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General

No Date

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Affidavit of Allan Mallach
re: Transfer to COAH will effect the
determination of the Municipal Fair
Share, Transfer will delay
resolution of the matter, the sum total
of "fair share" credits permitted
by the Act exceeds the combined
total present and prospective statewide
low income housing need

pgs - 20

CH000054 V

ALFRED SLOCUM, PUBLIC ADVOCATE OF NEW JERSEY
BY: STEVEN EISDORFER, ESQ.
ASSISTANT DEPUTY PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY
DEPARTMENT OF THE PUBLIC ADVOCATE
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX/MORRIS
COUNTIES
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING :
COUNCIL ET AL, :
 :
Plaintiffs :
 :
vs. :
 :
TOWNSHIP OF BOONTON ET AL :
 :
Defendants :

Civil Action
(Mount Laurel)

AFFIDAVIT OF ALAN MALLACH

STATE OF NEW JERSEY :
 : ss
COUNTY OF MONMOUTH :

ALAN MALLACH, being of full age and duly sworn, upon his oath deposes and says:

1. I am a housing and development consultant, and am a member of the American Institute of Certified Planners (AICP). I have been actively involved in a wide variety of issues relating to the implementation of the Mount Laurel doctrine, and have acted as a consultant on affordable housing to the Department of the Public Advocate in the above case since its inception.

2. In connection with the above, I have reviewed the provisions of the recently-enacted Fair Housing Act (referred to below as the "Act"), with particular reference to the potential effect of Sec. 16 of the Act, which provides that parties to ongoing Mount Laurel litigation may move to have the case

transferred to the jurisdiction of the Council on Affordable Housing (the "Council") established by the Act.

3. The Act provides that, in evaluating whether to grant such a motion, the court must consider whether permitting the transfer would "result in a manifest injustice to any party to the litigation" [Sec. 16(a)]. To that end, it is necessary to try as best one can to evaluate the effects that would result from a transfer. While to some extent this may be highly speculative, there are at least two areas in which the provisions of the Act make possible a rational evaluation of effects. These are, first, the manner in which a transfer will affect the determination of the municipal fair share; and second, the extent to which the transfer will delay resolution of the matter currently before the court.

4. Should a transfer be permitted, the municipality would then be required to enact a housing element and fair share plan consistent with the provisions of the Act. Sec. 7 of the Act provides that the Council shall (a) determine housing regions, (b) estimate the present and prospective need for lower income housing by region, and (c) "adopt criteria and guidelines for municipal determination of its present and prospective fair share of the housing need in a given region (emphasis added)" [Sec. 7(c)(1)]. Sec. 7 of the Act further provides extensively for adjustment of the municipal fair share, on the basis of a variety of criteria or conditions.

5. While the precise effect of many of the provisions of Sec. 7 is uncertain, the numerical effect of one provision,

however, can be directly measured. The provision reads as follows:

Municipal fair share shall be determined after crediting on a one to one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. [Sec. 7(c)(1)]

Since the terms "low and moderate income housing" are defined in the Act, it is possible to make a reasonably accurate numerical analysis of the number of units, statewide and for individual municipalities, that would represent fair share "credits" on the basis of the application of the above language.

6. I have prepared such an analysis, which is attached, with supporting documentation, as Appendix A to this affidavit, and which is incorporated herein by reference. Based on this analysis, and for reasons explained therein, I have concluded that the sum total of fair share "credits" permitted by Sec. 7(c)(1) of the Act exceeds the combined total present and prospective statewide lower income housing need as determine under generally accepted and used methodologies.

7. The reason for this patently absurd outcome is that the language of the Act permits credit to be taken for households in place, while the need assessment combines two elements (a) households in substandard housing, which is a very small percentage of total lower income households in place; and (b) incremental lower income household growth, which is also a small percentage of the existing base of lower income households. Thus, even when those households in place spending excessive amounts for shelter, or living in substandard housing, are excluded, the remaining number is still greater than the sum of present and prospective need.

8. The existence of lower income households in place, living in sound and affordable housing, has little or no bearing on the meeting of lower income housing needs. In both Washington Township and Denville, for example, 80% to 90% of the units meeting the standards of Sec. 7(c)(1) are occupied by moderate income homeowners/*. These are households who bought their units many years ago, at prices far below current market prices, and have either paid off their mortgages, or are making payments on mortgages at far below current mortgage interest rates. If and when these units come on the market in the future, they will not be affordable to lower income households under any even remotely plausible circumstances.

9. This single provision, therefore, thoroughly distorts the determination of municipal fair share in a manner that, in my opinion, contravenes the clear intent of the Supreme Court in the Mount Laurel II decision, which held, regarding the municipal fair share obligation that "the housing opportunity provided must, in fact, be the substantial equivalent of the fair share" [92 NJ at 216]. With rare exceptions, the units for which this provision awards credit do not represent a lower income "housing opportunity" by any rational definition.

10. Other provisions governing the determination of fair share, although less amenable on their face to arithmetical

*/Moderate income homeowners make up 40% to 50% of the total lower income population in place in these two communities. This is a further indication of the disparity between these communities and the typical distribution, since statewide only 16% of all lower income households are moderate income homeowners.

measurement, are equally prejudicial in their language and in their potential effect:

a. The provisions for further adjustment of the fair share obligation [Sec. 7(c)(2)] are entirely oriented toward reduction of the fair share; e.g., provision is made for [downward] adjustment where adequate infrastructure is not available, but not for upward adjustment in those communities which have adequate infrastructure to accomodate substantial growth. The act provides for seven separate such adjustments to be made.

b. Over and above any adjustments, the Council, at its discretion and on the basis of such criteria that it deems appropriate, may place a limit upon the magnitude of any municipality's fair share obligation [Sec. 7(e)].

c. The determination of prospective need is to be based on "development and growth which is reasonably likely to occur...as a result of actual determination of public and private entities' [Sec.4(j)]. In determining prospective need, furthermore, the Council is instructed to give consideration to approvals of development application[s] and real property transfers. These factors, which objectively have little or nothing to do with the actual lower income housing need, are likely to be used only to reduce the need figure that is established for purposes of municipal determination of fair share under Sec. 7(c).

Finally, under the provisions of Sec. 14(a) of the act, the Council must, prior to establishing the regional need that is to

be the basis on which each municipality determines its fair share obligation, adjust the need figures on the basis of the above criteria and guidelines.

11. While it is theoretically possible for the Council, given its broad discretion under the Act, to implement these provisions in a manner that would not impair the rational determination of fair share obligations, given the tendentious language of each of these provisions, such an outcome appears unlikely in the extreme. The intent of these provisions of the Act, and the likely outcome of their implementation, particularly when combined with the effects of the more clearly defined language of Sec. 7(c)(1), appear clearly to further undermine the execution of the Mount Laurel doctrine as set forth by the New Jersey Supreme Court.

12. The second readily predictable effect of a transfer under the provisions of Sec. 16 of the Act is delay. Under the provisions of the Act, the municipality whose case has been transferred has five months from the date of promulgation of criteria and guidelines by the Council to file a housing element and fair share plan; the Council, in turn has seven months from "confirmation of the last member initially appointed to the Council or January 1, 1986, whichever is earlier" [Sec.7] to adopt those criteria and guidelines. Thus, assuming the later date, a municipality need not file its fair share plan with the Council until as late as January 1, 1987.

13. The Act is ambiguous in the extreme with regard to the nature and duration of proceedings arising from a transfer subsequent to the filing of the municipal housing element and fair

share plan. It is clear, however, that in the event the housing element does not accommodate the proposal of a developer plaintiff, or, in the alternative, reflect the concerns of a public interest or lower income plaintiff, a considerable further delay, in all probability more than a year, is likely to take place before that plaintiff would be back in a position to seek relief from the courts; i.e., the position he was in prior to granting of the transfer motion. Thus, the total delay resulting from granting of the motion is likely to be between two and three years, assuming that the municipality does indeed move for substantive certification of its housing plan before the Council, an action which the Act does not require.

14. The effects of delay on a development proposal are twofold. First, there are a variety of direct costs associated with delay, most substantially the cost of holding land, which includes both the costs of interest and property tax payments. In many cases, furthermore, a developer facing a 2 to 3 year delay must then confront a choice between making a massive up-front cash outlay, which may be realistically impossible to him, or losing the land and the potential development in its entirety. The reason for this is that, in order to be able to hold land for such an extended period, it may be necessary to purchase it outright. Without massive cash resources, the developer may simply lose the land on which he is hoping to build. While this is a serious problem for individual developers, the second impact of delay is even more serious. This is, in essence, loss of the crucially important market opportunity that exists at present.

15. To the extent that production of Mount Laurel housing is conditioned on production of market housing, through the mandatory setaside approach, the amount of lower income housing constructed will be a function of the market demand that exists. At this point, and since 1983, market demand in New Jersey has been unusually strong. This is the result of a host of factors, most notably (a) lower interest rates; (b) massive pent-up demand from the preceding period, during which period little housing was built; and (c) strong and sustained economic growth throughout most of New Jersey. The explosion of developer-initiated Mount Laurel cases that followed the 1983 Mount Laurel II decision was a reflection of these factors; if the decision had come in 1980, for example, it is unlikely that more than a trickle of lawsuits would have been initiated by developers during the following two years.

16. It is unlikely that these exceptional market conditions will continue indefinitely. The American economy, and the housing market within it, are notoriously cyclical. There is close to a consensus of economists that the economic growth of the 1983-1985 period cannot be indefinitely sustained, and that interest rates are likely to begin to rise again in the future, for a variety of reasons, including massive Federal deficits now being incurred. The implications of these trends are that two to three years from now the market environment for development of housing in New Jersey is likely to be substantially changed, and that to the extent that it is changed, the change will be for the worse. Economic growth may be substantially less, interest rates may be substantially higher, and the pent-up demand that now exists may have

been substantially eroded by the efforts of other builders (many of whom are not subject to setbacks) not stymied by transfer motions.

17. A further consideration, which compounds these effects, is the fact that available infrastructure (particularly sewerage treatment capacity) is often very limited. There is a strong possibility, even a likelihood, that within the next two to three years in many communities there will no longer be sewerage treatment capacity available to prospective developers. Such capacity as exists today will have been fully utilized by the non-residential development and the non-Mount Laurel residential development that will take place between then and now.

18. As a result of these factors, if projects now being proposed are forced to suffer a two to three year delay, it is likely that (a) many projects will not be able to go forward at all at the end of that period; and (b) of those projects which could go forward in some fashion, the economic circumstances will have become more adverse, therefore threatening the provision of the amount of lower income housing now proposed. The overall effect of delays resulting from the granting of transfer motions on the provision of lower income housing in those communities is likely to be overwhelming; indeed, it could come close to completely nullifying the builder's remedy provisions set forth in the Mount Laurel II decision.

19. These last points are of significance to both developers and public interest or low income plaintiffs. A further effect of delay of particular concern to the latter group is the risk that

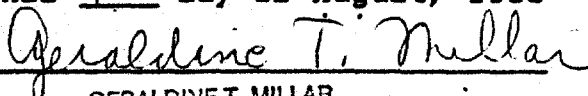
sites available and vacant today, which would be suitable and desirable for lower income housing development (either through set-asides or otherwise), are likely to be utilized for other purposes during the period of delay. The availability of desirable sites for lower income housing, which is already limited in many communities involved in Mount Laurel litigation, will be further constrained after two, three, or more years of delay.

20. In conclusion, it is my opinion that the effects of the fair share language of the Act, either separately or in conjunction with the extensive delays necessarily resulting from the procedures following a transfer of a case to the jurisdiction of the Council, will result in a drastic reduction in the number of lower income units that will be produced, both in individual municipalities and statewide, as well as substantial and unjustified delay in the provision of even that reduced number. Whatever the effects of granting a transfer motion may be on a particular developer, I believe that to grant such motions would have a disastrous effect on the interests of New Jersey's lower income population in need of housing, the population whose needs were so clearly addressed in the Mount Laurel decision. Whatever the meaning of "manifest injustice" may be in the strict legal sense, I believe that the above effects clearly represent a manifest injustice to this population by any reasonable definition of the term.


Alan Mallach, AICP

Sworn to and subscribed before

me this 12th day of August, 1985



GERALDINE T. MILLAR
Notary Public of New Jersey
My Commission Expires Aug. 11, 1987

AN ANALYSIS OF SECTION 7 C(1) OF THE FAIR HOUSING ACT PROVIDING FOR THE DETERMINATION OF HOUSING CREDITS AGAINST MUNICIPAL FAIR SHARE ALLOCATIONS

Prepared by Alan Mallach, AICP

In July 1985, the Fair Housing Act was enacted into law by the New Jersey Legislature, and signed by the governor. This act provides generally for the future implementation of what is known as the Mount Laurel doctrine through administrative machinery, including the determination of fair share obligations for New Jersey municipalities. For the most part, the provisions governing the determination of fair share are couched in broad and general language, with substantial administrative discretion granted by the act to the Council on Affordable Housing established by the act, as well as to local government¹. The act does, however, provide explicitly for municipalities to receive one particular clearly-defined credit against the municipal fair share, in Section 7 c(1) of the act, which is to be calculated as follows:

Municipal fair share shall be determined after crediting on a one to one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households.

The language of this section makes clear that, while subsidized housing is to be included in this credit provision, units eligible for credit are not to be limited to subsidized housing. In order to be able to estimate the potential magnitude of the credit made possible by the above provision, some definition is necessary, which is provided elsewhere in the act, in Section 4:

c. "Low Income Housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50% or less of the median gross household income for households of the same size within the housing region in which the housing is located.

The definition for "moderate income" is identical, except that the income range is specified to be 50% to 80% of the area median income. Thus, a unit would clearly meet the standard of Sec. 7

¹Contrary to some impressions that have arisen, the Council does not determine the municipal fair share allocations. The Council determines the regions and total need figures to be used, and then adopts "criteria and guidelines" on the basis of which each municipality determines its fair share. Thus, depending on the degree of specificity of those guidelines, municipalities may retain broad discretion to determine their own fair share allocations.

c(1) if it is:

1. Of adequate standard, which can reasonably be interpreted as meaning (on the basis of the most generally utilized definition) that it is neither substandard nor overcrowded.

2. Affordable, meaning that the household is not spending an excessive amount for shelter.

3. Occupied or reserved for occupancy² by a household falling within the above income definition.

This definition clearly includes a substantial part of New Jersey's housing stock. Roughly 40% of New Jersey's households are of low and moderate income, and the great majority of them live in physically sound housing. While the number of units occupied by lower income households which also meets the affordability standard is substantially smaller, it is still a substantial number.

In order to estimate the magnitude of the credit, first at a statewide level, then for a representative region, and then for selected municipalities, it is necessary to turn to 1980 Census data. Although a literal interpretation of the language of the act would suggest that a showing be made that the units are affordable and occupied by lower income households now; i.e., in 1985, no data more recent than the 1980 Census is available³. For purposes of estimation, therefore, the Census appears to be a reasonable source. The 1980 Census [STF-3, Part XI, Tables 30 and 31] provide a cross-tabulation of household income by percentage of income for shelter, for owners and renters, distributed on the basis of the following value ranges:

INCOME	% OF INCOME FOR SHELTER
\$0 - \$4999	under 20%
\$5000 - \$9999	20% - 24%
\$10000 - \$14999	25% - 34%
\$15000 - \$19999	35% and over
\$20000 and over	[not computed]

In order to estimate the number of lower income households, and the number paying no more than an affordable amount for shelter,

2/We have focused in this discussion only on occupied lower income units, since the number of such units reserved for occupancy but vacant is likely to be negligible.

3/There is an open question whether, at such time that the Council establishes guidelines for this matter, they will accept a showing under this section based solely on 1980 Census data, or whether they will require a more up-to-date study to be made by the municipality.

we have made the following assumptions:

1. Since in 1980, the median household income in New Jersey was \$19,800, we have used \$10,000 as the cut-off for the low income population, and \$16,000 as the cut-off for the moderate income population. Wherever we have interpolated within ranges, we have assumed that households are evenly distributed throughout the range.

2. We have assumed, for both owners and renters, that a unit in which the household spends under 30% of gross income for housing costs is considered affordable. Again, we have assumed that households are evenly distributed within each range.

3. We have assumed that the households listed in the Census tables as "not computed" (n.c.) are evenly distributed among the value ranges within the category in which they are found.

Having determined the total number of lower income households living in housing considered affordable, it was necessary to make an adjustment to reflect the fact that some of these units would be physically substandard or overcrowded; we have assumed, in the absence of a more detailed analysis, that half of all substandard and overcrowded units occupied by lower income households are also affordable by the definition given earlier. This is based on the proposition that, since the substandard units are likely to be less expensive on the average than sound units, a moderately larger percentage of substandard than of sound units will be found to be "affordable" to lower income households. In this analysis, we have used the total of deficient housing established by the Rutgers Center for Urban Policy Research/4. This figure was subtracted from the total number of affordable units occupied by lower income households obtained from the Census data analysis in order to determine the number of potential fair share credits.

1. STATEWIDE ANALYSIS

Table 1 on the following page presents the outcome of the analysis for the State of New Jersey as a whole, using the assumptions cited above. It will be noted that, although low income households make up the great majority of the total lower income population, moderate income households make up the great majority (nearly 70%) of the households in this "credit" pool. The significance of the number obtained in Table 1, however, is that it is larger than the total universe of fair share housing need, as determined either through the methodology used by the Center for Urban Policy Research, or that used by the court in the Warren decision. These figures, and the comparison with the pool of "credits" is given in Table 2. Note that we have used the CUPR

4/Mount Laurel II: Challenge and Delivery of Low-Cost Housing, p. 115.

figure for present housing need in all cases/5.

 TABLE 1: ANALYSIS OF POTENTIAL FAIR SHARE CREDITS BASED ON CENSUS DATA ON AFFORDABILITY BY HOUSEHOLD INCOME - STATE OF NEW JERSEY

1. DETERMINATION OF AFFORDABLE UNITS

% OF INCOME FOR SHELTER:	RENTER		OWNER		TOTAL
	LOW	MODERATE	LOW	MODERATE	
< 20%	21219	48595	10416	50104	
20-24%	24747	49151	13911	27315	
25-34%	54363	69981	32975	37946	
35% +	246459	29305	103879	37380	
n.c.	28201	6718	6211	0	

Collapsed value ranges (without n.c. adjustment):

< 30%	73147	132737	40815	96392
30% +	273640	64295	120366	56353

Number of affordable units after n.c. adjustment:

< 30%	79072	137250	42386	96392
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2. DETERMINATION OF POTENTIAL NUMBER OF FAIR SHARE CREDITS

Total number of affordable units occupied by lower income households	355,100
[less estimated number of substandard and overcrowded affordable units]	[60,080]
POTENTIAL FAIR SHARE CREDITS AVAILABLE	<u>295,020</u>

5/The reason for this choice is that it appears at this point that the Mount Laurel courts have determined that with regard to one aspect of the procedure by which present need is determined; that is, the determination of the percentage of substandard units which are occupied by lower income households, the CUPR methodology is more reliable than that methodology developed by the Consensus Group, and subsequently embodied in the Warren decision.

 TABLE 2: COMPARISON OF POTENTIAL FAIR SHARE CREDITS WITH TOTAL
 NEED TO BE ALLOCATED

1. CUPR NEED DETERMINATION/GROSS HOUSING NEED

Present need (from p. 115)	120,100
Prospective need (from p. 126)	133,981
	<u>254,081</u>
less potential fair share credits	[295,020]
NET FAIR SHARE TO BE ALLOCATED	[40,939]

2. CUPR NEED DETERMINATION/HOUSING NEED TO BE ALLOCATED
(gross need less need meet through private market without assistance; see p. 316)

Present need not housed	99,166
Prospective need not housed	118,561
	<u>217,727</u>
less potential fair share credits	[295,020]
NET FAIR SHARE TO BE ALLOCATED	[77,293]

2. WARREN NEED DETERMINATION

Present need	120,100
Prospective need	158,708
	<u>278,808</u>
less potential fair share credits	[295,020]
NET FAIR SHARE TO BE ALLOCATED	[16,212]

Under all three alternative approaches, the potential pool of credits exceeds the total need to be allocated. Upon reflection, this is not surprising. The statutory language of Sec. 7 c(1) provides, in essence, for credit to be taken on the basis of households and units in place. The need allocation, under all methodologies in use, is based in part on substandard and overcrowded housing and in part on future household increment. These factors have only the most general relationship with one another, and it is largely attributable to chance or coincidence that the two totals are as close as they are. If, for example, affordable units as a percentage of all units occupied by lower income households were even slightly higher, the number of potential credits, and thus the disparity between credits and need, would be substantially greater.

The excess of potential fair share credits over need to be

allocated will not necessarily recur in all, or even in most, municipalities. Although there is a modest (although tangential) relationship between the factors that determine this credit, and housing need generally, the relationship between the factors that determine a municipality's potential "credits" and its fair share allocation is nonexistent. Thus, in some municipalities the potential "credits" will vastly exceed the fair share, while in others they will be only a modest percentage of the fair share allocation. This statement should not be interpreted to suggest that in some cases the credit derived from Sec. 7 c(1) is "reasonable"; it is clearly nothing of the kind, even where its practical implications may not be substantial.

2. REGIONAL ANALYSIS

The same methodology can be applied to housing regions within the state. Indeed, the language of the Fair Housing Act requires this to be done, in some fashion, as stated in Sec. 14 (a) of the act:

....The Council shall review the petition and shall issue a substantive certification if it shall find that:

a. The municipality's fair share plan is consistent with the rules and criteria adopted by the council and not inconsistent with achievement of the low and moderate income housing needs of the region as adjusted pursuant to the council's criteria and guidelines adopted pursuant to subsection c. of section 7 of this act.....

The specific "credit" discussed in this analysis is clearly included within the adjustment specified in this paragraph. While the precise manner in which the council will choose to make such adjustments is left to that body's discretion, it is at least arguable that the paragraph calls for the regional need to be reduced by the amount of the "credit" before transmission to the municipalities for purposes of fair share allocation.

Should that or a similar interpretation prevail, the effect on the region in which Morris County municipalities are likely to be included would be dramatic. To assess the potential effect, we have calculated the potential "credit" and its relationship to housing need for the Newark PMSA, an area which contains Essex, Morris, Sussex and Union Counties/6. Table 3, presenting this analysis, is given on the following page. In the region created by

6/Sec. 4(b) of the act provides that the regions to be used by the council must (a) contain no less than two and no more than four counties; and (b) constitute to the greatest extent practicable the PMSAs defined by the Census Bureau. Thus, it is highly likely that Morris County will be eventually defined by the council to be in the Newark PMSA.

by the Newark PMSA/7, as the table indicates, the potential credits also exceed the regional need, by a far greater extent in proportionate terms than was the case with the statewide figures. This suggests the possibility of an utterly absurd outcome; namely, that on the basis of a straightforward interpretation of the act, the council could "logically" determine that there was no unmet housing need to be allocated within the Newark PMSA.

 TABLE 3: DETERMINATION OF POTENTIAL FAIR SHARE CREDITS UNDER SEC. 7 c(1) FOR NEWARK PMSA AND COMPARISON WITH REGIONAL HOUSING NEED

1. DETERMINATION OF POTENTIAL CREDITS AVAILABLE

	\$0 - \$9999	\$10000 - \$15999	TOTAL
Number of affordable units (housing cost < 30% of gross income) after n.c. adjustments:			
Essex	20478	30624	51102
Morris	1964	12701	14665
Sussex	890	3164	4054
Union	5985	17054	23039
			92860
			[less 50% of deficient housing units in region] [16720]
			Potential fair share credits available <u>76140</u>

2. COMPARISON OF POTENTIAL CREDITS WITH REGIONAL NEED

	CUPR/GROSS HOUSING NEED	CUPR/TO BE ALLOCATED	WARREN HOUSING NEED (ADJUSTED)
Present need	33440	26551	33440
Prospective need	8669	5223	23659
TOTAL REGIONAL NEED	42109	31774	57099
less credits	[76140]	[76140]	[76140]
NET REGIONAL NEED TO BE ALLOCATED	[34031]	[44366]	[19041]

7/The analysis indicates that the median household income for the PMSA in 1980 was approximately \$20,000, so that we have used the ranges of \$0-\$9999 as equivalent to low income, and \$10000-\$16000 as equivalent to moderate income, as in the statewide analysis.

3. MUNICIPAL ANALYSIS

Using the same methodology as shown above with regard to the State of New Jersey as a whole, we have computed the fair share credits potentially available to Washington and Denville Townships in Morris County. These totals are then compared with the fair share allocations for each township that have already been established through the litigation process. Table 4 for Washington Township is immediately below, while Table 5 for Denville is given on the following page.

 TABLE 4: DETERMINATION OF POTENTIAL FAIR SHARE CREDITS FOR WASHINGTON TOWNSHIP [MORRIS COUNTY] AND COMPARISON WITH FAIR SHARE ALLOCATION

	\$0 - \$9999	\$10000 - \$16000	TOTAL
1. households by % of household income for housing costs:			
< 20%	0	56	
20% - 24%	0	60	
25% - 34%	41	112	
35% +	189	80	
n.c.	7	10	
2. Collapsed value ranges (without n.c. adjustment):			
< 30%	21	172	
30% +	209	136	
3. Number of affordable units after n.c. adjustment:			
< 30%	22	179	201
			[less 50% of indigenous housing need]/* [52]
			Potential fair share credits available 149
			Fair share allocation as determined by Court [227]
			<u>NET MUNICIPAL FAIR SHARE OBLIGATION 78</u>

*Indigenous need determined by multiplying total deficient units by .673 (CUPR percentage of deficient units for Region II occupied by lower income households, p. 142).

 The effect of the credit provision on Washington Township is to eliminate approximately 2/3 of the court-determined fair share obligation of the municipality. Since Washington Township would not be precluded from making further adjustments under the various provisions of Sec. 7(c) of the act, it might well be able to argue

under the provisions of the act that it has no fair share obligation at all.

 TABLE 5: DETERMINATION OF POTENTIAL FAIR SHARE CREDITS FOR DENVILLE TOWNSHIP AND COMPARISON WITH FAIR SHARE ALLOCATION

	\$0 - \$9999	\$10000 - \$16000	TOTAL
1. Households by % of household income for housing costs			
< 20%	15	145	
20% - 24%	15	63	
25% - 34%	54	145	
35% +	336	120	
n.c.	12	16	
2. Collapsed value ranges (without n.c. adjustment):			
< 30 %	57	281	
30% +	363	192	
3. Number of affordable units after n.c. adjustment			
< 30%	59	291	350
			[less 50% of indigenous housing need]/* [46]
			Potential fair share credits available 304
			Fair share allocation as determined by Court/** 883
			<u>NET MUNICIPAL FAIR SHARE OBLIGATION 579</u>

*Indigenous need determined by multiplying deficient housing total by .673 (see note to Table 4).

**Credit for 41 units of rehabilitation has already been subtracted from this figure.

 While the effect of the "credit" on Denville is more modest, in that it only removes slightly more than 1/3 of the fair share allocation, it is still substantial.

It is extremely doubtful that the provisions of Sec. 7 c(1), as they have been described in this analysis can be reconciled in any rational fashion with the letter or intent of the Mount Laurel decision. In this respect, a noteworthy feature of these "credits" is that the overwhelming majority of units for which both Denville and Washington Townships would get credit under this approach are of a particular nature: owner-occupied units, occupied by a moderate income household. Such units represent nearly 90% of the

units for which Denville may receive credits, and roughly 80% of Washington Township's credits. These units appear in Census data as affordable, it can reasonably be assumed, because they were bought many years ago, at far lower prices, and with mortgages at interest rates far lower than those prevailing today⁸. Those units, when they may next come onto the market, will not be affordable by either low or moderate income households. Thus, bona fide housing needs may end up being disregarded or excluded from consideration, on the basis of a historical artifact bearing no relationship to the meeting of today's needs.

In conclusion, the implications of the provisions of Sec. 7 c(1) of the Fair Housing Act, as well as many other features of the act not discussed in this analysis, are worrisome in the extreme for those who hope that the Fair Housing Act will result in a fair process of balancing municipal interests with those of the lower income population.

⁸In many cases, furthermore, the affordability may be a function of the mortgage having been paid off already, and the unit being owned free and clear.