

ML - Morris County Fair Housing Council v.
Boonton

~ 1980

- Mendham

Defendant, Borough of Mendham's Responses to Plaintiff's proposed
finding of facts and proposed counter

pp. 12

ML000631G

DILLON, BITAR & LUTHER
24 Schooley's Mountain Road
P.O. Box 407
Long Valley, New Jersey 07853
(201) 876-4408
Attorneys for Defendant,
Borough of Mendham

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING
COUNCIL, et als.

Civil Action

Plaintiffs,

vs.

DEFENDANT, BOROUGH OF MENDHAM'S
RESPONSES TO PLAINTIFF'S PRO-
POSED FINDING OF FACTS AND
PROPOSED COUNTERFINDINGS

BOONTON TOWNSHIP, et als.,

Defendants.

In accordance with the terms of the Pre-trial Order dated March 19, 1980 and as amended by the Order dated June 12, 1980, the defendant, Borough of Mendham does make the following responses to the factual contentions of the plaintiff:

i. Denied.

a. Admitted, subject to 1980 Census.

1.-16. Admitted as accurate quotations, but neither admitted nor denied as to accuracy of content, since they are largely predictions or estimates. In fact, many of those predictions have already proved

to be erroneous, and much of the cited material is already obsolete and/or has been supplanted.

17. Neither admitted or denied as stated.

Too general and imprecise.

b. Neither admitted nor denied, as meaning is unclear. What is "residential growth and development," as opposed to "population growth?"

1.-17. Incorporate by reference answers to paragraphs i-a-1. to 17.

c. Denied as to Mendham, admitted as to Morris County.

1.-2. Admitted as to accuracy of quotations, but neither admitted nor denied as to accuracy of content, since they are largely predictions of future events, some of which have already proved to be erroneous.

d. Denied as to Mendham; neither admitted nor denied as to Morris County.

1. Admitted.

2. Admitted.

3. Admitted.

e. Neither admitted nor denied as stated, since the contention is vague and conclusory. The words

"attractive" and "extensively linked" are purely subjective.

1. Denied. Inaccurate. Paraphrasing by plaintiff changes meaning.

2. Admitted.

3. Denied. Inaccurate citation cannot locate this alleged quotation.

4.-7. Incorporate by reference answers to paragraphs i-a-2. to 4. and 12.

f. (No proposition labeled "f" appears in plaintiffs' submission).

g. Neither admitted nor denied as stated since the contention is vague and conclusory.

1. Admitted.

2. Admitted as to accuracy of quotation but not as to content, since the quoted phrase is outdated and has been supplanted by material of much more recent generation .

ii. Denied.

a. Neither admitted nor denied as stated, since the contention is vague and conclusory.

1.-2. Incorporate by reference answers to paragraphs i-g-1. to 2.

b. Denied. An arbitrary conclusion.

1.-7. Incorporate by reference answers to paragraphs i-e-1. to 7.

- c. Denied. An arbitrary conclusion.
 - 1.-17. Incorporate by reference answers to paragraphs i-a-1. to 17.
- d. Denied. An arbitrary conclusion.
 - 1.-2. Incorporate by reference answers to paragraphs i-c-1. and 2.
- e. Denied. The proposition is entirely unrelated to the sub-propositions 1.-3.
 - 1.-3. Incorporate by reference paragraphs i-d-1. to 3.
- iii. Denied as to Mendham, neither admitted nor denied as to "the region" or as to Morris County.
 - a. There is no proposition labeled "a" in Plaintiff's submission
 - b. Denied as to Mendham, neither admitted nor denied as to Morris County.
 - 1.-2. Incorporate by reference paragraphs i-c-1. 1 and 2.
 - c. Denied as to Mendham, neither admitted nor denied as to "the region" or as to Morris County.
 - 1.-2. Admitted.
 - 3. Admitted except as to price range.
- iv. Denied. Vague and conclusory; opinion rather than fact.
 - a. (No proposition labeled "a" appears).
 - b. Denied.

1. Admitted that "a defendant municipality can [perform the mathematical function described]", but denied that such an exercise is either useful or appropriate to any legitimate objective of government.
2. Admitted that the computations are attached, but denied as to any imputed value or significance.
- 3.-5. Admitted as to accuracy of quotation. The content consists of value judgment, not fact, hence is neither admitted nor denied.
6. Denied.
7. Denied
8. Admitted as to accuracy of quotation. The content consists of value judgment, not fact, hence is neither admitted nor denied.
9. Denied.
10. Admitted as to accuracy of quotation. The content consists of value judgment, not fact, hence is neither admitted nor denied.

v. Denied.

a. Denied.

1. Denied. The cited material merely acknowledges the existence of a D.C.A. study which posits that figure.

b. Denied.

1. Neither admitted nor denied, pending identification of the quoted source. Plaintiff has been asked to provide the document cited.
- 2.-3. Neither admitted nor denied; source cited is 15 years old, irrelevant, and supplemented by the 1978 Master Plan and other more recent documents.
- 4.-5. Incorporate by reference answers to paragraphs iv-b 9 and 10, and iii-c-3.
6. Denied.
7. Denied. It is also denied that the material contained in section V-B of the cited source is properly characterized as "planning techniques."
- 8.-15. Denied. All consist of legal conclusions, not facts.

c. Denied.

1. Denied.
2. Admitted.
3. Denied.
4. Admitted.
- 5.-12. Incorporate by reference answers to paragraphs i-d-3 and v-d-1 to 6.
- 13.-21. Denied. All consist of legal conclusions, not facts.

d. Denied.

1. Admitted, except that the quotation is as to 1969, not 1970.
- 2.-4. Incorporate by reference answers to paragraphs iii-c-1. to 3.

PROPOSED COUNTERFINDINGS

(NOTE: The numbering system used is designed to relate generally to that employed by Plaintiff in its Proposed Findings. Although this Defendant submits that Plaintiff's numbering system does not follow the format prescribed by paragraph 5. of the Order Directing Pretrial Submission and Amending Pretrial Order, entered June 17, 1980, it is felt that Defendant can best comply with the spirit of that Order by relating to Plaintiff's numbers as called for by paragraph 2.(3.) and 2.(4.) of the Pretrial Order of March 19, 1980)

- i. Although the 1978 Master Plan contains the assumption that the Borough is a "Developing Community", that was based upon the perception of the law as it existed at that time. The concept of "developing community" as it relates to this case is a judicial concept, still undergoing refinement, and is not ascertainable as a matter of evidentiary fact.

a. 1.-.7. As the population of the Borough continues to grow, more and more demand has been placed on the municipal sanitary sewer and water supply systems. As to the sewer system, the actual experience in the past two years is that serious problems have occurred in the functioning of the sewer system which is utilized near to its capacity. Emergency appropriations of substantial funds have been made to cure present problems, not to add capacity for future population growth. As to water supply the Borough has been and still is actively drilling for new water sources, which activity was underway well before the current drought. The Borough's Mountain Valley Well, which was previously regarded as a main producing well rated at 600kgpd, went dry during the summer of 1980, and is now regarded as no better than a potential 250kgpd producer. Testimony of Robert Snedaker and Victor Woodhull. Dresdner, Analysis of the Relationship of Environmental Characteristics and Land Development, Borough of Mendham, September, 1979, pp. 18-19.

c. The Borough has neither undertaken to attract, nor in fact attracted, industrial or commercial or other "employment-generating" growth and development. In fact, the most recent zoning ordinance has taken land out of industrial zoning and increased the amount in residential zoning. Kasler, Revised Fair Share Housing Study, September, 1979, p. 11.

1.-2. The Borough has a lower ratio of jobs to population than have most other municipalities, or the county as a whole, or any functional "region".

Kasler, supra, p. A-10.

There is, in fact, no industry in the Borough.

Dresdner, supra, p. 3.

d. Although the amount of vacant land in the Borough as stated by Plaintiff, is not disputed, the characterization of that land as "developable . . . to accommodate additional growth and development" is haphazard. There exist serious constraints to development of the presently undeveloped areas of the Borough, including water supply and sanitary sewer capacity (see discussion under a. 1-7., supra, and Dresdner, supra at 18-19), waste disposal (Dresdner, supra,

at 13-14), water quality maintenance (id. at 14-15), slope limitations (id. at 15-16), wetlands, floodplains, and farmland (id. at 16).

e. 1.-3. No railroad, busline, or major state highway provides transportation directly to the Borough. Dresdner, supra, at 5-6, 19. Route 24 (Main Street) has been for many years and continues to be a major problem limiting development in the Borough. Testimony of Ruth Smith and Victor Woodhull.

ii. The proper region for planning purposes is one which relates to "journey-to-work" time, as affected by employment distribution and available transportation. Such a region has been defined for the Borough of Mendham and used as a basis for a proper fair share housing study.

Kasler, supra, 1-2, A-16.

iv. b. The New Jersey Department of Community Affairs Statewide Housing Allocation Plan is neither conservative nor useful as a tool for "fair share planning" by the Borough, since it proceeds purely as a quantitative mathematical apportionment of figures (which are themselves of questionable validity), without regard to

qualitative features of land, housing, or the needs of the people who are to be served. A proper analysis of a "fair share housing" obligation takes into account the factors of employment, population, and vacant land, and should utilize the most recent fact sources available. Such an analysis has been performed for the Borough of Mendham, and concludes that the fair share obligation of the Borough is between 102 and 125 units.

Kasler, supra at 5-7, A-16-A-18.

- v. c. The Borough's zoning ordinance adopted to implement its 1978 Master Plan increased the amount of land zoned for smaller lot sizes and multi-family dwelling, and is free from unnecessary "cost-generating" provisions in those zones.

Kasler, supra at 10-11.

There are currently under construction 40 units of federal rent-subsidy senior citizen housing in the Borough, which project was moved along to completion by joint action of the Borough and other private and governmental agencies.

Kasler, supra at 6; Testimony of Ruth Smith.

- vi. It is the policy of the State of New Jersey to encourage direction of population growth to those

areas of the state where major transportation and business and industrial facilities (hence, jobs) exist, and to channel public investment into these "growth areas", while discouraging extension of facilities into "limited growth" areas, leaving them as a "reserve" for possible growth in the next century.

N.J.D.C.A. State Development Guide Plan,
Revision of May 1980 (hereinafter "Guide Plan 1980"), at 47-49, 71-72.

Mendham Borough has been identified and designated as a "limited growth area" for purposes of carrying out the above policies.

Guide Plan 1980, at 129.

The policies stated in the Guide Plan 1980 are those espoused by the preponderance of responsible planners, and are directly at odds with the numerical allocations sought to be impressed by plaintiff upon this and other defendants.

Testimony of Malcolm Kasler and Allen Dresdner.