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20-May-76

- First Amended Complaint In Lieu of Prerogative  
Writ

pgs. 30

AD 000012W

FILED

MAY 21 1976

D-4

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SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION-SOMERSET COUNTY  
 DOCKET NO. L-25645-75 P. W.

P.W.

THE ALLAN-DEANE CORPORATION, )  
 a Delaware corporation, qualified )  
 to do business in the State of )  
 New Jersey, )

Plaintiff, )

vs. )

THE TOWNSHIP OF BERNARDS, IN THE )  
 COUNTY OF SOMERSET, a municipal )  
 corporation of the State of New )  
 Jersey, THE TOWNSHIP COMMITTEE )  
 OF THE TOWNSHIP OF BERNARDS, and )  
 THE PLANNING BOARD OF THE TOWN- )  
 SHIP OF BERNARDS, and THE SOMER- )  
 SET COUNTY PLANNING BOARD, )

Defendants. )

Civil Action

FIRST AMENDED COMPLAINT

IN LIEU OF PREROGATIVE  
WRIT

Plaintiff, THE ALLAN-DEANE CORPORATION, a Delaware corporation, qualified to do business in the State of New Jersey, and having an office and place of business in the State of New Jersey located at Far Hills Country Mall, Borough of Far Hills, New Jersey, by way of Complaint against the Defendants, says:

FIRST COUNT

BERNARDS TOWNSHIP

1. Defendant, THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET (hereinafter referred to as "BERNARDS TOWNSHIP") is a sprawling rural-suburban community in the north-central portion of Somerset County, with a land area of 24.95 square miles, an amount equal to 8.2 per cent of Somerset County's land area of 305.6 square miles. At the time of the 1970 Census, BERNARDS TOWNSHIP contained a household population of 11,531 persons, or approximately 5.9 per cent of Somerset County's household population. Residential density in BERNARDS TOWNSHIP amounted to 462 persons per square mile as of the 1970 Census, a density substantially below the comparable figures of 635 persons per square mile in Somerset County and 938 persons per square mile in New Jersey.

2. Somerset County, in which BERNARDS TOWNSHIP is located, is the second wealthiest county in New Jersey, with a 1970 Census median family income of \$13,433, a level exceeded only by Bergen County with a median family income of \$13,597. Morris County, on the northern boundary of Somerset County, ranks third in wealth in New Jersey with a median family income of \$13,421, and was the only other county with a 1970 Census median family income over \$13,000.

3. BERNARDS TOWNSHIP stands out, even within

this structure of affluence, as one of the wealthiest municipalities in New Jersey. As of the 1970 Census (1969 income), BERNARDS TOWNSHIP was reported to have a median family income of \$17,852, and an average (mean) family income of \$19,243--income levels of 33 per cent above the County and 57 per cent above the New Jersey median. Of New Jersey's 567 municipalities, BERNARDS TOWNSHIP ranks 35th in family income, a ranking that places it in the 94th percentile in the State. The 531 municipalities in New Jersey with income levels below that of BERNARDS TOWNSHIP contained 95.69 per cent of New Jersey's population.

4. BERNARDS TOWNSHIP is a municipality of sizeable land area outside the central cities and older, built-up suburbs of our North and South Jersey metropolitan areas. It is in the process, due to its own land use decisions and its location with respect to major new interstate highways, of shedding its rural characteristics and would, but for its exclusionary land use practices, experience a great population increase.

5. BERNARDS TOWNSHIP is a "developing municipality" as defined by the New Jersey Supreme Court in Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975).

6. Only 10 developing municipalities in New Jersey had 1970 Census median family income levels above

that of BERNARDS TOWNSHIP.

7. The social characteristics of BERNARDS TOWNSHIP furnish further indication of its exclusionary status. Racially, BERNARDS TOWNSHIP is, according to the 1970 Census, 98.14 per cent white, a percentage well above the parallel statistics of 95.85 per cent white in Somerset County and 88.76 per cent white in New Jersey as a whole. Educationally, the median years of school completed by BERNARDS TOWNSHIP residents (excluding inmate population at Lyons Hospital) of 13.5 years is significantly above Somerset County's median of 12.4 years and New Jersey's median of 12.1 years. The median age of the TOWNSHIP'S residents is 34.0 years compared with 29.4 years in Somerset County and 30.1 years in New Jersey, reflecting the necessity of an established income to be able to afford the purchase of housing in BERNARDS TOWNSHIP.

8. Residential housing statistics from the 1970 census also reflect the municipality's affluence. According to the U. S. Census of Housing, 97.2 per cent of the BERNARDS TOWNSHIP'S housing units were one-family structures as compared with a State percentage of 57.9 per cent and a Somerset County percentage of 73.6 per cent. Of the occupied housing units in BERNARDS TOWNSHIP, 90.1 per cent were owner-occupied units as compared with a State percentage of 60.9 per cent and a Somerset County percentage of 73.1 per cent. The median number of rooms per housing unit was 7.2

rooms in BERNARDS TOWNSHIP while the New Jersey median was 5.2 rooms and the Somerset County median was 5.9 rooms.

9. The 1970 Census of Housing reported that the median value of owner-occupied housing units in New Jersey was \$23,400. The comparable figure for Somerset County was \$29,700, a value 26.9 per cent above the New Jersey median. The median housing value reported for BERNARDS TOWNSHIP in 1970 was \$40,000, a level 70.9 per cent above the New Jersey median and 34.6 per cent above the Somerset County value. The median housing values for units for sale in BERNARDS TOWNSHIP as of the 1970 Census were beyond the Census takers scale and were simply reported to be \$50,000-plus. Since the 1970 Census, housing values have increased markedly throughout New Jersey, and one survey reported a 1971 sample median value of existing and new homes of \$62,500 for Somerset County. Were this value relationship applied to BERNARDS TOWNSHIP, a 1971 median value of \$84,125 would be derived (Bernards = 1.346 x Somerset County). Even by conservative standards (assessed valuation) the average housing value in BERNARDS TOWNSHIP had increased to \$60,355 by 1974, a figure similar to the average value of \$60,854 reported by the Township Committee for all housing units as of August, 1975. New construction in the TOWNSHIP is considerably more expensive, ranging from \$80,000 upwards.

10. Although BERNARDS TOWNSHIP'S residents rank

among the most affluent in New Jersey, their property tax burden ranked the TOWNSHIP 226th (60 percentile) in the State in 1973. By 1975, BERNARD TOWNSHIP'S rank relative to property tax rate was 354th from the highest (below the 40th percentile). Similarly, the per capita real estate tax in BERNARDS was \$118 in 1960 and \$324 in 1970--amounts equal to 96.7 per cent and 126.1 per cent of the respective New Jersey averages. Thus, while income in BERNARDS TOWNSHIP was 57 per cent above the New Jersey median in 1970, the real estate burden was only 26.1 per cent above the State's average cost. Relative to income, BERNARDS TOWNSHIP residents have been paying a substantially lower per cent in property taxes than their New Jersey counterparts.

11. Since 1970, BERNARDS TOWNSHIP residents have enjoyed a particularly favorable tax climate, with the equalized tax rate decreasing--from \$3.93 per \$100 in 1971 to \$3.72 per \$100 in 1972 to \$3.53 per \$100 in 1973 to \$3.27 per \$100 in 1974 and \$2.86 per \$100 in 1975. Thus, while local equalized tax rates in New Jersey have generally increased, BERNARDS TOWNSHIP'S equalized tax rates have decreased.

12. The principal reason for the recent decrease of the tax rate in BERNARDS TOWNSHIP is the presence of the American Telephone and Telegraph Company (hereinafter referred to as "A.T.&T.") Worldwide Headquarters in the Basking Ridge section of the TOWNSHIP. This A.T.&T. facil-

ity will be valued at \$100 to \$110 million (1975 dollars) when completed. At current assessment rates, this A.T.&T. ratable could yield revenues of \$3.5 million when completed, an amount equal to 47.3 per cent of the TOWNSHIP'S total tax levy of \$7.4 million during 1975.

13. The new A.T.&T. facility, although only partially completed, was assessed at \$34.5 million during 1975 and yielded revenues of \$1.3 million last year. Approximately \$1.8 million in revenues from A.T. & T. are anticipated by the TOWNSHIP during 1976, and revenues of \$3.5 million between 1978 and 1980 from A.T. &T. would not appear unreasonable.

14. During 1975 and 1976, the revenues derived from A.T.&T. have enabled BERNARDS TOWNSHIP to lower its equalized tax rate significantly while other municipalities throughout New Jersey are raising general levies by 10 to 20 per cent in order to obtain minimum funds to finance local education. BERNARDS TOWNSHIP will be able, when the A.T.&T. facility is completed, if it continues to succeed in its efforts to exclude lower and middle income housing, to lower its present equalized tax rate at least \$1.00 to \$1.86 per \$100.00 in assessed population.

15. BERNARDS TOWNSHIP is intersected by two major Federal Interstate Highways which, when they are completed, will place it within 35 minutes of Newark, New Jersey's largest city, and 45 minutes of New York City.



16. BERNARDS TOWNSHIP would experience a great population increase because of its own primary employment, its geographic location with respect to other employment centers and its highway system but for its unique and hereinafter described system of exclusionary land use regulations.

#### THE ALLAN-DEANE APPLICATION

17. Plaintiff, THE ALLAN-DEAN CORPORATION (hereinafter referred to as "ALLAN-DEANE"), is the owner of 1,071 acres of land located in BERNARDS TOWNSHIP and more particularly known as Lots 1, 4, 6, 6-2, 6-3, 6-4, 21-2, 22-2, 23&35, 24, 28-1, and 32-1 in Block 171, and Lot 1 in Block 158, on the tax map of BERNARDS TOWNSHIP.

18. The ALLAN-DEANE property located in BERNARDS TOWNSHIP is contiguous on the west to an additional 461 acres of undeveloped land owned by Plaintiff in the adjoining Township of Bedminster.

19. Plaintiff's property is all undeveloped and is located northeast of the intersection of Federal Interstate Highway 78 and Federal Interstate Highway 287.

20. ALLAN-DEANE'S land is all located, pursuant to Chapter XII of the Revised General Ordinance of the Township of Bernards (hereinafter referred to as the "BERNARDS TOWNSHIP ZONING ORDINANCE") adopted by Defendant, THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS (hereinafter

after referred to as the "COMMITTEE"), in Residential 3A district. Under the use regulations applicable to such district, the only uses therein permitted are single-family detached dwellings on three (3) acre lots.

21. On November 1, 1971, ALLAN-DEANE formally applied to Defendant, THE PLANNING BOARD OF THE TOWNSHIP OF BERNARDS (hereinafter referred to as the "BOARD"), for a zoning change after several informal meetings with the BOARD, at which Plaintiff pointed out that the property could be developed at reasonable densities in a responsible manner.

22. By letter dated November 11, 1971, the BOARD acknowledged receipt of this application together with a proposed amendment to the BERNARDS TOWNSHIP ZONING ORDINANCE, and informed ALLAN-DEANE that it agreed that some corrections of the existing zoning were necessary and it was considering the rezoning, not only at the Plaintiff's property, but the entire TOWNSHIP. The BOARD requested ALLAN-DEANE to be patient in view of the magnitude of their concept to allow the BOARD to educate the public concerning this concept and to test their reaction to it.

23. ALLAN-DEANE gave the BOARD the time it had requested to study this application in the context of overall master plan revisions.

24. On December 18, 1975, the BOARD formally

adopted a new master plan in which the ALLAN-DEANE property was designated for sparse residential development.

25. On February 10, 1976, ALLAN-DEANE submitted a revised plan for the development of the property to the BOARD and again requested the BOARD to recommend the rezoning of this property to the COMMITTEE.

26. During ALLAN-DEANE'S presentation of its plan to the BOARD, Plaintiff demonstrated the following:

(a) the designation of the ALLAN-DEANE property for three-acre, single-family residential development was arbitrary;

(b) the ALLAN-DEANE property could be developed at reasonable densities without adverse environmental impact and is suitable for multi-family development;

(c) the master plan and natural resource inventory, insofar as it purports to support the existing zoning, is contradictory and indefensible;

(d) the existing PRN (Planned Residential Neighborhood) zones, to the extent they purport to be areas in which reasonably priced housing might be constructed, are unrealistic. The environmental and zoning constraints in that area work together to make it doubtful that any housing below the \$90,000 price range could be constructed; and

(e) BERNARDS TOWNSHIP has excluded, through its zoning, not only its fair share of the regional need

for low and moderate income housing, but also its fair share of the regional need at all income levels below \$40,000 per year.

27. The development of the ALLAN-DEANE property in accordance with the submitted plan would substantially relieve the existing housing shortage in the BERNARDS TOWNSHIP housing region and would enable persons who can not presently afford to buy or rent housing in BERNARDS TOWNSHIP to live there.

28. Because of the size of the ALLAN-DEANE land holdings and the economies of scale, housing could be constructed on the ALLAN-DEANE property in an environmentally responsible manner and at a price range affordable to all categories of people who might desire to live there, including those of low and moderate income, if BERNARDS TOWNSHIP, by its land use regulations, made such development reasonably possible.

29. ALLAN-DEANE is prepared and has offered to work with the TOWNSHIP OF BERNARDS or some other sponsoring agency to assure that a substantial portion of the multi-family homes constructed on the property would be eligible for rent subsidies in order to help BERNARDS TOWNSHIP to provide fully for its fair share of the regional housing need at all income levels.

THE BERNARDS TOWNSHIP EXCLUSIONARY ZONING SCHEME.

30. The BERNARDS TOWNSHIP ZONING ORDINANCE, by its

very terms and provisions, restricts housing uses in BERNARDS TOWNSHIP to persons who can afford to live in single-family dwellings located on valuable lots of considerable size. The effect of the design and structure of the zoning ordinance is to unnecessarily increase housing costs. This ordinance, by way of example, contains the following unique exclusionary provisions, all of which have the effect of driving upward the costs of housing:

(a) efficiency units are not permitted anywhere in BERNARDS TOWNSHIP and the smallest permitted unit is a one bedroom unit with a minimum of 660 square feet;

(b) apartment units are prohibited. (Although the PRN purposes indicate apartments are permitted, no unit may be placed above another unit);

(c) the minimum floor area requirements for one and two bedroom units in the PRN zone are excessive and bear no relationship to health, safety or welfare;

(d) the maximum gross density permitted is extremely low, requiring high-cost private units and precluding subsidized units;

(e) the filing fee required to be paid upon the submission of an environment impact report is excessive and bears no rational relationship to municipal costs in reviewing such reports, and is a patently unlawful revenue measure. The fee which ALLAN-DEANE would be required to pay in order to have its site plan merely re-

viewed would be in excess of \$165,000 under the BERNARDS TOWNSHIP fee schedule; and

(f) the only areas zoned for multi-family housing, the PRN zones, are the most environmentally sensitive and inappropriate areas in the entire TOWNSHIP. Both PRN zones have substantial areas in the flood plain. The entire PRN-8 zone and two-thirds of the PRN-6 zone are proposed, because of their unsuitability for development, as open-space in the County Master Plan; the United States Corps of Engineers has proposed that much of this area be a flood control reservoir; and the Upper Passaic River Environmental Counsel has recommended that 110 acres in these zones be preserved in open space. Much of the remaining land in the PRN zone is in institutional use and is not reasonably available for development. Because of the physical constraints, the low net density requirement and other exclusionary land use requirements, the actual housing unit yield from these areas should be considerably less than one unit per acre. The average housing unit cost of construction in this area should exceed \$90,000 per unit in 1976 dollars; and

(g) the BERNARDS TOWNSHIP ZONING ORDINANCE prohibits mobile homes in the entire TOWNSHIP.

31. In cynical disregard for their obligation to provide housing for persons of low and moderate income, the

BOARD drafted and the COMMITTEE enacted on May 18, 1976, an Ordinance (Ordinance No. 385 of the BERNARDS TOWNSHIP ZONING ORDINANCES) which provides on its face for 354 units of low and moderate income housing, but contains provisions which ensure that no such housing can be constructed. This Ordinance, by way of example, contains the following provisions which unnecessarily increase housing costs, are inimical with State and Federal subsidized housing programs and collectively ensure against the construction of any subsidized housing:

(a) the Ordinance provides for low and moderate income housing as a special exception or (following the effective date of the Municipal Land Use Law) as a conditional use, which mechanism is invalid on its face under New Jersey case law;

(b) the Ordinance requires that proof be provided by the applicant that the required rental or purchase subsidies are guaranteed as a condition precedent to approval, while all Federal and State subsidy programs require local land use approvals prior to considering subsidy applications;

(c) the Ordinance requires proof, as a condition precedent to approval, that the "adequate rental or purchase subsidies are adequately guaranteed for a minimum of forty years," which requirement effectively

precludes all subsidies under any program of the Farmers Home Administration, the Department of Housing and Urban Development, the New Jersey Mortgage Finance Agency, the New Jersey Housing Finance Agency or the Housing Grant Program of the State of New Jersey. In fact, the only method under which financing for a term of forty years might be provided would require the "piggy-backing" of a HUD, Housing Assistance Payments Program on top of a proposal financed by the New Jersey Housing Finance Agency, and would require the approval of both agencies;

(d) the Ordinance requires an undue concentration of low and moderate income housing in enclaves buffered on the perimeter by single-family houses in contravention of Federal housing project selection criteria;

(e) the Ordinance contains the same unique exclusionary provisions (such as the prohibition of efficiency units, the prohibition of apartments, extraordinarily high application fees, and an exceedingly low permitted density) found elsewhere in the BERNARDS TOWNSHIP ZONING ORDINANCE, all of which have the effect of driving upward the cost of housing and ensuring that housing in BERNARDS will not be eligible under any subsidy program of the State or Federal governments;

(f) the Ordinance ensures, in contravention of sound planning principles for the location of multi-



family housing, that none of the enclaves can be situated within one mile of Basking Ridge, which is the principal retail service area in BERNARDS TOWNSHIP; and

(g) the 354 units of low and moderate income housing and the 177 units of market income housing provided for in the Ordinance represent only a small fraction of BERNARDS TOWNSHIP'S "fair share" of the regional housing need.

32. The BERNARDS TOWNSHIP LAND SUBDIVISION ORDINANCE, by its very terms and provisions, unnecessarily increases housing and development costs.

33. The effect of these requirements, together with the density and floor area ratio requirements, the open space requirements and the complex and expensive environmental impact statement required, assures that any housing built in BERNARDS TOWNSHIP will be more expensive than housing similarly constructed elsewhere.

#### SOCIAL CONSEQUENCES OF BERNARD TOWNSHIP'S EXCLUSIONARY PRACTICES.

34. The COMMITTEE and the BOARD have deliberately sought to preserve BERNARDS TOWNSHIP as an enclave of affluence and social homogeneity by influencing County and State agencies and agencies of the Federal government to adopt policies which make it difficult

and expensive for developers to construct housing at reasonable price ranges. In particular, the BOARD and the COMMITTEE have:

(a) influenced the Somerset County Planning Board to designate the ALLAN-DEANE property and other areas suitable for multi-family housing as areas not intended to be sewered; and

(b) influenced the Somerset County Planning Board to include areas suitable for multi-family dwellings, including the ALLAN-DEANE property, in its master plan as an area to be developed in a sparse residential mode.

35. Although BERNARDS TOWNSHIP presently has over 7,000 acres of vacant, residentially zoned land, that land is physically and economically available, because of BERNARD TOWNSHIP'S system of land use regulations, to only the upper 5%, by income, of New Jersey's population.

36. There is a critical housing shortage in New Jersey generally and in the BERNARDS TOWNSHIP housing region specifically, and that housing need has been added to and increased by the actions of the COMMITTEE which rezoned an area at the request of the American Telephone and Telegraph Company in order to permit it to build a world headquarters in BERNARDS TOWNSHIP.

37. The A.T.&T. complex in BERNARDS TOWNSHIP will employ, when it is completed, an estimated 3,500 people at a broad range of income levels who will require an estimated 2,850 homes.

38. The A.T.&T. office complex in BERNARDS TOWNSHIP will, when it is completed in 1978, pay annual property taxes to BERNARDS TOWNSHIP of approximately three and one-half million dollars. These property taxes will constitute almost one-half of BERNARD TOWNSHIP'S total tax receipts.

39. BERNARDS TOWNSHIP, which already enjoys, in proportion to their taxpayers incomes, one of the lowest tax rates in New Jersey, will be able, due to the taxes it will receive from A.T.&T., to reduce its tax rates even further.

40. The great majority of the employees of A.T.&T. in BERNARDS TOWNSHIP will be unable to afford housing for their families within BERNARDS TOWNSHIP because of the TOWNSHIP'S land use regulations. Many of these workers will be locked out, because of their financial resources, of the other suburban residential areas surrounding BERNARDS TOWNSHIP and will have to commute excessive distances to their jobs.

41. A.T.&T.'s Long Lines Division is in the process of constructing their headquarters just north of the

ALLAN-DEANE property in neighboring Bedminster Township. That facility will employ an estimated additional 3,500 people who will require an additional 2,850 homes. The majority of these workers will be excluded, because of their financial resources, from BERNARDS TOWNSHIP and the suburban municipalities which surround it, and will have to commute excessive distances by automobile to their jobs.

42. The ALLAN-DEANE property, because of its unique locational relationship to both the Long Lines and the A.T.&T. Headquarters buildings, is in a position to provide a good portion of the housing needs of their proposed 7,000 employees.

43. The COMMITTEE and the BOARD failed to act reasonably and in furtherance of a legitimate comprehensive plan for the zoning of the entire municipality when they rezoned for A.T.&T., but chose to ignore the housing needs of A.T.&T.'s employees as well as the regional housing needs.

44. The BERNARDS TOWNSHIP ZONING ORDINANCE and its entire system of land use regulations is invalid because it has a substantial external impact contrary to the general welfare. BERNARDS TOWNSHIP'S accommodation of large employment generators, coupled with BERNARDS TOWNSHIP'S exclusionary land use policies have:

(a) imposed an unfair burden on other municipalities within the BERNARDS TOWNSHIP housing region to

provide housing for persons in the lower and middle income spectrums employed in BERNARDS TOWNSHIP;

(b) deprived other communities, cities and urban areas already providing more than their fair share of housing for all categories of persons of the ratables they need to create a better balance for their community to pay the educational and governmental costs associated with residential development;

(c) contributed adversely to a national and local energy crisis by creating a physical and economic need for long distance commuting for persons employed within BERNARDS TOWNSHIP;

(d) imposed an unfair burden on workers employed in the BERNARDS TOWNSHIP housing region, most of whom have no access to public mass transit and for whom transportation is both time consuming and prohibitively expensive; and

(e) contributed to the process of urban decay presently afflicting our cities by depriving these cities of tax ratables while requiring them, at the same time, to continue to bear the educational and governmental costs associated with housing.

WHEREFORE, Plaintiff demands judgment as follows:

A. that the BERNARDS TOWNSHIP ZONING ORDINANCE be declared invalid in its entirety;

B. that those portions of the BERNARDS TOWNSHIP LAND SUBDIVISION ORDINANCE, together with any other land use regulations which the Court finds unreasonably increases housing costs, be declared invalid;

C. that the COMMITTEE be ordered to rezone the ALLAN-DEANE property so as to permit the development of housing thereon at reasonable densities and at reasonable costs;

D. that the COMMITTEE and the BOARD be ordered to affirmatively provide for their fair share of the regional housing need at all family income levels, including low and moderate and specifically to:

(1) establish a Housing Authority to sponsor and develop low and moderate income housing in BERNARDS TOWNSHIP;

(2) fund that Housing Authority not only with federal and state housing grants but also with a substantial portion of the taxes paid to BERNARDS TOWNSHIP each year by A.T.&T.;

(3) plan and provide for, out of municipal tax revenues, the extension of sewers, water, roads and other utilities to areas zoned for multi-family development;

(4) cooperate with ALLAN-DEANE to keep housing and development costs down in order to assure the development on the ALLAN-DEANE tract of an appropriate

variety of housing types, including housing units eligible to be taken over by the BERNARDS TOWNSHIP Housing Authority under a federal rent subsidy program;

E. that Defendants pay to Plaintiff the costs of suit;

F. that BERNARDS TOWNSHIP be restrained from permitting further occupancy of the A.T.&T. facility in Basking Ridge until such time as it can provide housing for those employees;

G. that BERNARDS TOWNSHIP be restrained from permitting any further nonresidential development of the TOWNSHIP until it can meet its fair share of the regional housing need;

H. that BERNARDS TOWNSHIP be required to distribute to other municipalities within its housing region an apportioned fair share of its tax revenues; and

I. such other relief which this Court may deem appropriate.

#### SECOND COUNT

1. Plaintiff repeats the allegations contained in the First Count of the Complaint as if set forth herein at length.

2. BERNARDS TOWNSHIP has been able, because of this low tax rate and because of its unique location with

respect to two major federal interstate highways (paid for by the United States of America), to unfairly compete with and attract valuable tax ratables away from our cities and urban areas to further reduce its tax rate.

3. BERNARDS TOWNSHIP has refused or neglected to provide for any substantial portion of the housing needs of the employees of the company which it has induced to leave an urban area and has left to other municipalities, our cities and urban areas, the responsibility of providing adequate housing at reasonable costs for said employees.

4. The members of the COMMITTEE and the BOARD have conclusively demonstrated through their words and actions that, although they are aware of their legal obligation to affirmatively provide for BERNARD TOWNSHIP'S fair share of the regional housing need, they are prepared, at any cost, to maintain BERNARDS TOWNSHIP as an enclave of affluence and social homogeneity and to use every delaying tactic towards that end.

5. The general welfare of all citizens of New Jersey will be irreparably damaged by any delay in the resolution of this case. While this matter remains in litigation, the employees of A.T.&T. and other employees in the BERNARDS TOWNSHIP housing region will be seeking homes in areas far from their place of employment, other municipalities and cities will be paying educational and governmental ex-



penses associated with housing and irreversible long range patterns of commutation from home to work will be established.

WHEREFORE, Plaintiff demands judgment as follows:

A. that this Court suspend the COMMITTEE'S and the BOARD'S power to plan and zone BERNARDS TOWNSHIP;

B. that this Court appoint a receiver or trustee for BERNARDS TOWNSHIP with the power to appoint planners, housing consultants and consultants in the field of local finance;

C. that this Court order the COMMITTEE to pay over to the receiver or trustee all tax revenues received from non-residential uses in BERNARDS TOWNSHIP;

D. that the COMMITTEE be required, during the period of receivership, to support its schools and governmental services out of remaining funds;

E. that the receiver or trustee be authorized and directed to undertake comprehensive planning and to rezone BERNARDS TOWNSHIP into a reasonably balanced community, providing for its fair share of the regional housing need at every income level;

F. that the receiver or trustee be authorized to create and fund a HOUSING AUTHORITY and to otherwise spend the funds entrusted to him to affirmatively provide for the regional housing need; and

G. that this Court issue such other orders or relief as may be deemed appropriate.

THIRD COUNT

1. Plaintiff repeats all of the allegations contained in the First and Second Counts of the Complaint as if set forth herein at length.

2. The BERNARDS TOWNSHIP ZONING ORDINANCE, as applied to the Plaintiff's property, is unreasonable, arbitrary and capricious.

3. The BERNARDS TOWNSHIP ZONING ORDINANCE, as applied to Plaintiff's property, is discriminatory and exclusionary.

WHEREFORE, Plaintiff demands the following:

A. that Defendants be directed to permit the Plaintiff to develop its property at a reasonable density for multi-family housing; and

B. that those portions of the ZONING ORDINANCE, LAND SUBDIVISION ORDINANCE, and other building and land use regulations, which the Court finds unnecessarily increase housing costs, be declared invalid as applied to Plaintiff.

FOURTH COUNT

1. Plaintiff repeats the allegations contained in the First, Second and Third Counts of the Complaint, as if set forth herein at length.

2. Plaintiff alleges that the BERNARDS TOWNSHIP

ZONING ORDINANCE requiring a minimum acreage of three acres for residential dwellings is, as applied to Plaintiff's property, in violation of the State and Federal constitution in that it deprives Plaintiff of its property without due process of law and has denied to Plaintiff the equal protection of the laws.

WHEREFORE, Plaintiff demands that Defendants pay Plaintiff just compensation for depriving Plaintiff of its property without due process of law.

#### FIFTH COUNT

1. Plaintiff repeats the allegations contained in the First, Second, Third and Fourth Counts of the Complaint, as if set forth herein at length.

2. All three branches of State Government, the Legislature, the Judiciary and the Executive, have recognized that there exists a serious shortage of decent living accommodations in New Jersey at rents and prices affordable to a broad spectrum of this State's citizens and, have determined that the general welfare requires that such housing be provided.

3. THE SOMERSET COUNTY PLANNING BOARD (hereinafter referred to as the "COUNTY BOARD") has the duty and is required by basic planning principles, by N.J.S.A. 40:27-2, and by the United States and the New Jersey Constitutions to

promote the general welfare and to encourage all municipalities within the County to affirmatively provide for the regional housing need.

4. The COUNTY BOARD has conspired with BERNARDS TOWNSHIP and other municipalities in the Somerset Hills area to preserve the exclusionary zoning in that area of Somerset County.

5. The COUNTY BOARD has encouraged BERNARDS TOWNSHIP and the BOARD and other municipalities within the Somerset Hills area to adopt land use policies which have a substantial external impact contrary to the general welfare and which:

(a) impose an unfair housing burden on other municipalities, including municipalities in Somerset County, within the BERNARDS TOWNSHIP housing region;

(b) deprive other communities, cities and urban areas, already providing more than their fair share of housing for all categories of persons, of the ratables they need to create a better balance for their communities to pay educational and governmental costs engendered by residential development;

(c) contributed adversely to a national and local energy crisis by creating a physical and economic need for long distance commuting for persons employed within BERNARDS TOWNSHIP, Bedminster Township and Far Hills Borough;

(d) imposed an unfair burden on workers employed in the Somerset Hills area, most of whom have no access to public mass transit and for whom transportation is both time consuming and prohibitively expensive; and

(e) are in clear violation of the existing statutory and case law requirements that each municipality plan comprehensively for a reasonably balanced community and to affirmatively meet its fair share of the regional housing needs of persons employed within the housing region.

6. The COUNTY BOARD has adopted a County Master Plan which mirrors the existing desire of BERNARDS TOWNSHIP and of other communities in the Somerset Hills.

7. The County Master Plan, insofar as it includes the ALLAN-DEANE property, is arbitrary and capricious.

8. The COUNTY BOARD has conspired with BERNARDS TOWNSHIP and other municipalities within the Somerset Hills area to hold secret meetings in plain violation of the Open Public Meetings Act for the expressed purpose of preserving BERNARDS TOWNSHIP and other municipalities from residential developments of a density and on a scale which would economically permit housing to be provided to persons of low or moderate incomes.

9. The COUNTY BOARD, in reckless disregard of the public welfare, has:

(a) designated the ALLAN-DEANE property and

other areas suitable for multi-family housing as areas not intended to be sewered;

(b) influenced the New Jersey Department of Transportation to request the redesign of the proposed U.S. 287 interchange constructed for A.T.&T. so that it would be more difficult for that interchange to serve undeveloped areas of BERNARDS TOWNSHIP and Bedminster Township, including the ALLAN-DEANE property, which had applied for rezoning for a multi-family use;

(c) attempted to influence the State Department of Environmental Protection and the Federal Environmental Protection Agency to adopt sewer funding policies inimical to the development of housing in the Somerset Hills area;

(d) totally ignored the housing needs of persons employed in the BERNARDS TOWNSHIP housing region;

(e) encouraged and allowed its employee, the Director of the COUNTY BOARD staff, to publicly attack State housing policy and to discourage municipalities in Somerset County from providing for their fair share of the regional housing need.

WHEREFORE, Plaintiff demands the following:

A. that the COUNTY BOARD be directed to reorder its priorities and affirmatively encourage municipalities in Somerset County to meet the housing needs of persons employed within the Somerset County housing region generally and,

specifically, the need of persons employed in the two A.T.&T. facilities in the Somerset Hills area;

B. that the COUNTY BOARD be directed to adopt a new master plan consistent with the obligation of all municipalities within Somerset County to provide for their fair share of the regional housing need;

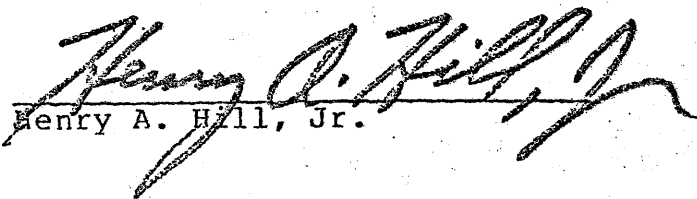
C. that the COUNTY BOARD be directed to cooperate affirmatively with ALLAN-DEANE and other prospective developers of new housing at price ranges below what is now available in the Somerset Hills area to solve the environmental problems associated with larger scale developments and to service such properties with utilities and adequate transportation facilities;

D. that the existing County Master Plan be declared invalid; and

E. such other relief which this Court may deem appropriate.

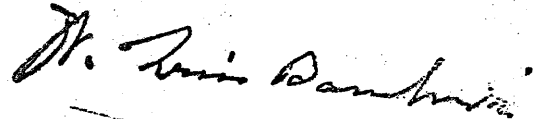
MASON, GRIFFIN & PIERSON  
Attorneys for Plaintiff

By:

  
Henry A. Hill, Jr.

Dated: May 20, 1976

I hereby certify that this document  
is a true copy of the original  
in my office.



Clerk