallach, 6T 50-15 to 17, 7T 78-15 to 24; Abeles, 11T 72-9 to 17; New Jersey Housing Finance Agency Law of 1967, N.J.S.A. 55:4J-3(e).

³ Mallach, 7T 80-1 to 11.

⁴ Glass, 22T 115-12 to 17; Brooks, 8T 18-13 to 15.

⁵ This is a conservative estimate. It does not include unrelated individuals in calculating the percentage of low and moderate income persons in the tri-county region. The total number of families and unrelated individuals reporting annual incomes of \$10,000 or less in 1970 in the Mt. Laurel region was approximately 49%. Brooks, 8T 14-20.

⁶ Mallach, 6T 61-23; Brooks, 8T 14-8. It may be noted that the total number of families reporting annual incomes of \$12,000 or less in 1970 in this tri-county region was over 50%. Mallach, 6T 62-5.

practices, even a greater proportion of households could not afford conventional housing.¹

3. Housing Need Assessment: In Mt. Laurel, the Supreme Court held that:

a developing municipality's obligation to afford the opportunity for decent and adequate low and moderate income housing extends at least to the municipality's fair share of the present and prospective regional need therefor. Mt. Laurel, supra, 67 N.J. at 188. (emphasis added).

A fair share plan must therefore estimate the present (existing) and future need within a region for additional housing units for persons of low and moderate income. Mt. Laurel, supra, 67 N.J. at 174; Madison, supra, 72 N.J. at 526 n. 33. This estimate is critical to the attainment of expanded housing opportunities for persons of low and moderate income.² As stated by the Supreme Court in Madison, supra, 72 N.J. at 541,

(t)he essential thing from that standpoint is that the true regional need be adequately quantified.

Absent a need assessment which accurately quantifies the full extent to which the present housing supply must be expanded, Mt. Laurel objectives cannot be realized.³

The technical details of the basis for fair share allocations of regional goals among municipalities, pertaining as they do to an area of considerable complexity and theoretical diversity, are not as important to a reviewing court concerned with effectuating Mount Laurel objectives as the consideration that the gross regional goal shared by the constituent municipalities be large enough fairly to reflect the

¹ Glass, 22T 117-12 to 20, 25T 33-15 to 19; Brooks, 8T 73-16 to 24; Abeles, 11T 75-2 to 13; Lynch, 18T 126-6.

² Brooks, 7T 7-1 to 6.

³ Brooks, 8T 30-7 to 13; Mallach, 6T 27-3 to 12.

full needs of the housing market area of which the subject municipality forms a part. Madison, supra, 72 N.J. at 536. (emphasis added).

4. Housing Need Allocation: Once the total need for additional low and moderate income housing units is assessed for a particular region, that need is allocated to the municipalities comprising the region.¹ This allocation is directly related to the expansion of housing choice throughout a region so that all persons, irrespective of their incomes, may choose to live anywhere within a region.² The allocation should be done in a manner that best approximates the demand for housing if low and moderate income households were able to effectively compete on the housing market. This requires a consideration of a variety of factors which identify the particular characteristics of a municipality and the region. As discussed in Madison, supra, 72 N.J. at 542 n. 45, these factors include:

- 1) the suitability of each municipality for accommodating additional housing units; e.g., the³ availability of vacant land, fiscal capacity, etc.;
- 2) the need for additional housing units within each municipality, e.g., the availability and growth of employment opportunities, etc.;⁴
- 3) the distribution of additional housing throughout a region to avoid the concentration of the region's poor into specific areas and to expand housing choice; e.g., the⁵ proportion of low and moderate income households.

¹ Mallach, 6T 52-1 to 7, 6T 54-5 to 16.

² Brooks, 7T 7-7 to 12, 9T 65-6 to 10.

³ Brooks, 8T 33-17 to 22, 8T 9-20 to 24.

⁴ Brooks, 8T 88-10 to 16.

⁵ Brooks, 8T 34-1 to 4, 8T 10-1 to 8; see also the Community Development Act, 42 U.S.C. 5301(a), 5301(c)(6).

B. New Jersey Department of Community Affairs (N.J.D.C.A.), "A State-wide Housing Allocation Plan for New Jersey", Preliminary Draft, November, 1976: As described by the Supreme Court in Madison, supra, 72 N.J. at 531, n. 37, the New Jersey Department of Community Affairs, pursuant to Executive Order No. 35, prepared a preliminary draft of a statewide housing allocation plan in 1976. The purpose of this plan was to set housing goals. . .

to guide municipalities in adjusting their municipal land use regulations in order to provide a reasonable opportunity for the development of an appropriate variety and choice of housing to meet the needs of the residents of New Jersey. Madison, supra, 72 N.J. at 532 n. 37.

This plan indicates the need for additional housing for low and moderate income households (using \$0-8,567 in 1970 dollars to define low and moderate) in each municipality in the State through the year 1990.¹ Exhibit P-4 at JA-39a. Under this plan, Mt. Laurel's fair share allocation to the year 1990 is 1,356 units. At trial, this plan was adjusted to make it comparable to all of the other plans relevant to Mt. Laurel. The low and moderate income figure was therefore adjusted from \$8,567 to \$10,000 and the planning year extended from 1990 to the year 2000. This was referred to in plaintiffs' testimony as the "adjusted" D.C.A. plan. With these adjustments, Mt. Laurel's fair share allocation to the year 2000 is 2,137 units.

¹ The definition of low and moderate income households used by D.C.A. limited to households with annual incomes below \$8,567 is concededly very low. Brooks, 8T 22-6 to 12. The D.C.A. plan admittedly used a very low income ceiling in making its need calculation in order to single out "the highest priority need group" or segment of the total need. Mallach, 6T 49-1 to 3; Brooks, 8T 32-1 to 9; Exhibit P-4 at JA-44a, n. 12. As a result of this limitation, the plan, absent some adjustment, admittedly fails to adequately assess the full housing needs of low and moderate income households in this state.

In December, 1976, as noted by the Supreme Court in Madison, supra, 72 N.J. at 532, this preliminary plan was reviewed and revised by D.C.A. pursuant to Executive Order No. 46. The "Revised Statewide Housing Allocation Plan for New Jersey" was released by the Governor in May, 1978.¹ This revised plan allocates 1,445 units to Mt. Laurel. With adjustments made to the moderate income ceiling and the planning year, the number of units allocated to Mt. Laurel is 2,276.

The implementation of the D.C.A. plan in Burlington County would result in some redistribution of housing opportunities for persons of low and moderate incomes.² If adjusted to conform with the income ceilings and time frame used by the other plans, the plan would result in the Mt. Laurel percentage of low and moderate income families reaching 28.8% of the total number of families in the township in the year 2000.³ This may be compared to the regional percentage of 42.5%. The plan's deficiencies, as reflected by this percentage test, are, as described below, a result of conservative assumptions regarding present and future housing needs and a failure to make adjustments in allocating units to accommodate the particular nature of Burlington County and its region.⁴

¹ The Revised Statewide Housing Allocation Plan was submitted to the trial court on May 26, 1978 and incorporated by judicial notice into this record. JA-57a through JA-104a.

² Brooks, 8T 74-21 to 24.

³ Exhibits P-20 at JA-173a and P-18; Brooks, 8T 72-19.

⁴ Exhibit P-18 at JA-167a to 171a; Brooks, 8T 17-6 to 10, 8T 62-19 to 22.

1. Housing Need Assessment: As described by the Supreme Court, the D.C.A.'s present (1970) need assessment is based on the number of "dilapidated units, overcrowded and necessary vacant units as of 1970." Madison, supra, 72 N.J. at 532 n. 37. By excluding from this calculation deteriorating units and households which are spending over 25% of their incomes for housing costs, the D.C.A. estimate of the present need is a conservative one.¹

D.C.A.'s "prospective housing needs are based upon estimates of growth of housing units from 1970 to 1990." Madison, supra, 72 N.J. at 532. In preparing these estimates D.C.A. used a conservative projection of population growth for the State prepared by the New Jersey Department of Labor and Industry. Additionally, D.C.A. assumed that the proportion of low and moderate income households in the State to the total population would not change during the next 20 years.² It was undisputed that the result of D.C.A.'s conservative methodology in assessing the housing need is that 36% of the total need for additional low and moderate income housing units in Burlington County was not identified in the plan.³ This ultimately results in a lower number of units allocated to each municipality.

2. Housing Need Allocation: The D.C.A. plan distinguishes between present and prospective need in its allocation. As described by this Court,

the method used for allocating present housing needs is to take the percentage of present housing needs of the region to the region's total housing stock and then apply that percentage to each municipality's housing stock. Madison, supra, 72 N.J. at 532.

¹ Brooks, 8T 31-12 to 15.

² Mallach, 6T 45-1 to 5.

³ Exhibit P-15 at JA-165a; Brooks, 8T 29-13; 8T 29-1 to 4.

This method results in greater allocations of the present need to the more developed areas in the region.

The method used for allocating prospective housing needs was to apply an average of four indexes being: (1) vacant developable land; (2) employment growth; (3) municipal fiscal capability (in terms of growth of non-residential ratables); and (4) personal income percentage. Madison, supra, 73 N.J. at 532.

These four factors account for the suitability of a municipality to accommodate additional units,¹ the need for those in a particular municipality,² and the distribution of these needed units throughout a region.³ By balancing these four criteria, the plan does seek, with some problems, to rationally and fairly allocate needed units to each of the region's component municipalities.

¹ The suitability of each municipality was based on its fiscal capacity and an estimate of its vacant developable land. Brooks, 8T 36-14. The fiscal capacity indicator used by D.C.A. is limited and short range. Brooks, 8T 39-6 to 11. The assessment of vacant developable land is also a conservative one which excludes all wetlands, land of 12% or greater slope, qualified farmlands and public land. Brooks, 8T 37-9 to 11. Furthermore, no adjustments were made to account for the location of this vacant acreage within the region and its particular potential for development. Brooks, 8T 48-6 to 16. This results in an allocation which fails to account for the peculiar regional characteristics of Burlington County and its region. Brooks, 8T 17-6 to 10. More specifically, this means that the Pine Barrens and its projected non-development is not incorporated into the plan. The housing need which is allocated to the Pine Barrens has not been redistributed or reallocated to those areas which are more appropriate for development. Brooks, 8T 62-19 to 22.

² The D.C.A. plan uses a municipality's past employment growth between 1969 and 1975 as an indicator of housing need in that municipality to the year 1990. Brooks, 8T 42-3 to 4. Employment growth is a common factor in fair share plans. However, D.C.A.'s criterion is limited because the data selected (employment growth between 1969 and 1975) is short range and not indicative of future changes in employment patterns. Brooks, 8T 42-4 to 9.

³ Brooks, 8T 45-1 to 10. D.C.A. used a per capita income figure weighted by regional averages as a distributive factor. Brooks, 8T 44-2 to 6. This is an acceptable and common method tending to redistribute future units to the relatively wealthier areas of a region. Brooks, 8T 44-7 to 9.

C. Plaintiffs' Plan: Mallach/Associates, "Fair Share Housing Allocation For Mt. Laurel and Burlington County," April 21, 1977: Plaintiffs' expert Alan Mallach prepared a fair share housing allocation plan to the year 2000 for families of low and moderate incomes (using \$0 to \$10,000 in 1970 dollars) for all municipalities in Burlington County, including Mt. Laurel Township.¹ Under this plan, Mt. Laurel's fair share allocation to the year 2000 is 3,672 consisting of a present, immediate need of 1,672 units and 2,000 additional units by the year 2000.²

The implementation of this plan would result in the Mt. Laurel percentage of low and moderate income families reaching 42.0% of the total number of families in the township by the year 2000.³ This favorably compares to the region's percentage of 42.5%. The reasonableness of the Mallach plan essentially results from an allocation methodology which seeks to distribute or allocate needed housing opportunities throughout Burlington County in accordance with the peculiar characteristics of the County.⁴

1. Housing Need Assessment: The plaintiffs' plan simply adopted D.C.A.'s need assessment and adjusted it for comparability purposes.⁵ The D.C.A. present need figure was used even though it is a conservative one, limited to the number of dilapidated units in the region requiring replacement, overcrowded units and additional units needed for an acceptable vacancy rate.⁶ D.C.A.'s figure for prospective need was also used but

¹ Exhibit P-11 at JA-132a.

² Mallach, 6T 44-1 to 3, 6T 46-1.

³ Exhibits P-12 at JA-142a and P-20 at JA-173a; Brooks, 8T 59-11, 8T 72-16.

⁴ Exhibit P-18 at JA-167a; Brooks, 8T 76-1, 8T 75-23 to 25, 8T 16-8 to 11.

⁵ Mallach, 6T 47-1 to 25; Brooks, 8T 22-23 to 25.

⁶ Mallach, 6T 44-15 to 20; Exhibit P-4 at JA-39a.

adjusted for comparability purposes by raising the moderate income ceiling from \$8,567 to \$10,000¹ and projecting the need to the year 2000.² As a result of this conservative methodology, the plaintiffs' plan does fail to identify 9% of the housing need for Burlington County to the year 2000.³

2. Housing Need Allocation: The plaintiffs' plan allocates the present and prospective need by balancing three factors: vacant developable land adjusted by its location;⁴ employment growth; and the municipality's existing proportion of lower income households.⁵ As in the D.C.A. plan,

¹ If a \$12,000 income ceiling had been used rather than the \$10,000 figure, Mt. Laurel's fair share of the regional need would increase by 1,000 units. Mallach, 6T 44-45; see also Madison, supra, 72 N.J. at 514, n. 25.

² Brooks, 8T 23-1 to 4. In making this projection from 1990 to 2000, Mallach held the household size projection developed by D.C.A. constant. Brooks, 8T 23-8 to 11. This is a further conservative calculation in that the indications are that household size in this region will continue its decline. Brooks, 8T 23-12 to 14. By assuming a constant household size, the number of needed units is reduced. Brooks, 8T 23-18 to 23, 8T 29-5 to 9.

³ Exhibit P-15 at JA-165a; Brooks, 8T 29-16.

⁴ Adjustments to land availability figures are common and appropriate in fair share plans. Brooks, 8T 40-1. The importance of land availability as a factor in fair share planning is that it indicates access to land for potential development. Madison, supra, 72 N.J. at 542 n. 45; Brooks, 29T 182-1 to 4. However, where the region is such that municipalities are substantially different in terms of accessibility, distance from central places, transportation routes, etc., location of that vacant land is significant in assessing the suitability of a municipality based on its vacant land. Mallach, 6T 13-20 to 25, 6T 14-1 to 5, 7T 128-2 to 17. Adjustments are therefore made in fair share plans for these regions to indicate the rate of potential development among the various areas in the region. Brooks, 8T 40-19 to 24, 9T 182-14 to 18.

⁵ Mallach, 6T 55-2 to 5, 7T 133-16 to 22, 6T 57-1 to 3.

these criteria are used to determine and balance the suitability,¹ need,² and distribution³ of needed housing opportunities throughout Burlington County.⁴ The implementation of this plan would result in a fair redistribution or allocation of housing opportunities throughout the sub-regions of Burlington County in accordance with the objectives of fair share planning and the peculiar characteristics of the county.⁵

D. Burlington County Board of Chosen Freeholders, "Burlington County Interim Housing Allocation Plan", March, 1976: The Burlington County Planning Board prepared a housing sub-allocation plan for the municipalities in

¹ Mallach used D.C.A.'s conservative definition of vacant developable land and adjusted this figure to account for the particular nature of development and growth in the region. Brooks, 8T 48-25, 8T 49-1 to 2. Vacant land close to the center of the region was considered to be more significant than vacant land in undeveloped areas such as the Pine Barrens where there is little or no immediate development potential. Mallach, 6T 55-2 to 5; Brooks, 8T 39-19. Mallach also adjusted allocations for those municipalities with sufficient remaining land capacity. Brooks, 8T 36-17 to 18. These adjustments are necessary and appropriate because of the wide variation in the developability of vacant land in Burlington County. Brooks, 8T 39-21 to 25; Exhibit P-18 at JA-167a.

² The need for additional housing was sub-allocated, as in the D.C.A. plan, on the basis of employment growth. Mallach, 6T 56-12 to 14; Brooks, 8T 42-3 to 4. Mallach used D.V.R.P.C.'s employment projection estimates for the year 2000. Mallach, 7T 133-16 to 22. These are the only available municipal employment projections. Glass, 25T 75-11 to 24; Mallach, 7T 133-12 to 15.

³ A final distributive modification was made to the allocation to account for the existing proportion of lower income households in each municipality as measured against the county-wide average. Brooks, 8T 44-10 to 16; Mallach, 6T 57-1 to 3. This is an acceptable method to distribute needed housing opportunities throughout a region. Brooks, 8T 16-17.

⁴ Brooks, 8T 48-20 to 24.

⁵ Brooks, 8T 76-1, 8T 75-23 to 25, 8T 16-8 to 11.

Burlington County based upon the total housing need figure (for all income groups) for Burlington County adopted by the D.V.R.P.C.¹ Under this plan, Mt. Laurel's fair share allocation to the year 2000 for additional low and moderate income (\$0 to \$10,000) units is 997.

The implementation of this plan would result in a decline in the proportion of low and moderate income families in Mt. Laurel as well as Burlington County as a whole.² Mt. Laurel's percentage of low and moderate income families would decrease from its present (1970) percentage of 25.5% to 18.1% of the total number of families in the township.³ This result is clearly antithetical to the objectives of fair share planning which are to redistribute and expand lower income housing opportunity and choice within the County and region.⁴ In fact, the Burlington County Plan itself acknowledges that this plan, even on paper, does not redistribute housing opportunity throughout the county.⁵

The plan's deficiencies, as discussed below, primarily result from an erroneous assumption that the low and moderate income population in the region will decline over the next 20 years. The use of this assumption

¹ Exhibit P-6 at JA-106a. As noted by this Court in Madison, the D.V.R.P.C. prepared a fair share plan adopted in 1973 for the nine-county, Philadelphia-Camden SMSA identifying the additional housing units needed in each county to the year 2000 for all income groups. Exhibit P-3 at JA-37a; Madison, supra, 72 N.J. at 533 n. 37. "Each of the counties was then assigned the task of making municipal sub-allocations pursuant to D.V.R.P.C. guidelines, and this has now been done in the four New Jersey counties named." Madison, supra, 72 N.J. at 533 and 536.

² Exhibit P-18 at JA-167a.

³ Exhibits P-18 at JA-167a and P-20 at JA-173a; Brooks, 8T 72-22.

⁴ Brooks, 8T 17-15 to 19.

⁵ Brooks, 8T 61-20 to 23, Exhibit P-6 at JA-113a and 122a.

in the plan results in: 1) an inadequate need assessment which fails to identify 54% of the need in Burlington County and 2) a further reduction in the number of units ultimately allocated to each municipality. In short, the plan fails to accurately identify the housing needs of low and moderate income families in the region and then to plan for the expansion of the housing supply and choice throughout the county pursuant to those needs.¹

1. Housing Need Assessment: The Burlington County Plan uses the unacceptable, if not totally erroneous, housing need estimates prepared by D.V.R.P.C. for Burlington County. It was undisputed at trial that the D.V.R.P.C. assessment significantly underestimates the need for additional low and moderate income housing in the tri-county region to the year 2000. It was uncontroverted that D.V.R.P.C.'s projections are unreasonably conservative and based on assumptions clearly incongruous to the objectives of fair share planning as well as all other available evidence, regarding the present and future need in the Mt. Laurel region.

D.V.R.P.C.'s estimate of present need does not include an identification of the number of families presently living in substandard or overcrowded conditions or paying more than 25% of their total incomes for shelter costs.² By excluding these existing housing needs which can only be met by additional housing units, D.V.R.P.C. essentially excluded present need from its total need assessments.³

The prospective need estimate for additional low and moderate units is also inaccurate based on:

¹ Brooks, 8T 46-8 to 17, 8T 74-14 to 18, 8T 17-15 to 19.

² Brooks, 8T 21-7 to 14.

³ Brooks, 8T 21-7 to 8.

1. inaccurate population projections. D.V.R.P.C.'s population projections were prepared in 1972 from 1969 census data. These projections have proven to be unreliaibly low as reflected in a comparison between them and actual population statistics. Glass testified that Mt. Laurel's present (1977) population actually exceeded D.V.R.P.C.'s projection for the township to the year 1990. In fact, D.V.R.P.C.'s projection for Mt. Laurel for the year 2000 (15,476 people) was little more than Mt. Laurel's present population (15,221).¹
2. inaccurate household size projections. D.V.R.P.C. assumed that household size would remain constant from 1980 on.² The fact is, as testified to by the defendant's witness Lynch, that the average household size is decreasing.³ A decline in the average household size means that the same number of people require a greater number of units.
3. inaccurate projection that the number of lower income groups in the region will substantially decline by the year 2000.⁴ Census data subsequent to the projections clearly indicate that the percentage of low and moderate income families has in fact increased in recent years.⁵ All of the parties' experts agreed that the percentage of families in the region with low and moderate incomes is on the rise.⁶

The impact of these fallacious assumptions is that the D.V.R.P.C. need assessment used by the Burlington County Plan underestimates by 54% the number of low and moderate housing units needed in the region over the next twenty years.⁷

2. Housing Need Allocation: The Burlington County Plan distinguishes between present and prospective need in its allocation. Present need is allocated to municipalities in the county where that need occurs rather than by assessing and dispersing that need throughout the county on a regional basis. This method places greater burdens on the developed areas

¹ Glass, 25T 73-13, 25T 74-5, 25T 73-2.

² Mallach, 6T 31-5 to 6.

³ Lynch, 18T 107-12 and 16.

⁴ Mallach, 6T 31-13 to 16, 7T 132-20 to 25.

⁵ Mallach, 6T 31-20 to 24.

⁶ Brooks, 8T 21-20 to 25.

⁷ Exhibit P-15 at JA-165a; Brooks, 8T 29-10 to 13; Mallach, 6T 32-15 to 18.

in the county for meeting these existing housing needs.¹

Prospective need is allocated on the basis of four factors: municipal fiscal capacity, vacant developable land, employment growth and income distribution projections. These criteria are used in an attempt to allocate the prospective need on the basis of a municipality's suitability² to accommodate more units, the need³ for additional units and the need to distribute⁴ these units. However, the criteria used by Burlington County to reflect these factors, in contrast to those used in the plaintiffs' and D.C.A.'s plans, are non-distributive and too limited to adequately expand housing supply and choice throughout the county.

¹ Brooks, 8T 17-18.

² The suitability of each municipality was based upon fiscal capacity and a very conservative assessment of land availability. Brooks, 8T 36-14 to 16, 8T 37-18. Available land was simply defined as 35% of a municipality's total vacant land and 30% of its woods and farms multiplied by a current density factor. No attempt was made to actually determine vacant, developable land. No adjustments were made to account for the wide variations in the developability of the vacant acreage within this county. Brooks, 8T 37-11 to 13.

³ The need for additional units in each municipality was based on employment growth projections to the year 2000 prepared by D.V.R.P.C. Brooks, 8T 42-3 to 15. These figures were also used in the plaintiffs' plan as they are the only available municipal employment projections. Glass, 25T 75-11 to 24; Mallach, 7T 133-12 to 15.

⁴ Burlington County modifies their final allocation to each of the municipalities on the basis of D.V.R.P.C.'s income distribution projections; i.e., the projected proportions of future households which will fall in the low and moderate income group. Brooks, 8T 43-4 to 8. This projection, as previously discussed, assumes, contrary to subsequent census data and all expert testimony at trial, that the proportion of lower income groups in the region will decline. Brooks, 8T 21-20 to 25; Mallach, 6T 3-6 to 10. In using this inaccurate projection, the Burlington County plans for fewer future households in the lower income groups. Brooks, 8T 43-10 to 14. This results in an unacceptable reduction in the number of units allowed to lower income groups in the County. Brooks, 8T 43-14 to 16. This modification is the most serious problem with this plan. Brooks, 8T 46-8 to 17, 8T 74-14 to 18, 8T 17-15 to 19.

The implementation of this plan does not result in a redistribution of housing opportunities throughout Burlington County. Not only does the plan use an inadequate assessment of the need, both present and future, for additional housing units in the county but it uses an allocation methodology which further reduces housing opportunity throughout the county. In short, the plan does not address or meet the housing needs in the county, expand choice or redistribute opportunity. It must be disregarded by this Court.

E. Defendant's Plan: Glass, Ordinance 1976-5, Sections 1702, 1703 and 1704: The defendant's plan prepared by the township's planner is set forth in Sections 1702, 1703 and 1704 of Ordinance 1976-5.¹ The implementation of this plan will result in a decrease in the proportion of low and moderate income persons in the township from 25.5% to 13.2% of the township's total population.² Furthermore, under any other test of reasonableness referred to by the Supreme Court in Mt. Laurel and Madison, the defendant's plan is clearly unreasonable: it is internally faulty; it results in unreasonable allocations to other municipalities in Burlington County to the "advantage" of Mt. Laurel, it is inconsistent with the township's own growth projections and with its overall zoning and projected development, and it is not comparable to other officially recognized plans in its methodology or results.

A detailed discussion of the derivation of the defendant's plan; its impact, if implemented, on housing choice and supply in Mt. Laurel for persons of low and moderate income; and the unreasonableness of the plan's methodology and results of this plan under any test is set forth below. All of these facts and analyses were admitted or not disputed by the

¹ Glass, 25T 2-18 and 24; Exhibit P-2 at JA-32a.

² Exhibit P-20 at JA-173a; Brooks, 8T 60-4 to 6, 8T 73-1.

defendant; none of them were referred to by the trial judge in reaching his decision in accepting the defendant's plan. A review by this Court of this uncontroverted evidence can only and must lead to the conclusion that the defendant's plan does not provide an opportunity for a reasonable share of the region's need for low and moderate income housing and must be rejected.

1. Housing Need Assessment: The defendant's present need assessment does not take into account the present regional need for low and moderate income housing. It is limited to the existing internal need in the township in 1976 as estimated by the defendant.¹ The decision to limit the present need assessment to that of current residents in Mt. Laurel is the antithesis of fair share planning.² The essence of fair share planning is to accounty for regional needs in municipal zoning and planning.³ At the outset, then, the defendant's plan limited to an assessment of internal need is deficient.

Furthermore, the defendant's estimate of its own internal need in 1976 is inadequate. The figure of 103 units was derived from a comparison between the number of lower-priced units in Mt. Laurel in 1970 and the number of resident families with incomes below \$10,000 in 1970 and an exterior windshield survey of existing housing in the township.⁴ This method erroneously underestimates the present need in Mt. Laurel for additional units in that it: 1) inaccurately assumes that every lower-

¹ Ordinance 1976-5, Section 1702.1, Exhibit P-2 at JA-32a. It should be noted that Madison Township's fair share plan was similarly limited to "in-place" or resident need. The Court stated:

The analysis of "need is largely weighted in favor of indigeneous need, i.e., of those persons already in the township, as compared with potential aspirants for housing from outside the municipality. Madison, supra, 72 N.J. at 529-530.

² Mt. Laurel, supra, 67 N.J. at 188-190, Madison, supra, 72 N.J. at 530 and 536.

³ Mallach, 6T 31-1 to 13.

⁴ Ordinance 1976-5, Exhibit C at JA-36a; Mallach, 6T 34-17 to 21

priced unit in the township is occupied by a family of low income;¹ 2) fails to account for substandard units in the township due to interior conditions (such as inadequate plumbing and overcrowding);² and 3) fails to count the number of additional standard units necessary to achieve an acceptable vacancy rate in Mt. Laurel.³ Finally, the defendant failed to consider, despite the Supreme Court's order the needs of the former residents of Mt. Laurel who were required to move due to the deterioration of their homes and neighborhoods.⁴ The Supreme Court stated that in arriving at a fair share determination for the township that:

the type of information and estimates, which the trial judge (119 N.J. Super. at 178) directed the township to compile and furnish to him, concerning the housing needs of persons of low and moderate income now or formerly residing in the township in substandard dwellings and those presently employed or reasonably expected to be employed therein will be pertinent.

The defendant's prospective need estimate is an adoption of the need assessment set forth in D.V.R.P.C.'s Regional Housing Allocation Planning (analyzed above).⁵ It was not disputed by the defendant that the D.V.R.P.C. estimate significantly underestimates the need for additional low and moderate income housing in the tri-county region to the year 2000. This estimate and the uncontroverted testimony regarding its deficiencies are detailed at pp. 16a-17a supra.

¹ Madison, supra, 72 N.J. at 519 n. 29; Mallach, 6T 33-21 to 25.

² The 1970 census reveals that, at a minimum, 154 units in Mt. Laurel were overcrowded or lacked adequate plumbing facilities. Glass, 25T 12-20.

³ Glass, 25T 9-1 to 3; Blackwell, 19T 124-8 to 11, 19T 128-13; Mallach, 6T 36-4 to 13; 6T 36-13 to 17.

⁴ Glass, 25T 14-14, 25T 15-6. Mt. Laurel, supra, 67 N.J. at 190.

⁵ Glass, 25T 32-14 to 25.

Despite these deficiencies, the defendant utilized this admittedly inaccurate need assessment in its fair share plan. The defendant's planner testified that he never bothered to take the time to evaluate the basis for the D.V.R.P.C. projections although he chose to incorporate its need assessment as the basis of his plan.¹ He never did any studies which would enable him to make such an evaluation despite an affidavit to Judge Martino that he would in fact undertake such studies.² He never attempted to update D.V.R.P.C.'s data and revise his plan after receipt of the D.C.A. study which included an updated need assessment for the county.³ In short, the defendant incorporated wholesale an admittedly unacceptable need estimate as the basis for determining its fair share. The result is that the defendant's plan, irrespective of any other criticisms, is substantially lower and not reflective of the actual need for additional housing units by families of lower incomes in the Mt. Laurel region.⁴

2. Housing Need Allocation: The defendant's plan allocates its total need estimate based on one factor, vacant land. The defendant's planner, author of this plan, admitted that it is the only plan he knew of which relies solely on a single factor to allocate needed housing opportunities throughout a region.⁵ Although land availability is an important

¹ Glass, 25T 32-6.

² Glass, 25T 32-8.

³ Glass, 25T 31-22 to 23. Such a revision was offered by Mallach to the town of Medford for whom he had done a similar study. Mallach, 7T 58-10, 7T 127-11 to 18.

⁴ Mallach, 6T 32-23 to 25.

⁵ Glass, 25T 25-14 to 25, 25T 27-7; Madison, supra, 72 N.J. at 542 n.45; see discussion of other plans. In Madison, the Supreme Court discussed allocation criteria noting that vacant, developable land was the most important single criterion. The Court went on to note that: other basic criteria include employment opportunity, fiscal measures . . . and existing housing or population density. Madison, supra, 72 N.J. at 542 n. 45. (emphasis added).

factor in fair share planning as an indicator of a municipality's capacity to absorb additional housing units, it is unacceptable as the only criterion by which the allocation of need is made.¹ A municipality's physical capacity to accommodate additional units (as reflected by vacant land) must be balanced against other factors indicating a need for additional units in that municipality and the need to distribute housing choice throughout a region.² Under the Mt. Laurel plan, which does not use any factor to indicate need,³ units are not allocated to municipalities where they would be needed.⁴ Using no factor to indicate distribution, the defendant's plan does not, nor could it, achieve a proper proportionality of low and moderate income households throughout the region.⁵ On this basis alone, the plan fails and must be rejected.

This conclusion is confirmed by an even closer look at the defendant's plan. In allocating units on the basis of land availability in Burlington County, the defendant used a narrow, more restrictive definition of vacant land for Mt. Laurel and a broader, more inclusive definition of vacant land for the remaining towns in Burlington County.⁶ More specifically, in assessing Mt. Laurel's vacant land, the defendant excluded flood plains,

¹ Brooks, 8T 74-6 to 12; Madison, supra, 72 N.J. at 542 n. 45; Mallach, 5AT 32a-10 to 11.

² Brooks, 29T 183-2 to 12.

³ All fair share plans, as discussed infra, aside from Mt. Laurel's use employment growth as a need indicator. Glass, 25T 28-8; Brooks, 8T 41-21.

⁴ Brooks, 8T 41-23, 8T 42-1.

⁵ Brooks, 8T 42-25, 8T 43-1.

⁶ Brooks, 8T 37-4 to 5.

highways and vacant, developable land which it labelled "legally committed lands."¹ In calculating all of the remaining vacant land in Burlington County, the defendant included all the vacant land in each town including flood plains and "legally committed land".²

¹ Exhibit P-5 at JA-105a. The defendant excluded 2,514 of completely vacant land from its assessment as "legally committed land", that is, land which had received a tentative approval for development from the township. Exhibit P-5 at JA-105a, Mallach, 5AT 35a-4. The result is that the total acreage of 23 developments, irrespective of their present level of development (from 0% to 50% developed) or their development schedules (which extend to 1990), was excluded. Glass, 25T 16-14, 20T 37-4, 20T 60-19 to 23, 20T 42 through 20T 44; Mallach, 125-2 to 19. Although 83% of the PUD units (8,797 units) are still to be constructed and 73% of the PUD acreage is admittedly still vacant, the defendant excluded this acreage from its count of the township's vacant, developable land. The reason given for this exclusion was that this land could not be used for low or moderate income housing. Glass, 25T 25-3, 21T 71-6 to 8.

The defendant admitted that this assumption was fallacious. First, the R-5 and R-7 zones were themselves located by the defendant on these "legally committed lands". Glass, 25T 19-6, 25T 24-14. Second, as admitted by Glass, these land areas are not any different from any other vacant land in any other zone in a municipality where a developer proposes to build pursuant to the existing zoning. If the proposed development conforms to the land's zoning, a municipality is "bound" to approve the project. Glass, 25T 17 to 25, 25T 18-1 to 3. All of that vacant land is not thereby excluded from an assessment of available land. Likewise, the PUDs, with their tentative approvals, are not somehow special just because the township has so labelled them. Third, Glass himself admitted that a PUD which had received a tentative approval wasn't always given a final approval. Glass, 21T 173-23 to 25. In fact, the township did deny final approval to the Cross Keys PUD. Glass, 22T 83-5 to 25, 22T 84-1 to 6. Finally, Glass admitted that developers could change their development plans if alternatives were offered to them. Glass, 25T 25-13 to 16; Mallach, 5AT 35a-14 to 17.

² Mallach, 5AT 36a-10 to 13. The defendant took its assessment of its own vacant land in 1976 and compared it against the total vacant acreage in Burlington County in 1970 as estimated by the Burlington County Planning Board. Mallach, 5AT 30a-6 to 15. This 1970 study of county vacant land did not exclude flood plains and "legally committed land" in the other municipalities in Burlington County. Mallach, 5AT 36a-10 to 13. This "ratio" was then multiplied against the D.V.R.P.C. need figure for the entire county to arrive at Mt. Laurel's share of that need. Glass, 25T 41-13 to 19 and 24.

This methodology results in a lower fair share number for Mt. Laurel (since it has less land) and a greater number of units for all the other municipalities in the County (which have more available land).¹

This methodology is clearly self-serving. First, no other fair share plan, as discussed above, uses such a restrictive definition of vacant land. No other fair share plan varies its methodology for assessing available land from municipality to municipality. Third, there is no comparability between the 1976 vacant land figure in Mt. Laurel which excludes "legally committed lands" and flood plains and the 1970 total vacant land figure for Burlington County which includes "legally committed lands" and flood plains.² The two figures simply represent different estimates for different years of what type of land is considered vacant, available land.³ No reasons were given to justify this methodology or to rebut plaintiffs' criticisms. In sum, every aspect of the defendant's plan is deficient, unjustifiable and incomparable to all of the other fair share plans.⁴ As a result, the defendant's plan fails when measured against any reasonableness test.

¹ Mallach, 5AT 33a-22 to 25, 5AT 34a-1 to 4, 6T 23-15 to 25.

² Mallach, 5AT 36a-5 to 7. Admitting that these figures were not comparable, Glass sought to adjust the figures at trial by excluding 63,000 acres from the Burlington County figure. Glass, 21T 68-12 to 16. This adjustment raised Mt. Laurel's "fair share" by 172 units to a total of 687 units. Glass, 21T 69-2. Seeking at any rate to somehow justify his methodology, Glass characterized this difference as insignificant. Glass, 21T 69-5 to 7. No reason, however, was given for making the invalid comparison initially or why the 1970 County figures were not used.

³ Mallach, 6T 12-6 to 16. The 1970 Burlington County study indicates that Mt. Laurel had 9,200 vacant acres. This is in contrast to the defendant's own calculation of 5,900 vacant available acres. Mallach, 5AT 36a-14 to 21.

⁴ See Exhibit P-16 at JA-166a. This chart summarizes and compares each of the plans' allocation methodologies and their acceptability.

3. Results of Defendant's Plan:

a) Other Municipal Allocations: One test of the reasonableness of a plan's methodology is its impact on the other municipalities in the region.¹ Having based its allocation solely on vacant land (with Mt. Laurel's vacant land calculated more narrowly than all of the other municipalities), the towns with the greatest amount of vacant land receive the greatest number of fair share units.² This means that the undeveloped, rural areas of Burlington County, which are in the Pine Barrens, receive the largest number of units.³ In fact, the Pine Barrens as a whole, receive an enormous allocation amounting to 30% of the entire County's allocation.⁴ If implemented, the Pine Barrens' low and moderate income population would comprise 85.3% of the total population residing in the Pine Barrens in the year 2000.⁵

The township planner did not deny the implications of implementing this plan throughout the county. His response on cross-examination was that this allocation to the Pine Barrens was reasonable.⁶ He did not think that the Pine Barrens vacant land should have any higher preservation priority than that given the farmland in Mt. Laurel.⁷ Seeking to dismiss this line of criticism, he stated that this apparent deficiency in his plan simply evinced the weaknesses in fair share planning.⁸

¹ Madison, supra, 72 N.J. at 530-531.

² Mallach, 6T 21-2 to 6, 6T 20-4 to 15.

³ Mallach, 6T 23-15 to 25; Brooks, 8T 50-3 to 14. For example, Mansfield, is a town admittedly not facing development pressures nor reasonably expected to be developed. Under the defendant's plan it received an allocation of 1,145 units. Brooks, 8T 37-7.

⁴ Mallach, 6T 23-13 to 15.

⁵ Brooks, 8T 59-21 to 25, 8T 60-1 to 3.

⁶ Glass, 21T 74-21 to 22.

⁷ Glass, 21T 75-2 to 5.

⁸ Glass, 25T 38-14.

The fact is that these fallacies demonstrate the weaknesses and unreasonableness of the defendant's fair share plan. Having failed to make any adjustments in the plan to account for the particular nature of development in the region and the particular characteristics of Mt. Laurel in the region, the plan is overtly unsuitable and blatantly inappropriate as a guide for the future planning and development of housing opportunities in the region.¹

b) Correlation With Township's Growth Projections: The defendant's plan does not correlate with its own projections of the township's growth. The township planner repeatedly testified that the actual growth occurring in the township approximated 200 housing units each year.² This means that approximately 6,000 additional units will be built in Mt. Laurel by the year 2000.³ The defendant's plan, if extended to calculate not only additional low and moderate income units but housing units for all income groups, provides for only 2,079 additional units in Mt. Laurel by the year 2000.⁴

This lack of correlation between the defendant's plan and its actual growth projections is another indicator of the irrationality of the defendant's plan. Seeking to reduce its obligation, even on paper, to plan and provide for housing opportunities for persons of low and moderate income, the defendant made no attempt to rationally assess a share of its actual growth for such opportunities.

c) Correlation With Employment Opportunities: One measure of a plan's reasonableness is that it provide, at a minimum, housing opportunities for persons who are or who will be employed in the municipality.

¹ Brooks, 8T 60-10 to 13.
² Glass, 21T 88-14 to 16, 21T 83-25.
³ Glass, 25T 49-1 to 4, 25T 48-10 to 25.
⁴ Glass, 25T 47-4 to 8.

Mt. Laurel, supra, 67 N.J. at 187. The township planner, agreeing with this precept, stated:

. . . I think as long as you come up with a number, it doesn't matter whether you had ten or three columns to do the mathematics. If the number is large enough to include future people that will be employed there it should be adequate. Glass, 25T 28-22 to 25, 25T 29-1.

This Court determined in 1975 that there was no rational relationship between the defendant's extensive industrial/commercial zoning and its residential zoning. The defendant has done nothing to change that. See pp. 71-75, supra. Having zoned 2,545 for industrial use alone, clearly the residential needs of those employed by such uses cannot be accommodated by 515 units. By the year 2000, conservative employment projections indicate 8,663 employees will work in Mt. Laurel of which approximately 3,465 will be of lower incomes. Mt. Laurel's allegation that it will plan, at some future date, to provide a zoning opportunity for 515 units affordable to persons of low and moderate income is grossly inadequate.

d) Correlation With Regional Percentage of Low and Moderate Income Population: Without devising a specific formula for estimating any municipality's precise fair share, the Supreme Court articulated a prima facie test of reasonableness by which fair share plans could be evaluated.² That standard, as previously discussed, is whether a municipality's percentage of low and moderate income persons, as projected in the particular plan, is equivalent to the regional proportion of low and moderate income households.

It was undisputed that under the defendant's plan, Mt. Laurel's low and moderate population would comprise approximately 13.2% of Mt. Laurel's population in the year 2000.³ That is a further decline of the low and

¹ Exhibit P-6 at JA-127a; Abeles, 10T 83-20 to 25, 10T 84-1 to 4.

² Madison, supra, 72 N.J. at 543; Brooks, 9T 76-17 to 20.

³ Brooks, 8T 60-4 to 6, 8T 73-1; Exhibit P-20.

moderate income population proportion existing in the township in 1970.¹

The defendant's plan clearly does not provide a sufficient housing opportunity for persons of low and moderate incomes.

5. The Housing Timetable: Mt. Laurel has provided one other feature in its fair share plan, a housing timetable. In setting forth this timetable the defendant is seeking to control when the 515 units are actually built in the township. This timetable provides that the present need of 103 units may be developed now.² In subsequent years, development of the 515 units is to be guided by the provision which limits construction to 17 units per year.³

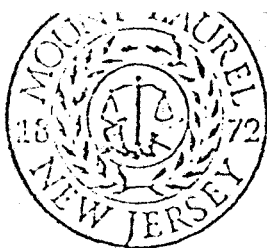
Plaintiffs submit that there is no reason to arbitrarily limit when "least cost" development should take place. The market should be permitted to control the production of this type of development as it does in other forms of residential development.⁴ Furthermore, the purpose of a fair share plan is not to limit that development but to insure that least cost and assisted housing opportunities are not precluded from sharing in the growth of a municipality. If least cost development is municipally controlled at all, the limitation should be comparable to a reasonable percentage of the total growth of the municipality.⁵

Additionally, it must be noted that this provision not only impacts upon the timing of least cost construction in the township, it actually creates additional barriers to the realization of least cost housing. It was uncontroverted that this provision may render least cost development infeasible because :

- ¹ Glass, 21T 136-4; Brooks, 8T 60-4 to 6.
- ² Glass, 25T 3-4; Mallach, 5AT 319-3 to 12.
- ³ Glass, 21T 86-19 to 25; Mallach, 5AT 31a-12 to 16.
- ⁴ Mallach, 6T 65-4 to 8.
- ⁵ Mallach, 6T 10-12 to 20.

1. it does not provide for economies of scale or volume housing production. Mallach, 7T 64-19;
2. it does not provide for any lead time required by non-profit sponsors and developers to provide assisted units; and
3. it ignores the realities of how low income subsidized projects must be packaged in order to obtain state and federal financing. Mallach, 6T 39-19.

In short, this housing timetable is not a rational provision for phasing development, but a regulatory scheme which strait jackets least cost and assisted housing development in the township.



TO TOWNSHIP COUNCIL
MOUNT LAUREL
MUNICIPAL CENTER

Distribution _____

Resolution No. 78-R-96

Meeting: NINTH REGULAR

Date: May 1, 1978

RESOLUTION DECLARING CROSS KEYS PLANNED
UNIT DEVELOPMENT APPLICATION NULL AND VOID

WHEREAS, tentative approval for the Cross Keys Planned Unit Development was granted on April 10, 1970; and

WHEREAS, no applications have been received for final approval with the exception of an application filed on October 23, 1973 which was rejected on December 3, 1973 for failure to conform to various and sundry conditions of the tentative approval; and

WHEREAS, all time restraints for application for final approval have long expired.

THEREFORE, BE IT RESOLVED by the Township Council of the Township of Mount Laurel, County of Burlington, State of New Jersey that failure of the property owner to file for final approval on any section of the Cross Keys Planned Unit Development over such a period of time violates the PUD Ordinance and the tentative approvals for Cross Keys Planned Unit Development are hereby declared null and void and the property of the landowner will revert back to the present zoning.

MOTION:

AYES:

A CERTIFIED COPY

NAYS:

-31a-

ABSENT/OTHER:

Municipal Clerk