

MLZ - ~~Anderson~~ Madison

10/30/80

2 cover letters

Δ, Madison, adopts, in toto, Δ's, Two of
Chester, responses to T's proposed
findings of facts + counterfindings of
facts on maxi-trial issues

+ Δ Madison's responses + ~~and~~ counterfindings
to T's proposed findings as to
Borough of ~~the~~ Madison

P 22

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RECEIVED
R. S., J. S. C.
OCT 31 1980
JUDGE'S CHAMBERS
MORRIS COUNTY
COURTHOUSE

VOGEL AND CHAIT
A PROFESSIONAL CORPORATION
Attorneys at Law

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MORRISTOWN, NEW JERSEY 07960
538-3800
AREA CODE 201

October 29, 1980

HAROLD GUREVITZ
OF COUNSEL

RECEIVED

OCT 30 1980

Honorable Robert Muir, Jr.
Morris County Court House
Morristown, New Jersey 07960

R. M. JR., A. J. S. C.
JUDGE'S CHAMBERS
MORRIS COUNTY
COURTHOUSE

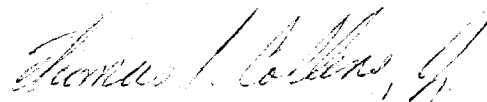
RE: Morris County Fair Housing Council, et al.,
vs. Boonton Township, et al.
Docket No. L-6001-78 P.W.

Dear Judge Muir:

Enclosed please find the Defendant, Borough of Madison's, responses to the proposed findings of the Plaintiff regarding the mini-trial and maxi-trial submissions.

Very truly yours,

HEBERT A. VOGEL
Attorney for the
Borough of Madison



THOMAS F. COLLINS, JR.

TFC:ngc
encl.
cc: Department of the Public Advocate
All Common Defense Council

VOGEL AND CHAIT

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AREA CODE 201

October 29, 1980

HAROLD GUREVITZ
OF COUNSEL

Stephen Eisdorfer, Assistant Deputy
Public Advocate
Department of the Public Advocate
Division of Public Interest Advocacy
P.O. Box 141
Trenton, New Jersey 08625

RE: Morris County Fair Housing Council, et al. vs.
Boonton Township, et al.
Docket No. L-6001-78 P.W.

Dear Mr. Eisdorfer:

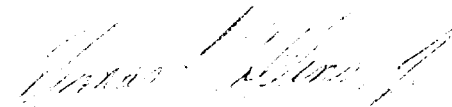
I have enclosed defendant, Borough of Madison's, responses to the plaintiff's proposed findings and defendant's proposed counterfindings on the mini-trial issues.

In addition, I have enclosed the Borough of Madison's response and adoption of the Township of Chester's submissions in connection with the plaintiff's proposed findings and the defendant's counterfindings on the maxi-trial issues. Our response includes an incorporation of the answers to Interrogatories and reports of Harvey Moskowitz, Planning Consultant to the Borough, and certain sections of Madison's mini-trial responses and proposed counterfindings.

The originals have been filed with the Court, with copies to the appropriate parties.

Very truly yours,

HEBERT A. VOGEL
Attorney for the
Borough of Madison



THOMAS F. COLLINS, JR.

TFC:ngc
encls.

cc: The Honorable Robert Muir, Jr.
All Common Defense Counsel

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ATTORNEYS FOR THE DEFENDANT, BOROUGH OF MADISON

MORRIS COUNTY FAIR HOUSING)
COUNCIL, et al,)

Plaintiffs,)

VS.)

BOONTON TOWNSHIP, et al,)

Defendants,)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MORRIS COUNTY

DOCKET NO. 1-6001-78 P.W.

Civil Action

Defendant, BOROUGH OF MADISON, hereby adopts, in toto, defendant's, TOWNSHIP OF CHESTER, responses to plaintiff's proposed finding of facts and counterfinding of the facts on maxi-trial issues as submitted. The BOROUGH OF MADISON also incorporates by reference the answers to Interrogatories and reports of Harvey S. Moskowitz, Planning Consultant for MADISON, heretofore submitted to you in response to your questions on the maxi-trial issues. In addition, the BOROUGH OF MADISON incorporates by reference sections i., ii., iii., iv. and v. of its responses and proposed counterfindings to plaintiff's findings on the mini-trial issues for the purposes of the maxi-trial, to the extent that they supplement the maxi-trial findings and counterfindings.

HEBERT A. VOGEL
ATTORNEY FOR DEFENDANT,
BOROUGH OF MADISON

DATED: OCTOBER 29, 1980

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

MORRIS COUNTY FAIR HOUSING)
COUNCIL, et al.)

Plaintiffs,)

VS.)

BOONTON TOWNSHIP, et al.)

Defendants,)

Civil Action

DEFENDANT BOROUGH OF MADISON'S
RESPONSES AND COUNTERFINDINGS TO
PLAINTIFF'S PROPOSED FINDINGS AS
TO THE BOROUGH OF MADISON

HEBERT A. VOGEL
MAPLE AVENUE AT MILLER ROAD
MORRISTOWN, NEW JERSEY 07960
(201) 538-3800

ATTORNEY FOR DEFENDANT,
BOROUGH OF MADISON

INTRODUCTION

In accordance with the terms of the Pretrial Order dated March 19, 1980 and the Order dated June, 1980 defendant Borough of Madison makes the following admissions, denials and proposed counterfindings with respect to the mini-trial findings of fact proposed by Plaintiffs dated August 25, 1980 and served on August 27, 1980.

The Defendant Borough of Madison points out that many of the quotations from public documents cited by the Plaintiffs are accurate quotations, however, the statements are often misleading because they have been taken out of context. To the extent possible, the context of the statement is explained. Some of the statistics quoted in these documents may also be inaccurate or outdated and the Defendant reserves the right to object to their admission.

RESPONSES AND PROPOSED COUNTERFINDINGS

- i. Denied. Defendant Madison Borough is not a "developing" municipality but rather is a "developed" municipality. As a developed municipality it does not have the characteristics, resources or legal obligation to implement a fair share allocation formula for the region's low and moderate income housing needs.
 - a. Denied. The Defendant Madison Borough experienced population growth in the period from 1950 to 1970 but the population declined between 1970 and 1980.
 - 1-9 The Plaintiff's proposed findings i. a. 1. through 9. are accurate quotations from the cited reports of the Madison Borough Planning Board. The Defendant admits the accuracy of the quotations but denies the accuracy and relevance of the projections mentioned in the quotes. Based on more recent data from the preliminary 1980 Census figures and other sources, the Defendant proposes the following counterfindings.
 - 1-2 Between 1950 and 1960, population in Madison grew by 45%. Between 1960 and 1970, it grew by only 10%, and between 1970 and 1980, population in Madison declined by approximately 9%, according to preliminary figures.
 3. Madison Borough experienced its highest rates of population growth during the 1950 - 1960 decade. Table 1 represents the absolute and proportional increases in the population of Madison Borough and of Morris County as a whole during the period from 1940 to 1980. Madison's population is expected to remain relatively stable or decline slightly into the next decade as a result of trends toward smaller households.

TABLE 1

POPULATION TRENDS, 1940 - 1980

Borough of Madison

| <u>Year</u> | <u>Population</u> | <u>Absolute Change</u> | <u>Percentage Change</u> |
|-------------|-------------------|----------------------------|------------------------------|
| 1940 | 7,944 | | |
| 1950 | 10,417 | 2,473 | 31.3 |
| 1960 | 15,122 | 4,705 | 45.2 |
| 1970 | 16,710 | 1,588 | 10.5 |
| 1980* | 15,222 | -1,488 | -8.9 |

Morris County

| | | | | <u>Madison Borough as a Percentage of Morris County</u> |
|-------|---------|---------|------|---|
| 1940 | 125,732 | | | |
| 1950 | 164,371 | 38,639 | 30.7 | 6.3 |
| 1960 | 261,670 | 97,249 | 39.2 | 5.8 |
| 1970 | 383,454 | 121,834 | 46.6 | 4.4 |
| 1980* | 404,148 | 20,694 | 5.4 | 3.8 |

*Preliminary 1980 Census Estimates, Daily Record, July 27, 1980.

Source: U.S. Bureau of Census, 1960 and 1970 Census of Population:
Final Report PC(1)-B32.

4. While it is true that "the Borough will witness the bulk of its remaining growth by 1980 due to its highly developed nature" the amount of growth will be very small in comparison to other municipalities classified as developing.
5. The "major surge of development" predicted for 1975 - 80 did not take place. The population estimate for 1980 is below the 1970 level. The Dodge property will not be used for residential development.
6. Defendant admits that this is an accurate quotation. However, the Defendant rejects the proposed finding since it is irrelevant in that the zoning adopted was not the "existing zoning pattern" mentioned in the 1975 Master Plan.
7. The Defendant admits that this is an accurate quotation. However, the Defendant proposes the counterfinding that the projection for 1990 is too high since 44% of the projected housing increase was based on the P.U.D. zone, which no longer permits housing.

- 8-9. The Defendant admits that these are accurate quotations. The Defendant rejects them as proposed findings because the Borough is not planning any significant increases in public services and facilities. Even if it were, in expectation of further population growth, it does not necessarily mean that the population growth will take place.
10. Denied. Madison Borough is not planning any significant increases in public services and facilities.
11. Admit.
- b. Madison Borough experienced residential growth in the 1950 to 1970 period but has experienced a stabilization or decline in residential growth during the 1970-1980 decade.
- 1-11 Incorporate by reference the denials, admissions and proposed counterfindings in paragraphs i. a. 1. to 11. above.
- c. Denied. Madison Borough had experienced minor amounts of employment generating industrial and commercial development. In 1973, Madison has 2,927 covered jobs. In 1978, the number of covered jobs was 3,535.
- 1-5 The Defendant admits that the statements in sections i.c. 1-5 are accurate quotations from the reports cited therein. The Defendant proposes the following counterfindings to supplement and qualify the quotations.
1. An increase of 22.7 acres in all business, professional and commercial uses over a 13 year period (1961 to 1974), is not major growth.
- Between 1970 and 1976, the period used for calculating job growth as a weighting factor in the D.C.A. allocation, covered employment grew by 410 jobs. These levels of growth are not equivalent to or within the range of growth which is typical of a "developing" as opposed to a "developed" community.
2. The Defendant admits that this is an accurate quote from the 1963 Master Plan Report. The 1975 Master Plan superceded the 1963 Master Plan Report. The 1975 Master Plan indicates that in 1974, the Borough still had little industrial activity, with only 16 acres classified as industrial.
3. The Defendant admits that this is an accurate quotation from the 1963 Master Plan Report, which was superceded by the 1975 Master Plan.

4. Admit. At the present time, no P.C.D.O. has been constructed and there is no guarantee that the 2,250,000 square feet of office space will be built.
5. This is an accurate quotation from the 1977 Master Plan Revision. The Defendant incorporates by reference the proposed counterfinding in i. c. 4. above.
6. The Defendant admits that on April 2, 1979, the Madison Borough Planning Board approved a site plan for six parcels of land which, if sold and developed to capacity, would provide jobs for an undetermined number of people.
- d. Denied. The Borough of Madison does not have substantial amounts of vacant, developable land but rather has very little vacant developable land and is nearly fully developed. Madison Borough is substantially developed in that only a small proportion (7 percent) of its total land area can be defined as vacant developable land, This 7 percent can be sharply contrasted with the 65 percent of undeveloped land in Mt. Laurel. It is more similar to the less than 10 percent undeveloped lands remaining in Washington Township and Demarest, communities classified as developed by the Supreme Court.
- 1-3 Denied. Currently, a total of 411.5 acres, or 15.6 percent of the Borough remains vacant; however, of these 411.5 acres, 185 will be developed as part of the Prudential Office Complex; 6.6 acres are under construction with single-family attached housing; 26 acres have been approved for 208 townhouse units; and another 6 acres have received preliminary site plan approval for 32 townhouse units. Essentially, only 187 acres (7 percent of the total land area) are actually uncommitted, or available, vacant and developable, and most of this acreage is scattered throughout the Borough in small parcels of relatively insignificant size. This lack of available vacant developable land seriously inhibits the potential for significant amounts of new development in Madison.
4. Admit.
- g. Admit. But Madison Borough is not located outside the built-up suburbs because, in fact, it is a built-up suburb. This is illustrated by the following facts which are documented below: (1) only 7 percent of Madison's land mass is available vacant land; (2) Madison's population density is nearly 4,000/square miles; and (3) The Borough of Madison's major increases in population occurred between 1940 and 1970. The

Borough of Madison's status as a built-up suburb is attributable primarily to its location along Route 24 and the Morris-Essex line of what is now Conrail. This location caused Madison to be encompassed quite early in Morris County's development by the relatively narrow corridor of intense development extending westward along Route 24 and the railway from Union and Essex Counties toward Morristown.

- 1-4 The quotations in Plaintiff's proposed findings i. g. 1-4 are accurate quotations from the Master Plan Reports cited; however the information is from the 1960's and is clearly dated. The Defendant proposes the following as counterfindings.

Population density is one factor used to gauge the extent to which a municipality has already been urbanized. Madison's 1970 population density, at nearly 4,000 persons per square mile, is twice the 2,000 persons per square mile figure which generally characterizes established suburbs.* In fact, since the mid-1940's, Madison Borough's population has exceeded the 2,000 per square mile density level.

Table 2 represents population densities in 1950, 1960 and 1970 for each of the twenty-seven (27) Morris County municipalities named in the Public Advocate's suit. Against the backdrop of these municipalities, Madison Borough stands out as: (a) consistently having the highest concentration of persons per square mile; and (b) having a substantially higher level of urbanization than any of the other twenty-six (26) municipalities. In 1950, the population density of Madison Borough was 2.4 times that of the next highest among the selected municipalities.

* Rose, Jerome G., "After the Recent N.J. Supreme Court Cases: What Is The Status of Suburban Zoning?" in New Jersey Municipalities, May, 1977.

TABLE 2

POPULATION DENSITIES, TWENTY-SEVEN MORRIS COUNTY MUNICIPALITIES
IN PUBLIC ADVOCATE'S SUIT, 1950-1970

| Municipality | Population Per Square Mile | | |
|----------------------------|----------------------------|---------|---------|
| | 1950 | 1960 | 1970 |
| Boonton Twp. | 154.0 | 266.4 | 374.4 |
| Chatham Twp. | 313.9 | 659.0 | 889.3 |
| Chester Twp. | 45.2 | 73.5 | 147.6 |
| Denville Twp. | 473.0 | 830.6 | 1,106.0 |
| East Hanover Twp. | 256.1 | 521.3 | 942.0 |
| Florham Park Boro | 313.8 | 950.3 | 1,079.2 |
| Hanover Twp. | 347.8 | 863.8 | 990.7 |
| Harding Twp. | 118.0 | 160.7 | 158.5 |
| Jefferson Twp. | 61.9 | 155.4 | 392.8 |
| Kinnelon Boro | 68.5 | 224.9 | 399.0 |
| Lincoln Park Boro | 482.3 | 864.0 | 1,356.5 |
| Madison Boro | 2,604.2 | 3,780.5 | 3,978.6 |
| Mendham Boro | 257.3 | 353.9 | 621.5 |
| Mendham Twp. | 78.4 | 128.2 | 210.1 |
| Montville Twp. | 227.3 | 370.1 | 624.5 |
| Morris Twp. | 470.4 | 765.3 | 1,236.6 |
| Morris Plains Boro | 1,082.8 | 1,881.2 | 2,130.8 |
| Mountain Lakes Boro | 935.3 | 1,345.7 | 1,634.1 |
| Mount Olive Twp. | 82.2 | 120.5 | 345.8 |
| Parsippany-Troy Hills Twp. | 604.3 | 1,010.2 | 2,268.0 |
| Passaic Twp. | 207.8 | 335.6 | 591.4 |
| Pequannock Twp. | 761.4 | 1,529.4 | 2,064.7 |
| Randolph Twp. | 203.8 | 364.4 | 636.8 |
| Riverdale Boro | 751.1 | 1,442.2 | 1,459.4 |
| Rockaway Twp. | 98.4 | 230.7 | 447.6 |
| Roxbury Twp. | 271.8 | 475.4 | 734.1 |
| Washington Twp. | 47.6 | 73.8 | 154.3 |

Source: Annual Report of the Division of Local Government Services, 1976, State of New Jersey, Department of Community Affairs, December 1977; and U.S. Bureau of Census, 1960 and 1970 Census of Population Final Report PC(1)-B32.

1-4 continued.

Another characteristic of developing municipalities, not mentioned in the Plaintiff's proposed findings as to Madison Borough, is a large gross acreage. Madison Borough cannot be considered to have a "very large gross acreage," either absolutely or relative to other municipalities in the State of New Jersey and in Morris County. Its total area is less than 4.2 square miles, or 2,644 acres, substantially below the average of 13.2 square miles for all New Jersey municipalities and slightly below the median (50 percent mark) of 4.3 square miles. In a State where municipal size ranges from 0.09 square miles (Shrewsbury Township, Monmouth County) to 113 square miles (Hamilton Township, Atlantic County), Madison Borough's land area appears relatively insubstantial.* In addition, the Borough's total area is less than 20 percent of Mount Laurel's 22 square miles, judged sizeable by the Court.

Table 3 shows the land area of each of the thirty-nine (39) municipalities in Morris County. Computed medians, averages and ranges of size in square miles are given for all thirty-nine (39) municipalities, for the twenty-seven (27) municipalities named in this case, and for the twelve (12) municipalities excluded from this case. Clearly, Madison Borough's size falls well below the median and average land area for all Morris County municipalities and for the twenty-seven (27) municipalities included in this case. In fact, its small size more nearly resembles the land area figure given for those municipalities which were not included in this case..

*Rose, Jerome G., Supra.

TABLE 3

LAND AREA OF MORRIS COUNTY MUNICIPALITIES

| <u>Municipality</u> | <u>Area in Square Miles</u> |
|---------------------|-----------------------------|
| Boonton Town | 2.42 |
| Boonton Twp. | 8.20 |
| Butler Boro | 1.97 |
| Chatham Boro | 2.35 |
| Chatham Twp. | 9.10 |
| Chester Boro | 1.60 |
| Chester Twp. | 28.90 |
| Denville Twp. | 12.70 |
| Dover Town | 2.51 |
| East Hanover Twp. | 8.21 |
| Florham Park Boro | 7.50 |
| Hanover Twp. | 10.80 |
| Harding Twp. | 20.50 |
| Jefferson Twp. | 41.20 |
| Kinnelon Boro | 19.05 |
| Lincoln Park Boro | 6.66 |
| Madison Boro | 4.20 |
| Mendham Boro | 6.00 |
| Mendham Twp. | 17.60 |
| Mine Hill Twp. | 2.95 |
| Montville Twp. | 18.97 |
| Morris Twp. | 15.70 |
| Morris Plains Boro | 2.60 |
| Morristown Town | 2.86 |

TABLE 3 cont.

| <u>Municipality</u> | <u>Area in Square Miles</u> |
|----------------------------|-----------------------------|
| Mountain Lakes Boro | 2.90 |
| Mount Arlington Boro | 2.25 |
| Mount Olive Twp. | 30.06 |
| Netcong Boro | 0.90 |
| Parsippany-Troy Hills Twp. | 24.30 |
| Passaic Twp. | 12.50 |
| Pequannock Twp. | 6.95 |
| Randolph Twp. | 20.88 |
| Riverdale Boro | 1.87 |
| Rockaway Boro | 2.00 |
| Rockaway Twp. | 42.35 |
| Roxbury Twp. | 21.46 |
| Victory Gardens Boro | 0.20 |
| Washington Twp. | 45.12 |
| Wharton Boro | 1.95 |

All Morris County Municipalities

| | |
|----------|-----------------------|
| Range: | 0.20 to 45.12 sq. mi. |
| Median: | 7.50 sq. mi. |
| Average: | 12.06 sq. mi. |

Twenty-Seven Morris County Municipalities
Named in Public Advocate's Suit

| | |
|----------|-----------------------|
| Range: | 1.87 to 45.12 sq. mi. |
| Median: | 12.70 sq. mi. |
| Average: | 16.16 sq. mi. |

TABLE 3 cont.

Twelve Morris County Municipalities
Excluded from Public Advocate's Suit

| | |
|----------|----------------------|
| Range: | 0.20 to 2.95 sq. mi. |
| Median: | 2.13 sq. mi. |
| Average: | 1.83 sq. mi. |

Source: Annual Report of the Division of Local Government Services, 1976, State of New Jersey, Department of Community Affairs, December, 1977

- ii. Denied. The Borough of Madison rejects the eight county region proposed by the Plaintiff because it is unreasonable and is not supported by the planning literature on housing region. The eight county housing region proposed by the Plaintiff, based on N.J.D.C.A.'s 1978 Revised Statewide Housing Allocation Report for New Jersey, is not consistent with the planning literature or the Mt. Laurel decisions on housing regions. The method totally ignores the relationship between residence and place of employment. In this regard, it is noteworthy that the American Planning Association has filed an Amicus Curiae brief in the exclusionary zoning cases before the housing region. Furthermore, in After Mt. Laurel: The New Suburban Zoning edited by Jerome G. Rose and Robert E. Rothman, Carl S. Bisgaier in "Implementation of the Decision": noted at page 142:

In Mt. Laurel, the Court chose a 20 mile radius around the City of Camden.

In some cases the equation of region with county may work.

The practicalities of the situation demand some simplicity of approach.

The location of jobs has traditionally served as an indicator of appropriate location of residences.

In the Madison decision, Judge Furman noted that a region was "the area from which, in view of available employment and transportation, the population of the Township would be drawn absent invalidly exclusionary zoning."

David Listoken, in Fair Share Housing Allocation notes "... (the) key variable is location relevant to distance to work; other things being equal, a housing consumer will seek the best accomodation available within a reasonable commuting

distance to his job.

David Zimmerman, in his reports for the maxi trial has suggested a reasonable housing market that includes only four counties (Essex, Morris, Union and Somerset), but which takes into account commuting patterns. This four county region is consistent with criteria used by D.C.A. in determining the allocation region and is also consistent with the guidelines established by the Supreme Court in Mt. Laurel cases. See Zimmerman's reports.

Another reasonable method for determination of the housing region appropriate for the Borough of Madison would be to include all municipalities within a 30 minute driving time from the approximate center of Madison. This rationale is supported by a home-to-work report prepared by the U.S. Department of Transportation which indicates that 74.1% of the New Jersey labor force commuted to work by automobile and of that total, close to 90% of all workers traveled approximately 20 miles or less. Clearly, this region would not encompass the unreasonable eight county region proposed by the Plaintiff.

In sum, the eight county region proposed by the Plaintiff is inconsistent with the Supreme Court's exclusionary zoning decisions and the planning literature on housing regions for fair share allocations.

- a. and 1-4 The Defendant incorporates by reference its responses and proposed counterfindings in sections i. g. and i. g. 1-4 above.
 - b. The Defendant incorporates by reference its responses and proposed counterfindings in sections i. c., i.c.1 to 6 and i. g. above. Also Plaintiff has offered no evidence to support the statement that jobs created in Madison are low income jobs.
 - c. The Defendant incorporates by reference its responses and proposed counterfindings in sections i. c. and i. c. 1 to 13 above.
 - d. The Defendant incorporates by reference its responses and counterfindings in sections i. c., i. c., 1 and i. g. above.
 - e. The Defendant incorporates by reference its responses and counterfindings in sections i. d. and i. d. 1 to 3 above.
- iii. Denied. The Defendant incorporates by reference its responses and counterfindings in sections i. c. 1 to 6 and ii. b. above.
- b. Denied. The Defendant incorporates by reference its responses and counterfindings in sections i. c. 1 to 6 and ii. b. above.

c. Denied.

1-5. The quotations in sections iii. c. 1 to 5 of Plaintiff's proposed findings are accurate quotations from the reports cited. The quotes in sections iii. c. 1 to 2 are no longer accurate statements since they were taken from the 1963 Master Plan Report.

3-5. The following table describes the existing housing stock in Madison Borough by type of dwelling unit. At the present time, approximately 27 percent of the Borough's housing units which are single-family residences are on small lots ranging in size from 6,000 to 9,375 square feet. With the construction of 266 new multi-family units, plans for which are presently being considered or have recently been approved by the Planning Board, the percentage of multi-family housing units in Madison Borough will be increased to 32 percent. These figures exclude faculty and student housing in apartments and dormitories located at Drew University. Approximately 1,250 persons are housed within the 185-acre campus.

TABLE 4
HOUSING COUNT - 1974

| <u>Residential Uses</u> | <u>Number of Dwelling Units</u> | <u>Percent of Total Dwelling Units</u> |
|-------------------------|---------------------------------|--|
| Single-Family Homes | 3,348 | 72.88 |
| Two-Family Homes | 530 | 11.54 |
| 3-7 Family Homes | 127 | 2.76 |
| Garden Apartments | 456 | 9.93 |
| Mixed Uses | <u>133</u> | <u>2.89</u> |
| Total: | 4,594 | 100.00% |

Source: Borough of Madison Master Plan, 1975: Comprehensive Revision, prepared by Robert Catlin and Associates, adopted May 3, 1976.

6. Since the Borough has very little available vacant land, the impact of this office development on housing needs will be primarily outside Madison.

iv. Denied

b. Denied. The Plaintiff is apparently referring to IV. B. 75-78 not V. B. 75-78. The Defendant admits that the "mechanical dispersion" housing allocation methods proposed by the Plaintiff in iv. b. 1 can be used to make allocations, but the Defendant denies the meaningfulness and efficacy of such models. See the criticisms in the reports of David Zimmerman. Apparently, the N.J. Department of Community Affairs has also discounted the efficacy of the allocation methods and report since the Revised Statewide Housing Allocation Report for New Jersey dated May, 1978 was never adopted by any public agency. The method of allocation is highly unorthodox and runs counter to the generally accepted method of determining housing regions based on the relationship between residence and place of employment. The Plaintiff's allocation method ignores the legitimate planning goals, including environmental protection, adequate transportation systems, access to jobs, need to strengthen older cities, energy conservation and the needs of low and moderate income families themselves. See the counterfinding reports of Levin, Cuppola, Frost, Duhl, Keene, Patrick and Morell.

1. Notwithstanding the criticisms and counterfindings proposed above in section iv. b., Madison Borough is meeting the fair share allocation in the D.C.A. plan through its current planned housing programs. When the demographic and locational characteristics of the Borough of Madison are measured against the criteria defining a developing municipality, it is clear that Madison cannot be considered "developing." It is, instead, a developed municipality. As such, it has no legal responsibility to provide for its fair share of the region's low and moderate income housing need.

The Borough of Madison does recognize that a need exists to provide the opportunity for development of a variety of housing types and sizes, and that it should make possible the development of housing affordable by low and moderate income households. The opportunities to achieve these goals are limited, however, by the Borough's capacity to absorb new development or promote redevelopment. Its housing needs, therefore, cannot be defined in terms of the needs of a larger region but rather in terms of its own internally generated housing requirements.

The limitations on Madison's ability to absorb new residential development were recognized in A Revised Statewide Housing Allocation Report for New Jersey, prepared by the New Jersey Department of Community Affairs, Division of State and Regional Planning, in

May of 1978. The 1990 housing allocation for Madison Borough is 387 units, only forty-four (44) units more than the indigenous housing need in 1970 which was calculated to be 343 units. This relatively low allocation results from the acknowledgement by the State of Madison's "development limit" (a term used in the Allocation Report). Since 1970, approximately fifty (50) units of Section 8 housing and nearly 25 rental units in duplexes have been built. The 1978 zoning ordinance provides for a wide range of housing types. The Borough is exploring the possibility of obtaining 100 to 150 more Section 8 units. In addition, the housing authority has also proposed the construction of thirty (30) units of low and moderate income housing. The Defendant incorporates by reference the proposed counterfindings in section v. b. 5 to 13 below.

2. Admit. But see the proposed counterfindings in section iv. b. and iv. b. 1 above which question the meaningfulness and efficacy of the regional definition and the resulting allocation.

v. Denied.

a. Denied.

1. Incorporate by reference section ii. c. 6 above.

b. Denied. Madison Borough has utilized its land use planning techniques to provide a realistic opportunity for development of sufficient affordable housing to meet its obligations under the Mt. Laurel cases. As a developed municipality it has used its land use planning techniques to provide a realistic opportunity for development of housing to meet all of its internal needs and a substantial portion of the regional need.

1. The Defendant admits that the quotation in section v. b. 1 is an accurate quotation from the 1963 Master Plan Report; however, the statement is dated and is rejected as a finding. Actions taken by the Borough in recent years indicate that the Borough has recognized and met its responsibility to provide a variety of types and price levels in its housing.
2. Admit. Planning standards clearly require less density for townhouses as opposed to garden apartments. Eight units per acre is a very high density for townhouses and is within the least cost guidelines set by the Madison court.
3. Admit.
4. The Defendant incorporates by reference its responses

and proposed counterfindings in section iii. c. 6 above.

5-13. The Defendant denies the proposed findings in sections v. b. 5 to 13. The Defendant proposes the following as a counterfinding.

Despite its status as a developed municipality, the Borough of Madison has affirmatively demonstrated a commitment to provide for a variety of housing types to meet a wide range of income levels. Furthermore, the Borough is actively participating in Federal and State programs designed to promote the development of new housing, specifically low and moderate income households. It is anticipated that through these positive efforts, the Borough of Madison will be able to provide approximately 387 additional units of low and moderate income housing by the year 1990 and will thus have met its housing responsibilities.

The zoning ordinance for the Borough of Madison, adopted on February 28, 1978, provides for a range of housing types, including single-family detached, two-family, multi-family and single-family attached housing. Single-family residential lot sizes are permitted to be as small as 6,250 square feet in appropriate areas and two-family dwellings are permitted on 7,500 square feet of land. Minimum tract sizes for various forms of attached and multi-family housing range from slightly over one (1) acre to three (3) acres with gross densities ranging from six (6) to ten (10) dwelling units per acre.

In 1971, the Borough of Madison established a Housing Authority. The Madison Housing Authority currently administers approximately fifty (50) units of Section 8 subsidized housing scattered throughout the Borough. Of these 50 units, approximately 16 are reserved for senior citizens and the remaining 34 are for families. The Housing Authority has also proposed the construction of thirty (30) units of low and moderate income housing on three scattered sites within the Borough, although consideration is still being given to increasing the number of sites to decrease the densities of development. A Federal grant of \$276,000 has been awarded to the Borough of Madison for the acquisition of sites for this project. The Borough of Madison is also exploring the possibility of obtaining an additional 100 to 150 Section 8 subsidized housing units.

Clearly, the Borough of Madison has considered and is attempting to provide for low and moderate income housing opportunities through a variety of techniques including the use of available Federal and State rent and construction subsidy programs, rezoning to encourage private multi-family housing, and working with existing institutions to provide land for specialized housing.

It has provided the administrative framework and adopted the resolutions and ordinances necessary to actively and aggressively fulfill its housing responsibilities.

c. Denied.

1. The exhibit attached to section v. b. 13 of Plaintiff's proposed finding indicates that the Borough of Madison has provided for "least cost" housing of various types within its land use ordinances. The following are provisions which Plaintiff admits are least cost: (1) single-family houses in the R-4 zone (6,250 sq. foot area, 50 foot frontage, and 1,000 sq. foot area); (2) two-family houses in the R-4 zone (7,500 sq. foot area, 60 foot frontage per structure and 80 sq. foot floor area per unit); and (3) mid-rise apartments in the C zone. The provisions for townhouses at 6 units per acre and 8 units per acre and for garden apartments at 10.8 to 11.8 units per acre are least cost provisions within the definition set forth in the Madison decision.

The Defendant incorporates by reference the proposed counterfindings of Gershen in paragraphs 19 to 22 of the proposed counterfindings as to the maxi trial issues.

- 1-3. These are an accurate or relatively accurate analysis of the Defendant's land use ordinances; however, the Defendant rejects the Plaintiff's extreme definitions and standards for "least cost" provisions. The Defendant incorporates by reference its responses and counterfindings in section v. c. above.

When the provisions of the Madison zoning ordinance are compared with the Plaintiff's proposed standards for "least cost" housing it is clear that the ordinance meets many of the standards. The differences are in minimum floor area and density. Townhouses are permitted at 6 dwelling units per acre in the R-6 zone and at 8 dwelling units per acre in the T-1 and I-P zones. These are very close to the 10 dwelling units per acre minimum proposed by the Plaintiff. Floor area requirements are no longer applicable. The garden apartment densities of 10.8 to 11.8 units per acre (depending on the number of bedrooms) are also close to the Plaintiff's proposal of 15 - 20 per acre.

- 4-7. Defendant incorporates by reference its responses and counterfindings in sections v. b. 1 to 4 above.

- 8-16. Denied. Defendant incorporates by reference its responses and counterfindings in sections i., ii., iii., iv. and v. a through c. above. Defendant proposes the general counterfinding that despite the fact that it is a fully "developed" community within the decisions of

the Supreme Court in Washington Township and Demarest, it has met and exceeded its obligation to provide the opportunity for "least cost" housing and for the development of housing affordable to low and moderate income families, senior citizens and employees in lower wage and salary occupations and industries.

d. Denied.

1-6. Defendant incorporates by reference its responses and counterfindings in sections ii. c. 1 to ii. c. 6 and v. b. 1 above.

7. Denied. The Defendant admits that this is an accurate quotation from the 1963 Master Plan. The statement bears absolutely no relationship to the finding which it supposedly supports. It is outdated. Furthermore, "white collar" workers include low and moderate income persons. The quotation states that 65 percent of the resident working population in 1960 fell into white collar categories; however, none of the findings proposed by the Plaintiff indicate the percentages of all workers in the region and State that were in these categories. Therefore, even if the quotation were relevant, it is impossible to determine from the findings proposed whether, in fact, Madison has in any way fostered segregation in the region.