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# **SUBURBIA**

*The American Dream and Dilemma*

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EDITED BY PHILIP C. DOLCE

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posed to requirements that assistance be largely limited to ghetto areas. Ghettos were seen as conditions of constraint. Removing the constraint on locational opportunity by affording minorities choice of location throughout a metropolitan region including the suburbs would terminate the ghetto condition of an area.

The agencies organized to open the suburbs to minorities have pursued activities that have included research, organization, and administrative and legal action. The research has focused on demonstrating the existence of suburban exclusion and on describing new patterns of "inclusionary" development. Organizational work has aimed to create an enlarged group of advocates of open suburbs. The New Jersey Housing and Land Use Coalition and the Connecticut Coalition for Open Suburbs represent the product of organizing efforts. Important as educational and organizational activities are, by far the most decisive component of the open-suburbs movement has been that work which tested discriminatory suburban zoning in the courts. It has been the feeling of those who have been in the movement to open the suburbs that litigation was the only means that could successfully bring about a change in suburban zoning practices. It is still generally believed that remedial local or state legislation will not be forthcoming in any meaningful sense without the pressure of a judicial mandate for elimination of discriminatory zoning.

## THE MOUNT LAUREL DECISION

We conclude that every such municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low- and moderate-income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefor. These obligations must be met unless the particular municipality can sustain the heavy burden of demonstrating peculiar circumstances which dictate that it should not be required so to do.

With this powerful statement of the obligation of municipalities to meet the housing needs of low- and moderate-income persons, the New Jersey Supreme Court (the highest court in that state) in its decision in the case of *Southern Burlington County NAACP et al. v. Township of Mount Laurel* (hereinafter referred to as the Mount Laurel case) has handed down the most far-reaching opinion on exclusionary zoning yet evidenced in years of litigation on this issue.

Mount Laurel is a developing community characterized by open farmland. However, it is crisscrossed by major highways and has become the home of a number of large industrial plants. Nearly 30 per cent of the Township's land is zoned for industry. The residential land area has been zoned to permit only single-family detached dwellings. Mount Laurel's residential areas, therefore, have an almost all-white complexion even though its population grew from 2,817 in 1950 to 11,221 in 1970 and the Township lies adjacent to the city of Camden which has a primarily black and Puerto Rican population. In general, Mount Laurel's ordinance requirements are characteristic of many suburban communities surrounding major metropolitan centers which, as the Court stated, "realistically allow only homes within the financial reach of persons of at least middle income."

The court recognized many of the problems inherent in exclusionary practices which prevail in suburban America. It found that specific regulations in Mount Laurel's zoning ordinance were "presumptively contrary to the general welfare and outside the intended scope of the zoning power." Those zoning measures discussed were Mount Laurel's exclusion of all types of dwelling units except single-family detached houses, bedroom restrictions, minimum-lot area, lot frontage, building size, and large amounts of land zoned for industrial and related uses. Each of these was discussed by the Court in terms of its restrictive effect on low- and moderate-income households.

The Court reached its decision under the state constitution and did not consider federal constitutional questions. None-

theless, the Court stated that all enactments of the state's police power, which provides for land-use regulation, "must conform to the basic state constitutional requirements of substantive due process and equal protection of the laws . . . the requirements of which may be more demanding than those of the federal Constitution." The Court also stated "it is required that, affirmatively, a zoning regulation, like any police power enactment, must promote public health, safety, morals or the general welfare." The basic importance of housing and local regulations restricting its availability to substantial segments of the population falls within matters of constitutional dimension. The Court noted that "if a zoning regulation violates the enabling act with respect to the general welfare, it is also theoretically invalid under the state constitution."

In discussing the general welfare, the Court recognized that it is the municipality's responsibility to make provision for low- and moderate-income housing. The decision stressed a "nonlocal approach" in cases of zoning where there is broad public benefit as distinct from purely parochial interest. The Court stated that:

It is plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation. Further the universal and constant need for such housing is so important and of such broad public interest that the general welfare which developing municipalities like Mount Laurel must consider extends beyond their boundaries and cannot be parochially confined to the claimed good of the particular municipality. It has to follow that, broadly speaking, the presumptive obligation arises for each such municipality affirmatively to plan and provide for an appropriate variety and choice of housing, including, of course, low- and moderate-cost housing, to meet the needs, desires, and resources of all categories of people who may desire to live within its boundaries. Negatively, it may not adopt regulations or policies which thwart or preclude that opportunity.

The Court clearly recognized the importance of a well-defined regional plan to guide the development and the provi-



sion of housing opportunities for citizens throughout the region. The Court discussed the definition of a region, stating that the composition will vary from situation to situation but that confinement to a county appears unrealistic. Restriction to the boundaries of the state might be practical, the court stated, but a municipality may not disregard housing needs of persons who commute to another state. Nonetheless for Mount Laurel, the Court defined the region as those areas "within a semicircle having a radius of 20 miles or so from the heart of Camden City." The Court recommended specific zoning changes in the Mount Laurel decision. These included:

permitting multifamily housing, without bedroom or similar restrictions,

permitting small dwellings on very small lots,

permitting low-cost housing of other types,

permitting high-density zoning without artificial and unjustifiable minimum requirements as to lot size, building size, and the like,

permitting adequate housing within the means of employees of industry and commerce for which the municipality has zoned,

permitting within allowed planned-unit developments a reasonable amount of low- and moderate-income housing in its residential mix, and,

permitting an amount of land for industrial and commercial purposes reasonably related to the present and future potential for such purposes.

The Court proceeded to discuss the reasons put forth by Mount Laurel to justify its zoning provisions and in doing so made a strong statement against fiscal zoning. A developing municipality may properly zone for ratables to create a better economic balance for itself, according to the Court, provided that it is "done reasonably as part of and in furtherance of a

legitimate comprehensive plan for the zoning of the entire municipality." But the Court invalidated municipal exclusion by zoning out types of housing and kinds of people for that same local financial end. The Court stated: "We have no hesitancy in now saying, and do so emphatically, that, considering the basic importance of the opportunity for appropriate housing for all classes of our citizenry, no municipality may exclude or limit classes of our citizenry, no municipality may exclude or limit classes of housing for that reason or purpose." The Court fully recognized the burden on municipalities to meet municipal costs but stated that relief from the consequences of our tax system will have to be furnished by other branches of government. "It cannot legitimately be accomplished by restricting types of housing through the zoning process in developing municipalities." In other words, communities such as Mount Laurel must zone primarily for the living welfare of people and not for the benefit of the local tax rate.

Conceding that environmental factors were important, the Court stated that "only a relatively small portion of a developing municipality will be involved, for, to have a valid effect, the danger and impact must be substantial and very real . . . not simply a makeweight to support exclusionary housing measures or preclude growth—and the regulation adopted must be only that reasonably necessary for public protection of a vital interest." The lack of water and sewer facilities in Mount Laurel, where land is amenable to utility installations, was not sufficient excuse for limiting housing to single-family dwellings on large lots, according to the Court. The Mount Laurel case will affect other developing communities in New Jersey. The Court deliberately stated that this decision is applicable to other municipalities which are:

. . . of sizable land area outside the central cities and older built-up suburbs of our North and South metropolitan areas (and surrounding some of the smaller cities outside those areas as well) which, like Mount Laurel, have substantially shed rural characteristics and have undergone great population increase . . . but still are not completely developed and remain in the path of



inevitable future residential, commercial, and industrial demand and growth.

The Mount Laurel decision is the most encouraging sign to date that exclusionary suburban zoning practices are being recognized as discriminatory. It has given full support to those who have claimed that suburban growth policies have been misapplied to benefit the fiscal base of the community and the families privileged to live within its borders. Soon after the Mount Laurel decision was delivered, groups in New York and Connecticut announced plans to challenge exclusionary suburban practices in their state court systems. No doubt, similar court action will commence in other states as well. The Mount Laurel decision exemplifies the fact that the judiciary is still far more willing than state and local governments to solve this and other civil rights issues.

### THE BALANCED COMMUNITY: AN IMPROVED LIFE-STYLE

Land becomes an even more critical resource as metropolitan regions become more involved with concepts of large-scale developments and residential communities with a mixture of housing types and varied residents. As land-use controls begin to reflect concern for low- and moderate-income housing development, such housing begins to play a more integral part in the future development of metropolitan areas. A balanced community occurs when in the residential portion of a community or development, a variety of housing types and prices permit a socioeconomic and racial mix of residents to live there. The degree to which the balanced community should be the subject of public regulations has received considerable debate. Experts have concluded that in no case should the unresolved legal questions focusing on the balanced community justify denying access to housing. Nonetheless, the degree to which regulations should induce the balanced communities is unclear. At any rate, a variety of zoning provisions are appearing which encourage, if not