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Exclusionary Zoning: An Appraisal of Residential Restrictive Zoning

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EXCLUSIONARY ZONING: AN APPRAISAL OF RESIDENTIAL RESTRICTIVE ZONING—*South Burlington N.A.A.C.P. v. Mount Laural Township*, 67 N.J. 151, 336 A.2d 713 (1975).

Mount Laural Township, New Jersey, is a relatively small suburban community located near the metropolitan area of Camden, New Jersey and just ten miles from Philadelphia. Despite this close proximity to these densely populated urban centers, Mount Laural has managed to avoid the crushing urban rush to this now mainly residential community. The somewhat sobering decision of *South Burlington N.A.A.C.P. v. Township of Mount Laural*[1] awakened this suburban society to its metropolitan surroundings. In the *Mount Laural* decision, the Supreme Court of New Jersey dealt with the issue of whether a developing municipality[2] may validly, by a system of land use regulations, make it physically and economically impossible for those of low and moderate income to share in the suburban life.

In a forceful opinion Justice Hall, writing for a unanimous court, invalidated a huge portion of Mount Laural's zoning scheme.[3] He chastised that community for its "selfish and parochial interests" and for its failure to be concerned with its neighbors and their housing problems.[4] He went on to hold that the municipality had an affirmative burden to correct its zoning deficiencies by appropriate amendments to its zoning plan.[5] These amendments were to be in the form of a comprehensive scheme, including the entire gambit of housing needs and community services.[6]

The focus of this note will be on the "exclusionary zoning"[7]

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1. 67 N.J. 151, 336 A.2d 713 (1975).

2. In 1950, Mount Laural Township had an estimated population of approximately 2,800 residents. This was only a very slight increase over the preceding decade. By 1960, however, the population had almost doubled to 5,200, and by 1970 that number again doubled to just over 11,000. 67 N.J. at 161, 336 A.2d at 718.

3. The trial court had totally invalidated the township's zoning scheme. 67 N.J. at 157, 336 A.2d at 716. The Supreme Court, however, somewhat modified this decision by allowing the municipality a reasonable amount of time to implement a plan without judicial scrutiny. 67 N.J. at 191, 336 A.2d at 734.

4. 67 N.J. at 171, 336 A.2d at 723. Zoning ordinances which restrict new construction to single family dwellings only are a rather common practice in New Jersey. In rare instances where multi-family dwellings are allowed their use has been made available through variances rather than as amendments to a comprehensive plan. *See* LAND USE REGULATIONS, THE RESIDENTIAL LAND SUPPLY (April 1971) 10-13; Williams & Norman, *Exclusionary Land Use Controls: The Case of North-Eastern New Jersey*, 22 SYRACUSE L. REV. 475 (1971).

5. 67 N.J. at 191, 336 A.2d at 734; see note 3 *supra*.

6. 67 N.J. at 191, 336 A.2d at 734.

7. Exclusionary zoning is a restrictive device, grounded in the concept of promoting health and welfare, that excludes certain lawful or permissible land uses within a township or municipality because of the unfavorable impact such uses will have upon the community's

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policy of Mount Laural Township and the ramifications this decision will have on the rest of suburban New Jersey. The problems discussed and the solutions offered in this note appear to have broad viability for resolving the exclusionary zoning dilemma regardless of the municipality jurisdiction involved.

Facts

Mount Laural is a partially rural township whose area is approximately 22 square miles (14,000 acres) on the western edge of Burlington County, New Jersey. It was a rapidly growing community of outsiders[8] from the nearby central cities and older suburban areas. City dwellers began their exodus to the then developing industrial community in the early 1950's. They were drawn by reason of the recent growth in the employment opportunities and were pushed by the rapidly deteriorating conditions of urban life.[9] In 1964 the ordinance at issue in this case was adopted by Mount Laural. This community, in an attempt to economically discriminate against a substantial segment of the area's population, amended an earlier ordinance to exclude all but residential development.[10]

The plaintiffs,[11] objecting to this very limited developmental housing scheme alleged that Mount Laural's system of land use regulation was unlawful because it excluded low and moderate incomed families from living within its confines. The New Jersey Su-

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economic base. Such restrictions may be in terms of a minimum lot size requirement, or minimum floor space. Becker, *The Police Power and Minimum Lot Size Zoning*, 1969 WASH. U.L.Q. 263; Nolan & Horack, *How Small A House? Zoning For Minimum Space Requirements*, 67 HARV. L. REV. 967 (1954).

8. See note 2 *supra*.

9. 67 N.J. at 161-62, 336 A.2d at 718.

10. *Id.* at 162, 336 A.2d at 718. Under this 1964 ordinance approximately 30% of the township was zoned industrial (essential light industrial), a very small portion was zoned retail commercial with the balance of the township, approximately 70% being zoned in four categories of residential use. In those residential areas only single family dwellings were permitted. Attached townhouses, apartments and mobile homes were not allowed anywhere in the township.

11. Southern Burlington County N.A.A.C.P. was the named plaintiff in the suit, and they represented the interests of a minority group of poor, black and Hispanic people. Some were residents of a deteriorating section of Mount Laural, and others were described as those who sought adequate housing in the township. Standing was granted in favor of the residents, and the trial court found it unnecessary to rule on the standing of the non-residents. 119 N.J. Super. 164, 166, 290 A.2d 465 (L. Div. 1972).

Interestingly, not only did the New Jersey Supreme Court affirm the standing question but indicated a broader category than those plaintiffs' named were affected by the zoning plan. They referred to the elderly, single persons and large growing families who are not necessarily in the poverty class but who were still unable to afford the housing permitted by the township. 67 N.J. at 159, 336 A.2d at 717.

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preme Court decided the question in favor of the plaintiffs resting its decision on article I paragraph 1 of the New Jersey state constitution.[12] The township was granted a reasonable amount of time to rectify its zoning inequities without judicial supervision but was cautioned to keep in mind the responsibility to accept its "fair share" of the regional need for low and moderate income housing in amending the ordinance.[13]

Case Law Developed

In order to understand the full significance of the *Mount Laural* decision and its justification for overruling two decades of zoning development in New Jersey a brief explanation of that state's prior case law is essential.

The case of *Lionshead Lake, Inc. v. Wayne Township*[14] is perhaps the beginning of the judicial imprimatur for economic zoning regulations. In this decision the New Jersey Supreme Court, in sustaining an ordinance which required houses to be of a certain size, held that "there are minimums in housing below which one may not go without risk of impairing the health of those who dwell within."[15] The court concluded that there is, indeed, a relationship between a minimum floor plan requirement and the authority to zone for public health safety and welfare.[16] While this ordinance is arguably unoffensive on its face, in actuality it is economically discriminatory because it insists on a minimum dimensioned dwelling. In essence, the court ratified a system of exclusionary zoning which has enabled suburban New Jersey to successfully zone out undesirable social conditions relying on economic justifications.[17]

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12. 1. Natural and unalienable rights

1. All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

13. 67 N.J. at 192, 336 A.2d at 734.

14. 10 N.J. 165, 89 A.2d 693 (1952), *appeal dismissed*, 344 U.S. 919 (1953).

In order to protect against a certain influx of urban dwellers from the northern New Jersey urban center and New York City the township enacted a minimum floor space requirement for newly constructed residential units. The qualifications guaranteed that the houses would be of a relatively high fixed price. *But see* Brookdale Homes, Inc. v. Johnson, 123 N.J.L. 602, 606, 10 A.2d 477, 478 (Sup. Ct. 1940), *aff'd*, 126 N.J.L. 516, 19 A.2d 868 (Ct. Err. & App. 1941).

15. 10 N.J. at 173, 89 A.2d at 697.

16. *Id.* at 174, 89 A.2d at 697. The court (judicial notice) went on to hold that the purpose of the New Jersey Enabling statute is to insure the effective control of bulk and density.

17. Between 1950 and 1966 on the strength of *Lionshead* an estimated 250 municipalities enacted amended ordinances requiring minimum floor plans for any residential construc-

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This exclusionary trend[18] continued throughout the 1950's and was again confirmed by the New Jersey courts in a slightly different fashion. In *Naperkowski v. Township of Glouchester*,[19] the township successfully defended against the influx of trailers and trailer parks. The court held that a municipality should encourage the most appropriate use of the land, conserve property values and should not permit the indiscriminate use of trailers.[20]

In *Vickers v. Township Committee of Glouchester Township*,[21] the New Jersey court upheld an amendment which excluded trailers in an area where such use had been previously permissible.[22] This case is most significant, for the dissenting opinion of Justice Hall which featured the first meaningful break in a decade of land use decisions epitomized by *Lionshead*.[23] Hall addressed himself to the crux of the social issue when he assailed his brothers on the court for giving their judicial blessing to the "selfish zoning regulations which tend to have the effect of precluding people who now live in congested and undesirable city areas from obtaining housing within their means in open, attractive and healthy communities."[24]

It is crucial at this point to note that the majority opinions in these decisions appear to be in conflict with other New Jersey precedents which were decided simultaneously. These decisions espouse a regional scheme that encourages planning beyond near-

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tion. Williams & Wacks, *Segregation of Residential Areas Along Economic Lines: Lionshead Lake Revisited*, 1969 WIS. L. REV. 827, 829, n. 5.

18. It is interesting to note that until 1950 the weight of authority was against minimum lot zoning. M. ROTLEKOPF, THE LAW OF ZONING AND PLANNING (1949). This trend began to change, however, and gained validity rapidly. *See* Thompson v. City of Carrollton, 211 S.W.2d 970 (Tex. Civ. App. 1948) (900 square foot minimum held to be valid); Flower Hill Bldg. Corp. v. Village of Flower Hill, 199 N.Y. Misc. 344, 100 N.Y.S.2d 903 (Sup. Ct. 1950) (1800 square foot minimum was held to be valid).

19. 29 N.J. 481, 150 A.2d 481 (1959).

20. *Id.* at 493-94, 150 A.2d at 487. *See* Peirro v. Boxendale, 20 N.J. 17, 118 A.2d 401 (1955) (barring motels from the municipality); Fanale v. Borough of Hasbrouch Heights, 26 N.J. 320, 139 A.2d 749 (1958) (validated an ordinance requiring a minimum number of bedrooms); Fischer v. Township of Bedminster, 11 N.J. 194, 93 A.2d 378 (1952) (validated five acre minimum lot sizes).

21. 37 N.J. 232, 181 A.2d 129 (1962).

22. *Id.* at 248, 181 A.2d at 138.

23. 37 N.J. 232, 252, 181 A.2d 129, 140. Since the 1952 case of *Lionshead* there have been numerous articles critical of exclusionary zoning. Haar, *Zoning for Minimum Standards: The Wayne Township Case*, 66 HARV. L. REV. 1051 (1953); Haar, *Wayne Township: Zoning For Whom?—In Brief Reply*, 67 HARV. L. REV. 986 (1954); Nolan & Horack, *How Small A House? Zoning For Minimum Requirements*, 67 HARV. L. REV. 967 (1954); Williams & Norman, *Exclusionary Land Use Controls: The Case of North-Eastern New Jersey*, 22 SYRACUSE L. REV. 475 (1971).

24. 37 N.J. 232, 265-66, 181 A.2d 129, 147. *See* Bartke and Gage, *Mobile Homes: Zoning and Taxation*, 55 CORNELL L. REV. 491 (1970).

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sighted local objective. This regional concept[25] first appeared in New Jersey in *Duffcon Concrete Products Inc. v. Borough of Cresskill.*[26] Chief Justice Vanderbilt in upholding the validity of an ordinance which excluded heavy industry mentioned in dicta that zoning problems cannot be effectively solved within the territorial limits of a municipality.[27] Following shortly after *Duffcon* the Burough of Cresskill was again involved in zoning litigation[28] concerning the zoning responsibilities of one adjacent borough to its neighbor.[29] The New Jersey appellate court held that the nature of the entire region in which the municipality is located must be examined to obtain a broad perspective of the municipality and the region in which it is located.[30]

The *Mount Laural* decision solidified these two seemingly divergent lines of decisions into one concise case law statement.[31] Justice Hall, writing now for the majority, again reiterates his dissent in *Vickers* and faces squarely the municipal subterfuge of exclusionary ordinances as he encourages the regional solution to zoning problems and the need for varities in housing schemes.[32]

Suburban Justifications for Zoning Plans

While *Mount Laural* has brought the cause of "adequate housing and living conditions for all" a good deal closer to fruition, there are numerous and difficult problems ahead. Suburban communities have various justifications for their zoning schemes. These rationales make the analysis of exclusionary zoning more difficult and the practical implementation of *Mount Laural* theory illusive.

Perhaps the most universal and pervasive argument concerns

25. In the landmark case involving zoning, Justice Sutherland, in sustaining the constitutionality of zoning itself, indicated that there may be instances where the public interest would outweigh the interest of the individual municipality and in those cases the municipality could not stand in the way of the broader regional needs. Village of Euclid v. Amber Realty, 272 U.S. 365 (1926).

26. 1 N.J. 509, 64 A.2d 347 (1949).

27. *Id.* at 513, 64 A.2d at 350.

28. Borough of Cresskill v. Borough of Dumont, 28 N.J. Super. 26, 100 A.2d 182 (L. Div. 1953).

29. The Borough of Dumont had amended a zoning ordinance which affected a district adjacent to Cresskill, from essentially residential to a business use. Cresskill sued to test the validity of the amendment being concerned that this change in use, while technically in another jurisdiction, would have a profound effect on the property values of Cresskill's residential district. *Id.* at 29, 100 A.2d at 184.

30. *Id.* at 33, 100 A.2d at 186. While this regional concept seems to be contrary to the *Lionshead* line of cases the decisions are consistent in the one aspect in that they are decided in favor of exclusion of all but residential uses.

31. 67 N.J. at 159-180, 336 A.2d at 717-28.

32. *Id.* at 185-191, 336 A.2d at 730-34.

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the local taxing scheme.[33] New Jersey municipalities are typical of the fiscal suburban structure which requires that the local community be financially responsible for its own services, its public education and other community projects.[34] It does not seem unreasonable, then, for a municipality to argue that it must zone its acreage to its economic advantage. It then follows that communities cannot be opened to all types of development because this precludes the notion of the most productive use.[35]

In addition to these economic barriers an opponent of exclusionary zoning must face other arguments from the local town fathers. Such justifications as the protection of the "rural environment"[36] and the need for open spaces, clean air and adequate light,[37] are all couched in the familiar language of the "general welfare." Added to these is perhaps the most traditional of all zoning arguments: the necessity to have some certainty in property values.[38] These exclusionary concepts are so embodied in several decades of case law and favorable public attitude that a suburbanite accused of consciously excluding lower income families can excuse himself with an arsenal of public support, and judicial and legislative authority.[39]

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33. STERNLIEB, RESIDENTIAL DEVELOPMENT, URBAN GROWTH AND MUNICIPAL COST (1973); NEW JERSEY COUNTY AND MUNICIPAL GOVERNMENT STUDY COMMISSION, HOUSING AND SUBURBS: FISCAL AND SOCIAL IMPACT OF MULTIFAMILY DEVELOPMENT (1974); *but cf.* Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273, *cert. denied*, 414 U.S. 976 (1973).

34. The New Jersey government has historically played a relatively small role in helping municipalities finance their local services. As a result, the pressure on New Jersey municipalities and townships to zone in terms of good tax rateables is much greater than in states where the states contribution is more significant. For example, in 1969 New Jersey ranked ninth in municipal expenses among the other 49 states in the area of primary and secondary education. Their rank in per capita state aid, however, was 41st for such educational expenses. William & Norman, *Exclusionary Land Controls: The Case of North-Eastern New Jersey*, 22 SYRACUSE L. REV. 475, 477 (1971). *See generally* Heller, *The Theory of Property Taxation And Land Use Regulations*, 1974 WIS. L. REV. 751; W. NETZNER, TAX STRUCTURES AND THEIR IMPACT ON THE POOR IN FINANCING THE METROPOLIS (1970).

35. For example, if municipalities are not free to set minimum square foot requirements and are not permitted to exclude mobile home parks, property values will necessarily decrease and the tax revenues will fall with the housing market. The argument continues, if municipalities are not permitted to exclude low income housing units who is to pay for the increased demand on local services as well as the new demand on local school systems.

36. Simon v. Township of Needham, 311 Mass. 560, 42 N.E.2d 516 (1942); Dillard v. Village of North Hills, 276 App. Div. 969, 95 N.Y.S.2d 503 (2d Dep't 1950); Gignaoux v. Village of King Point, 199 N.Y. Misc. 485, 99 N.Y.S.2d 280 (Sup. Ct. 1950).

37. *Cf.* Newark Milk & Cream Co. v. Township of Parsappany-Troy Hills, 47 N.J. Super. 306, 135 A.2d 682 (L. Div. 1957); Note, 32 N.Y.U.L. REV. 1261 (1957).

38. Rockhill v. Chesterfield Township, 23 N.J. 117, 128 A.2d 473 (1957); Manfield & Sevett, Inc. v. Township of West Orange, 120 N.J.L. 145, 198 A. 225 (Sup. Ct. 1938).

39. In addition to these arguments are other problems which are not directly related to the municipality or its controls: (1) increasing building costs; (2) in conjunction with these

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Analysis of Solutions

Other urban centers have experienced the same or similar exodus to the suburbs that Mount Laural fought so hard to avoid.[40] The Philadelphia-Camden area, where the most significant litigation has transpired,[41] seems to have best dealt judicially with the exclusionary zoning concept.[42] It appears that the solutions to exclusionary zoning are as numerous as the individual problems. The one theme, however, that is constantly repeated is that the local governing structure cannot solve zoning problems in an insular fashion, for the problems are not limited to one municipality or town. In many instances the suggested solutions and those judicially imposed are violative of traditional concepts but have empirical support in terms of their workability.[43]

The following suggested solutions, if implemented conjunctively, could offer a means to end both the need and the desire to

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rising costs is the need for federal funds; (3) the local drain on housing projects in their present form. *See* Mallack, *Do Law Suits Build Housing? The Implications of Exclusionary Zoning Litigation*, 6 RUTGERS-CAMDEN L.J. 653 (1975).

40. Collura v. Arlington, 329 N.E.2d 733 (Mass. 1975) (a two-year moratorium on growth and service development held valid); Tocco v. Atlas Township, 55 Mich. App. 160, 222 N.W.2d 264 (1974) (a rezoning to exclude mobile homes held invalid); Korpf v. City of Sterling Heights, 391 Mich. 139, 215 N.W.2d 179 (1974) (exclusion of a valid use anywhere in a municipality causes a "taint" of unlawful discrimination); County Comm'n of Queen Anne's Co. v. Nules, 228 A.2d 450 (Md. Ct. App. 1967) (if primary purpose of ordinance is for a private benefit rather than public it cannot be valid); Senior v. Zoning Comm'n of Town of New Caanan, 146 Conn. 531, 153 A.2d 415 (1951) (a rezoning from minimum of two acres to four acres was held valid); State *ex rel.* Grant v. Keefaber, 114 Ohio App. 279, 181 N.E.2d 905 (1960) (two acre minimum residential held valid); Board of Supervisors of Fairfax County v. Carper, 200 Va. 653, 107 S.E.2d 390 (1959) (two acre minimum held invalid); Haneck v. County of Cook, 12 Ill. 2d 257, 146 N.E.2d 35 (1957) (five acre residential plots held valid).

41. It is interesting to note that the most significant litigation on exclusionary zoning has taken place in the Philadelphia metropolitan area. Not only Burlington County on the New Jersey side but also Bucks, Delaware and Montgomery counties adjacent to Philadelphia on the Pennsylvania side have litigated this exclusionary issue. See note 42 *infra*.

42. The Pennsylvania courts have taken the lead in the examination of exclusionary zoning and have felt no compulsion to avoid striking down ordinances which have been economically discriminatory. *See* National Land & Investment Company v. Easttown Township Bd. of Adjustors, 419 Pa. 504, 215 A.2d 597 (1965) (an ordinance which provided for large minimum acreage lots held invalid); Appeal of Gish, 437 Pa. 237, 263 A.2d 395 (1970) (ordinance excluding multifamily dwelling held invalid); Appeal of Kit Mar Builders, Inc., 439 Pa. 466, 268 A.2d 765 (1970) (ordinance requiring minimum size lots held invalid).

The Pennsylvania courts have tested the ordinances at issue by examining them in terms of whether they are exclusionary in purpose or effect. If, indeed, they are exclusionary they are presumptively invalid unless an extraordinary justification can be established by the municipality. Comment, *Exclusionary Zoning: An Overview*, 47 TULANE L. REV. 1056 (1973).

43. *See* N. GREEN & C. GREEN, LAW AND MODERATE INCOME HOUSING IN THE SUBURBS: AN ANALYSIS OF THE DAYTON OHIO REGION (1972); R. BABCOCK, THE ZONING GAME (1966); *but see* Buchell, Listoken & James, *Exclusionry Zoning: Pitfalls of the Regional Remedy*, 7 URBAN LAW 262 (1975).

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zone in an exclusionary manner. First, courts must ignore the municipality's intent, *i.e.*, whether or not it intended to exclude, and focus primarily on the effect or the purpose of the zoning.[44] Second, if a plaintiff successfully demonstrates that a developing municipality has failed to provide a variety of housing choices, there should be a presumption of invalidity and the burden should shift to the municipality to establish an authentic justification for their action or inaction.[45] Third, there must be a fundamental change in the local taxing structure, for as long as the land use control system provides financial reward for economic discrimination, it will be difficult for local governments to resist the temptation to adopt such discriminating ordinances.[46] Fourth, the suburbs should be granted a trade off, or at best an opportunity to catch their breath.[47] The suburbs might be granted the power to time growth development,[48] control access to open spaces and devise some means of apportioning the cost of local services. In return for these considerations they must accept the responsibility for some of their "fair share" of the lower income sector.[49] Finally, what appears to be the best solution is a voluntary or legislatively-imposed regional scheme.[50] There must be planning beyond the township or village lines. Such planning should consider and include population density, population movement, employment requirements and an evaluation of the existing housing stock and service requirements.[51]

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44. See note 42 *supra*. (The Pennsylvania test).

45. The *Mount Laural* decision has somewhat altered the traditional concept that zoning ordinances are presumptively valid. 67 N.J. at 180-81, 336 A.2d at 728.

46. See note 34 *supra*.

47. Williams & Wacks, *Segregation of Residential Areas Along Economic Lines: Lionshead Lake Revisited*, 1969 WIS. L. REV. 827, 847.

48. The City of Petaluma in California has just successfully concluded a lengthy court battle and their timed growth program was sustained by the United States Supreme Court. Construction Indus. Ass'n of Sonona County v. City of Petaluma, 44 U.S.L.W. 3467 (U.S. Feb. 24, 1976). For a detailed discussion of this well thought out plan, see the statement of facts in the district court opinion, Construction Indus. Ass'n of Sonona County v. City of Petaluma, 375 F. Supp. 574 (N.D. Cal. 1974) and the Court of Appeals decision, Construction Indus. Ass'n of Sonona County v. City of Petaluma, 522 F.2d 897 (9th Cir. 1975). *See* Rose, *Exclusionary Zoning and Managed Growth: Some Unresolved Issues*, 6 RUTGERS-CAMDEN L. REV. 689 (1974); Note, 6 SETON HALL L. REV. 207 (1974).

49. See note 47 *supra*.

50. *See* Comment, *"Exclusionary Zoning": A Legislative Approach*, 22 SYRACUSE L. REV. 583 (1971).

51. *See* Kelley, *Will the Housing Market Evaluation Model be the Solution to Exclusionary Zoning?* 3 REAL ESTATE L.J. 373 (1975), G. MULLER, EXCLUSIONARY ZONING (1972); Berteck & Schafer, *A Regional Housing Plan: The Miami Valley Regional Planning Commission Experience*, 1 PLANNING NOTEBOOK 1 (1971).

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Conclusion

Exclusionary zoning is a relatively new concept, for the judicial validity of zoning itself is just a half century old.[52] It is now quite obvious that urban and suburban communities are faced with an awesome task. A task that involves the hurdling of traditional concepts which have weathered several decades of litigation. Mount Laural has been one judicial step in the reexamination of these concepts. All growing communities will soon be charged with a duty to reappriase their zoning structures, for it appears to be a foregone conclusion that the "general welfare" is not served by delegating a portion of society to an inferior status regardless of the economic motivations.[53]

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52. Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926).

53. As was so aptly put in a concurring opinion in *Mount Laural* Judge Pashman stated "a homogeneous community, one exhibiting almost total similarities of taste, habit, custom and behavior is culturally dead aside from being downright boring. New and different life styles, habits and customs are the lifeblood of America." 67 N.J. 151, 221, 336 A.2d 713, 749.

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