

AD - Bernards

08/5/1976

Allan -Deane Corp v Twp of Bernards

Plaintif. demand for answers to
Interrogatories (Third set)

pgs 36

AD 0000 136

MASON, GRIFFIN & PIERSON
201 NASSAU STREET
PRINCETON, N. J. 08540
(609) 921-6543
ATTORNEYS FOR Plaintiff

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

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

Plaintiff,)

Civil Action

vs.)

INTERROGATORIES

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,)

Defendants.)

(THIRD SET)

TO: McCarter & English, Esquires
550 Broad Street
Newark, New Jersey 07102

SIRS:

PLEASE TAKE NOTICE that the undersigned demand
that the Defendants, THE TOWNSHIP OF BERNARDS, IN THE COUNTY
OF SOMERSET, THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF

BERNARDS and THE PLANNING BOARD OF THE TOWNSHIP OF BERNARDS,
give certified answers to the following Interrogatories,
based upon the knowledge and information available to them
and to their agents and attorneys, within the time period
allowed by the rules of Court.

MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff

By:

Henry A. Hill, Jr.
Henry A. Hill, Jr.

Dated:

August 5, 1976

DEFINITIONS

Whenever any of the following terms are used in the within Interrogatories, such term shall have the following meaning:

PLAINTIFF: shall mean THE ALLAN-DEANE CORPORATION and any of its agents, servants or employees, including any attorneys it may have employed or still employs.

DEFENDANT: shall include THE TOWNSHIP OF BERNARDS, THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS and THE PLANNING BOARD OF THE TOWNSHIP OF BERNARDS and any individual member of the COMMITTEE or PLANNING BOARD, including any attorneys it may have employed or still employs.

PERSON: shall mean any individual, corporation, partnership, or unincorporated association, or sole proprietorship.

DOCUMENT or WRITING: shall mean all documents as defined in Rule 4:18-1 of the New Jersey Rules of Civil Procedure, all writings of any nature whatsoever and all non-identical copies of different versions of the same document (e.g. copies of a printed document with different handwritten notations), in your possession, custody or control or to which you have or have had access, regardless of location, and includes, but is not limited to, agenda, agreements, analyses, announcements, articles, assignments,

bills, books, books of account, brochures, bulletins, calendar and diary entries, charts, checks, communications, computer output or input, contracts, correspondence, data sheets, drawings, handwritten notes, inserts, instructions, invoices, indexes, labels, magazines, magnetic tapes, manuals, maps, memoranda of agreements, mechanical reproductions, memoranda, minutes, motion picture film, notebooks, notes, notices, orders, packages, pamphlets, papers, periodicals, pictures, price lists, receipts, recordings, records, reports, samples, schedules, statements, statistical or informational accumulations, studies, summaries, tabulations, tape recordings, telegrams, teletypes, video tapes, vouchers, working papers, or any other written, recorded, transcribed, taped or photographic matter, however produced or reproduced.

Whenever the words IDENTIFY THE SOURCE are used, they mean:

1. If the source material is written, specify the author, publisher, date of publication and all information sufficient to identify the writing. If the writing is a letter or other document not exceeding fifteen pages, attach a copy of it to your answers to these Interrogatories. If the writing exceeds fifteen pages, state where the writing may be inspected and copies and the name and address of the person who has possession of it.

2. If the source material was orally given or

submitted, state:

(a) the name and address of the person who gave it;

(b) the date, time and place when given;

(c) the name and address of all persons present when the oral information was given;

(d) exactly what was said by each person present; and

(e) whether Defendant has a memorandum or any other writing evidencing said oral material given and, if so, attach a copy thereof to your answers to these Interrogatories.

IDENTIFY or IDENTIFICATION: when used in reference to an individual person, shall mean to state his full name, residence address and his present or last known business affiliation; when used in reference to a document, shall mean to state the type of document (e.g. letter, memorandum, telegram, chart, tape recording, etc.), or some other means of identifying it, and its present location or custodian. If any such document was, but is no longer in your possession, or subject to your control, state what disposition was made of it.

INTERROGATORIES

1. (a) Set forth all facts upon which Defendants rely to support the allegations of the First Separate Defense that the comprehensive plan upon which the zoning ordinance of Bernards Township is based:

- (i) secures safety from flood;
- (ii) promotes the general welfare;
- (iii) prevents the overcrowding of land or buildings;
- (iv) avoids undue concentrations of population; and
- (v) encourages the most appropriate use of land throughout the municipality.

(b) Set forth all facts in support of the allegations of the First Separate Defense that the comprehensive plan upon which the Bernards Township zoning ordinance is based:

- (i) promotes appropriate population densities which will contribute to the general welfare; and
- (ii) provides sufficient space for the specified uses according to environmental requirements.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatories No. 1(a) and (b) above.

Answer to Interrogatory No. 1:

1. (a) The comprehensive plan upon which the Zoning Ordinance of Bernards Township is based is found in the Natural Resource Inventory of Bernards Township, the Master Plan for Parks and Recreation, the Master Plan of Bernards Township adopted in December, 1975, and the Zoning Ordinance, with amendments.

(i) Ordinances 265 and 390 restrict development in areas subject to flooding. Development increases the quantity of surface water runoff, and the courts have taken judicial notice of such fact. Oakwood at Madison, Inc. v. Township of Madison, 117 N.J. Super. 11, 21 (Law Div. 1971); see also Armstrong v. Francis Corp., 20 N.J. 320, 323 (1956); Divan Builders v. Planning Board, Township of Wayne, 66 N.J. 582 (1972); Cappture Realty Corp. v. Board of Adjustment, Elmwood Park, 126 N.J. Super. 200, 206 (L. Div. 1973), aff'd 133 N.J. Super. 216 (App. Div. 1975). By imposing reasonable restrictions on the intensity of development in Bernards Township, the municipality has acted to ameliorate downstream flooding. See N.J.S.A. 58:16B-2(a). See also: Magnitude and Frequency of Floods in New Jersey with Effects of Urbanization, 1974, prepared by U.S. Geological Survey in cooperation with the N.J. Department of Environmental Protection.

(ii) The Zoning Ordinance of Bernards Township is presumed to promote the general welfare unless and until plaintiff sustains the burden of proving the contrary. The general welfare is promoted by an ordinance, such as that in Bernards Township, which provides for appropriate development of lands within its borders; that does not conflict with the appropriate development of neighboring communities, the county and State; that promotes the establishment of appropriate population densities and concentrations after careful consideration of the land and uses to which it properly should be put. Such consideration includes the reasonable protection of the natural environment pursuant to legislative policy and judicial ruling. See answer to Interrogatory 7, herein. In Taxpayers Ass'n of Weymouth Township v. Weymouth Township, N.J. (slip opinion Sept. 28, 1976), rev'g 125 N.J. Super. 376 (App. Div. 1973), the the Supreme Court held that the concept of general welfare in the land use regulation context is "quite extensive". Accord, Shepard v. Woodland Township, N.J. (slip opinion Sept. 28, 1976) rev'g 135 N.J. Super. 97 (App. Div. 1975) ("... the concept of the general welfare in the realm of land use regulation is broad and inclusive...."). See also, without limitation: Somerset County Master Plan of Land Use; Morris County Master Plan Future Land Use Element; "Second Regional Plan, draft for discussion,"

of Regional Plan Association; Tri-State Transportation Commission, "Regional Development Guide, Technical Perspectives," Tri-State Transportation Commission.

(iii) (iv) The provisions in the Zoning Ordinance for minimum lot sizes in single family residential zones, and the percentage of floor area ratio permitted in planned residential neighborhoods and balanced residential complexes prevent the overcrowding of land or buildings and avoid undue concentrations of population.

(v) The Zoning Ordinance permits business, commercial and employment activities and multi-family housing to be located only in areas served by the Bernards Township Sewerage Authority under present or projected future plans. In other parts of the Township, residential density is permitted only to an extent reasonably calculated to permit on-site sewerage disposal.

(b) (i) See answer to 1(a)(v). The Bernards Township Master Plan projects an ultimate population ceiling of 30,000 to 35,000 based upon the considerations set forth therein. Current studies of water quality problems in the Passaic River which have not yet become final indicate that there are limitations on the quantity of pollutants from sewerage which can be assimilated by the Dead River and the Passaic River in the vicinity of Bernards Township. Similar studies of water quality problems in the Raritan River may limit pollutants introduced into that river as well. Virtually the entire present capacity of the Bernards Township Sewerage Authority plant is currently being used or has been committed. The Authority has pending before the New Jersey Department of Environmental Protection an application to expand its treatment plant to 3 million gallons per day. The Authority estimates that this would provide additional capacity of 800,000 gallons per day for residential connections. Using an estimate of 100 gallons per day per capita, this would mean an additional population of 8,000 to be served by the Sewerage Authority, and if the figure of 120 gallons per day per capita were used, this would mean an additional residential population of 6,667. Approximately 177,460 gallons per day would be required to service existing homes which presently do not have sewerage service. The Environmental Protection Agency advised the Bernards Township Sewerage Authority under date of August 17, 1976, that the flow projections, for the Authority's plant may be reduced to 2.8 million gallons per day until 1990. This might reduce the additional residential capacity of Bernards Township to be provided with sewerage service below the figures stated above.

(ii) See foregoing answers.

(c) See attached documents and documents referred to above. In addition, the Natural Resource Inventory, Master Plan for Parks and Recreation, Master Plan and Ordinances of Bernards Township may be examined and inspected, and plaintiff may make copies thereof at the Bernards Township Municipal Building during normal business hours pursuant to Rule 4:17-4(d). See also Draft reports of studies for the Upper Passaic River Basin Water Management Committee and Draft Report commissioned by N.J. Department of Environmental Protection entitled "Section 303(e) Water Quality Management, Freshwater Passaic River Basin." Such documents may be examined after notice to defendants by plaintiff and inspected by plaintiff and copies, compilations, abstracts or summaries of said documents may be made during normal business hours at the offices of McCarter & English in Newark, New Jersey, pursuant to Rule 4:17-4(e). Such other documents as continuing investigation and research will reveal.

2. (a) Set forth all facts in support of the allegation of the Second Separate Defense that the Bernards Township zoning ordinance promotes the general welfare by requiring reasonable protection of the natural environment.

(b) In accordance with Rule 4:17(a), identify and attach a copy of all documents relevant to the facts set forth in the answer Interrogatory No. 2(a) above.

19 2. See answer to Interrogatory No. 1. The general welfare requires reasonable protection of the natural environment according to legislative policy, Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., and according to judicial ruling, e.g., Hackensack Meadowlands Development Commission v. Municipal Sanitary Landfill Authority, 68 N.J. 451, 473, 476 (1975).

3. (a) Set forth all facts which support, rebut or pertain in any way to the allegations of the Third Separate Defense that the zoning ordinance of Bernards Township requires land uses reasonably necessary to preservation of the water quality of:

- (i) the Dead River and its tributaries; and
- (ii) the tributaries and headwaters of the Upper Raritan River and its Watershed.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 3(a) above.

3. See answer to Interrogatory No. 1. See particularly, without limitation, Bernards Township Natural Resource Inventory, pp. 32 and 33, and pp. 58-74, and Tables 19, 20, 21, 22, 23, 24 and 25 in the Appendix thereto. See also testimony of Dr. Ruth Patrick on March 27, 1974 and Exhibit D-47, "Upper Raritan Watershed Water Quality Survey for 1972" in the case of Allan-Deane Corporation v. Township of Bedminster.

4. (a) Set forth all facts which support, rebut or pertain to the allegation of the Fourth Separate Defense that, at present, economically feasible sewerage treatment plants will "inevitably" introduce pollutants into the receiving waters.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 4(a) above.

4. (a) No responsible official has suggested that distillation of sewage treatment is an economically feasible method of sewage treatment. No other method of sewage treatment eliminates all pollutants. Generally a separate method of treatment is required to remove a particular element of pollution, and complete removal of a particular element may be technologically impossible, or prohibitively expensive.

(b) See "Primer on Waste Water Treatment," a copy of which is attached hereto. See also, "General Review of the Present State of the Art of Sewerage Treatment, which is an exhibit attached to Defendants' Second Request for Admissions. Such other documents as continuing investigation and research will reveal.

5. (a) Set forth all facts, and identify the sources thereof, which support, rebut or pertain in any way to the allegation of the Fifth Separate Defense that Federal and State water quality standards for the Passaic River cannot be "met" unless there are limitations on the treated sewage effluent introduced into the Dead River and Upper Passaic River by Bernards Township.

(b) Set forth the factual basis for the statement in the Fifth Separate Defense that there is a "reasonable likelihood" that authorities may impose waste load allocations upon Bernards Township.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatories No. 5(a) and (b) above.

Answer to Interrogatory No. 5:

5. (a) Federal Water Pollution Control Act amendments of 1972, 33 U.S.C.A., §1251, et seq., and particularly, without limitation, §1311(a) and §1342. This statute declares that it is a national goal that the discharge of the pollutants into navigable waters be eliminated by 1985 and that it is a national goal that wherever attainable an interim level of water quality which provides for the protection and propagation of fish, shellfish and wildlife, and provides for recreation in and on the water be achieved by July, 1983. The statute also requires all publicly owned treatment works to achieve secondary levels of treatment by 1977 (sections 301(b)(1)(B) and 304(d)(1)) and best practicable waste treatment technology by 1983 (sections 301(b)(2)(B) and 201(g)(2)(A)). More stringent effluent limitations, treatment standards or compliance schedules are to be established for areas where such effluent limitations are inadequate to achieve applicable water quality standards (section 302(a)). The State of New Jersey has adopted similar water quality standards for the Passaic River in "Surface Water Quality Standards, Docket No. DEP 012-74-11", effective December 2, 1974.

The necessity of reaching these State and federal water quality standards imposes limitations on the pollution loadings that the Dead River and the Passaic River can assimilate in Bernards Township, whether from treated sewage effluent or from non-point sources. See answer to Interrogatory 5(c), below.

(b) See subparagraph (a), above. See also Draft Report commissioned by N.J. Department of Environmental Protection entitled, "Section 303(e) Water Quality Basin Plan."

(c) See answer to Interrogatory No. 1. See also Bernards Township Natural Resources Inventory Volume I, Page 45 through 48, 58, 70 through 74, 76 through 77; Volume II, Table 25. Draft Report commissioned by New Jersey Department of Environmental Protection, "§303(e) Water Quality Management Basin Plan, Fresh Water Passaic River Basis," dated August 1975, and Draft Executive Summary of such Basic Plan, dated September 1976, attached hereto.

6. (a) Set forth all facts which support, rebut or pertain in any way to the allegation of the Sixth Separate Defense that efforts to improve local water quality will necessitate connection of certain buildings, presently serviced by septic systems, with the Bernards Township Sewerage Authority plant. Also specify and identify these "certain buildings."

(b) Set forth the factual basis for the contention in the Sixth Separate Defense that presently required and authorized additions to the Bernards Township sewerage facilities will likely absorb "virtually all" of a prospective waste load allocation; i.e., what is the factual basis for believing that a reasonable, supportable waste load allocation would be so low as to preclude development beyond that presently authorized.

(c) Is it Defendant's contention that any waste load allocation imposed upon Bernards Township would be retroactive in effect, so as to require disconnection of facilities from the sewage system to meet that allocation?

(d) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatories No. 6(a), (b) and (c) above.

Ans. 6. (a) 467 homes listed in Schedule A of documents attached to answer to Interrogatory No. 1 are presently served by septic systems that do not function satisfactorily or as to which infill sewerage is both economically feasible and reasonably calculated to avoid future septic system malfunctions. See Natural Resource Inventory, Page 76.

(b) See answer to Interrogatory No. 1.

(c) No.

(d) Documents referred to herein or in Interrogatory No. 1, as well as documents attached hereto in response to Interrogatory No. 1. Such other documents as continuing investigation and research will reveal.

7. (a) Relate specifically how extension of the Bernards Township sewerage system to Plaintiff's lands would be contrary to the general welfare. Without limitation of the foregoing, specify the factual basis, if any, for characterizing:

- (i) such extension as undesirable "excess sewer capacity" (Governor's Commission to Evaluate the Capital Needs of New Jersey, Research Report Vol. 2, April, 1975, p. 46); and
- (ii) Plaintiff's proposed development as "excessive overbuilding" (Id. at p. 64.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 7(a) above.

Answer to Interrogatory No. 7:

7. (a) The general welfare is promoted by minimizing the ecological disturbance of plaintiff's lands and by distributing population growth to other areas in Bernards Township and Somerset County. This is recognized and confirmed by the Somerset County Master Plan, the plans of Tri-State Regional Planning Commission, the Bernards Township Master Plan and Natural Resource Inventory. According to the testimony of plaintiff's planner, John Rahenkamp, on deposition, if dwellings on plaintiff's lands are to be served by conventional septic systems, individual lots would probably have to be larger than 3 acres. The prospective capacity for the foreseeable future for the Bernards Township Sewerage Authority System is limited as set forth in answer to Interrogatory No. 5, and the Somerset County and Bernards Township Master Plans reflect these limitations by including plaintiff's lands in areas planned to remain unsewered. All of the zoning districts, other than 3-A in Bernards Township are either within or immediately adjacent to the area either presently serviced by Bernards Township Sewerage Authority, or to be served, if its pending application for expansion is approved. Since there is no foreseeable likelihood that the sewerage capacity in Bernards Township will be able to accommodate development requiring sewerage in the 3-A zone until at least after 1990, such development should not be permitted in the 3-A zone. In view of the limitations on the treatment capacity of the Bernards Township Sewerage Treatment plant for the foreseeable future, the practical effect of extension of sewer lines to plaintiff's property would be a wasteful expenditure of funds for new construction instead of utilizing more fully the existing sewer lines, and would also utilize treatment capacity which would otherwise be available for the development of presently undeveloped lands lying in the portion of the Township which is planned by municipal, county and regional planners to have sewers and as appropriate for further development. Such areas include those designated by the Bernards Township Zoning Ordinance for the construction of multi-family housing, including housing for low and moderate income families. The general welfare would not be served if these forms of development were prevented in order to permit the development of plaintiff's lands at densities greater than the responsible planning officials have determined is consistent with the

general welfare and with a cost of sewerage far in excess of that on other lands planned for more intensive development. Such additional cost may well make the multi-family housing proposed for plaintiff's lands to be beyond the cost of low and moderate income families, young marrieds, senior citizens or others on limited or fixed incomes. The Bernards Township Committee has the power and, pursuant to Municipal Land Use Law of 1975, the duty to determine "appropriate locations" for a variety of residential and nonresidential uses in an "appropriate population density and concentration." Pursuant to that statute, a zoning ordinance must be "drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land." Under these circumstances, to extend sewer lines into plaintiff's property would be contrary to the general welfare and the policy recommendations made by the Governor's Commission to Evaluate the Capital Needs of New Jersey.

(b) "Regional Development Guide - Technical Perspectives, November 1969," Tri-State Transportation Commission.

Somerset County Master Plan of Land Use.

Water Supply and Distribution, Somerset County Planning Board.

Sewerage Systems Report: Somerset County - Somerset County Planning Board.

Bernards Township Natural Resource Inventory.

Bernards Township Master Plan.

Bernards Township Zoning Ordinance, as amended.

(Plaintiff has copies of all of the foregoing documents.)

Portions of Volume 2, Research Report, April 1975 of the Governor's Commission to Evaluate the Capital Needs of New Jersey as quoted in the Seventh Separate Defense.

Portions of Report "Secondary Impact of Regional Sewerage Systems", Volume 1 of Department of Community Affairs as quoted in the Seventh Separate Defense.

8. (a) Set forth all facts which support, rebut or pertain in any way to the allegations of the Eighth Separate Defense that:

- (i) a "significant proportion" of stream pollution results from nonpoint sources; and that
- (ii) surface water runoff from multi-family housing is a "significant source" of nonpoint pollution.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 8(a) above.

Answer to Interrogatory No. 8:

8. (a) The allegations of Paragraphs 2 and 3 of the Eighth Separate Defense are the results of research by a number of investigators, including, without limitation, William Whipple, Jr., Director, Water Resources Research Institute, Rutgers University. The N.J. Department of Environmental Protection, in its Draft Report entitled "Section 303(e) Water Quality Management, Freshwater Passaic River Basin," estimates that the ratio between nonpoint source pollution and combined point and nonpoint source pollution in the Upper Passaic River Basin is 45% and averages 50% throughout the Freshwater Passaic River Basin, as there defined. See e.g., Table II-13 at page II-45. Multi-family housing normally results in significant quantities of surface water runoff or nonpoint source pollution since impervious land coverage for that form of development typically is greater than that associated in single family residences on individual lots for various reasons and is located in larger uninterrupted sections.

(b) Whipple: "Preliminary mass balance of BOD in Three New Jersey Rivers."

Whipple: "BOD mass balance and water quality standards."

Marcus and Whipple: "Predicting future growth of organic pollution in metropolitan area rivers."

Yu, Whipple and Hunter: "Assessing organic pollution from agricultural regions and wooded lands."

(The foregoing documents were marked as exhibits in the case of Allan-Deane Corporation v. Bedminster, and are in plaintiff's possession.)

Whipple, Hunter & Yu: "Unrecorded pollution from urban runoff." (Copy attached)

Whipple: "BOD phosphorus and other pollution in runoff from developed land, Bernards Township" June 24, 1976.

Whipple: "Estimate of additional pollution to be added to streams by rezoning 1722 acres to PRN 12" June 24, 1976. (Copy attached hereto).

See Bernards Township Natural Resource Inventory, Appendix, Table 18. See also Draft Report, commissioned by N. J. Department of Environmental Protection entitled "Section 303(e) Water Quality Management, Freshwater Passaic Basin." Those interested can find additional data in "Urbanization and Water Quality Control," 1975. American Water Resources Association, Minneapolis. Such other documents as continuing research and investigation may result.

9. (a) Set forth all facts which support, rebut or pertain in any way to the allegations of the Ninth Separate Defense that the proposed development of Plaintiff's lands would cause:

- (i) a "large" increase in the quantity of surface water runoff; and
- (ii) resultant flooding of the Dead River downstream from Plaintiff's lands, as well as increased flooding problems in the Passaic River Basin.

(b) Set forth a record of past flooding of the Passaic River, giving dates and "severity" (as measured by height or flow), for all areas of the river which Defendants contend may be adversely affected by the development of Plaintiff's lands as proposed.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatories No. 9(a) and (b) above.

Passaic River problem which has been controversial for over 100 years. One recent proposal is the so-called Plan 11B of the Army Corps of Engineers. Some communities that would be affected by this plan are loud in their opposition, while others acclaim it. Many of them, however, until recently, continued to allow development on the flood plains. Nevertheless, the Commission feels that it cannot support the plan. In its present form, it would disrupt too large a segment of our state and its population. In the event the plan is modified and made acceptable, then the Commission would also suggest that we contemplate a multi-purpose project tying together flood control and water sources. This type of system might also be considered at the confluence of the two branches of the Raritan River. Finally, the Commission recommends that the state immediately carry out a full and thorough delineation of the flood plains, in order that dangerous developments in these areas can be prevented. Ensuring that the flood plains remain undeveloped will help to achieve natural flood control in downstream areas by allowing the flood plains to fill with water during periods of heavy rainfall and runoff. We recommend that \$5 million be allocated by the State for that purpose." Problems such as those described above are not atypical of the Raritan River basin.

(c) See documents listed in answer to Interrogatories 1 and 8(b). See also series of articles in Newark Star Ledger special report by Gordon Bishop commencing October 10, 1976, on subject of flooding and flood protection in the Passaic River Basin, attached hereto. "Flood Insurance Study, Township of Bernards", by Pfisterer, Tor & Associates is more than 10 pages in length, and may be examined during normal business hours at the Bernards Township Municipal Building, Basking Ridge, N. J. Such other documents as continuing research and investigation may result.

10. (a) As to the allegations of the Tenth Separate Defense, set forth the information requested in Interrogatories No. 9(a) and (b) as regards the flooding of the Raritan River.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 10(a) above.

Ans.

10. See answer to Interrogatory No. 9.

11. (a) Relate specifically the manner in which the Bernards Township zoning ordinance, by its exclusion of multi-family housing of the type and at the location proposed by Plaintiff, follows the objectives of the Somerset County Master Plan and other regional plans.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 11(a) above.

Answer to Interrogatory No. 11:

11. The Somerset County Master Plan for Land Use, the Morris County Master Plan, Future Land Use Element, the Tri-State Transportation Commission in its study entitled "Regional Development Guide - Technical Perspectives" and the Regional Plan Association in its study entitled "Second Regional Plan, a draft for discussion" all have as their objective the promotion of the reasonable development of their particular study areas. Each emphasizes the need to prevent further wall to wall sprawl of urbanization, to encourage development of urban centers the effect of which will make mass transit economically feasible, reduce the job-to-home distance of employees, attract centers of entertainment and services such as shopping and preserve natural features and open space of outlying areas. They also seek to preserve woodlands, headwater areas, floodplains and other environmentally critical areas. The Somerset County Master Plan of Land Use, for example, recognizes that woodlands are important to the ecological environment because of their water retentive ability, ability to moderate stream flow preserve the quality of the potable water supply in both the Passaic and Raritan Rivers and because they act as a filter to cleanse the airshed. Much of plaintiff's lands are identified by the Master Plan as being part of the Woodlands of Somerset County. (See Map at page 22 of Master Plan) In its map entitled "Master Plan of Land Use," the Somerset County Planning Board identifies all of plaintiff's lands as planned for "Rural Settlement". Such areas are so designated by the Plan due to their direct relationship to the Raritan River basin, one of New Jersey's major sources of potable water. At page 51, the Master Plan states as follows:

"Fundamentally, if the headwaters and the runoff to these water supply facilities are not to be contaminated, there must be highly restricted land development controls. The most suitable method of achieving this effect is to restrain and control intensive economic and residential development. Without these controls the water resources of New Jersey will become so polluted as to force the State into a very uneconomic water purification program or radically restrict all economic and residential development in northern New Jersey."

In designating plaintiff's land for "Rural Settlement", the Somerset County Master Plan proposes that other areas of Bernards Township and surrounding municipalities be developed at higher densities in areas where such development is

suitable, e.g., where public utilities such as sewers and water connections are, or can be, readily available and where warranted by existing road and other transportation networks. Similarly, the Tri-State Transportation Commission's report identifies plaintiff's lands as located in an area it proposes should remain predominantly open land. Map 15, page 33. This determination is based upon an analysis of seven factors including man-made and natural determinants such as topography, geology and hydrology. The Commission advocates the preservation of all headwater areas within its study region. Headwaters regions produce and regulate the water supply in the study region. Accordingly, it must be preserved, if possible, from development which might adversely affect its effective operation. If these areas can remain predominantly open and in the natural state, the headwater's region will continue to function effectively. The "Second Regional Plan" of the Regional Plan Association, at page 61, Map 8, indicates both existing development in the tri-state study region and the proposed future development of the area. This pattern of residential development appears to propose that much of Bernards Township and all of plaintiff's lands remain open. This proposal is based upon some of the same conservation and ecological reasons described above, as well as the sociological reason that life in the study region would be improved for future generations if a sharper distinction is made between natural countryside and urbanized areas. Planning for such open spaces avoids haphazard urbanization typical of the spread city development of the past and ensures that vital natural resources are retained for future generations. The Future Land Use Element of the Morris County Master Plan generally reflects the concerns and recommendations of each of the above studies without, of course, dealing specifically with plaintiff's lands in Somerset County. It advocates that future economic development and high density housing development be located within existing economic concentrations, that more intensive use be made of any land proposed to be used at all and that in the interest of economy and efficiency, as well as sound planning of land use, that new growth be coordinated with transportation systems and existing or readily feasible utility networks. Large lot zoning is defended where appropriate due to water quality and topological constraints, in headwater regions and where accessibility to public sewerage is limited. In its designation of plaintiff's lands in Bernards Township within the 3A zone, the ordinance recognizes the environmental constraints imposed on this section of town and seeks to preserve vital woodlands, open and headwater areas

as well as preserving steeply sloped land in its natural condition. Recognizing the natural constraint on much of the 3A lands due to its topography, subsurface bedrock, and other soil conditions which would make public sewerage uneconomic, as well as the fact that greater economies can be gained by infill sewerage by extension of existing sewerage lines, the ordinance provides that more extensive residential development is appropriate in other parts of the town, including multifamily development in all but the 3A and PRN residential zones. Multifamily development is more appropriate in other parts of the town for the additional reason that by clustering near existing economic centers and transportation systems, the proposals of various regional plans are achieved. Since public sewer connections to the 3A zone are not reasonably foreseeable or economical, and septic systems for residential developments in that portion of the township are therefore necessary, requiring that each lot be at least three acres in size is reasonable. See deposition of plaintiff's planner, John Rahenkamp. The Bernards Township Zoning Ordinance promotes the establishment of appropriate population densities and concentrations in appropriate locations after careful consideration of the land and uses to which it properly should be put. Such consideration includes the reasonable protection of the natural environment pursuant to legislative policy, judicial ruling and regional plan. The development permitted by the ordinance does not conflict and, indeed, responds to the future development as proposed by neighboring communities, Somerset County, neighboring counties, the State and regional plans. See also deposition of William E. Roach taken by plaintiff in this action.

(b) See all documents referred to herein. See also Bernards Township Natural Resource Inventory, Master Plan and Zoning Ordinance, as amended. Such other documents as continuing research and investigation may reveal.

12. (a) Set forth all facts which support, rebut or pertain in any way to the allegation of the Thirteenth Separate Defense that the density of development in a watershed area is "directly related" to the quality of water passing downstream. Specify all expert or technical reports relied upon by Defendants which purport to demonstrate such a correlation.

(b) State whether it is Defendant's contention that there is certain set correlation between population density and water quality, as revealed by any studies in Defendant's knowledge or possession, and, if so, specify said correlation.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatories No. 12(a) and (b) above.

Ans. 12. The density of population would affect nonpoint sources of pollution, and would also have a bearing upon the volume of sewage effluent to be treated and introduced into the river. All this would be directly related to the quality of water passing downstream. See facts and conclusions contained in the documents authored or co-authored by William Whipple, listed in answer to Interrogatory 8(b); see also "Upper Raritan Watershed Quality Survey for 1972" referred to in answer to Interrogatory No. 3. See also "Section 303(e) Water Quality Management Basin Plan, Executive Summary, Freshwater Passaic River Basin" (Draft, September 1976), copy of which is submitted herewith.

13. (a) Is it Defendant's contention, as implied in the Fifteenth Separate Defense, that rezoning to allow development of Plaintiff's lands as proposed by Plaintiff would not be "firmly rooted" in local, regional and environmental considerations?

(b) Specify what is meant by the (i) "local", (ii) "regional" and (iii) "environmental considerations" mentioned in the Fifteenth Separate Defense.

(c) If the answer to Interrogatory No. 13(a) is in the affirmative, relate specifically the manner in which zoning to allow the proposed development of Plaintiff's lands would, under any circumstances, necessarily be inconsistent with the local, regional and environmental considerations.

(d) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatories No. 13(a), (b) and (c) above.

Ans. 13. The question is improper. The 15th Separate Defense sets forth a proposition of law which defines one of the criteria for adjudicating the reasonableness of a zoning regulation. This proposition was argued for in the brief of the Commissioner of Environmental Protection, amicus curiae, filed by the Attorney General of New Jersey in the case of Allan-Deane Corporation v. Bedminster Township. Examination of the documents cited in the answer to Interrogatory No. 7(b) will disclose that the existing zoning of plaintiff's property is, in fact, rooted in local, regional and environmental considerations as therein set forth. The existing zoning of plaintiff's property is presumed to be valid unless and until plaintiff sustains the burden of proving that it is unreasonable. Even if the rezoning of plaintiff's property, as desired by the plaintiff, were equally reasonable, which is not admitted, with the existing zoning, that would not establish the invalidity of the existing zoning.

14. (a) Set forth all facts to support the allegation of the Seventeenth Separate Defense that Plaintiff's proposed development will cause changes in existing natural ecosystems.

(b) Specify the natural ecosystems referred to in the Seventeenth Separate Defense which Defendants may regard as likely to change, with adverse consequences, as a result of the proposed development of Plaintiff's lands.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatories No. 14(a) and (b) above.

ans. 14. (a) and (c) Ecosystem is defined as "a complex of ecological community and environment forming a functioning whole in nature," Webster's Seventh New Collegiate Dictionary (1967). Ecosystem has also been defined as "a system formed by the interaction of a community of organisms with their environment," and organism is defined as "any form of animal or plant life," -- Random House Dictionary of the English Language (Unabridged Edition) 1966. "An ecosystem, ... is a basic functional unit of nature comprising both organisms and their non-living environment, intimately linked by a variety of biological, chemical and physical processes," Borman and Likens in "The Nutrient Cycles of an Ecosystem," Scientific American, Oct. 1970, p.92. It is admitted in plaintiff's "A Proposal for an Open Space Community" which has been marked D-76 for Identification in this proceeding, that plaintiff's proposed development would cause changes in existing natural ecosystems, by reason of the substitution of roads and buildings for some of the existing vegetation, the need for some bedrock removal, and the alteration of existing natural drainage.

(b) The question is improper. The burden of proof rests upon plaintiff, not on defendants. Were it otherwise, municipalities would find it extremely difficult, if not impossible, to meet their obligation under Municipal Land Use Law, §2J, to promote the conservation of open space and valuable natural resources and to prevent urban sprawl and degradation of the environment through improper use of the land.

15. (a) Define "ecologically sensitive area" as used in Defendant's Eighteenth Separate Defense, and specify the character of soils, geology and topography in such an area.

(b) Set forth all facts which support, rebut or pertain in any way to the allegation of the Eighteenth Separate Defense that Plaintiff's property is located in an ecologically sensitive area. Identify the source of any information relating to the ecology of the Bernards Township area.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatories No. 15(a) and (b) above.

15. (a) and (b) See Bernards Township Natural Resource Inventory, including pp. 58 to 74. See Bernards Township Natural Resource Inventory Appendix Maps OL-1, 2, 7, 8, 9, 10, 11, 12, 13 and 14. See "A Proposal for an Open Space Community," Exhibit D-76 for Identification herein, pp. 12 to 18, and Maps 2 to 6. Plaintiff's property is located in the headwaters of both the Passaic and Raritan Rivers (Ex. D-76 for Identification, p. 1). The Tri-State Transportation Commission's "Regional Development Guide, Technical Perspectives," November 1969, pp. 25 to 27 sets forth why the headwater areas should remain predominantly in the natural state. Draft Report commissioned by N.J. Department of Environmental Protection entitled, "Section 303(e) Water Quality Basin Plan," identifies the following environmental features as most relevant to water quality management planning and in identifying what it calls "environmentally-sensitive areas": wetlands (swamps and marshes), flood plains, natural areas (forests and grasslands), steep slopes (defined as those in excess of 15%), soils (either those unsuitable for intensive development because of their make-up or those not suitable for land application of septic waste), and aquifer-recharge areas. (at pages II-16,18).

(c) See Bernards Township Natural Resource Inventory. Reference to "Regional Development Guide - Technical Perspectives" is contained in defendants' First Request for Admissions, paragraph 25. Draft Report "Section 303(e) Water Quality Basin Plan" is out of print; defendants only available copy may be inspected by plaintiff during normal business hours at the offices of McCarter & English in Newark.

16. (a) Is it Defendant's contention, in view of the studies mentioned in the Nineteenth Separate Defense, that the natural growth of population in the Bernards Township area has "virtually halted"?

(b) If the answer to Interrogatory No. 16(a) is in the affirmative, set forth all facts, and the sources thereof, which support or pertain in any way to the supposed halt in population growth in the Bernards Township area.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatories No. 16(a) and (b) above.

Ans. 16. (a) No.

(b) Not applicable.

(c) Not applicable.

17. State whether Defendants admit, by the Twentieth Separate Defense, that Plaintiff cannot realize as much profit out of its land as presently zoned as would be possible under other land-use schemes.

Ans.

17. The question is improper.

18. (a) Relate specifically the manner in which Plaintiff has failed to exhaust its administrative remedies, as alleged in the Twenty-First Separate Defense.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 18(a) above.

Ans. 18. 21st Defense is withdrawn.

19. (a) Set forth all facts in support of the allegation of the Twenty-Second Separate Defense that Plaintiff is guilty of laches.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory No. 19(a) above.

19. 22nd Defense is withdrawn.

Ans.

20. Specify the basis for the claim in the Twenty-Third Separate Defense that the specified Counts of Plaintiff's Complaint fail to state a claim upon which relief can be granted.

Ans. 20. The question is improper as calling for a conclusion of law.

21. (a) Identify the sources of all information contained in the Twenty-Fifth Separate Defense relating to Plaintiff and Johns-Manville Corporation. Without limitation of the foregoing, specify:

- (i) the source or derivation of the \$3,500/acre figure for the average price paid by Plaintiff or Johns-Manville Corporation for the lands in Bernards and Bedminster Township; and
- (ii) the source or derivation of the figures regarding the assets and debts of Johns-Manville Corporation.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 21(a) above.

Ans.

21. (a) Deposition of Arthur C. Smith on November 18, 1971 in the case of Allan-Deane Corporation v. Bedminster Township; deposition of John Kerwin herein on May 24, 1976; deposition of E. James Murar herein on May 25, 1976 and such documents as may have been marked. Johns-Manville Corporation Annual Reports for 1969 and 1975, respectively.

(i) Deposition of Arthur C. Smith.

(ii) Johns-Manville Corporation Annual Reports for 1969 and 1975. And see plaintiff's admission of Defendant's First Request for Admissions, paragraphs 2, 3, 4, 5, 9, 12 and 14.

(b) All of the named documents are in the possession of plaintiff.

22. (a) Set forth all facts, and the sources thereof, which support, rebut or pertain in any way to the allegation of the Twenty-Sixth Separate Defense that Johns-Manville Corporation is the ultimate source of funds to be used in prosecuting the within action.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 22(a) above.

Ans.

22. See plaintiff's answer to First Request for Admissions, paragraph 5. See also aforesaid deposition of Arthur C. Smith. Additional facts to be developed on further discovery.

23. (a) Set forth all facts, and identify the sources thereof, which support, rebut or pertain in any way to the allegation of the Twenty-Eighth Separate Defense that Plaintiff is a "voracious land speculator and developer".

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 23(a) above.

Answer to Interrogatory No. 23:

23. According to the deposition of Arthur C. Smith, former president of plaintiff, plaintiff acquired its land in Somerset County as an investment for the purpose of making money, with knowledge of the existing zoning in both Bedminster and Bernards Townships; thereafter plaintiff engaged a planner to develop plans for the development of its property. Plaintiff's operating assumption appears to have been that it could not reap satisfactory profits from developing its land as zoned, but had to speculate on its chances of securing satisfactory zoning changes. Neither of the plans for the development of plaintiff's property that have been made public ("Wardley Woods," Exhibit D-5 for Identification herein, or "A Proposal for an Open Space Community", Exhibit D-76 for Identification herein) conforms even closely to the existing zoning in either Bedminster or Bernards Township. See alternate plan proposed to the Board of Directors of Johns-Manville Corporation, entitled Plan B, development of plaintiff's lands in accordance with Bernards and Bedminster Township zoning ordinances projected an estimated pre-tax profit for 1969-1973 in excess of \$5 million on an investment of about \$8 million. This proposal was referred to as "minimal plan" and, to defendants' knowledge and information was never seriously pursued by Johns-Manville or plaintiff. Defendants know of no public announcement of such "minimal" proposal. That plaintiff is not only a land speculator and developer, but a "voracious" one, is a finding of fact or conclusion of law to be derived from plaintiff's whole course of conduct, including without limitation, the following: the fact that plaintiff sued Bedminster Township to invalidate its zoning ordinance before the Bedminster Planning Board had acted upon plaintiff's request for zoning changes; the threats made by plaintiff's representatives to the Bernards Township Planning Board at a public meeting on February 10, 1976 to institute suit if Bernards Township did not adopt the PUD ordinance proposed by plaintiff on or before March 11, 1976; the institution of suit on March 11, 1976, although the only regularly scheduled public meeting of the Bernards Township Planning Board between that date and February 10, 1976 had to be cancelled due to adverse weather conditions; the threats made by plaintiff's counsel to defendants during the course of depositions (deposition of E. James Murar, May 25, 1976, Tr. 61-13; deposition of William W. Allen, July 20, 1976, Tr. 56-21); the institution by plaintiff of Civil Action bearing Docket No. L-27518-75 P.W. against Bedminster and Bernards

Township, the Somerset County Planning Board and others, and the institution by plaintiff of Civil Action bearing Docket No. L-39401-75 P.W. against Bedminster Township, both of said actions having been summarily dismissed by the trial court; the designation by plaintiff's parent corporation that a \$5 million return on \$8 million investment was "minimal" and undesirable, while the proposal favored by Johns-Manville was projected to gross a \$28.5 million profit on a \$13 million investment in four years. Other facts and circumstances may be developed during the course of this litigation which will lend further support to this conclusion.

24. (a) Relate specifically the factual basis for the allegation of the Twenty-Ninth Separate Defense that Plaintiff's offer to work with Bernards Township, to ensure the eligibility for rent subsidies of a portion of its proposed multi-family housing, is a "sham" designed to harass Defendants and complicate the instant action.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 24(a) above.

Ans.

24. It appears from the transcript of the argument before Judge Leahy on May 11, 1976, and from the deposition of E. James Murar on May 25, 1976, that plaintiff's offer to work with Bernards Township to ensure the eligibility for rent subsidies of a portion of its proposed multi-family housing, was an idea concocted by plaintiff's counsel to give plaintiff purported standing to litigate issues in which plaintiff has no direct or substantial interest, for the purpose of harrassing the defendants and imposing upon the court. Further facts to be developed on further discovery.

25. (a) Relate specifically all facts relative to the manner in which Bernards Township has complied with the law of the Mt. Laurel case, as alleged in the Thirtieth Separate Defense, and identify the source of all material which supports this contention.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 25(a) above.

Ans.

25. The enactment of Ordinance 347, Ordinance 385 and the granting of a variance to Ridge Oak, Inc.

26. (a) Set forth all facts, and identify the sources thereof, of the claim in Defendant's Answer to paragraph 7 of the First Count of Plaintiff's Complaint, that the median years of school completed by Bernards Township residents is 12.8 (rather than 13.5), and state whether this figure excludes the inmate population at Lyons Hospital.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 26(a) above.

Ans.

26.(a) The source of defendant's answer to Paragraph 7 of the First Count of the Amended Complaint that the median years in school completed by Bernards Township residents is 12.8 (rather than 13.5, as alleged) is the document entitled "U.S. Census Data for New Jersey Townships" issued by New Jersey Department of Community Affairs. The data appears at page 32-81, Table 103, entitled "Educational and Family Characteristics for Townships of 10,000 to 50,000", derived from 1970 Population Reports on Family Population Characteristics.

(b) The document referred to in answer to Interrogatory 26(a) may be inspected by plaintiff and plaintiff may make copies thereof at the Bernards Township Municipal Building during normal business hours pursuant to Rule 4:17-4(d).

27. (a) In view of Defendant's denial of the allegation of paragraph 8 of the Complaint, set forth the following information:

- (i) percentage of one-family structures among housing units for Bernards Township, for the State and for Somerset County;
- (ii) percentage of owner-occupied units among all occupied housing units in Bernards Township, in the State, and in Somerset County; and
- (iii) median number of rooms per housing unit in Bernards Township, in the State and in Somerset County.

(b) Identify the source for the information given in answer to Interrogatories No. 27(a) and (b) above.

Ans. 27. Defendants wish to hereby amend its answer to paragraph 8 of the First Count of the First Amended Complaint, to read as follows:

"8. Answering paragraph 8 with respect to the data contained in the 1970 Census of Housing, defendants admit such data to the extent that it fully represents the entirety of such document. Defendants are at this time without knowledge or information sufficient to admit or deny the statistical computations drawn from documents referred to therein and demand production and proof. Except as herein specifically admitted, defendants deny the allegations contained in paragraph 8 and further deny any characterization, interpretation or extrapolation contained therein."

28. (a) State whether Defendants, by answer to paragraph 14 of the First Count of the Complaint, intended to deny that Bernards Township was able to lower its equalized tax rate for 1976.

(b) If the answer to Interrogatory No. 28(a) is in the affirmative, set forth all facts which support the denial so made, and identify the sources thereof.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatories No. 28(a) and (b) above.

Ans.

28. No. As is indicated in answer to the allegations in Paragraph 11 of the First Amended Complaint, there has been a decline in the equalized tax rate for Bernards Township from \$3.92 per \$100 in 1971 to \$2.86 per \$100 in 1975. In 1976, the equalized tax rate is \$2.79 per \$100. Had the plaintiff alleged that the equalized tax rate declined from 1975 to 1976 defendants would have admitted it. Defendants did intend to deny the allegation that the decline in the equalized tax rate from \$2.86 per \$100.00 to \$2.79 per \$100.00 is "significant" as alleged in Paragraph 14 of the First Count of the First Amended Complaint and that the decline in its equalized tax rate was due to "the revenues derived from A. T. & T." Furthermore, defendants deny and object to plaintiff's attempt to contrast the decline in the equalized tax rate in Bernards Township with the rise of general levies in other municipalities since the two figures have no relation and, in fact, the general levies in Bernards Township were increased from 1975 to 1976.

29. (a) Relate specifically the manner in which Bernards Township has provided for a "substantial portion" of the housing needs of the employees of AT&T Corporation, as is implied by Defendants' denial of the allegations contained in paragraph 2 of the Second Count of the Complaint.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory No. 29(a) above.

Ans. 29. Paragraph 2 of the Second Count of the Complaint, as amended, makes no such allegations, consequently no response need be made to this Interrogatory.

CERTIFICATION

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief, and with the understanding that the information to furnish answers to interrogatories has been gathered from records of the Bernards Township Committee, the Planning Board of the Township of Bernards, consultants, including Charles Agle, and Richard J. McManus, Esq., by our attorneys, McCarter & English, Esqs., and from various documentary sources. The accuracy of all said answers is subject to verification by all documents in the Township files and to revision as discovery in this action progresses. I have made a conscientious effort to obtain documents and answers, as required by our attorneys.

Because the defendants in this action include the Township Committee and the Planning Board, and because questions are directed to those defendants concerning "communications", and since the persons who served on said Committee and Planning Board are numerous and may no longer be in office, it is difficult to answer all questions directed to "communications" by and/or between defendants with a great deal of accuracy, particularly as to oral communications, which may or may not have been noted in the files of the Township.

The answers are further made upon information and belief due the fact that I was first employed by Bernards Township on January 1, 1975.

I further certify that copies of reports of expert witnesses to be furnished to the attorneys for plaintiff will be true and complete copies of all reports of expert witnesses which may be furnished to me from time to time, and I will serve them promptly upon the attorneys for plaintiff after they have been received.

I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

THE TOWNSHIP OF BERNARDS, IN THE
COUNTY OF SOMERSET

By Frederick C Conley
Frederick C. Conley, Administrator

TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF BERNARDS

By Frederick C Conley
Frederick C. Conley, Administrator

THE PLANNING BOARD OF THE TOWNSHIP
OF BERNARDS

By Frederick C Conley
Frederick C. Conley, Administrator