The Persistence of Exclusionary Zoning in New Jersey

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Introduction:

Since 1975, the Mount Laurel doctrine has required that New Jersey municipalities provide their fair share of the regional need for low and moderate-income housing.[1] Yet despite this landmark decision, New Jersey is still one of the top ten most racially and economically segregated states.[2] In this paper, I will provide a working definition of exclusionary zoning in the both the economic and racial contexts. I will argue that despite the powerful efforts of the judiciary to position New Jersey's at the forefront of inclusionary land use policy, the practice of exclusionary zoning is both persistent and widespread.

In Part I of this paper, I will provide a definition of exclusionary zoning in the context of both economics and race. In Part II, I will examine the types of ordinances that municipalities use as subterfuge to create the same exclusionary effect that existed before the Mount Laurel cases. In Part III, I will argue that exclusionary zoning is not legally permissible in New Jersey under the New Jersey Fair Housing Act NJFHA. In Part IV, I will examine census data to see to what degree exclusionary zoning still exists in New Jersey, despite the Mount Laurel Doctrine, NJFHA and Council on Affordable Housing (COAH) and demonstrate that where exclusionary zoning does exist, it disproportionately impacts minorities. Finally in Part V, I will look at the practice of inclusionary zoning – and the impact that implementing these type of land use policies could have in the greater context of regional equity.

Part I: Exclusionary Zoning Defined

a. Economic Definition of Exclusionary Zoning:

Exclusionary zoning is a municipal government's use of land use controls or zoning ordinances, singly or in concert, in such a way that tends[3] to exclude people of low or moderate income from the municipality.[4] Municipalities accomplish this economic exclusion through the use zoning ordinances that limit the supply of housing, increasing its desirability and ultimately raising the price of residential access to the affected area.[5] Through this practice, municipal governments are able to accomplish two distinct but interrelated objectives: (1) they can take advantage of the benefits of regional development without having to bear the burdens of such development; and (2) they can maintain themselves as enclaves of affluence.[6] In New York, the court identified a two-part test to determine whether a municipal ordinance is exclusionary. This test looks to (1) "whether the town has provided a properly balanced and well-ordered plan for the community . . . that [ensures]. . . the present and future housing needs of all the town's residents [are]. . . met" and (2) whether the regional needs have been considered.[7] Under this flexible standard, courts in the state and throughout the country have balanced a regions housing needs against concerns such as school

overcrowding,[8] water supply crisis, air pollution,[9] budgetary and tax limitations,[10] and preservation to a communities' rural character.[11] In Pennsylvania, the courts have identified the practice exclusionary zoning by looking at "whether the challenged zoning scheme effected an exclusionary result or, alternatively, whether there was evidence of a 'primary purpose' or exclusionary intent to zone out the natural growth of population."[12] Under this standard, the courts examine whether a zoning ordinance has the impact of excluding as opposed to whether there was underlying motivation of the legislature to exclude.[13] What is central to these definitions of exclusionary zoning is the idea that a municipality can, thru its land use policy, create a situation in which the poor and near poor cannot gain entrance to the wealthy often homogenous suburbs.[14] What they ignore is the potential correlation between class and race.

Race based impact of economic exclusion:

While at first glance, exclusionary zoning appears to be predominantly centered on exclusion by class – that interpretation ignores an important and perhaps more troubling component. Although zoning ordinances cannot be enacted or enforced for the purpose of excluding persons of a certain race from a district, exclusion by race has been carried out indirectly through the exclusion of persons of low and moderate income.[15] Wealth and race in America are closely related and minorities are disproportionately affected by poverty and economic hardship.[16] Therefore, by excluding individuals on the basis of wealth, municipalities are inherently excluding racial minorities at a disproportionate rate.[17] The result is a segregated society in which minorities are often concentrated in urban poverty while whites enjoy the benefits suburban excess.[18]

Part II: The Ordinances

Now that we have a definition of exclusionary zoning, it is important to look at the types of ordinances that tend to have this exclusionary effect. Municipal governments employ a wide-range of techniques to restrict housing opportunities for lower income and in turn minority persons.[19] The most common way that municipalities exclude thru zoning is to control density, by limiting the amount of housing that can be built in a particular area.[20] Examples of these types of controls include allowing large minimum lot sizes or floor space, long frontage requirements, and wide setbacks from property lines.[21] That is not the only way that municipalities exclude however, minimum bedroom numbers also limits access to affluent suburbs.[22] In addition to controlling density, some municipalities exclude by prohibiting certain types of more affordable housing such as apartments and mobile homes all together.[23] In doing so these municipalities are ensuring that the supply of housing is low, house sizes are large, and therefore without financial resources low income and minority individuals can't gain access.[24]

These density-diminishing ordinances also have another consequence. By limiting the supply of available land for development, the cost of development increases, so that low-income housing is unlikely to be constructed unless explicit provisions are included

within the growth control plan for such uses.[25] In addition to raising the cost of construction by limiting the available land for development, municipalities commonly demand expensive developer fees for subdivision approval and administrative measures, which make the process complex and expensive, especially where third parties must be brought in as agents to facilitate the process.[26] Developers are then forced to pass this cost along to purchaser again raising the price of housing.[27] However proponents of limiting density would argue, that larger setbacks and substantial floor space requirements prevent overcrowding, excessive noise, and pollution and provide open space for recreation in turn promoting better health.[28] For these reasons, courts have consistently upheld this practice as a valid exercise of a municipality's police power.[29]

As states are becoming increasing sensitive to exclusionary practices, municipalities are increasingly turning to environmental protection as a subterfuge for exclusion. [30] As a result permanent preservation of open space has become an increasingly popular zoning alternative in the United States. Although local governments in the United States are able to protect or restrict lands from development through regulatory land-use controls and infrastructure decisions, these protections are not permanent and subject to future policy changes. As a consequence, local governments seem increasingly willing to spend public dollars to acquire land in fee simple ownership or to purchase development rights (conservation easements) on private land to protect land permanently from development.[31] This also serves to limit density and exclude low-income individuals, but unlike zoning for large lots sizes, this practice appears more facially neutral. Environmentalists and other proponents of open space ordinances argue that these ordinances maintain "the desired scenic beauty, while both avoiding unnecessary overdevelopment and provide a beneficial use to the landowner."[32] Further, they feel that by preserving open space, these ordinances actually prevent the problem of sprawl and help to preserve the environment.[33]

In more extreme cases of exclusionary zoning, municipalities have gone as far as imposing requirements regarding the outward appearance of homes within a municipality[34] and set aside large lots for luxury or recreational use.[35] These ordinances also limit the supply and type of housing making it more expensive and less accessible. Finally, in municipalities located in states where the courts have found an affirmative duty to provide affordable housing, municipalities have drafted ordinances, which while appear to comply with the fair share housing requirement but still exclude low income minorities. The primary vehicle they use to create this desired effect is age-restricted housing. Age-restrictive zoning ordinances authorize land users to live in a dwelling area, or exclude them, on the basis of their age.[36] While it is important to provide housing for seniors these ordinances allow municipality to satisfy its obligations on the proposed rules without providing any housing for younger families with children who could benefit from the education a more affluent suburb could provide.[37] More concerning it also allows municipalities to provide affordable housing without opening their borders to lower income minorities.[38] These practices alone and in concert all lead to one result. The wealthy are isolated in enclaves of suburban privilege and poor minorities are condemned to lives lived in social isolation and compounded poverty.

Part III: Why Exclusionary Zoning Violates New Jersey's Constitution:

The Mount Laurel cases are often regarded as the most influential cases for racial equality since Brown v. Board of Education. Yet despite the sweeping impact that many low income and minority individuals hoped would stem from the decision in Mt. Laurel I between 1975 and 1983, most municipalities simply refused to implement the Mount Laurel doctrine and actually provide their fair share of affordable housing.[39] Affluent communities throughout the state organized determined to overturn the controversial decision and maintain themselves as homogenous enclaves privilege separate from the perceived problems of poverty and more specifically the poor themselves.[40] In response to the decision Mount Laurel itself re-zoned three tracts of land totaling 20 acres out of 22.4 square miles (14,300 acres) for affordable housing.[41] The parcels themselves, however were undesirable and the ordinance drafted by Mount Laurel were so cost prohibitive they still served to constructively bar affordable housing from the town.[42] Plaintiff again sued stating that efforts by Mount Laurel were insufficient to comply with the court's previous decision. This led to Mount Laurel II.[43]

In the case, the New Jersey Supreme Court reaffirmed the Mount Laurel doctrine. [44] They found that while the power to zone is one delegated to municipalities, it was power that "must be exercised for the general welfare."[45] The court held that the practice of exclusionary zoning was unconstitutional, stating that

> "[m]unicipal land use regulations that conflict with the general welfare thus defined abuse the police power and are unconstitutional. In particular, those regulations that do not provide the requisite opportunity for a fair share of the region's need for low and moderate income housing conflict with the general welfare and violate the state constitutional requirements of substantive due process and equal protection"[46]

The decision created specific requirements that every New Jersey municipality provide its fair share of affordable housing, holding that

> ". . . .proof of a municipality's bona fide attempt to provide a realistic opportunity to construct its fair share of lower income housing shall no longer suffice. Satisfaction of the *Mount Laurel* obligation shall be determined solely on an objective basis: if the municipality has *in fact* provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the *Mount Laurel* obligation to satisfy the constitutional requirement; if it has not, then it has failed to satisfy it."[47]

The decision also created new ways for developers and public interest groups to ensure that municipalities actually complied with their fair share obligation. The most prominent of which was the "builder's remedy," which granted real estate developers

standing to bring litigation against a municipality to change zoning on a particular site if they can demonstrate that the municipality is not in compliance with its Mount Laurel obligations and they promise to include a 20 percent set-aside of low- and moderate-income housing as part of their development plan.[48]

Two years later in response to pressure from municipalities, frustrated with the litigation, which arose from as a result of the builder's remedy, the New Jersey legislature passed the Fair Housing Act.[49] The Act created the Council on Affordable Housing (COAH) a state agency that shielded municipalities who voluntarily devised plan to meet with their fair share requirements from further litigation.[50] It also charged COAH with reassessing the fair share requirements allocations assigned to affected communities.[51] Since the advent of the Mount Laurel doctrine and its implementation through COAH, New Jersey has created more than 60,000 units of affordable housing statewide.[52]

Yet despite a doctrine that should provide individuals of every income level and every background a choice to live in any community and attend any school district, many New Jersey residents still find themselves excluded by discriminatory zoning policies.[53] Many wealthy municipalities in New Jersey have successfully in avoided their constitutional duty to provide their "fair share" of the region's need for affordable housing. [54] Though the Mount Laurel doctrine remains the nation's strongest statewide affordable housing policy, these municipalities have made a strong and concerted effort to lower obligations required and for years avoided them all together either by not building at all or entering into Regional Contribution Agreements (RCAs), though this vehicle is no longer permissible. [55]These municipalities enlist experts and attorneys, which enable them to claim to meet their Mount Laurel obligation without actually doing anything. The result is that New Jersey has not been able to meet even the most modest projections of need in the state. [56]

Below is an illustration of what that unconstitutional behavior by wealthy municipalities means for New Jersey as a whole. The data focuses in the parts of the state with the largest minority populations and those municipalities ranked highest in terms of wealth. It illustrates the practical impact on zoning on opportunity, access, and wealth.

Part IV: The Data[57]

New Jersey as a Whole

Pop. Density per sq. mi.	Housing Density per sq. mi.	Percentage of White Residents	Percentage of Black Residents	Percentage of Hispanic Residents	Per Capita Income	Persons Below the Poverty Line
1,195.5	483.2	73.8%	14.7%	18.5%	$35,678	9.4%

New Jersey Municipalities with Largest Minority Populations

Municipalities with Largest Hispanic Populations

Municipality	Pop. Density rank in state	Pop. Density per sq. mi.	Housing density per sq. mi.	Units of Affordable Housing	Number of Hispanic Residents	Total Percentage of Hispanic Population	Per Capita Income	Percentage of pop. living below poverty level
Newark	23rd	11,458.2	4,528.1	27,906	93,746	33.8%	$17,617	26.1%
Paterson	9th	17,346.3	5,668.7	7,581	84,254	57.6%	$15,498	27.1%
Elizabeth	37th	10,144.4	3,694.7	4,011	74,353	59.4%	$19,613	17.7%
Jersey City	10th	16,736.3	7,349.1	14,899	68,256	27.6%	$32,120	16.4%
Union City	2nd	51,810.1	19,436.9	26	56,291	84.7%	$18,542	21.1%
Passaic	7th	22,180.9	6,494.2	3,008	49,557	71.0%	$14,606	29.2%
North Bergen Twp.	21st	11,838.0	4,657.8	2,230	41,569	68.4%	$20,058	11.1%
Perth Amboy	29th	10,806.8	3,521.0	2,028	39,685	78.1%	$20,744	19.9%
West New York Town	3rd	49,341.7	19,870.5	2,800	38,812	78.1%	$22,682	19.0%
Camden	42nd	8,669.6	3,178.7	7,540	36,379	47.0%	$12,950	38.4%
Dover Town	67th	6,765.5	2,154.8	534	12,598	69.4%	$21,744	9.7%
Victoria Gardens Borough	35th	10,419.2	3,879.8	————	957	62.96%	$18,340	16.3%

Guttenberg Town	1st	57,020.4	24,730.2	449	7,245	64.8%	$33,648	13.6%
East Newark	6th	23,532.1	7,765.8	————	1,477	61.29%	$22,242	12.5%
Fairview Borough	11th	16,431.1	6,112.9	360	7,558	54.6%	$23,333	15.1%
Prospect Park Borough	19th	12,347.2	4,065.2	————	3,055	52.1%	$23,444	7.8%

Municipalities with Largest Black Populations

Municipality	Pop. Density rank in state	Pop. density per sq. mi.	Housing density per sq. mi	Units of affordable housing	Number if Black Residents	Total Percentage of Black Population	Per Capita Income	Percentage of pop. living below poverty level
Newark	23rd	11,458.2	4,528.1	27,906	145,085	52.4%	$17,617	26.1%
Jersey City	10th	16,736.3	7,349.1	14,899	64,002	25.8%	$32,120	16.4%
East Orange	12th	16,377.1	7,339.5	4,506	56,887	88.5%	$21,352	19.4%
Paterson	9th	17,346.3	5,688.7	7,581	46,314	31.7%	$15,498	27.1%
Irvington Twp	8th	18,417.0	7,922.0	1,513	46,058	85.4%	$20,520	16.8%
Trenton	26th	11,102.6	4,319.2	7,789	44,160	52.0%	$17,902	25.6%
Camden	42nd	8,669.6	3,178.7	7,540	37,180	48.1%	$12,590	38.4%
Elizabeth	37th	10,144,4	3,694.7	4,011	26,343	21.1%	$19,613	17.7%

Plainfield	45th	8,269.9	2,759.8	2,088	25,006	50.2%	$23,955	19.0%
Willingboro Twp	150th	4,087.3	1,478.6	13	23,007	72.7%	$25,989	8.6%
Lawnside Borough	287th	2,091.5	833.7	132	2,616	88.83%	$25,086	12.7%
City of Orange Township	17th	13,705.7	5,558.9	2,699	21,645	71.83%	$19,816	18.1%
Salem	275th	2,196.3	1,123.6	737	3,197	62.1%	$19,346	31.4%
Roselle Borough	46th	7,953.6	2,994.7	433	11,610	55.1%	$26,611	9.5%
Hillside Township	49th	7,784.0	2,740.6	46	11,384	53.2%	$35,486	11.7%

New Jersey's Wealthiest Municipalities

Municipality	Pop. Density rating in State	Pop. Density per sq. mi.	Housing density per sq. mi.	Units of affordable housing	Number of White non-Hispanic Residents	Total Percentage of White population	Per Capita Income	Percentage of pop. living below poverty level
Tavistock	561st	19.7	27.5	0	5	100%	$86,136	O%
Upper Saddle River	328th	1,560.0	527.6	66	7,104	86.6%	$73,369	1.4%
Alpine	483rd	288.4	104.5	8	1,260	68.1%	$107,604	3.4%
Essex Fells	337th	1,496.3	536.8	————	1,998	94.6%	$94,432	0.9%
Harding	509th	192.7	80.8	31	3,613	94.1%	$109,472	7.5%
Rockleigh	437th	548.1	88.8	8	505	95.1%	$36,771	3.4%

Millburn	280th	2,161.3	762.2	————	16,154	80.2%	$84,663	1.9%
Chester Township	487th	266.8	91.8	39	7,314	93.3%	$77,787	6.2%
Mendham Township	472nd	328.4	115.4	85	5,477	93.3%	$93,011	1.7%
Tewksbury	512th	190.1	73.7	73	5,643	94.2%	$91,644	1.2%
Little Silver	274th	2,197.3	841.3	————	5,737	96.4%	$66,069	2.1%
Mountain Lakes	327th	1590.3	521.1	————	3,726	89.6%	$75,525	2.1%

Of the 16 municipalities with largest Hispanic populations all 16 rank in the top 100 most densely populated municipalities in the state, with 15 falling in the top 50. 11 of the sixteen fall in the top 25 and 7 are in the top ten. Housing density in these municipalities was also significantly above the state average. In terms of per capita income not one of the 16 municipalities met or surpassed the average for the state and all but one have a higher rate of poverty than the average. 13 of these municipalities are currently providing affordable housing. 11 of which provide more units alone than are provided in 12 wealthiest municipalities in the state.

Of the 15 municipalities with the largest black populations, 12 rank in the top 100 in terms of population density. Of those 12 all also fall in the top 50 and 6 are ranked in the top 25, with 3 falling in the top 10. Again not a single one of these municipalities has a per capita income, which meets or exceeds the state average and 14 have a poverty level that exceeds the average for the state. All 15 are currently provided units of affordable housing and 12 provide more units of affordable housing individually than are provided in the 12 wealthiest municipalities.

As for the state's 12 wealthiest municipalities, 6 fall in the top hundred least densely populated municipalities. 11 of these municipalities has a white population that is higher than the state average and 8 of them have population that are more than 90% which, significantly higher than the average. In total these 12 municipalities provide 415 units of affordable house with 5 providing no units at all and another 2 providing less than 10 units.

Based on this data it becomes immediately apparent that wealthy municipalities maintain their homogeneous status by limiting density through exclusionary zoning practices. This is turn forces the economically disadvantaged into less restrictive areas with more inclusionary zoning practices. It also demonstrates how restricting access to the economically disadvantaged, restricts access to minorities and in turn concentrates

poverty and encourages segregation. This practice is in direct opposition to the Mount Laurel doctrine and violates the NJFHA, which was designed to grant low income individuals and minorities choice in housing.

Part V: Inclusionary Zoning

Exclusionary zoning continues to persist in New Jersey despite the fact that the New Jersey Supreme Court found the practice unconstitutional over 25 years ago and the number of social problems it creates. The law already exists to remedy the practice, it is now time for New Jersey to adopt an inclusionary approach. Just a zoning has served as a tool to keep New Jersey economically and racially segregated it could also serve as tool to desegregate the state. Inclusionary zoning is a type of residential zoning which incorporates a provision that requires the developer to set-aside a defined percentage of the residential units for occupancy by low and moderate-income households.[58]

The way that most inclusionary zoning programs work is through a compromise between local government and housing developers.[59] "The builders submit development proposals to local zoning boards that include the production of a certain percentage of affordable housing, and in return, the builder receives an exemption from certain zoning laws.[60] Inclusionary zoning programs are in line with free market economics and allow builders to build more profitable higher density housing.[61] Also because they usually only require builders to make 20-30% of the property poverty it doesn't concentrate poverty in the way exclusionary practices do.[62]

Currently Massachusetts, Rhode Island, and Connecticut all currently practice inclusionary zoning.[63] Those states require that a board is in place "to weigh harm to public interests, such as health, safety, design, or open space, against the need for affordable housing" a practice that New Jersey could also employ. The disadvantage of being poor and residing in a poor neighborhood magnifies and perpetuates the problems faced by people who are poor, a concept known as the "double burden."[64] Be employing inclusionary zoning techniques as required by the state constitution, New Jersey could alleviate this this burden for it economically disadvantaged and minority residents.

Conclusion:

Exclusionary zoning is unconstitutional under New Jersey law. Yet, almost 30 years after the state's advent of the Mount Laurel doctrine the practice is still pervasive throughout the state. The Mount Laurel Doctrine has led to the development of over 40,000 affordable housing units outside New Jersey's racially and economically-segregated urban centers. Unfortunately more affordable units are still needed. "It's time for New Jersey to stop playing games over affordable housing and require

municipalities to meet their legal obligation to open up their borders to the less affluent."[65]

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[1] *See* Southern Burlington County NAACP v. Township of Mount Laurel, 336 A.2d 713 at 724 (N.J. 1975) (concluding that municipalities must implement land use regulations that offer an "appropriate variety and choice of housing" and different types of living accommodation)[hereinafter Mount Laurel I], *rev'd,* 456 A.2d 390 (N.J. 1983) [hereinafter Mount Laurel I]. Although *Mount Laurel I* was reversed by *Mount Laurel II* in 1983, the *Mount Laurel* doctrine is derived from sections of both cases.

[2] Laura Denker, *Future of Fair Housing at Stake: New Jersey Ranks in Tope 10 Areas Segregated by Race and Economics,* Fair Share Housing Blog (Nov. 12, 2012), http://fairsharehousing.org/blog/entry/future-of-fair-housing-at-stake-m...

[3] Cont'l Bldg. Co., Inc. v. Town of N. Salem, 211 A.D.2d 88, 95 (1995)

[4] Martin v. Millcreek Twp., 413 A.2d 764, 765 (1980) abrogated by C & M Developers, Inc. v. Bedminster Twp. Zoning Hearing Bd., , 820 A.2d 143 (2002)

[5] Lawrence Gene Sager, Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent, 21 Stan. L. Rev. 767, 781 (1969)

[6] S. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 67 N.J. 151, 195 (1975)

[7] Berenson v. Town of New Castle, 38 N.Y.2d 102, 110 (1975)

[8] Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court, 529 P.2d 582, 587 (1974)

[9]Id. at 585

[10] Golden v. Planning Bd. of Town of Ramapo, 285 N.E.2d 291, 304 (1972)

[11] Steel Hill Dev., Inc. v. Town of Sanbornton, 469 F.2d 956, 961 (1st Cir. 1972)

[12] Surrick v. Zoning Hearing Bd. of Upper Providence Twp., 382 A.2d 105, 110 (1977)

[13] Id. at 111

[14] Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism, 88 Geo. L.J. 1985, 2003 (2000) (Explaining that outer-ring suburbs that are experiencing rapid growth constitute the "favored quarter" who receive massive, disproportionate infrastructure investments that fuel their growth, including new roads and highways, expensive wastewater treatment systems, and other developmental infrastructure.)

[15] 9 Illinois Real Property § 46:58

[16] Luke Reidenbach & Christian Weller, The State of Minorities in 2010: Minorities Are Suffering Disproportionately in the Recession 1 (2010), available at http://www.americanprogress.org/issues/2010/01/pdf/state_of_ minorities.pdf

[17] Dr. Wayne Batchis, *Suburbanization and Constitutional Interpretation: Exclusionary Zoning and the Supreme Court Legacy of Enabling Sprawl*, 8 Stan. J. Civ. Rts. & Civ. Liberties 1, 37 (2012)

[18] Janai S. Nelson, *Residential Zoning Regulations and the Perpetuation of Apartheid,* 43 UCLA L. Rev. 1689, 1706 (1996)

[19] Valente, Local Government Law 521 (3d Ed 1987)

[20] Paul K. Stockman, Anti-Snob Zoning in Massachusetts: Assessing One Attempt at Opening the Suburbs to Affordable Housing, 78 Va. L. Rev. 535, 540 (1992)

[21] Richard F. Babcock & Fred P. Bosselman, Exclusionary Zoning: Land Use Regulation and Housing in the 1970s, at 10 (1973); National Comm'n on Urban Problems, Building the American City, 213-15 (1969)

[22] Millbrae Ass'n for Residential Survival v. City of Millbrae, 262 Cal. App. 2d 222, 69 Cal. Rptr. 251 (1st Dist. 1968) (two bedroom maximum in planned unit development); Malmar Associates v. Board of County Com'rs for Prince George's County, 260 Md. 292, 272 A.2d 6 (1971); Oakwood at Madison, Inc. v. Madison Tp., 72 N.J. 481, 371 A.2d 1192, 1204, (1977) (effectively discouraged large bedroom configuration); Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp., 67 N.J. 151,

336 A.2d 713, 721–22, (1975) (Mount Laurel I) (cluster zones limited generally to one bedroom with a small number of two bedroom units).

[23] See Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977) (rejected on other grounds by, Villas West II of Willowridge Homeowners Ass'n, Inc. v. McGlothin, 885 N.E.2d 1274 (Ind. 2008)) (invalidated); Kropf v. City of Sterling Heights, 391 Mich. 139, 215 N.W.2d 179 (1974) (rejected preferred use doctrine); Fobe Associates v. Mayor and Council and Bd. of Adjustment of Borough of Demarest, 74 N.J. 519, 379 A.2d 31 (1977)(upheld exclusion in developed community); Westwood Forest Estates, Inc. v. Village of South Nyack, 23 N.Y.2d 424, 297 N.Y.S.2d 129, 244 N.E.2d 700 (1969)(denial of sewer connections for apartments held a taking); Appeal of Girsh, 437 Pa. 237, 263 A.2d 395, 1 Env't. Rep. Cas. (BNA) 1140 (1970) (apartments must be expressly provided for). *See also* Langford v. Calcasieu Parish Police Jury, 396 So. 2d 956 (La. Ct. App. 3d Cir. 1981) (downzoning to exclude trailers upheld where health requirements not met); Stewart v. Inhabitants of Town of Durham, 451 A.2d 308 (Me. 1982) (restriction to trailer parks); Robinson Tp. v. Knoll, 410 Mich. 293, 302 N.W.2d 146, 17 A.L.R.4th 79 (1981) (mobile homes cannot be restricted to parks); Vickers v. Township Committee of Gloucester Tp., 37 N.J. 232, 181 A.2d 129 (1962), upheld but overruled in Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158, 456 A.2d 390 (1983) (Mt. Laurel II); Town of Gardiner v. Stanley Orchards, Inc., 105 Misc. 2d 460, 432 N.Y.S.2d 335 (Sup 1980) (invalidated mandatory neighbor consent for mobile home subdivisions). **Pennsylvania.** Baker v. Upper Southampton Tp. Zoning Hearing Bd., 830 A.2d 600 (Pa. Commw. Ct. 2003) (prohibition held de jure exclusionary).

[24] Eliza Hall, Divide and Sprawl, Decline and Fall: A Comparative Critique of Euclidean Zoning, 68 U. Pitt. L. Rev. 915, 925-26 (2007)

[25] VIII. Exclusionary Zoning, 91 Harv. L. Rev. 1624, 1630 (1978)

[26] *The Misuse of Land Use Control Powers Must End: Suggestions for Legislative and Judicial Responses,* 32 Me.L.Rev. 29, 51–52 (1980).

[27] *Id.*

[28] BGC Properties, Inc. v. Township of Bath, 1990 WL 31789 (Ohio Ct. App. 9th Dist. Summit County 1990), motion overruled, 558 N.E.2d 61 (1990); see also Zeltig Land Dev. Corp. v. Bainbridge Twp. Bd. of Trustees, 599 N.E.2d 383, 387 (11th Dist. Geauga County 1991)

[29] See, e.g., Simon v. Town of Needham, 42 N.E.2d 516, 141 A.L.R. 688 (1942) (involving a zoning ordinance prescribing a one-acre minimum for house lots); Padover v. Farmington Tp., 132 N.W.2d 687 (1965) (where ordinance required lots to be 100 feet wide and 20,000 square feet); Snaza v. City of Saint Paul, Minn., 548 F.3d 1178 (8th Cir. 2008) (zoning requirements for minimum lot size and setback space for car dealerships did not violate plaintiff's substantive due process rights).

[30] Stephen Schmit, Kurt Paulson *Is Open Space Preservation a form of Exclusionary Zoning,* 1 – 2 (2009) *available at*http://uar.sagepub.com/content/early/2009/02/03/1078087408331122.full.pd...

[31] *Id.*

[32] Agins v. City of Tiburon, 80 Cal. App. 3d 225, (1st Dist. 1978), opinion vacated, 598 P.2d 25 (1979), judgment aff'd, 447 U.S. 255, (1980) and (abrogated by, First English Evangelical Lutheran Church of Glendale v. Los Angeles County, Cal., 482 U.S. 304, (1987)).

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[35] Schumm v. Board of Sup'rs of San Joaquin County, 295 P.2d 934 (3d Dist. 1956).

[36] J. Gregory Richards, Zoning for Direct Social Control, 1982 Duke L.J. 761, 799 (1982)

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[41] *Id.*

[42] *Id.*

[43] *S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp.,* 456 A.2d 390 (1983) (hereinafter *Mount Laurel II*)

[44] *Id.*

[45] *Id.* at 415.

[46] *Id.*

[47] *Id*. at 421

[48] *Id.* at 416.

[49] *The Mount Laurel Doctrine, supra* note 40.

[50] N.J. Stat. Ann. § 52:27D-305 (West)

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[55] *Id.*

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