

RULS-AD-1974-30

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• FINDINGS OF FACT FOR AND ON BEHALF OF ALLAN-DEANE

Pgs - 54

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - SOMERSET COUNTY  
DOCKET NOS. L-28061-71 P.W. S-~~9158~~<sup>9153</sup> PW  
L-28837-72 P.W. S-9955 PW

LYNN CIESWICK, et al., :  
 :  
 Plaintiffs, :  
 :  
 THE ALLAN-DEANE CORPORATION, : Consolidated  
 : Civil Actions  
 Plaintiff, :  
 :  
 -vs- :  
 :  
 TOWNSHIP OF BEDMINSTER, et al., :  
 :  
 Defendants. :

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FINDINGS OF FACT FOR AND ON BEHALF OF THE  
ALLAN-DEANE CORPORATION, PLAINTIFF

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LAW OFFICES OF  
WILLIAM W. LANIGAN, P.A.  
59 South Finley Avenue  
Basking Ridge, New Jersey  
07920

## PREFACE

The thrust of the proposed findings is much the same as was indicated in the opening remarks prior to the trial of the within matter. The Township of Bedminster has purported to zone for multi-family use but in effect has granted with the one hand and has taken away with the other. To call the rezoning "multi-family" is illusory, for the number of dwelling units per acre which can be constructed under the existing ordinance nowhere achieves a sense of "multi-family".

It is true that one of the main thrusts of the plaintiff, i.e., a charge that the planned residential neighborhood concept (hereinafter called "PRN") in the ordinance was "permissive" rather than "mandatory", has been remedied by an amendment to the zoning ordinance. At the outset the plaintiff had contended that since the ultimate discretion was in the planning board to grant or deny the right to utilize the PRN concept in the ordinance, there could be no assurance until a particular case was presented to the planning board that the ordinance had any real meaning. At the trial it was quite apparent that the township planner and the county planning director recognized this inadequacy and the township committee on August 5, 1974, with the change of a simple word from "may" to "shall" apparently remedied this objection.

It is too bad that so much time had to be spent on this point and that it was necessary to bring an action in lieu

of prerogative writ to achieve this result. It does point up the fair amount of dispatch which exists when the township attorneys are asked to prepare findings and defend what is an indefensible position.

As long as the township is making adjustments in its position after the fact and prior to the oral argument, it should also disclose that it is very deeply involved in the process of obtaining a sewer for the area which will service The Allan-Deane Corporation land. Indeed, it was reported in the Somerset Messenger Gazette of August 22, 1974, that the Township of Bedminster has approached the Township of Bridgewater Sewerage Authority and the Township of Bedminster has received the approval of Somerset Raritan Valley Sewerage Authority to accept the sewage and, in fact, the Somerset Raritan Valley Sewerage Authority has apparently advised the State Department of Environmental Protection of its willingness to allow Pluckemin to be tied in.

This is disclosed because, frankly, plaintiffs are at a disadvantage when, after the conclusion of the trial, the Township of Bedminster apparently resolves some of the inadequacies in the ordinance and puts itself in a better defensive position but fails to disclose that it is actively seeking to sewer the Pluckemin area. This is contradiction to all of the ecology testimony which would tend to preclude any development because there are no sewers. Let the Township of Bedminster officials come forward, as they have with the amendment to their ordinance, and explain to the Court their active efforts

and the approvals they have received thus far to sewer the area that they allege cannot support any greater density because it is not sewered.

The Court can conclude that based upon these findings that the so-called "ecology" testimony, while it is educational, enlightening and of overall significance in our future, does not support the premise that there should be zero growth in the Pluckemin village area on the land owned by The Allan-Deane Corporation.

Finally, it is respectfully submitted that the Court is able to differentiate between what an ordinance calls "multi-family use" and what is, in fact, multi-family use. For whatever reason, the township has determined to permit this type of use. Perhaps it is in recognition of existing case law, or recent decisions such as Judge Gaynor's decision in Edward Wasser vs. Township of Bridgewater, et als., Docket No. L-17289-72 P.W. Superior Court of New Jersey Law Division, Somerset County (unreported) a copy of which is attached hereto, or it is with the expectation that the Courts of this state (and perhaps soon the Supreme Court of New Jersey) have determined that a municipality can no longer turn its head away from the responsibility of making some provision for multi-family use.

Whatever the obligation, it is not satisfied by calling it multi-family zoning when, in fact, the density is closer to one dwelling unit per acre. It does not become multi-family zoning just because they say it is. If, in fact, it turns

out that the zoning is one acre zoning in disguise and masquerading as a permitted multi-family use, then it should be exposed for what it is. It is respectfully submitted that this Court should remand the matter back to the governing officials and the township planning board to amend its ordinance to reflect a proper multi-family use at a density of dwelling units per acre that is consistent with multi-family use and not consistent with one acre zoning.

DEVELOPMENT OF THE ALLAN-DEANE TRACT

FINDING

Allan-Deane's planner, Robert T. Catlin, is an expert, a licensed planner, and has been retained by approximately 70 New Jersey municipalities, including nine communities in Somerset County as a planner. Catlin Page 611.

FINDING

Catlin has prepared the master plans in Bernards Township, Bernardsville and Peapack-Gladstone, three communities which abut the Township of Bedminster. Catlin Page 611.

FINDING

Allan-Deane's planner has written approximately 50 to 60 zoning ordinances that are presently in operation in the State of New Jersey. Catlin Page 612.

FINDING

The Township of Bedminster zoning ordinance omits certain jughandles and access points to Route Interstate 287 which are extremely important as far as access into the Allan-Deane property is concerned, and yet there is no explanation for their omission. Catlin Page 615-616.

FINDING

In order to gain better access to Route 287 the Township of Bedminster is working in conjunction with the owner of the property, A. T. & T. Long Lines, and is, in fact, in receipt of a comprehensive plan showing such access, which access, if

the plan is followed, would provide immediate access to roads leading into the Allan-Deane property. (Exhibit D-57)

FINDING

The Allan-Deane property is a unique piece of property in an isolated section of Bedminster bounded on two sides by Route 287 and 78, and backs up onto the Watchung mountains, which is the approximate location of the municipal boundary line separating Bernards Township from Bedminster. Catlin Page 616.

FINDING

The property working back from Route 202-206 is a rather general slope that includes approximately 100 acres, and at that point raises very rapidly and has slopes that probably go up to 30 or 40 percent. It is heavily wooded, and it is land that can be developed. Catlin Page 617.

FINDING

The land abutting the Allan-Deane property backs onto Pluckemin center, and is pretty much limited to one lot depth of property fronting on Route 202-206. There is a shopping center on the corner of Washington Valley Road and 202-206, there are older homes, a church, a number of real estate offices, and some antique shops. Directly across the street from the Allan-Deane property is a tavern, a gas station, and the Department of Transportation of the State of New Jersey has recently constructed a highway maintenance yard including a heliport. There is a newer gas station near the northerly part of Allan-Deane property. South of the Allan-Deane property,



south of Washington Valley Road on Route 202-206, there are gas stations and older homes. More westerly on Washington Valley Road, there is a little professional business kind of building, and easterly, after a gas station on the corner, there is a place where school buses are stored. Catlin Page 617-619.

FINDING

The present residential density in the Pluckemin area in terms of lot size varies from 50 to 100 feet, with a probable average of maybe 75 feet. Catlin Page 619.

FINDING

The dwelling structures in the Pluckemin area are relatively close to one another, and may have 20 foot in between buildings, and is best characterized by a small, old village in this part of the Township. Catlin Page 620.

FINDING

The area in and about the Pluckemin center has a relatively high density in the Somerset Hills area. Catlin Page 621.

FINDING

In the Somerset Hills area, the nature and extent of land available for multi-family use, there are relatively few communities that have zoned and permit multi-family development. Neither Bernards Township nor Bernardsville permit it. Catlin Page 622.

FINDING

The political climate for multi-family use is something you seem to find in built-up communities more so than in

rural communities, and the existence or nonexistence of multi-family use depends on the political climate, sometimes very much so. Catlin Page 624.

FINDING

If Allan-Deane builds the minimum units which are permitted by the Bedminster Zoning Ordinance, it will be permitted to construct 718 units or a density of 1.579 units per acre. Catlin Page 627.

FINDING

The units that Allan-Deane Corporation intended to construct were relatively small units with an average unit size of approximately 1700 square feet, exclusive of parking. Catlin Page 629.

FINDING

If Allan-Deane Corporation were to use 1700 square feet average for all units, it would then have to use 2-1/2 parking spaces average, which is 500 square feet, or 2200 square feet coverage per unit under the terms of the existing ordinance. Catlin Page 630.

FINDING

If Allan-Deane Corporation constructs an average unit of 1700 square feet, it will then be permitted to build 540 units on the 455 acres zoned for residential use. Catlin Page 630.

There are approximately 240 acres of unusable land on the Allan-Deane property which would be left in its natural state for conservation or what ever purpose the municipality or the people who become part of the community, or the association would want to use it for. Catlin Page 631-632.

FINDING

It would not be possible under the terms of the existing zoning ordinance in the Township of Bedminster to give land such as the Allan-Deane land amounting to 240 acres to the Federal government for a national park, or for an historical site. Catlin Page 635. Exhibit PC-2-A (Article 10, Paragraph C).

FINDING

At least 55 acres of the Allan-Deane tract have been zoned for a one residential dwelling unit per acre use even

prior to the revision of the zoning ordinance in April 1973, and even under the rezoning which permits a so-called multi-family use, the increase as to those 55 acres is only .579 acres - units per acre if a minimum size structure is built according to the Township of Bedminster.

FINDING

It is not very clear under the zoning ordinance where the business zone is located in the Pluckemin area, in that the dimension on the zoning map of 350 feet along a boundary line is not designated to be from Route 202-206 or from the corner of the tract. Catlin Page 638.

FINDING

The designation of the business zone under the Township of Bedminster ordinance is unconstitutionally vague in that the boundary lines so designated cannot be delineated with respect to an existing boundary line, a tax map lot line, or a footage from any known reference point. This conclusion is based on the testimony of Mr. Catlin and the confusion of the ordinance itself.

FINDING

The Pluckemin center is the most mixed-up and complicated in the Township. Exhibit PA-3 "Memo to Bedminster Planning Board 13 July 1964 written by the Township of Bedminster Planning Board's planning consultant, Charles K. Agle". Catlin Page 640.

FINDING

The entire sector in which the Allan-Deane Corporation's

property is located is severed from the rest of the Township by two Federal aid Interstate Routes 78 and 287, id.

FINDING

The location of the Allan-Deane Corporation's property which is known as the Back Village area is such that has no influence whatsoever on the rest of the Township, and can easily be shielded from the village of Pluckemin. The foot of the mountain does not have a steep enough slope to be visible from either Pluckemin or from anywhere else, provided a single, simple landscaping buffer is provided. It cannot be seen from the lower elevation and any residential use provided at the top of the mountain will be 250 feet above. Id. Catlin Page 643.

FINDING

The Allan-Deane Corporation's use of the property will have no impact on the traffic pattern of the rest of the Township since its an isolated sector surrounded by the two Interstate highways and the Watchung mountains. Id. Caling Page 644.

FINDING

The Township of Bedminster planning consultant, Charles K. Agle, recommended the best use of the Allan-Deane land fringe area on top of the mountain for apartments. Id. Catlin Page 653.

FINDING

Charles K. Agle, the Township planner, found that these could be confined to six stories so as not to exceed

the sky line of the trees, and that such six story apartments would provide the best possibilities for encouraging a balanced housing supply for all the families of Bedminister, and have no undesirable influence on any of the rest of the planned land of the Township. Id. Catlin Page 653.

## SEWAGE DISPOSAL

### FINDING

Pluckemin has a sewage disposal problem. They need to take action to solve that problem and they have been working diligently over the past few years to make provision for handling that problem through the trunk line of the Bridgewater Township Authority which connects to the Somerset-Raritan Sewerage Authority, which trunk line goes up to the municipal boundary of Bedminster Township near Pluckemin. Roach Page 829-830.

### FINDING

As far as the County Planning Director's personal viewpoint as to how the county plan would like to see it go, the County Planning Board would be for certainly Bedminster and Far Hills to cooperate on a subregional system of some sort in the area to serve the village of Pluckemin, the village of Bedminster and the village of Far Hills, possibly using the lagoon method of sewage treatment, land disposal, possibly cooperating with any major development coming into that area and the treated effluent would percolate down through the ground and go into the ground water resource and find its way into the streams of the Raritan River tributaries in that area. If it was a lagoon method the treated waste would largely be discharged into nearby streams into the Raritan Basin. Roach Page 831-832.

FINDING

If the effluent is treated it will not pollute the North Branch since that treatment must be of a quality that will not adversely affect the quality of water in the stream, and if Bedminster's health rules were complied with it would not pollute the water. Roach Page 832-833.

FINDING

There is no proof that the master sewage plan which was prepared at some expense has ever been accepted by Somerset County. Roach Page 833.

FINDING

Allan-Deane's land could be sewerred with a package treatment plant of a type which would not pollute the streams and which could be expanded. Transcript Stires Page 586.

FINDING

The Pluckemin area in the Township of Bridgewater which is one of the areas within the Township with a relatively high population density is in need of sanitary sewers. Stires Page 588 referring to "a master sewerage plan for the upper Raritan and Delaware watershed" VIII-23 prepared by Elston Killam.

FINDING

The Allan-Deane tract would be able to be drained using modern methods of sedimentation chambers during construction limiting the construction to certain areas at one time rather than a mass construction of the entire site preserving the ground cover where possible, and limiting the acreage to be



beared for runoff and detention basins. Stires Page 590.  
The tract could be developed by taking construction runoff  
and constructing temporary ponds and then on a permanent  
basis, to facilitate the runoff not exceeding the capacity  
of the culvert under Route 287 to be able to take care of  
the water. Stires Page 592-593.

## COUNTY MASTER PLAN

### FINDING

The County Master Plan is the result of a culmination of many years of basic planning in the county which includes comprehensive water resources study, transportation plan, basic land use plan, evaluation of zoning ordinances and included input by the Upper Raritan Water Shed Association and was only adopted after the planning board staff met with a group of North County municipalities. Roach Page 721 - 724, Exhibit D - 6.

### FINDING

The County Master Plan shows future development of multi-family residential residences in a cluster in the general Pluckemin area. Roach Page 740.

### FINDING

This cluster of proposed multi-family residential use in the Pluckemin area is the only cluster in the Master Plan. Roach Page 740.

### FINDING

The fact that there might not be any designation of multi-family use on the Tri-State Regional Planning Commission Report is the fault of the system employed by the Tri-State Regional Planning Commission in that they plan on a square mile grid basis and the square mile grid could all be on the village of Pluckemin and a part of the village could comprise a small percentage of that particular area so there would be

no, what you might call cluster residential, depicted in that area. Roach Page 743.

FINDING

The County Master Plan has designated an expansion of the villages in the county beyond the present zoning and has, in fact, advocated a larger village neighborhood designated for the Pluckemin area and Bedminster as contrasted with the zoning for the ordinance in effect at that time. Roach Page 754.

FINDING

Although the Planning Board in the establishment of its Master Plan has considered the ecological factors and the headwaters of the Raritan River (Roach Page 760-761) in terms of a regional basis, in terms of flood control, water quality and air quality (Roach Page 762) it has still advocated a density of five to 15 units per acre expansion of the Pluckemin area. Exhibit D - 6.

FINDING

In the opinion of the County Planning Director a medium lot size is 20,000 square feet or half an acre and under. Roach Page 805.

FINDING

At the time of the formulation of the Master Plan there was an indicated need for other than single family houses on individual lots. Roach Page 805-806.

FINDING

At the time of the formulation of the Master Plan with the exception of a few multi-family type developments in Bernardsville, the Planning Board staff did not find that type of housing available in the Somerset Hills area (Roach Page 807) and the few developments that did exist were non-conforming uses in the legal sense. Roach Page 807.

FINDING

In formulating the County Master Plan a determination was made to place Pluckemin in a village neighborhood area and the County Planning Board urged a less intensive mix of uses such as single family uses, town houses, garden apartments and a range of housing types in these areas to afford an opportunity for the various population groups and economic groups to live in these areas. Pluckemin Center was one of those areas that the County Planning Board had in mind. Roach Page 811.

FINDING

The Pluckemin Center is located where bus transportation could be of use and would be a feasible approach as part of the regional system. Roach Page 813.

FINDING

There is Erie Lackawanna rail service at the Far Hills station north of Pluckemin approximately two miles away which takes under five minutes to get there from the Pluckemin Center. Roach Page 816-817.

FINDING

The County Planning Board has advocated feeder service via bus, transportation from Pluckemin Center to the rail facilities located in Somerville or Raritan which would take approximately 15 minutes. Roach Page 817.

FINDING

Although the County Planning Board urged direct access from the major highways into Pluckemin the township did not want it and it is feasible in the future. Roach Page 819-820.

HOUSING  
AND DENSITY

FINDING

The County Planning Director thinks there is some obligation on the part of Bedminster to provide a share of the housing needed by the full range of employees to be brought into the community and this might be done under Bedminster's present zoning, at least he hopes that it is. Roach Page 3-4.

FINDING

The County Planning Director is of the opinion that Bedminster should provide for housing in the areas designated on the Master Plan and in those areas that are planned in the zoning ordinance for those areas. This is the Pluckemin area designated in the County Master Plan. Roach Page 6.

FINDING

People such as janitors and policemen are going to need a new supply of housing with the impact of A. T. & T. in the Township of Bedminster. Roach Page 12.

FINDING

As part of the basic information prior to the adoption of the Master Plan the county planning staff surveyed the area and the survey resulted in a finding that there was a lack of housing for the middle and lower income group and that there was a lack of housing type for the varying needs. The middle income group being defined at the time as \$15,000 a year and under. Roach Page 13.

FINDING

Although the County Planning Board in Page 9 of the county planning report had found that the vast majority of wage and salary employees in Somerset County are being priced out of the new housing market and the response to the questionnaire pinpoints this inequity and expresses concern over the imbalance of housing values it has actually gotten quite a bit worse according to the County Planning Director. Roach Page 18-19.

FINDING

The County Planning Director has determined that a density of five to 15 units is a suggested density for the zoning ordinance covering the neighborhood areas such as Pluckemin. Roach Page 22. If the Bedminster Zoning Ordinance did not permit densities in the range of five to 15 families per acre the County Planning Director would conclude that it was not in accord with his belief as to the needs in the village neighborhood areas.

As a matter of fact, when the County Planning Board endorsed the approval of the Bedminster Zoning Ordinance it was in part dependent upon a belief that the densities in the range of five to 15 units per acre were possible under the Bedminster Ordinance and the County Planning Director assumed that that was a fact contained in the ordinance as he read it. Roach Page 22-23.

FINDING

The County Planning Director thinks that the average bedroom size should be somewhere between 1 1/2 and 2 1/2.

FINDING

The County Planning Board considered the fact that Bedminster was making any modifications to their zoning plans was a major break through and they did not comment on the fact that the ordinance only allowed 2.5 to 3 units per acre instead of the five to 15 units per acre that the County Planning Board had suggested, because they did not want to ridicule them and their comments would not have advanced the cause of getting housing in the county. Roach Page 26.

FINDING

3 or 2.5 units per acre was considerably below even the lowest range of what has been suggested by the County Planning Board. Roach Page 27.

FINDING

With all of the concern for a low density area preserve the key area in terms of the Raritan Water Shed and to eliminate flooding problems and all the concern about water quality and air quality and preserving agricultural lands, County Planning Board still designated the Pluckemin area for desirable density of five to 15 units per acre. Roach Page 46 and County Master Plan.



FINDING

Zoning by itself could prevent the development of lower and moderate income housing if a town were to zone all large lots. Roach Page 72.

FINDING

There is an inherent conflict in the fact that while the County Planning Director recognizes the need for low and moderate income housing within Somerset County and favors the opportunity for people to live within a reasonable distance of their places of employment and yet to the contrary he values and favors low density development in the Somerset Hills. These views are in conflict and are not able to be coordinated. Roach Page 74-75. The answer that followed in response to the Court's question was unresponsive. Roach Page 75.

FINDING

The Allan-Deane planner, Robert T. Catlin, found that it would be more appropriate to put in two story townhouses instead of garden apartments at a density of varying from 4 to 8 and sometimes 10 per acre. Catlin Page 654.

FINDING

In terms of aesthetics, townhouses could be designed into colonial architecture townhouses, although the Allan-Deane planner certainly hoped, and would not think that Bedminster would want to encourage both townhouses to look like some of the dwellings that are in the Pluckemin area. The Allan-Deane planner felt that something could be designed that could

be compatible to the area, and if anything, it might very well improve the appearance of that section of the Township. Catlin Page 656.

FINDING

At present, a single family residential dwelling could anticipate close to 1.25 children per dwelling unit, and a figure of closer to .5 or closer to .6 school age children per dwelling unit in townhouses. Catlin Page 658.

FINDING

A residential single family dwelling would normally anticipate twice as many children as the multi-family townhouse. Catlin Page 658.

FINDING

In a study made by Catlin throughout the metropolitan area for many, many communities, the ratio of school age children per family is .118 unit, or roughly about 1 child for every 5 units, as opposed to a half a child per unit for townhouse, and 1-1/4 children for single family homes. Catlin Page 660.

FINDING

Using the educational factor alone, a townhouse unit would pay more in taxes than it would cost for municipal services. Catlin Page 661.

FINDING

The effect of the inclusion of a parking requirement of one parking space measured 10 x 20 or 200 square feet for each bedroom in the dwelling unit, cuts down the number of units that can be constructed on any given piece

of property, and reduces the density. Catlin Page 665.

FINDING

There is no limit on the number of parking spaces, and theoretically if someone built a 10-bedroom home, they would have to have 10 parking spaces. Catlin Page 666.

FINDING

It is not clear whether a driveway is counted as a parking space, and there is an ambiguity in the ordinance in that it seems to imply that you can compute the driveway as part of the parking space, and in another instance, it stands to imply that you cannot. Catlin Page 666-667.

FINDING

Generally speaking, garden apartment developments vary from 10 units per acre to as high as 22 units per acre. For example, it is 10 units per acre in Madison Borough in Morris County, and it as high as 22 units per acre in Ridgewood in Bergen County. Catlin Page 668.

FINDING

The density of townhouses varies from 4 units per acre to perhaps 9 or 10 units per acre at the maximum. Id.

FINDING

The Allan-Deane Corporation's tract would support a reasonable density in the opinion of the planner of about 4 units per acre. Catlin Page 671-672.

FINDING

There are ways to encourage moderate or low cost or senior citizen housing available to the municipalities in the State of New Jersey. Catlin Page 673.

FINDING

It is possible to give a bonus for developing a certain kind of housing type which could be senior citizen housing, for example of a type being developed in Ridgewood, New Jersey. In the comprehensive revision of the master plan and zoning ordinance in Ridgewood, there is an option to the developer that if he wants to build conventional garden apartments in the garden apartment zone, he does so at a density of 15 or 16 units per acre, but if he comes in as a special exception with standards under the zoning ordinance, he is permitted a bonus by putting in maybe 4 or 5 units per acre if he limits that development to senior citizens housing. In this manner, the owner is encouraged by greater density to provide this type of housing. Catlin Page 674.

FINDING

Developers cannot make more money by selling more expensive units since if you have a given piece of land, and you only put "X" number of units on that land, then the developer is going to build the most expensive unit they can to get the maximum return on their investment as a matter of simple economics. Catlin Page 675.

FINDING

A so-called "self-subsidy" program could be inserted in the ordinance which would permit a greater availability of low and moderate income housing for younger and older people. Catlin Page 674-675.

FINDING

The Pluckemin center in its existing development constitutes a kind of a core for future development, and would act as a nucleus for the kind of development suggested by The Allan-Deane Corporation instead of spreading this kind of residential development all over the Township, having it on the periphery of the established course. Catlin Page 677-678.

FINDING

Family sizes are becoming smaller and smaller so that as of 1970 a population per occupied household in the State of New Jersey is now down to 2.9 people. Agle Page 103.

FINDING

The single family house development is now appropriate only for maybe half the population and inappropriate for the other half. Agle Page 103.

FINDING

Free standing houses are appropriate for parents between the ages of 29 and 49 or 50. Agle Page 104.

FINDING

Anybody over 50 is paying through the nose [SIC] maintaining a large establishment which he doesn't need and which frequently he is forced to do because of the fact that there is not any appropriate smaller place for him to go to. Agle Page 104.

FINDING

There is an enormous shortage of small modest places for our kids to get started in. Agle Page 105.

FINDING

People over 50 are going to be happier in townhouses because of the fact that they are mature and do have means there which the young do not have.

FINDING

According to the 1970 census the persons per family amounts to 16% one person families, 28% two person families, 18% for three person families and 17% for four person families.

FINDING

The floor area ratio concept is a method of controlling the intensity of land use or the density of use. Agle Page 117.

FINDING

The average single family free standing house with three to five bedrooms runs between 2,500 and 3,500 square feet. The medium size house is approximately 2,500 square feet and the large house is approximately 3,500 square feet. Agle Page 131.

FINDING

Charles K. Agle, the township planner, is the architect for a smaller tract in Princeton which is building at a density of 6.7 dwelling units to the acre. Agle Page 70.

FINDING

The units per acre density in the R-6 zone under the Township of Bedminster Zoning Ordinance is two dwelling units per acre. Agle Page 75.

FINDING

Charles K. Agle, the township planner, has never constructed public housing at two units per acre. Agle Page 75.

FINDING

There is going to be some substantial employment introduction into the Somerset Hills area, specifically A. T. & T., in addition to Fireman's Fund so that in the immediate environment of Bedminster there will be a large employment increase. Agle Page 83.

FINDING

Charles K. Agle, the Township planner feels that where there is a major generator of employment then the burden is on the developer or planner to analyse the location of housing to take care of all the people that will be needed in that employment area and failing that he thinks a plan is superficial.

FINDING

Charles K. Agle, the Township planner had previously postulated that there was no housing shortage in Bedminster because Bedminster did not have an employment demand but he felt that if a research-office facility was to be built in Bedminster you would create a local demand. At the time Mr. Agle made that statement it was in response to a question at a deposition and the A. T. & T. Long Lines project had not been in existence nor was it even a reality. Subsequent to such date it has become a reality. Agle Page 125 and testimony

throughout the record that A. T. & T. Long Lines is in fact a reality in the Township of Bedminster.

FINDING

It is established that if there is a research-office facility in Bedminster, then there is a local demand for housing. Agle Page 125.

FINDING

Charles K. Agle, Township planner, feels that the amount of housing for Bedminster should be 100% of the employment being suggested for Bedminster. Of course, although his arguments were directed to an Allan-Deane proposal, they are nonetheless valid when several years later A. T. & T. Long Lines has made an identical proposal and, therefore, the same conclusions must necessarily follow, i.e., that the demand for housing is 100% of the amount of employees coming into the Township at the A. T. & T. Long Lines facility.

FINDING

Charles K. Agle, Township planner, was quite emphatic that anyone coming into the Township had an obligation to satisfy 100% of their housing needs or the burden of proof would then be on the company coming into the Township to assemble an adequate housing supply say, within 20 minutes of the proposed employment area without any competing need for any other housing or any other employment in that area. Agle Page 128.

FINDING

There is a substantial increase in employment in the



Bedminster area with the advent of the companies coming into the area. Agle Page 129 - 130.

FINDING

In spite of the existence of the watershed there can be development of the watershed since sooner or later sewers should be built to take care of the Pluckemin area in some fashion or another. This is consistent with what is shown on the master plan and the expansion in the Pluckemin area is within the watershed and the present ordinance allows an expansion of population in those areas. Agle Page 146 - 147.

FINDING

The County Master Plan postulates a density of five to 15 families per acre and the Township of Bedminster planner, Charles K. Agle, agrees with such postulation in the built up area suggested in Pluckemin. Agle Page 149.

FINDING

The divorce of employment from residence location is an active evil for many reasons in that low paid workers cannot afford the cost of commutation without reduction in food, shelter or living standards, the exaggerated travel time is inhumane and hostile to family solidarity, and when plants are located in areas reachable only by automobile this exaggerates high congestion and danger and the over use of the automobile exaggerates air pollution problems and depletes our natural resources. Agle Page 154.

FINDING

Charles K. Agle, the township planner, concludes that people in residential dwellings have to be told to have some storage space whereas an office and commercial use does not have to be told because it is part of their own area with respect to its business and will happen automatically by the enterprise. Agle Page 156.

FINDING

According to Charles K. Agle, the Township planner, the distinction between permitting an office-research complex to utilize land in another municipality and not permitting a residential use to utilize land in an adjoining municipality to fulfill its percentage of lot coverage is because the research and office use is more of "an in looking" kind of enterprise and the individual worker is not immediately influenced by the exposure to the landscape whereas the character of the environment in a residential area is dependent upon the relationship of the individual dwelling unit to its immediate surrounding area. Agle Page 158.

FINDING

It is stated by Charles K. Agle, the Township planner, that the concentration of an employment building is much more acceptable than the concentration of buildings than for residential use to an extent that a lot coverage of 28 1/2% would be acceptable for office-research use whereas only 3% coverage in the building of the township with respect to residential use would be acceptable. Agle Page 160 - 161.

FINDING

It appears that even though part of the land in an adjoining municipality will be utilized for purposes of increasing a density and lot coverage in the Township of Bedminster, the Township of Bedminster will enjoy all of the tax revenues from that building. There is no known method of taxing ratables in another municipality.

FINDING

There is no legitimate reason for permitting an office research use to utilize 28 1/2% of its land and limiting a residential use to 3% of its land other than a desire to favor that particular industrial use and discourage a residential use. No other reason exists for such a disparity in the treatment accord of the respective interests.

FINDING

Charles K. Agle, Township of Bedminster planning consultant did not feel that there was any mineral or water source or anything of that character which had to be preserved on the Allan-Deane land other than a so-called natural resource of "rural character". Agle Page 184.

FINDING

The Township of Bedminster raised the percentage of lot coverage for the office-research zone from 13% to 15% because one company asked for it and the 13% was thought to be too tight a construction and so this was eased by a couple of percent just to allow slightly more latitude in the use of the land. Agle Page 159.

FINDING

Charles K. Agle, the Township planner, answered that for gross residential density the average of multiple family housing should be somewhere near three or four average dwelling units per acre and four would be a better figure than six or eight. Agle Page 186.

FINDING

In trying to explain that answer Charles K. Agle, the Township planner, then stated that what he had in mind was net useable residential land area in spite of the fact that he was quite expansive in the definition of gross residential density incorporating the necessary yard space. Agle Page 186.

FINDING

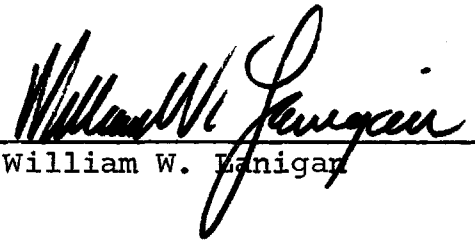
Charles K. Agle, the Township planner, is in favor of a gross residential density of four average dwelling units per acre. Agle Page 186.

FINDING

The best that can be said about the Township of Bedminster zoning for multi-family use according to Charles K. Agle, Township of Bedminster planning consultant, is that Bedminster is extraordinarily honest in its attempt to balance out one thing against the other. Agle Page 197.

Respectfully Submitted,

LAW OFFICES OF  
WILLIAM W. LANIGAN, P.A.  
Attorneys for Plaintiff,  
The Allan-Deane Corporation

By   
William W. Lanigan

**SOMERSET COUNTY COURT**

**ROBERT H. GAYNON**  
JUDGE



**SOMERVILLE, NEW JERSEY**  
**08876**

August 8, 1974

Re: Edward Wasser v.  
Township of Bridgewater, et als.  
Docket No. L-17289-72 PW

Norris, McLaughlin, Trucker & Marcus, Esqs.  
Attn: Richard A. Norris, Esq.  
2 Park Avenue  
Somerville, New Jersey 08876

Reid and Vogel, Esqs.  
Attn: Charles A. Reid, Jr., Esq.  
519 Central Avenue  
Plainfield, New Jersey 07060

Gentlemen:

This is a prerogative writ proceeding in which plaintiff challenged the denial of his application for a variance and, alternatively, attacked the validity and constitutionality of the zoning ordinance of the defendant municipality. The denial of the variance was upheld by this court for the reasons stated in its letter opinion dated January 9, 1974. The hearing as to the validity of the ordinance has been completed and the determination of that issue is the subject of this opinion.

Plaintiff's contention is that the exclusion by ordinance of multi-family dwellings as a permitted use in any zone district of the municipality is an unlawful exercise of the municipal authority and violative of the constitutional guarantees of due process and equal protection. The gravamen of this contention is that such an

exclusionary proscription in the zoning ordinance ignores the housing needs of the population of the Township and of the region encompassing the Township and by virtue thereof fails to promote reasonably a balanced community in accordance with the general welfare. Defendant asserts that the ordinance is valid, having been adopted in accordance with, and in furtherance of, a comprehensive plan for the zoning development of the Township, that there is no legal requirement that multi-family dwellings be one of the permitted uses as prescribed by the zoning ordinance, and further that defendant is meeting its obligation to provide the housing needs of its own population and that of its region.

Bridgewater Township is centrally located within Somerset County and comprises an area of 32.67 square miles, or more than 10% of the total area of the County. It is served by 5 major highways and 3 rail lines. Although a major portion of the developed area of the Township is devoted to residential use, industrial and commercial activities occupy a significant area and are presently expanding as a result of new highway construction. The population of the Township as reported by the 1970 census was 30,235, and that of the County was 198,372. The projected population increase as of 1980 is 40,000 for the Township and 280,000 for the County. The Township and the County are also experiencing an increase in industrial and commercial activity. A study prepared by the Somerset County Planning Board and the Office of Economic Development forecast an increase of 32,400 employees

Re: Edward Wasser v. Township of Bridgewater, et als.  
Page 3

in the County from 1970 to 1980.

The zoning ordinance, enacted in 1962, divides the Township into 4 residential zones, a commercial zone, a highway business zone and an industrial zone. The residential uses are limited to single family dwellings on minimum lot sizes ranging from 10,000 square feet to 50,000 square feet. The ordinance was adopted on the basis of the then existing uses as well as the plan for the future desired development of the community and was in accord with the Master Plan subsequently adopted in 1966. Of the 20,915 acres comprising the Township, 15,264 acres are within the residential districts, 516 acres are within the commercial districts and 5,131 in the industrial districts. Approximately 43% of the residentially zoned area is limited to a minimum lot size of 50,000 square feet and approximately 30% is limited to a minimum lot size of 40,000 square feet. There are approximately 900 multiple family dwelling units located in the Township which are either non-conforming uses or permitted under variances.

The plaintiff presented the testimony of Mr. John Lynch, a professional planning consultant, in support of his contentions that the existing ordinance does not promote a well balanced community and does not provide for the present and reasonably anticipated housing needs of the Township, as well as its proportionate share of such needs of the region, which he considered to be generally Somerset County. Mr. Lynch presented an analysis of the housing market of the municipality and county and on the basis of such an analysis he opined that by 1980



Re: Edward Wasser v. Township of Bridgewater, et als.  
Page 4

the need for smaller housing units (primarily one and two bedroom units) in the county would approximate 33,500 units, of which the Township's proportion should be between 10,000 and 15,000 units. This conclusion was based upon the projected population and employment growth in the county, together with an assessment of the trends in age composition and family size, housing vacancy rates and replacement of substandard housing units. His study reflected a general decrease in household size throughout the State and County but an increase in the Township. Also, while a healthy housing market should have a rental vacancy rate of about 5%, the present vacancy rate for the county is 1.97% and 1.54% for the Township, the result of which is to increase rent levels to the detriment of those seeking housing. His analysis of the projected population increase in the county indicated a substantial proportional increase in the age groups of 15-24 and over 55, and he concluded that to accomodate these new households about 3,000 new housing units per year would be needed in the county during 1970-1980. Total employment within Somerset County by 1980 was estimated at 92,000 by Mr. Lynch, representing an increase of about 30,000 over the 1970 figures, and according to his survey of present employee population, approximately 43% of all county employees were located in Bridgewater Township. Present housing production in the county and township is far below that of the 1960's, averaging only 861 units over the past 4 years, of which only 102 were milti-family dwellings. There

has been only single family construction in the Township with 103 units started in 1971. A total of 8,152 multi-family units are planned or under construction in neighboring Montgomery and Hillsborough Townships which will provide a portion of the needed rental and lower priced homes. At the present time, families with high incomes are able to meet their housing needs, but the lower income groups, which represent about 85%-90% of the households in the county, are unable to obtain adequate housing within their means. Mr. Lynch concluded that, in order to meet the housing needs in the county and township which will exist over the next decade, production must proceed at a much greater rate than at present. In order to accomodate those households requiring primarily one and two bedroom units (50 and over age group and 30 and under age group) approximately 33,500 additional units will be needed by 1980, of which from 10,000 to 15,000 units should be located in Bridgewater Township.

A real estate expert, Mr. T. Sanford Van Syckle, also testified on behalf of the plaintiff as to the present character of dwellings available for purchase in the county and township and the demand for housing. During 1973 a total of 254 dwellings were sold for an average price of \$57,114.00. Of these 222 were sold for prices in excess of \$40,000.00. As of April, 1974, 87 dwellings were listed for sale through the Multiple Listing Service, and of these 79 were listed for prices in excess of \$40,000.00. During 1973, 14 rentals were negotiated through the Service. He stated that

Re: Edward Wasser v. Township of Bridgewater, et als.  
Page 6

there was a continuing demand for rental units, as well as for lower priced single-family dwellings, in the county and township which demand could not be met. This type of housing was desired by young persons and older persons, including persons now employed in Bridgewater, but was unavailable. The available housing was generally beyond the means of the majority of the wage earners in the county and township.

The plaintiff also introduced through the testimony of Mr. Arthur Reuben, Assistant Director of Planning for Somerset County, the "Master Plan of Land Use" for Somerset County, dated September, 1971, prepared by the County Planning Board, and also a report entitled "Housing and Jobs", dated February, 1970, prepared by the County Planning Board and the Office of Economic Development. The Master Plan of Land Use projected the 1980 population of the county as 280,000, and that of the township as 40,000. This report also included statements that "the County Planning Board has advocated greater attention to be given to providing a variety of community development and of housing types, including a range of housing to meet needs of all sectors of the population", and "the design of housing in relation to various age groups is also of critical importance . . . a basic postulate of the Master Plan of Land Use (is) that the stages of the life cycle require a variety of housing types - apartments, garden apartments, townhouses, and single family houses". The conclusion of the report entitled "Housing and Jobs" was that "during the early part of the Sixties, Somerset County was largely meeting its needs for housing, except the lowest

income groups. Upon entering the seventies, we are not able to meet the needs of a majority of the people requiring new housing. It is expected that employment will grow by about 32,000 during the seventies and that there will be a commensurate need for 27,500 units during the decade; or, production at the rate of about 2,500 units per year during the first five years and 3,000 units per year during the last half of the decade . . . with an increasing proportion of townhouses and garden apartments, requirements for the Seventies can be obtained . . . . There must be greater attention to providing a variety of community development and of housing types, including a range of housing to meet the needs of all sectors of the population. Community design should include all densities of housing and allow for clustering of residential and community facilities. Many older residents would prefer apartment accommodations, and thereby allow for a natural progression in the style of life and thus making available additional single family houses. A development plan for a county of hundreds of thousands must provide a full range of community development".

Mr. Robert Strong, a professional planning consultant, who has acted as the consultant to the Planning Board of Bridgewater Township since 1958, testified on behalf of defendant. It was his opinion that the area to be considered as an appropriate region in determining the need and availability of housing as it pertained to the Township extended beyond the boundaries of Somerset County, and more properly should be related to the travel distance between work and home locations. For such purpose, he suggested that a

reasonable distance would be that which could be traveled by automobile within a period of 30 minutes. On this basis, his studies indicated that the appropriate housing region for Bridgewater Township extended into the adjoining counties of Hunterdon, Morris, Union, Middlesex and Mercer. He presented statistics showing that of the number of persons employed in the Township, 17.3% reside in the Township, 61.8% reside within 15 minute travel-time distance, 91% reside within a 30 minute travel-time distance, and 8.19% reside beyond a 30 minute travel-time distance, and concluded that the employee population of defendant has found housing within the regional area. Mr. Strong also cited data as to the number of housing units within a 15 minute and 30 minute travel-time distance from the Township, which indicated that there are a total of 74,655 housing units within the 15 minute radius (52,323 owner occupied and 20,761 renter occupied), and 392,329 housing units within the 30 minute radius (273,198 owner occupied and 110,640 renter occupied). The present unit vacancies, both for sale or rent, were 687 within the smaller area and 3,825 within the larger area. The vacancy level of the units for sale in Bridgewater corresponded proportionately to the regional area, however the vacancy level of units for rent was about 25% lower in Bridgewater. Mr. Strong also presented figures as to building permits issued during the periods 1960-1969 and 1970-1973 in the Township, County, 15 minute radius and 30 minute radius, which indicated that during the latter period the percentage of permits issued compared to the 1969 housing units was about

the same for all areas. He further testified that the available land within the Township would permit the construction of an additional 4,126 housing units, which, at the rate of 3.8 persons per unit, would provide housing for 15,678 persons. It was Mr. Strong's conclusions that under the present ordinance the Township has made an appropriate contribution to the housing needs of the region and will be able to meet its share of the housing needs of the increasing township and regional population.

Mr. Strong also stated that the Planning Board of the Township has considered providing for multi-family uses, and that in 1971 he was directed to prepare and submit to the Board an evaluation of the market and demand for such housing facilities and, in the event of such demand, the manner in which zoning changes might be made to accommodate this type of housing. Such a report was made and the conclusions therein included the following recommendat

It is apparent from all available research material that there is, at the present time and in the foreseeable future, a demand and need for a greater variety of housing types in the region in which Bridgewater is located. Bridgewater centrally located in the region, possessing a substantial undeveloped quantity of the regions industrial development, and having substantial undeveloped land areas to accommodate such development, and having the road and sanitary facilities needed for multi-family development is in a unique position to assist in providing the needed housing variety.

Based upon these considerations, it is this consultant's recommendation that the Bridgewater Township Planning Board amend the Township Master Plan to establish the general conditions under which a variety of multi-family housing types be permitted, with appropriate controls . . .

Re: Edward Wasser v. Township of Bridgewater, et als.  
Page 10

This recommendation has not been accepted by the Planning Board, however the matter is still the subject of discussion.

Mr. Strong voiced the opinion that the existing zoning ordinance is reasonable, and that there has been no change in conditions since its enactment which would require or warrant any major change in its provisions. In his opinion the Township is not required to provide <sup>for</sup> all kinds of housing, although he still holds to the recommendations contained in his 1971 report to the Planning Board as being applicable.

It is plaintiff's contention that the exclusionary aspect of the Bridgewater Township zoning ordinance, i.e., the exclusion of multi-family residences as a permissible use in any district of the community, has no relation to the public health, safety, morals or general welfare, has evinced a disregard of the housing needs of the Township and its region, and has resulted in an unconstitutional deprivation of equal protection. As indicated previously he argues that the prohibition against multi-family dwellings ignores the housing needs of the populace of the Township and its region and results in a failure to promote a balanced community in accord with the general welfare. Plaintiff recognizes that certain exclusionary zoning provisions have been upheld by our courts as a proper exercise of a municipality's authority.

(See Lionshead Lake Inc. v. Township of Wayne, 10 N.J. 165 (1952); Fischer v. Township of Bedminster, 11 N.J. 194 (1952); Fanale v. Borough of Hasbroude Heights, 26 N.J. 320 (1958); Guaclides v. Borough of Englewood Cliffs, 11 N.J. Super. 405, (App. Div. 1951);

Vickers v. Township Comm. of Gloucester Township, 37 N.J. 232 (1962). However, plaintiff argues that the concept of the promotion of the general welfare through zoning is changing from a consideration of its application to the particular municipality to one of applicability to the citizenry of a larger area. Further, that the reasonableness of restrictive provisions must be viewed in the light of existing circumstances and conditions, and that one of such conditions of substantial importance is the present need for all types of housing accommodations.

Defendant contends that it has no legal requirement to zone for all types of housing facilities and that its total exclusion of multi-family dwellings as a permissible use is a proper exercise of its zoning powers, citing Fanale v. Borough of Hasbrouck Heights, supra. and Guaclides v. Borough of Englewood Cliffs, supra. Defendant further asserts that its zoning ordinance was enacted in accordance with a comprehensive plan and that its subsequent development has been in furtherance of that plan. Also, that the land as zoned is reasonably marketable for the permitted uses. However, defendant while recognizing the trend toward regional planning, contends that the appropriate region applicable to it is an area which presently includes sufficient housing units to meet present demand, and that under its ordinance it will be able to meet its fair share of future housing needs.

Thus, it appears that the basic conflict in this proceeding is whether the ordinance as presently structured does provide the means whereby the Township will develop as a balanced community and



be able to meet the housing needs of its own population and of the applicable region. All the evidence adduced at the trial was directed to this issue.

It is well recognized that there is a strong presumption in favor of the validity of a zoning ordinance. Ward v. Montgomery Township, 28 N.J. 529, (1959); Harvard Enterprises v. Board of Adj. of Madison Twp., 56 N.J. 362 (1970). This presumption of validity may be overcome only upon a clear and affirmative showing that the ordinance is arbitrary or unreasonable when measured by the standards prescribed by statute and it bears no reasonable relationship to public health, morals, safety or general welfare. N.J.S.A. 40:55-32; Harvard Enterprises v. Board of Adj. of Madison Twp., supra.; Oakwood at Madison, Inc. v. Township of Madison, 117 N.J. Super 11 (Law Div. 1971).

The housing needs of the municipality and its region is a valid purpose of zoning and is encompassed within the general welfare. In Oakwood at Madison, Inc. v. Twp. of Madison, supra, the court stated in this regard:

The exclusionary approach in the ordinance under attack coincides in time with desperate housing needs in the county and region and expanding programs, federal and state, for subsidized housing for low income families.

Regional needs are a proper consideration in local zoning. DeSimone v. Greater Englewood Housing Corp. No. 1, 56 N.J. 428 (1970); Duffcon Concrete Products v. Cresskill, 1 N.J. 509, 513 (1949); Gartland v. Maywood, 45 N.J. Super. 1, 6 (App. Div. 1957); Molino v. Mayor, etc. Glassboro, 116 N.J. Super. 195, 204 (Law Div. 1971).

In pursuing the valid zoning purpose of a balanced community, a municipality must not ignore housing needs, that is, its fair proportion of the obligation to meet the housing needs of its own population and of the region. Housing needs are encompassed within the general welfare. The general welfare does not stop at each municipal boundary. Large areas of vacant and developable land should not be zoned, as Madison Township has, into such minimum lot sizes and with such other restrictions that regional as well as local housing needs are shunted aside. *Vickers v. Tp. Com., Gloucester Tp.*, 37 N.J. 232 (1962), upholding a prohibition against trailer camps anywhere within a municipality, is not to the contrary.

The ordinance under attack must be held invalid because it fails to promote reasonably a balanced community in accordance with the general welfare, unless it is defensible on some other ground.

And in *Molino v. Mayor and Council of Bor. of Glassboro*, 116 N.J. Super 195 (Law Div. 1971), the court referred to this rule in the following language:

Exclusionary zoning may lead to illegal and unwanted conditions, which are violative of individual rights. No municipality can isolate itself from the difficulties which are prevalent in all segments of society. When the general public interest is paramount to the limited interest of the municipality then the municipality cannot create road blocks. Zoning is not a boundless license to structure a municipality.

This amendment to the ordinance can find no legal support when its provisions are analyzed in relation to the Borough of Glassboro. This determination can only be made when the trial record is adequate to fully reveal the needs of this community. Counsel for the parties made this possible. Justice Hall, in supporting a use variance in *DeSimone v. Greater Englewood Housing Corp.*, 56 N.J. 428 (1970), held "as a matter of law in the light of public policy and the law of the land" that housing needs must be met by official action. The same reasoning applies to the instant case when the governing body legislates to defy the public need for housing.

The test then to be applied to the Bridgewater zoning ordinance is whether it promotes reasonably a balanced and well ordered plan for the entire municipality and does not ignore the housing needs of its own population and of the region.

The evidence clearly supports a finding that the complete restriction against multi-family residences prevents the development of the Township as a balanced community. The major portion of the land area available for residential use is so zoned that it can be utilized<sup>only</sup> for high-priced, single-family dwellings. The Township is encouraging, and experiencing, expansion of industrial and commercial activity, yet it is precluding, through its zoning provisions, a large segment of its employee population, as well as others presumptively desiring to reside in the municipality, from obtaining housing within the community. The proofs support the conclusion that there is a demand for low and moderate priced housing in Bridgewater which cannot be met because of the restrictive zone plan adopted in 1962 and rigidly adhered to since then. A large portion of the multi-family housing now existing in the Township is the result of variances reluctantly approved.

Whether a particular use may be excluded depends upon its compatibility with the circumstances of the particular municipality, always to be judged in the light of the statutory standards for zoning. Each case must turn upon its own facts. Fanale v. Hasbrouc Heights, supra. The case sub judice differs substantially from the

factual situation presented in the Fanale case and in the cases of Guaclides v. Englewood Cliffs, supra, and Duffcon Concrete Products, Inc. v. Bor. of Cresskill, 1 N.J. 509 (1949). We concur with the observation of Judge Furman in Oakwood at Madison, Inc. v. Twp. of Madison, (Law Div., May 30, 1974), that, "Presumptively the Supreme Court would have recognized the general welfare as overriding and struck down the ordinances under review in Duffcon and Fanale if, respectively, there had not been adequate industry or adequate multi-family housing nearby". The following portion of Justice Hall's dissent in Vickers v. Twp. Comm. of Gloucester Twp., supra, forecast current judicial thinking as to this issue:

In my opinion legitimate use of the zoning power by such municipalities does not encompass the right to erect barricades on their boundaries through exclusion or too tight restriction of uses where the real purpose is to prevent feared disruption with a so-called chosen way of life. Nor does it encompass provisions designed to let in as new residents only certain kinds of people, or those who can afford to live in favored kinds of housing, or to keep down tax bills of present property owners. When one of the above is the true situation deeper considerations intrinsic in a free society gain the ascendancy and courts must not be hesitant to strike down purely selfish and undemocratic enactments.

The cases of Appeal of Girsh, 437 Pa. 237, 263 A.2d 395 (1970) and Township of Williston v. Chesterdale Farms, Inc., 7 Pa. Cmwlth. 453, 300 A.2d 107 (1973), cited with approval in Chandler Associates v. Bd. of Adj, etc., unreported (App. Div. 1974), in which zoning ordinances failing to provide for apartments as permissible uses were struck down, are applicable to the issues presented in the instant case. In Girsh, the court found "(i)n refusing to allow

apartment development as part of its zoning scheme, appellee has in effect decided to zone out the people who would be able to live in the Township if apartments were available", and it further commented that "(a)partment living is a fact of life that communities . . . must learn to accept". The effect of exclusionary zoning is noted in the following portion of the decision in Williston:

Zoning has been said to be exclusionary when the zoning laws of a community seriously impede or absolutely prevent the construction of low-cost housing. By an definition, however, the term "exclusionary zoning" has come to signify the general problem created by local zoning ordinances that render suburban housing costs of prohibitively high that low-and moderate-income families cannot afford to buy. Exclusionary zoning may bar not only the poor or near poor, but a fairly substantial segment of the middle class as well.

Additionally, from the evidence presented it can be concluded that Bridgewater has failed to adequately react to the burgeoning population of its region and to the need for reasonable housing alternatives. Its own planning consultant reported to it in 1971 that "Bridgewater Township cannot remain unaffected by the conditions and needs of the rest of Somerset County or for that matter, the State of New Jersey", and that "multi-family housing will have to fill some of that need". The proofs leave no doubt that there exists in the Township's region a need for low and moderate income housing. We are not convinced that the regional area as suggested by the defendant is appropriate. Although such areas may be difficult of exact specification and must be considered in relationship to the peculiar conditions of a particular municipality, the area

Re: Edward Wasser v. Township of Bridgewater, et als.  
Page 17

generally co-extensive with Somerset County appears to be an appropriate region for the purpose of considering the zoning regulations of Bridgewater Township. It should be noted that this area substantially coincides with the 15 minute radius (more realistically 20-30 minutes) advanced by defendant's expert. Regional needs have long been regarded a proper consideration in local zoning. Oakwood at Madison, Inc. v. Twp. of Madison, supra. A continuance of the zoning exclusion of multi-family residences in Bridgewater would permit that Township to abrogate its obligation to provide a fair share of the housing needs of the region and to cast upon its neighbors this governmental responsibility for accomodating regional housing demands. Such municipal action would constitute an inadequate governmental response to the fundamental societal need for reasonable housing. An exclusionary ordinance permitting and inducing such abrogation of responsibility cannot be regarded as a measure calculated to advance the general welfare.

A consideration of all the evidence compels the conclusion that plaintiff has overcome the presumption of the validity of the ordinance and has established that this zoning ordinance, by reason of its exclusion of multi-family dwellings as a permissible use, fails to promote a reasonably balanced community and ignores the housing needs of its own population and of the region and is thereby violative of the general welfare. There was no showing

Re: Edward Wasser v. Township of Bridgewater, et als.  
Page 18

that such exclusion, because of any other condition of the municipality, bears any rational relationship to the advancement of public health, safety, morals or welfare. That the enactment of the ordinance was in accord with a comprehensive plan adopted and being followed by defendant is of no significance when such plan is not in furtherance of the general welfare. Accordingly, we hold the ordinance to be invalid. This conclusion makes it unnecessary to consider the constitutional issues advanced by plaintiff.

In order to permit the municipality a reasonable time within which to take such action as it deems appropriate because of this ruling, the judgment to be entered herein shall not become effective until 90 days after it is entered.

A judgment in accordance with the foregoing may be submitted.

Yours very truly,

Robert E. Gaynor

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