

~~EA~~ ~~Oakwood v. Madison~~

Sept. 7, 1978

AD - Bedminster

Letter from expert Mallach to Hill re fair share ~~##~~  
numbers for Bedminster

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Alan Malach/Associates  
11 North Willow Street  
Trenton, New Jersey 08608

609-393-5979

September 7, 1978

Henry A. Hill, Jr., Esq.  
Mason, Griffin & Pierson  
201 Nassau Street  
Princeton, New Jersey 08540

Dear Henry:

At your request I have reviewed the fair share issue, as well as the implications of the language in the Oakwood v. Madison decision, in order to outline the scope of my potential testimony in the forthcoming Bedminster trial. Given some of the points made in Oakwood, as we have discussed, I have looked at a number of variations in possible fair share allocations, rather than a single 'formulaic' approach. Specifically, I have evaluated the impact on fair share allocations for Bedminster of (a) using alternative regions; and (b) using alternative time frames, in both cases within the context of a generally acceptable and reasonable allocation formula. My conclusion, on which I will amplify below, is that a reasonable fair share for Bedminster Township should be above 2,000 low and moderate income housing units, and possibly as much as 3,000 or more; certainly far more, under any reasonable body of assumptions, than 600 units. Below I will describe the reasoning and analysis I followed, as well as some of the points regarding the State of New Jersey fair share allocation plan that may be relevant to the discussion.

(1) allocation formula: I have already described the allocation formula, generally speaking, that we have used in an earlier memorandum, which, I believe, has long since been provided to the defendants in the Bedminster case. With one exception, I can see no reason to change any of the allocation factors. The three factors (a) vacant land availability; (b) total employment; and (c) wealth, are the factors almost universally recognized as the essential elements of a fair share plan. The sole change that I have made is to retain a certain part of the present need to be met in place; i.e., certain of the existing housing needs of each community, particularly the central cities, are met in the city where the need exists, and are not reallocated within the region. This has the net effect of slightly reducing the number reallocated, and therefore the fair share allocation for affluent communities with negligible in-place needs.

## Alan Mallach/Associates

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(2) region: As we have discussed, in my judgement both the Mt. Laurel decision as well as general logic dictate that the region be one based on the central places (core) of the region (in the Mt. Laurel case, Camden) and radiating outward. This is consistent as well with Judge Leahy's decision in the earlier Bedminster case, with the definition of region used by the United States Bureau of the Census, the New Jersey Division of State & Regional Planning, etc.

Although there is a consensus on the general principle of what a region is, there is some disagreement as to exactly what should constitute the region for Bedminster. Three alternatives have been proposed:

(a) the nine-county region, containing Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union counties. This is the region Judge Leahy proposed in his Bedminster decision.

(b) the eight-county region, containing all of the above with the exception of Monmouth County. This is the region the state of New Jersey proposes in its fair share allocation plan; and

(c) the four-county region, which the U.S. Bureau of the Census has designated as the Newark SMSA, and which contains Essex, Morris, Somerset, and Union Counties.

We have calculated a fair share allocation for Bedminster based on each of the above alternative regions.

(3) time frame: The extent of the fair share obligation will vary on the basis of the time frame employed. Since housing need is generally divided into two components: (a) present need, which is independent of time frame; and (b) prospective need, based on household increase over time, any adjustment of the target year will affect the fair share amount. Clearly, the time frame must be long enough to make planning possible; e.g., a 1980 fair share is almost meaningless, since housing units that will be available for occupancy in 1980 are already well along in planning, if not already in construction. The two plausible alternatives that have been suggested are 1990 (which the Division of State & Regional Planning uses) and 2000. We have calculated fair share allocations for both periods. It should be noted that the difference is not great between the two.

By varying the region and time frame as described above, we can obtain a total of six different fair share levels, as shown on the table on the following

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page. The point of this table is that there is no perfect fair share number; rather, the alternatives on the table represent the boundaries of a reasonable and legitimate fair share allocation goal for Bedminster Township.

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ALTERNATIVE FAIR SHARE ALLOCATION LEVELS (ROUNDED) FOR BEDMINSTER

	to 1990	to 2000
four-county region	2300	2700
nine-county region	2800	3200
eight-county region	3500	3900

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The variation between regions is largely a function of the difference in the total need generated in each region vs. the amount of land availability. By adding Monmouth County to the region, for example (going from eight to nine counties), the allocation for all other counties is reduced significantly, since Monmouth's presence increases total need very slightly, but land availability for housing considerably. Bergen, Hudson, and Passaic, on the other hand, tend to generate more need than ability to meet needs; as a result, the four-county region fair share is the smallest of all.

Turning to the State of New Jersey fair share allocation plan, which arrived at the figure of roughly 1,400 low and moderate income housing units as Bedminster's fair share to 1990, it is not conceptually incompatible with the above analysis. There are, however, a series of technical inadequacies in that plan which have the result of reducing Bedminster's fair share from the reasonable range cited above. These include:

(a) use of a statewide income level definition of low and moderate income, which is substantially lower than that applicable to North Jersey. HUD makes a regional distinction for purposes of Section 8, with North Jersey levels being roughly 20% higher. This flaw on the part of the state plan arbitrarily deflates need.

(b) the state deletes land under farmland assessment from the vacant land totals, without regard to the reality of housing development. This has a strong effect on Bedminster, which has large amounts of land, which are not prime agricultural lands, under farmland assessment.

**Alan Mallach/Associates**

Henry A. Hill, Jr., Esq. (4)

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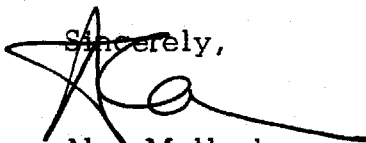
(c) the state does not take account of the AT&T facility in its employment data. In addition, the state measures only short-term employment change, which (although not affecting Bedminster's total significantly) is clearly inequitable.

(d) the state uses a highly arbitrary method of allocating units 'in-place' which creates unrealistically high figures for central cities, and unrealistically low ones for many suburban areas.

All of these factors tend to depress the fair share allocation in the state plan for Bedminster, as well as for affluent exurban townships of similar character.

Finally, I hope to have the opportunity to review whatever fair share plan Bedminster may plan to introduce before the trial date.

Sincerely,

A handwritten signature in black ink, appearing to be 'AM', written over the word 'Sincerely,'.

Alan Mallach

AM:ms