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Critique of the 1978 Bedminster Township Zoning Ordinance
(Report No. 2)

pg. 14

Note: Expert Report

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REPORT NO. 2

CRITIQUE OF THE 1978 BEDMINSTER TOWNSHIP ZONING ORDINANCE

PREPARED BY
RSWA, INC.
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After a careful analysis of all proposed amendments and supplements to the zoning ordinance approved December 19, 1977, including those shown in a letter from the Bedminster Township Planning Board dated August 18, 1978, our conclusion is that the contents of the ordinance and amendments thereto remain exclusionary. The stated purpose of the ordinance - the promotion of the public health, safety, morals and general welfare - is violated by numerous provisions within the ordinance. The presumptive intent of these provisions is suspect, but, at least, does not conform to the enabling legislation - the Municipal Land Use Law, Chapter 291 of the Laws of New Jersey 1975. This general conclusion derives from the following critical points.

I. PROVISIONS FOR HIGH DENSITY RESIDENTIAL USE ARE RESTRICTIVE AND EXCLUSIONARY.

A. There have been minimal changes in zonal boundaries, permitted uses or allowable densities, but fewer potential multi-family units can be obtained in the revised ordinance. The 1977 ordinance allowed multiple dwellings, defined as a "building or portion thereof containing two or more dwelling units", within Open Space Clusters (sec. 4.2.3) which were a permitted conditional use in R6 and R8 zoning district (sec. 4.4). The revised ordinance permits Open Space Clusters in all residential districts (sec. 11.1) but the definition of this cluster excludes multi-family dwelling units

which are only permitted in Village Neighborhood and Compact Residential Clusters. These clusters are promoted as Planned Developments in the R20 district. Though the boundaries for the R20 zones have changed slightly - that east of Pluckemin Village is now 1100' wide versus 1000' in the 1977 ordinance - they do not account for the loss of the 414 potential units from the R6 and R8 zones. (See deposition of Carl Lindbloom of March 15, 1978 for assumptions on unit counts).

B. Though 300 additional least cost housing units are allowed, for a total of 600, they are only conditionally permitted with a separate approval procedure (sec. 11.1.2) that is ambiguous, redundant and not established in enabling legislation: "300 additional units...are permitted, unless":

1. "...adequate infrastructure cannot be provided..." - standards of adequacy and infrastructure type are not defined;
2. "environmental constraints dictate such additional units cannot be accommodated" - critical environmental areas are presumptively contained in the Critical Area District and, further, the Mount Laurel Court said "the present environmental situation in the area is...no sufficient excuse in itself for limiting housing therein to single-family dwelling on large lots." (67 N.J. at 186, 336A.2d at 731);

3. "the Township's regional obligation has been fully satisfied." - the May 1978 Revised Statewide Housing Allocation Report for New Jersey shows for Bedminster Township a 20 year allocation of 1346 low and moderate income units (p. A-31). This is an average regional need allocation to Bedminster of 67.3 units per year since 1970. The accumulated need to 1978 is 538 units and therefore, in 1979 the last conditional approval provision will have become moot.

The court in Oakwood at Madison, Inc. vs. Madison stated:

> "Many owners of land zoned for least cost housing may not choose to use it for that purpose. And developers of least cost housing may not select all of the zoned land available therefor, or at least not within the anticipated period of need. Thus overzoning for the category desired tends to solve the problem."
>
> p.46

This point was made in calling for "reasonable cushion over the contemplated least cost units deemed necessary..." The proposed ordinance is clearly exclusionary in its provisions for least cost housing. Approximately 1.5% of Bedminster is zoned for least cost housing, Madison had 9%.

Further, this additional approval procedure is unnecessarily burdensome and contradicting to the intent "to promote the construction of least cost housing" (sec. 11.1). As a form of Planned Development encouraged by the Municipal Land Use Law (40:55D-2K), the necessary procedures for findings of fact,

though incomplete and inconsistent with sec. 40:55D-65 (pp. 57-59) of the enabling act, are contained in sections 11.3 and 11.4 of the proposed ordinance.

2. SPECIFIC RESTRICTIVE PROVISIONS ARE COST-GENERATING AND, THEREFORE, ECONOMICALLY DISCRIMINATORY.

A. The minimum floor area requirements of section 10.3.1 remain excessive especially so when the additional floor area requirements of section 10.3.2 are added. Their application as minimums does not meet general health and welfare criteria. This point is established in the contradiction of allowing subsidized units to "comply with room and dwelling unit size standards promulgated by the State or Federal Government..." (section 10.3.3). Presumably, these standards would be those shown in Chart 1, as provided by the U.S. Department of Housing and Urban Development.

Proposed revisions to the Master Plan indicate that the minimum net Habitable Floor Area standards are based on New Jersey Housing Finance Agency standards. These are shown below along with the unit size minimums contained in the proposed ordinance. The ordinance standards shown include the additional space for storage, etc. required in section 10.3.2.

CHART 1

Minimum Dwelling Unit Size Standards (sf)

	HUD[1]	NJHFA[2]	Zoning Ordinance	
			SF det. (Min + 20%)	MF (Min + 10%)
Eff.	NA	285	600	550
1 BR	460	430	780	660
2 BR	540	590	1080	990
3 BR	640	740	1440	1320
4 BR	760	885	1740	1595

1. Minimum Property Standards for Multi-Family Housing (Washington: U.S. Department of HUD, 1973) p. 4-9F.

2. Minimum Design Standards (State of New Jersey Housing Finance Agency, n.d.) p. 7.

In each case, State and Federal dwelling units sizes are significantly less than those contained in the proposed ordinance. General public welfare concerns are not served by higher, more cost generating standards for intended least cost, private development. The effect, if not the intent, is discriminatory and contradicts the stated purpose for Compact Residential Clusters: "...to promote the construction of least cost housing..." (sec. 11.1). The only type that would then be possible is subsidized development and this requirement conflicts with N.J.S.A. 40:55D-2f, "(t)o encourage the appropriate and efficient expenditure of public funds..."

B. The Proposed ordinance retains a restrictive section previously pointed out as contrary to New Jersey case law. The required mix

of dwelling unit sizes as measured by number of bedrooms conflicts with the court opinion in Mount Laurel, stating that where unit size standards are based on number of bedrooms, such "restrictions are so clearly contrary to the general welfare as not to require further discussion." This supports a general point that mandating a minimum of 30% of all units will have 3 or 4 bedrooms is illogical without reference to, for example, growth demand, nature of client orientation or locational criteria. In conjunction with the proposed minimum floor area requirements, it is clearly inadequate as a means of encouraging least cost housing and is inconsistent with Municipal Land Use Law section 40:55D-65 (pp. 57-59): the "standards and criteria by which the design, bulk (emphasis added) and location of buildings are to be evaluated...for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for a planned development can be evaluated." Such criteria are missing.

C. The provision of section 11.1 for the location of Compact Residential Clusters is contradictory and produces excessive unnecessary expenses. Avoiding high density concentration by requiring one-half mile separations between centers is contradicted

by allowing them to be located adjacent to one another immediately across roads or highways. Taking 16 acres as the minimum size parcel required for a 150 unit cluster (for calculations and assumptions, see Report No. 3 on Exactions), a third of each development will be community open space. A design responsive to sections 11.3.3, 11.3.3 and 11.5 of the proposed ordinance would insure proper and sufficient buffers and transitions between clusters and between clusters and existing developments.

There is no basis in infrastructure design or from environmental considerations for this specific distance and it does not comply with section 40:55D-65 (pp. 57-59) of the Municipal Land Use Law as to "certainty" of criteria for reasonable evaluation of proposals. A proposal by one agent for the construction of least cost housing in the R20 district east of Pluckemin Village would be restricted to a total of 300 units for there is only sufficient space for 2 Compact Residential Clusters. The overall capital cost per unit would be $900 higher for sewer service alone (see Report #3 for calculations). If a Village Neighborhood cluster were developed between the two Compact Residential Clusters, only a portion of additional costs incurred by the least cost units would be lowered because of the lower density allowed in Village Neighborhoods. The intent and opportunity for providing

least cost housing is negated.

3. THE REVISED DEVELOPMENT CONTROLS FOR ENVIRONMENTALLY CRITICAL AREAS REMAIN A TAKING WITHOUT COMPENSATION.

A. In the 1977 ordinance, defined critical areas were excluded from floor area ratio computations of adjacent land. Though the language of the ordinance has been changed, the effect remains the same. Critical areas are now defined as a separate zoning district with residential development still impermissable. Though open space functions are allowed, residential development rights are not transferred to adjacent zones.

Before the 6/12/78 revisions the Master Plan stated that transfer of development rights from critical areas to nonadjacent parcels does not provide "immediate benefit of the open space" from which the transfer occurred (Section VIII). It proceeded logically, however, to allow a developer of property with environmentally restricted land to use all his land in computing the floor to area ratios and to presume the most critical areas as open space for the adjacent development. This conforms to the objectives of the Environmental Protection Plan and yet permits a landowner to receive benefit from the economic value of environmentally restricted land. This, however, has been struck from the Master Plan.

B. The classification of slopes of 15% or greater as not suited for residential use is not supported by current development

practices or construction techniques. The intent is to prevent "the risk of flooding and erosion both on and off-site" (sec. 8.1). A blanket prohibition of residential use represents an unnecessary restriction. Land with slopes in this range is often highly desirable for residential use, especially multi-family units. Units can be fit into the slope following the contours thus minimizing energy consumption from exposure of external walls, creating small custers following harmoniously the curves of the land and offering unhindered and unique vistas. Environmental considerations outlined in the purpose for critical area designations are better observed through strict performance standards for construction and site design rather than prohibition of development. These can insure that erosion and tree clearing will be minimized and that sediment and runoff will be retained and controlled on-site. (See Report 4, Critical Areas).

Outright prohibition is contrary to the court's opinion in Mount Laurel that for environmental factors "to have a valid effect, the danger and impact must be substantial and very real..." (67 N.J. at 187). A concern for the public's health, safety and welfare can be effectively manifested in suitable development controls; a complete restriction on development is a taking not supported by welfare concerns for the general public.

4. THE PLANNED DEVELOPMENT APPROVAL CRITERIA ARE AMBIGUOUS PRODUCING UNREASONABLE PROCEDURAL DELAYS AND NOT IN COMPLIANCE WITH THE N.J. MUNICIPAL LAND USE LAW.

A. N.J.S.A. 40:55D-65 (pp. 57-59) requires "certainty" in the standards by which any planned development proposal may be reasonably evaluated. N.J.S.A. 40:55D-39 (pp. 36-38) provides "for standards encouraging and promoting flexibility, and economy in layout and design through the use of planned unit development, planned unit residential development and residential cluster..." The proposed zoning ordinance requires a finding of fact in section 11.3.4 that "...the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established." Standards by which such adverse impact would be measured are not shown in the ordinance thus leaving the ultimate disposition of an application unclear.

However, the development potential of the majority of lands zoned R20, wrapping around Pluckemin Village, is presumptively in conflict with the language of the intent of "preserving and augmenting the historical values and village character of Pluckemin" (sec. 7.6). In reviewing plans for new development associated with the Village of Pluckemin, designated as an ambiguously defined zone around Artillery Park and the business district of Pluckemin, the Planning Board is

to consider the "historical and architectural value and significance of the structure and its relationship to the historic value of the surrounding area" (sec. 7.4.1). Unreasonable, cost generating procedural delays would occur as the potential "adverse impacts" of proposed planned developments were evaluated for their relationship to Pluckemin Village. This violates New Jersey statutory law, the inherent due process provision of the New Jersey Constitution and Bedminster's purported intent to encourage responsible design through clustering.

It also is clearly contrary to Oakwood at Madison, Inc. vs. Madison where the court identified protracted approval processes as cost generating and to be eliminated. (p. 53)

These delays would discourage applications by responsible developers of well designed private residential communities as well as hinder the opportunities for satisfying Bedminster Township regional obligation for low and moderate income housing.

B. Similar ambiguity leading to delay is found in sections 11.4.5 and 11.4.6. As part of the design review of housing structures in planned developments, the Planning Board is to follow the standard that landscaping "shall be provided satisfactory to the Planning Board" and that connections "must be made to sewer and water systems, satisfactory to the Planning Board..."

Satisfactory is not defined in either case and it is not clear whether utility connections to public systems are intended or whether satisfactory on-site systems are permitted. The general objectives of the Master Plan suggest that densities and locations for further development have been chosen so as to "permit on-site waste disposal (of waste water) without degradation of ground-water quality" (Article I). However, if public systems are required, then least cost housing construction opportunities are effectively denied until connections are available, clearly violating Bedminster Township's responsibility to accept its fair share of low and moderate income housing needs.

The court in Madison concluded that a similar provision was a "prima facie case of exclusion". (p. 51)

5. BEDMINSTER TOWNSHIP'S SUBSTANTIVE PROVISIONS FOR PLANNED DEVELOPMENTS VIOLATE THE NEW JERSEY MUNICIPAL LAND USE LAW AND CONTRADICT THE TOWNSHIP'S PROPOSED MASTER PLAN.

A. More than half of the R20 districts, permitting higher density uses, are located adjacent to Interstate Highways 78 and 287. Revisions to the Master Plan state "(b)ecause of (a) existing transportation arteries, (b) the existence of residential support facilities, (and) (c) the least handicapped area for expansion of existing utilities...the Pluckemin area is the

most appropriate in the Township for the enlarged Village Neighborhood..." (Article IIA). Yet the general objectives of the township show " (t) he Township does not intend to allow in these corridors (I-78 and I-278) the urban facilities that are commonly associated with major highways in less sensitive areas" (Article I). The township cannot puntatively encourage development in Pluckemin Village yet fail to provide the necessary infrastructure support. If land immediately adjacent to those highways is inappropriate for development, but Pluckemin Village is a suitable and desirable location for growth, then additional area to the east of the Village should be zoned for high intensity development.

B. The minimum required 9 acre parcel for the Compact Residential Cluster and Village Neighborhood and the minimum of 25 acres for an Open Space Cluster do not comply with N.J.S.A. 40:55D-6. Further, the 9 acre minimum would require an approximate minimum of 92 dwelling units in a proposed planned development at the highest permitted density. (see Report No. 3 for calculations). This does not comply with the purpose of N.J.S.A. 40:55D-2K (p. 5): " (t) o encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential...development to the particular site..."