

CA - General

January 4, 1983

George M. Raymond

Report from Judge's Appointed Expert ~~in response to three reports~~
~~sent to them~~ Fair Share Reports concerning East Windsor
Twp, Urban League of Greater New
Brunswick v. Carteret, and Branchburg
Twp.

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JUDGE SERPENTELLI'S CHAMBERS

January 4, 1983

The Honorable Eugene J. Serpentelli, J.S.C.
Superior Court of New Jersey
Ocean County Court House
Toms River, New Jersey 08753

My dear Judge Serpentelli:

I have reviewed briefly the three reports* you sent me. My comments are set forth below.

A. General

1. I am very troubled by the distorting effects of use of the vacant developable land figures from the Revised Statewide Housing Allocation Report for New Jersey. My reasons are set forth in the attached copy of an excerpt from the draft of the report I am preparing for you in the Bedminster matter. In addition, the mere presence of developable land as a proportion of that of the region is an insufficient indicator of a municipality's relative ability to satisfy the obligation to provide a realistic opportunity for the construction of housing. Thus, for instance, 100 vacant acres in a developed community, served by sewers and water, may be suitable for the immediate development of housing at a density of 30 units per acre, for a total of 3,000 units. In contrast, the development of 100 acres in a developing community may have to be delayed to allow for the provision of utilities and may be appropriately developed at a density of only 8 or 10 units per acre, for a total of only 800-1,000 units.

* A Fair Share Housing Allocation for East Windsor Township, Abeles Schwartz Associates, Inc., Nov. 1983; Fair Share Allocation Report, Urban League of Greater New Brunswick, et. al. v. Borough of Carteret, et. al., Carla L. Lerman, P.P., Nv., 1983; Branchburg Township Fair Share Housing Report, Clarke & Caton, Nov. 1983.

2. I feel quite strongly that, on the basis of the quality of currently available data, the only valid prospective need allocation criterion is job growth as a percentage of that throughout the region. The figures are solid, not subject to interpretation, and up-to-date.
3. The growth in commercial/industrial rateables measures essentially the same thing as job growth--but less perfectly because of the inevitable variations in assessment practices and the equally inevitable vagaries of the equalization process. In addition, low- and moderate-income housing does not impose such inordinate fiscal burdens as to justify relieving any municipality of any portion of its obligation by shifting it onto another. Job growth materializes in a given municipality as a result of encouragement under its own zoning policy, independently conceived. It would seem to me warranted to assume that, in the calculus that led it to adopt that policy, the municipality has factored those costs that would be associated therewith. For these reasons, I feel that averaging the job growth percentage with that representing the municipality's proportionate growth in commercial/industrial rateables may cause unwelcome distortions.
4. I also cannot accept the assumption that a physically sound but overcrowded unit requires "replacement." In the beginning of the Mount Laurel II implementation process the most important contribution that can be made in that regard is to create the opportunity for movement within the housing market that includes overcrowded units. The construction in the community of a given number of affordable units will allow lower income families who live in apartments that are too small for them to move into suitable quarters. The vacated units then become available and, to the extent that they, too, are "affordable," they can satisfy the "prospective needs" of smaller households. The proper mechanism for the constructive evolution of this process of internal re-arrangement would be an agency which would keep a record of the residual problem and monitor the moves.
5. While I can readily accept the assumption that, in older cities, most units lacking basic plumbing facilities are likely to also be in physically poor condition, the same is not necessarily the case in rural communities on the fringes of urbanization. The way to

determine whether the units need to be replaced or rehabilitated is through a detailed house to house survey and the pricing of the needed improvements. Code enforcement can take care of some of the problems, and subsidized rehabilitation can keep the resulting rents within the limits of affordability by Mount Laurel-type households. Subsidies are available through the federal Community Development Block Grant program. For these reasons, I would tend to initially assume that only a proportion (33 to 50 percent) of such units will require replacement. I would also recommend that the locality be put on notice that, unless it shows detailed evidence of improved conditions and willingness to remedy remaining deficiencies the next time around, it will be required to provide for the replacement of all such units.

6. I feel very strongly that consistent regional boundaries must be drawn and observed in all cases if major problems are to be avoided. As one example, for East Windsor Township (EWT) which is in Mercer County, the Abeles study uses a tri-county region (including Mercer, Middlesex and Monmouth). The Lerman report uses a six-county region, which includes Mercer County (Union, Middlesex, Somerset, Hunterdon, Mercer and Monmouth). Abeles' basis for his suggested region is the "housing market" for EWT, which, if it includes all of Monmouth County, should most probably also include adjacent Somerset, Hunterdon, and possibly even all or most of Burlington Counties. Thus the Lerman region seems to be more logical than that proposed by Abeles.

The Rutgers study includes Mercer County into its proposed Southwest Region, together with Burlington, Camden and Gloucester Counties. This delineation, which that study claims to have been based on exhaustive computer-generated data regarding socio-economic, physical, and transportation characteristics, also has the advantage of corresponding to federally-delineated metropolitan statistical areas. This region also seems to be more logical than the Abeles region for EWT.

The general problem which results from using a different region for each community is, perhaps, even more basic. Within each region, the allocation of prospective and redistributed surplus present need to a given municipality is based on the assumption that each of the others will provide its fair share. The fair

share number allocated to each municipality will vary, however, depending upon the region in which it is included for calculation purposes. Thus, let us assume that Community A is allocated 500 units on the basis of Region X, and 750 units on the basis of Region Y. When Community A, itself, is used as the focus of its region (say, Region Z), it is probable that its allocation will differ from the others--let us say, it will be 400. The latter represents the number that Community A will actually be required to make realistically possible. This means that in Region X, 100 units of real need and in Region Y, 350 units of need will remain unallocated.

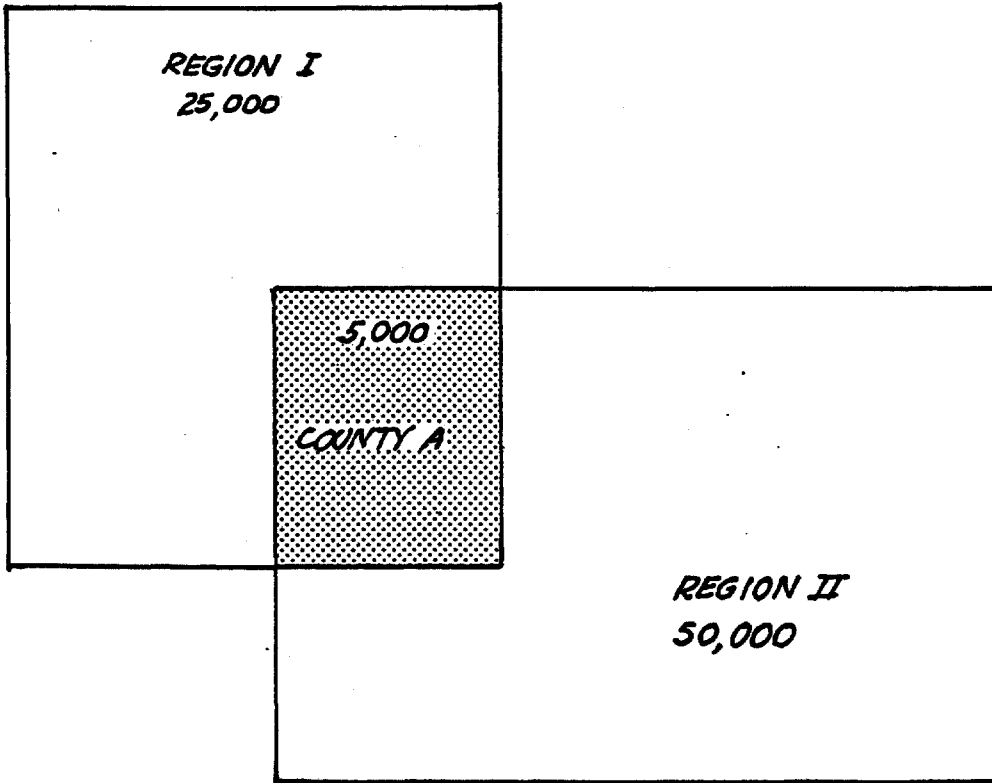
A second difficulty is that of artificial inflation of prospective need. The attached diagram shows how this happens.

I can appreciate the difficulty at this early time in the Mount Laurel II implementation process of accepting definitive regional boundaries. I would like to suggest, however, that one issue which I have heard raised as a deterrent to such a determination may be premature. I have reference to the issue of communities on the edge of a region, whose housing market obviously includes portions of the adjacent region. If all regions are carefully designed to include an appropriately balanced mix of housing needs, land resources, and socio-economic characteristics, the initial implementation measures will all be based on reasonably equivalent allocations of the aggregate statewide needs to each region. Any imbalances which may not be corrected initially can be addressed later in the process through an appropriate revision of regional boundaries in the year 2000 or beyond.

B. The East Windsor Township Study

Except for regional delineation, I find no problems with the determination of prospective need or the redistribution of surplus present need.

I believe that the Supreme Court concept of individual municipal responsibility precludes reliance on others to provide vacancies for the relief of tightness in any local housing market. Occupancy of low- and moderate-income units provided under Mount Laurel can be prioritized so as to favor local residents who live in substandard or overcrowded housing or people who work locally. This can work to some



Prospective Need of 25,000 units for Region I includes that generated by County A.

Prospective Need of 50,000 units for Region II also includes that attributable to County A.

The aggregate "prospective need" of 75,000 units which is thus being allocated exceeds the actual, which amounts to 70,000, by reason of double-counting.

extent to prevent others from flooding locally-provided housing because of shortages in adjoining communities during the period in which they work on the implementation of their Mount Laurel II requirements.

Of the 133 rental units required in EWT to provide the needed 5% vacancy ratio, 37 percent can be assumed to be needed for low- and moderate-income households. I suggest, therefore, that 49 units be added to the total EWT fair share.

On the other hand, for the reasons stated in Sections A.4 and A.5, above, I feel that replacement housing needs to be provided for only one-third of the 149 units found to be physically deficient or overcrowded. This reduces that portion of the fair share number from 149 to 50.

In summary, the "present need" portion of East Windsor Township's fair share that I would recommend thus amounts to the following:

1/3 of 149 deficient units	50
Needed for 5% rental vacancies	49
Re-allocated surplus need	26
	<u>125</u>

C. Urban League of Greater New Brunswick v. Carteret Study

The components of "present need" are standard, but are used in a way which is not entirely acceptable, in my view. I discussed above my problem with the assumption that every physically deficient and overcrowded unit needs to be replaced. The novel aspect of the Lerman approach is the redistribution of the units needed to create acceptable levels of vacancies in local housing supplies throughout the region as part of the "surplus" present need. Building hundreds of units on the fringes of the region which may remain vacant for lack of new jobs in the area will not necessarily increase vacancies in communities near the center. In fact, since all communities will have to rely on the private market to supply both the market- and sub-market-rate units, it is very doubtful that the goal of building units in excess of the demand generated by the housing market area's job base is attainable at all. Few builders will want to include lower income housing in their development if these units are intended expressly for households not employed locally--or at all--that would be expected to relocate from Newark or some other core city.

My general objection to the use of vacant developable land as an allocation criterion becomes particularly strong where, as is the case here, it results in a major skewing in the allocation to the South Metro region of an already inflated surplus present need.

The report also fails to show that an excess present need over the regional average exists only in Newark and Hudson County. The at least superficially correct procedure might have been to identify all localities in the South and North Metro regions with excess need and redistribute the entire resulting surplus between the two regions.

To compensate for the presence of 27 municipalities located entirely in "non-growth" areas, the total present need was trimmed down in proportion to their percentage of the total population of the region (p.28). It would have been more correct to deduct from the total present need the indigenous need for which they remain responsible under Mount Laurel II.

The percentage of vacant developable land figures used do not represent the percentage of all such land in the region which is located in Growth Areas, as implied in the fair share allocation formula (p.27). In fact, the figures used are the percentage of all vacant developable land in all communities that contain any land mapped in a growth area in the State Development Guide Plan. The figures purportedly being used do not exist.

The reallocated present need was not phased into the receiving communities over a period of time (as was done in the EWT report, using a 30-year period, or in the Branchburg report, using a 17-year period).

I discussed above my objection to the use of commercial/industrial rateable growth as a criterion.

D. The Branchburg Report

By reason of the fact that Branchburg adjoins Hunterdon County, this study adds a ninth county to the 8-County Northeastern Region. The assumption must be that, if the community involved was located near the intersection of the boundaries of Hunterdon, Warren and Somerset, a 10-county region would be appropriate. I cannot accept this approach to regional boundary delineation. It may be of significance here that the Rutgers 4-County region (consisting of Middlesex, Somerset, Hunterdon and Warren Counties) which

includes Branchburg may make considerably more sense than one which adds Hunterdon to the "established" 8-County Northeastern Region, but retains Bergen, Passaic and Hudson Counties.

After adding all overcrowded and deficient units (including those that lack complete kitchens or have inadequate heating) this report quite arbitrarily deducts 50% to compensate for possible duplications, single-deficiency units which can obviously be corrected in place, and over income households). My inclination is to rely as little as possible on figures that result from unsupported and thus seemingly totally arbitrary assumptions.

This report correctly notes that losses from the housing stock should be counted. I am not sufficiently certain of the validity of the method used to determine the quantity involved to judge whether the use of this factor is warranted at this stage. My inclination would be not to increase local burdens wherever the extra allocation rests on doubtful components, and to rely on the possibility of correcting any wrong initial assumptions which is implied in the evolutionary character of the Mount Laurel II process.

Even though small, the number of units (8) needed to bring the vacancies in Branchburg's rental housing supply to 5% should be added to its present need, regardless of the surplus of unsold sales units. The two types of units serve different markets.

I hope the above will be of some help to you. If I can be of further service in clarifying any of this, I hope you will not hesitate to call me.

Respectfully submitted,

George M. Raymond, AICP, AIA, P.P.
Chairman

GMR:kfv

Excerpt from*
Draft Report
in
Allan-Deane v. Township of Bedminster

by
George M. Raymond, AICP, AIA, P.P.

for submission to
Honorable Eugene D. Serpentelli, J.S.C.
Superior Court of New Jersey
Ocean County Court House
Toms River, New Jersey

* This excerpt was taken from a report that was still in preparation. The final report may be revised before submission.

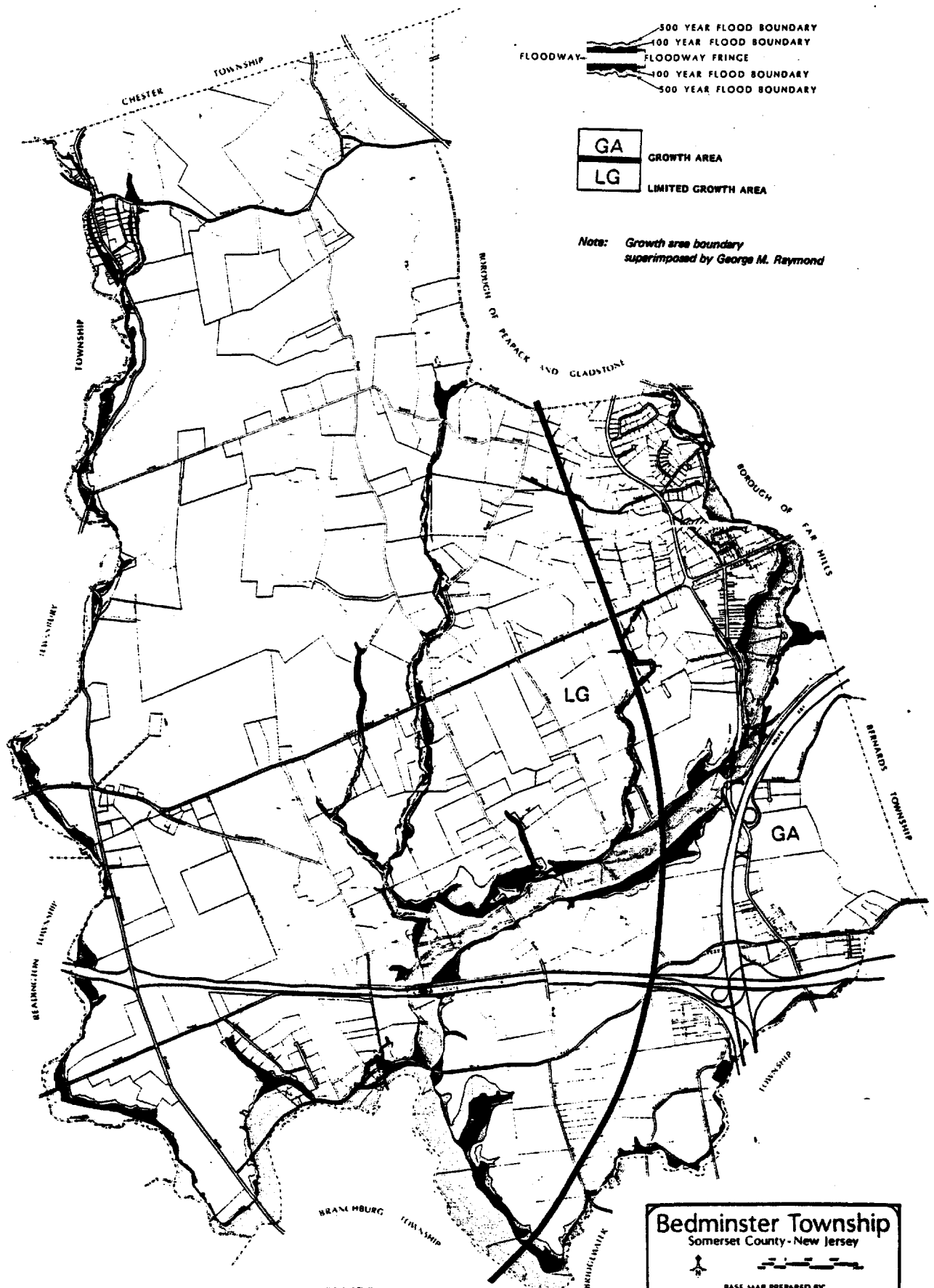
In my opinion, the Public Advocate's allocation formula is severely flawed because of the unreliability of the data regarding vacant developable land in the region as a whole and in its municipalities. The vacant developable land figures in the Allocation Report were based on information that was three or four years old when first used. Enormous changes have occurred along the whole length of Route I-287 between the New Jersey Turnpike and Route I-80, rendering these data obsolete.

Of even greater concern, however, is the definition of "vacant developable land" used in the Allocation Report as it relates to the State development policy expressed in the State Development Guide Plan (hereinafter referred to as the SDGP). The Allocation Report defines as "vacant and developable" all the vacant land in the community "less land with greater than 12 percent slope, wetlands, qualified farmlands and public lands," irrespective of whether such theoretically developable vacant land lies in an area designated as suitable for "growth" or "limited growth" in the SDGP. Communities located in their entirety in "limited-growth" or non-growth areas were exempt from consideration, but for communities where even a fraction of their vacant developable land was located in a "growth" area, all of their vacant land was counted for allocation purposes.

If the State Development Guide Plan determination of "non-growth" areas is to have any meaning, those lands which are so classified in the plan should not be counted as available for development irrespective of whether the community in which they are located also contains lands classified as suitable for growth.

Bedminster's case illustrates with particular clarity the problem raised by the use of all of the municipality's vacant developable land as a basis for determining its proper share of the region's future higher density housing development (since, under present conditions, low- and moderate-income housing can only be produced at densities of at least 6-8 units per acre). In Bedminster, the State Development Guide Plan delineates a "growth area" straddling Routes 202-206 and extending to the Township's eastern boundary (see map entitled Critical Areas: Flood Plains). Excluding land with greater than not merely 12, but 15 percent slope, wetlands and flood plains, and publicly owned lands--and ignoring some 360 acres of land in agricultural use--, the vacant developable land within this corridor amounts to only 1,529 acres. (This acreage includes all the land with less than 15 percent slope that was formerly owned by Allan-Deane). The 1,529 acres represent only 26.9 percent of the 5,675 acres credited to Bedminster in the Allocation Report.

Critical Areas: Flood Plains NOVEMBER 1983



SOURCE: FLOOD INSURANCE RATE MAPS AND FLOOD BOUNDARY-FLOODWAY MAPS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, SEPT. 30, 1982.

Bedminster Township
Somerset County - New Jersey

BASE MAP PREPARED BY:
Richard Thomas Coppola, P.P. - License No. 3378
Bordentown Township, New Jersey - April, 1981

Bedminster's "limited growth" area is part of a continuum which extends westward across the top of Hunterdon County and north into Morris County (where it includes the Township of Chester, whose similar designation in the SDGP caused the Supreme Court to keep it free of any Mount Laurel prospective or redistributive present need obligation). The Supreme Court explicitly states that it is "able to fashion judicial relief through...a remedial solution that imposes the Mount Laurel obligation only in those areas designated as 'growth areas' by the SDGP."¹³ The Court adds: "There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently."¹⁴

Significantly, the Court also points out that if, subsequent to the Mount Laurel II decision, a municipality were to encourage or allow development in contravention of the SDGP, a trial court "should more readily conclude that the challenged SDGP 'non-growth' characterization has become inappropriate."¹⁵ It would be ironic, indeed, if a court-mandated breach of the SDGP pattern for rational

¹³ 92 N.J. 158, p. 236.

¹⁴ *Ibid*, p. 238.

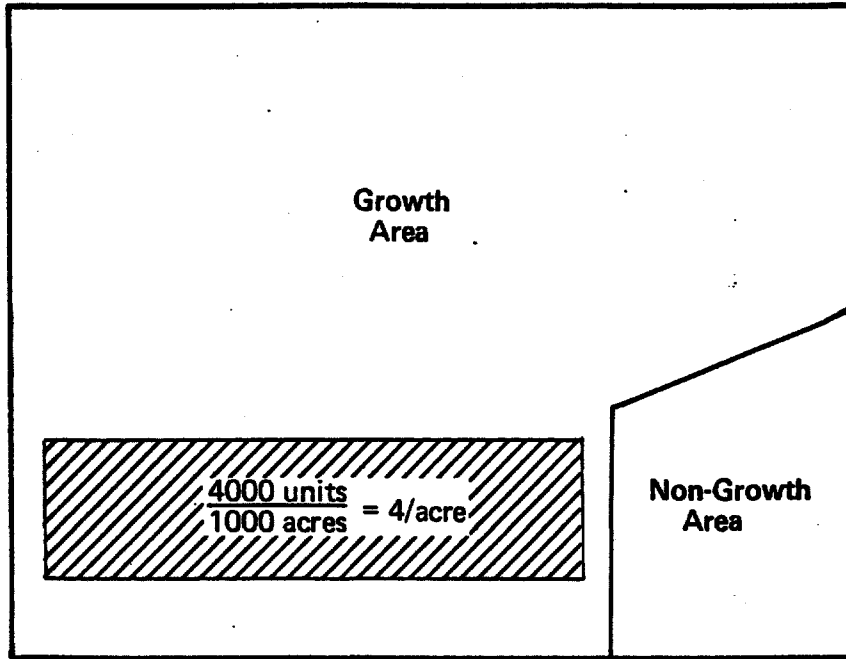
¹⁵ *Ibid*, p. 242.

distribution of development in Bedminster were to be found in the future as offering grounds for the invalidation of the Township's SDGP-based Master Plan.

Figures 1 and 2 illustrate diagrammatically the distortion of development patterns which could, and probably would, result from the allocation of housing responsibilities on the basis of the Allocation Report. To prevent such distortions, a given municipality's share of the region's total vacant developable land should be calculated by comparing the developable acreage in its "growth" area only, with a similarly developed quantity for the region as a whole.

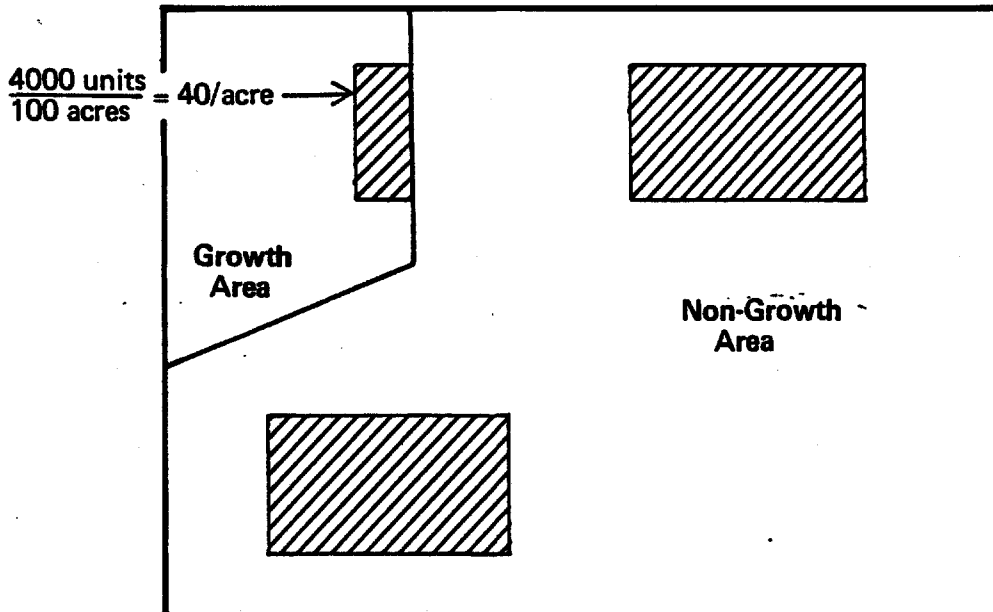
While it is true that vacant developable land is a key allocation criterion "by which new housing can be directed to where it is both suitable and feasible,"¹⁶ the area within Bedminster to which this criterion can be applied without violating the SDGP thus only encompasses the 1,529

¹⁶ A Fair Share Housing Allocation for Ten Municipalities in Morris County, prepared for New Jersey Department of the Public Advocate by Abeles Schwartz Associates, Inc., October, 1983, p. 34.



Community A- 1000 vacant developable acres, all of which lie in the "growth area"

Figure 1



Community B- 1000 vacant developable acres of which only 100 lie in the "growth area"

Figure 2

Housing Allocation to each = 800 units of lower income housing requiring a land capacity of 4000 units with a 20% mandatory set-aside.

Vacant Developable Land

vacant acres that are truly "developable" and which lie within the "growth" corridor (see map entitled Critical Areas: Flood Plains). If similar determinations of the amount of vacant developable land in "growth" areas, exclusively, were available for all communities in the 8-County Region, it would be possible to establish Bedminster's share. Although the Allocation Report may well contain "the only statewide calculations of developable land available on a municipal level,"¹⁷ these vacant developable land figures are outdated and methodologically flawed. They lack the credibility needed to permit them to be used as a fair share allocation criterion as recommended by the Public Advocate.

¹⁷ Ibid., p. 35.