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Critique of the Proposed Bedminster Township Subdivision and Road Construction Ordinances

(Report No. 3)

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Note: Expert Report

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REPORT NO. 3

CRITIQUE OF THE PROPOSED BEDMINSTER TOWNSHIP SUBDIVISION AND ROAD CONSTRUCTION ORDINANCES

PREPARED BY
RSWA, INC.
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This analysis concerns itself primarily with the proposed Bedminster Township Subdivision ordinance and Road Construction ordinance. In addition sections of the township's Zoning Ordinance are evaluated specifically, regarding excessive cost generating standards.

The following review divides itself into two major components; those provisions which we felt to be unduly cost generating, thus constituting exactions and those which are arbitrary and unreasonable.

1. THERE ARE NUMEROUS PROVISIONS WHICH ARE EXCESSIVELY COST GENERATING AND THUS CONSTITUTE EXACTIONS.

A. Subdivision Ordinance

1. Filing Fees. The filing fees for Preliminary and Final Plat as required in Section 4.5 are an exaction. A review of this section based upon the Allan Deane Proposal of 1849 units reveals that the submission costs amount to $101,895 (see Appendix A). This is a totally up front cost and does not include possible interest accrued between the time of payment and when the first units are sold or rented. In addition the uniform provision of fees on a per lot basis does not recognize economies of scale in the review process. This is unreasonable as the court pointed out in Round Valley vs. Clinton Township when it stated "(b) y assessing fees on a 'per lot basis',

this processing schedule gives no recognition to the fact that essentially the same plans will be be reviewed for all housing types." The Bedminster ordinance does make provision for the return of unused fees. The same situtation was present in Round Valley vs. Clinton Township when the opinion stated that "the court cannot help but wonder whether the fees were excessive to begin with."

2. Inspection Fees. Section 4.5.3 requires a cash deposit of 5% of the cost of "all required improvements" to cover the cost of inspecting the same. In the case of the Allan Deane proposal this would amount to $555,846. Again this is an "up front" cost since one cannot obtain Final Subdivision Approval before the necessary improvements are installed and inspected by the township. For comparative purposes Clinton township had inspection fees of $3,700 plus 2½% of improvements cost. These were cited as unduly contributing to the cost of housing.

3. Installation of Improvements Prior to Final Approval. Section 4.3.10 states that "before consideration of a final subdivision plat, the subdivider shall have installed all required improvements." The ordinance allows performance

guarantees on five items: (1) The final surface courses of streets, (2) Sidewalks, (3) Monuments, (4) Street signs and (5) Shade trees. Installation of the bulk of the most costly improvements for the entire project, however, are required. These would include: Street excavation, grading and base courses, sewer lines and structures, water lines, all drainage systems and structures, curbs, any required buffers and lot grading. On a large scale project phased over a period of years such as proposed by Allan Deane these improvements would have to be constructed for the entire project before Final Approval could be obtained for even the first phase. The whole concept of staging for the reasonable maintenance of cash-flow for the developer and encouraging least cost housing is not recognized by the ordinance. As the Court stated in Clinton vs. Round Valley, when, construction of on-site improvement were required before subdivision approval: "While this one condition might make sense for a very small scale subdivision, its impact upon any larger scale developments geared toward providing least cost housing, is devastating." The Court cited this requirement as "a clear, unreasonable subdivision 'exaction'."

4. Excessive Requirements on Shade Trees. Section 7.2.8 requires that shade trees of 2 inch caliber planted at 50' intervals

along streets. Although this is commendable trees of 1½ inch caliber would serve the public health, safety and welfare equally effectively and contribute to lessening the cost of housing.

B. Road Construction Ordinance

1. Installation of Curbing. Section 2.3.a of the Road Construction Ordinance states that "unless the township engineer recommends otherwise all curbing shall be constructed of "granite block". The alternatives to granite is concrete curbing. To give a cost comparison concrete curbing fully installed is $7.00 per lineal foot, granite curbing $10.00 per lineal foot. To install granite curbing on one mile of road, which on a large development is not an unreasonable length, would cost $31,680 more than concrete.

In addition to the added cost the criteria by which the township may waive granite block and substitute concrete is extremely arbitrary. The ordinance states that a waiver may be "based on existing conditions." There are no further standards.

2. Road Pavement. The minimum negotiable road pavement with the exception of rural residential roads is "Class B" (Section 2.7). By way of definition Data Book for Civil Engineers, Seelye;describes a "Class B" pavement as capable

of supporting a 9,000 lb. wheel load and is used for "medium traffic routes containing uniform passenger and commercial vehicles." It is not, however, reserved for residential areas. The U.S. Army Corps of Engineers accepts Class C pavement with a 6,000 lb. wheel load for residential areas. Raising the minimum accepted standard in this way deters from providing least cost housing and constitutes an exaction.

C. Zoning Ordinance

1. Compact Residential Clusters. In Section 11.1, a number of standards are specially changed in an effort to promote least cost housing as part of the Cluster options, such as a density increase bonus and a floor area reduction bonus. The same section states, however, that a minimum distance of ½ mile shall be kept between compact residential clusters where existing roads could not provide a separation between any two groups containing a maximum of 150 dwelling units each. Assuming the maximum number of units allowable (see Appendix B) were place in two such clusters, and assuming that both of these, as would be reasonable, would be served by the same sewer trunk line, a cost of $270,000 would be generated by the ½ mile separation requirement. This is equal to an additional per unit cost of $900 . Such an exaction

clearly counters the least cost housing intent of the Compact Cluster provision. Furthermore, if the purpose of this requirement is to provide buffering from two such clusters, it does not represent the minimum standards accepted in the ordinance, which subsequently states that such clusters may in fact be adjoined by existing roads, which in no eventuality could amount to a distance greater than 200!

Thus this requirement is contradictory to the ordinances' stated purposes and constitutes an exaction to the subdivider.

2. BEDMINSTER TOWNSHIP ORDINANCES CONTAIN A NUMBER OF PROVISIONS WHICH ARE ARBITRARY AND/OR UNREASONABLE.

A. Subdivision Ordinance

1. Applicant's rights following preliminary plat approval.

One of the rights conferred upon the applicant after preliminary plat approval, is that "the general terms and conditions on which preliminary approval was granted, shall not be changed, including but not limited to use requirements; layout and design standards for streets; sidewalks; etc." Further, however, the same section (4.3.9.1) states that "...nothing herein shall be construed to prevent the municipality from modifying,

by ordinance such general terms and conditions..." this clause, in effect, takes away vesting that it grants; it is a self-contradicting provision. At any time after preliminary approval the subdivider can be required to make changes on the approved design, which is approved by ordinance. This is unreasonable.

2. Environmental Impact Statements. Potential environmental impacts (both adverse and positive) shall be considered as major factors in appraising a subdivision plan (sec. 7.1.3). Approval of a subdivision shall follow only when the approving authority has determined and found that the proposed project, among other factors, will not result in a significant adverse impact on the environment. The criteria used to determine what constitutes a negative impact is not defined. Thus arbitrary standards to alleviate "negative" impacts could be imposed on the developer, most likely at additional cost to him, and with time delays.

3. Hook-up to Public Systems. Sec. 7.2.7.1 states that "all properties shall be connected to a sanitary sewer system, and to the public water supply if available." This requirement preempts the option of on-site sewer treatment and/or water supply systems. Moreover, what constitutes "if available" is not defined. Conceivably a subdivider could be required to hook-up to sewer or water mains miles away from the site.

B. Road Construction Ordinance

1. Curbing. One of the standards under which curbing is required is when the "quantity of water is greater than 3 cubic feet per second". (Section 2.3.d). This is an unreasonable requirement in that swales if properly designed can be used to accommodate such volumes and more safely. The major problem with specifying one standard such as the township has done is that it fails to recognize variations in soil conditions or vegetative covering in swales. Standards for Soil Erosion and Sedimentation Control in N.J. (pp. 4.22 and 4.23) specifically shows that the volume capacity of a swale is entirely dependent on these two conditions and slope, thus acceptable velocities will vary accordingly. To specify only one velocity, above which curbing is required, does not recognize the facts of varying conditions and as such is unreasonable.

Another criteria in Section 2.3 for requiring curbing is that an "entire roadway shall be curbed where 20% or more of the curbline has to be constructed by the (other) specified standards." This is totally arbitrary and unreasonable. It could in fact increase the cost of required curbing by 500%, and does not contribute to providing least cost housing.

2. Minor Streets, Alleys. Minor streets, by ordinance (sec. 2.1.c.1) shall be either loops or culs-de-sac, shall serve only single family detached houses, and shall serve no more than 30 and 15 lots respectively. The factors that help maintain the public health, safety and general welfare in street layout and design are many, and include type, size and appearance of structures on the street, existing and proposed landscaping as well as existing topography, etc. Thus, to attempt to set standards based solely on number of lots is entirely arbitrary. Furthermore, the requirement that only single family detached dwellings be serviced by such roads is exclusionary in that it does not include other types of dwelling units. The ordinance also requires that alleys shall not be permitted on residential developments (2.1.k.1) thus, the ordinance preempts the use of such roads for service on apartment houses where traditionally they are of great use, in garbage pick-up, general service situations, etc. Furthermore, the width of alleys are restricted to the minimum of 20'. This is not an accepted minimum standard, especially since an alley is most often one way only. Such provisions are unreasonable.

C. Zoning Ordinance

1. The zones of this ordinance are density-regulated by Floor Area Ratios (F.A.R.)and Gross Site Area (G.S.A.) (Schedule A: Table of Dimensions). Using the term definitions as provided by this ordinance (Article 20) this means that on any given lot, the total lot coverage is computed by dividing the total amount of building area - whether at ground level or not - by the total lot area. In other words, the impervious cover on any given lot, for computational purposes, would be equal to the entire building area, disregarding the possibility that such area might be spread in two stories, which would reduce the actual impervious cover by half. This is flagrantly unreasonable, as the actual impervious cover is the only measure which can evaluate runoff impacts on a project.

Therefore, when runoff is a major environmental consideration, the prescribed impervious coverages may be achieved by building two story structures rather than one. This ordinance renders this option useless.

As a result, a 4 bedroom house with the prescribed area of 1470 sq.ft. plus 2 parking spaces cannot fit in a minimum cluster, even if the structure uses two stories and the impervious cover less than that as prescribed by the lot coverage requirement of 30%. The same holds true for a 3 bedroom house.

This ordinance thus effectively inhibits higher density clusters since at least 30% of the unit types must be either three or four bedrooms both of which require larger lots than the minimum prescribed. This is a requirement which does not uphold any environmental standards that help insure the public health, safety and welfare.

APPENDIX A

CALCULATIONS AND ASSUMPTIONS TO DETERMINE FILING FEES

Preliminary plat ..... $100.00 + $40.00/lot

Final plat ..... $100.00 + $15.00/lot

Inspection fee ..... 5% of cost of required improvements

If lot basis is also taken to mean unit basis the following would be the submission fee requirements for the Allan-Dean site:

Apartments ..... 1215 units

Townhomes ..... 504 units

Single family detached .... 130 units

Total ..... 1849 units

Preliminary plat fee (1849 x 40 + 100) = $74,060

Final plat fee (1849 x 15 + 100) = $27,835

Total Fee $101,895

Submission Cost per Unit ..... $ 55.10

APPENDIX B.

ASSUMPTIONS MADE IN CALCULATING THE COST OF A SEWER TRUNK LINE SERVING TWO 150 DU CLUSTERS SEPARATED BY ONE HALF MILE.

1. Population (number of persons per DU)

	Garden Apts.	Townhouses	Single Family	Average
Efficiency	1.077			1.077
1 Bedroom	1.722	1.886		1.804
2 Bedroom	2.525	2.630		2.579
3 Bedroom		3.658		3.658
4 Bedroom			4.143	4.143

2. Dwelling Units

30	DU	at	1.077	-	32.31
30	DU	at	1.804	-	54.12
45	DU	at	2.579	-	116.05
30	DU	at	3.658	-	109.74
15	DU	at	4.143	-	62.14
		Total Population			374.36

APPENDIX B (continued)

3.	Topography	-	level
4.	Depth to Bedrock	-	8' minimum
5.	Capital Cost	-	1978
6.	Pine Length	-	½ mile
7.	Construction Cost	-	$200,000 (Clinton Bogert Assoc.)
8.	Legal, engineering, interest cost 35% of Construction Cost	-	$70,000 (Clinton Bogert Assoc.)
9.	Total Capital Cost	-	$270,000