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- PROPOSED FINDINGS OF FACT SUBMITTED BY CIESWICK

PGS-82

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REC'D AT CHAMBERS  
SEP 9 1974  
JUDGE LEAHY

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-SOMERSET COUNTY  
DOCKET NO. L-36896-70 P.W.

LYNN CIESWICK, et al.,  
Plaintiffs,

and

ALLAN-DEANE CORP.,  
Plaintiffs,

vs.

TOWNSHIP OF BEDMINSTER,  
et al.,

Defendants.

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Civil Action

PROPOSED FINDINGS OF FACT  
SUBMITTED BY THE CIESWICK  
PLAINTIFFS

I. THE PLAINTIFFS

1. Plaintiff Lynn Cieswick presently lives with her two young sons in married student housing at Livingston College in

Piscataway. Her monthly rental is \$67. She is a senior at the college and will therefore have to leave her present apartment in a matter of months. (T 109, 115, 3/14/74)\*.

2. Plaintiff Cieswick does not know where she will live when she leaves the student housing. (T 115).

3. Before moving into the married student housing, plaintiff Cieswick had been forced to live with her mother, sisters and brothers in her mother's house in North Bergen. (T 111). Six people then lived in the two-bedroom house. Plaintiff Cieswick applied to the School's Appeals Committee for permission to move into the student housing early because her housing situation was so bad. At that time there were 500 names on the waiting list for student housing.

4. Plaintiff Cieswick was forced to move in with her mother when the house in which she had been living was sold. That house had been located in the Urban Renewal Area of Somerville. Plaintiff Cieswick had paid \$95 a month for the house. (T 112).

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\* Dates of testimony are given only in connection with first reference to a particular witness. Thereafter transcript references will include witness names and page citations, only one index to the witnesses is annexed hereto.

5. At the time that she was evicted from the house in Somerville and during the period she was constrained to live with her mother, sisters and brothers, plaintiff Cieswick looked for housing for herself and her sons throughout Somerset County. (T 112-113).

6. Plaintiff Cieswick was looking for a two-bedroom unit renting for between \$165 and \$200 a month. She looked at about 15 garden apartment complexes in the Somerset area, including Pine Grove Manor, South Bridge Street Gardens, Brookside Gardens, and a number of apartment complexes in Piscataway. (T 112-113).

7. Plaintiff Cieswick also looked at private homes which were on the rental market. She found these houses through newspaper advertisements and by learning of them from friends. She remembers looking at houses in Somerville, Hillsborough, and Bridgewater. Every house she saw rented for more money than she could afford to spend. (T 113-114).

8. Plaintiff Cieswick never found any newspaper ads for nor heard of any housing which she could afford in Bedminster. She would like to live in Bedminster because of its open space. In addition, she had cousins who already live in the community. (T 115, 119).

9. Plaintiff Cieswick presently receives public assistance and a grant from her college. (T 115-116). She hopes to earn between

\$7,500 and \$8,000 next year. She has applied for jobs in Bridgewater, Somerville, and Morristown. (T 116, 118). She receives no support from her former husband. (T 116).

10. Applying the rule of thumb that rent should not exceed 25% of a month's earnings, it seems that plaintiff Cieswick needs to find housing which rents for no more than \$170 a month. (T 262, 3/5/74). Plaintiff Cieswick is willing to spend up to \$200 a month for a place to live. (T 115).

11. Plaintiff April Diggs is a Black woman who lives with her husband and five of her seven children in the Pine Grove apartments in Franklin Township. (T 39, 40, 3/4/74).

12. Plaintiff Diggs and her family live in a three bedroom apartment. Because there are only three bedrooms in the apartment, two of the Diggs children must live out of the apartment, with Plaintiff Diggs' mother. (T 40).

13. Plaintiff Diggs would like to rent a larger housing unit so that all of her children could live with her. She has attempted without success to find a larger unit which her family can afford for some time. (T 41).

14. At the time the complaint was filed, the Diggs family lived in a four bedroom unit in the Parkside Apartments in

Franklin Township. These apartments are owned and operated by a public housing authority. (T 41, 42).

15. The Diggs family was asked to move from Parkside because plaintiff Diggs began working and the Diggs' family income rose above public housing limits. (T 41, 42).

16. Despite the fact that the Diggs family income exceeded public housing limitations, the family was unable to find decent housing of sufficient size which the family could afford. The family was unable to find any housing, even through the Somerset County Housing Association down payment assistance program. (T 42).

17. The Diggs family moved into the Pine Grove Apartments only after the manager of Pine Grove entered into an agreement with the manager of Parkside pursuant to which the manager of Pine Grove agreed to give the Diggs family an apartment, despite the fact that there were hundreds of people ahead of the Diggs family on the Pine Grove waiting list, so that a public housing unit could be made available to a large, low income family which had been burned out of its apartment. (T 43).

18. When the Diggs family moved into Pine Grove, their name had been on the Pine Grove waiting list for six years. (T 42).

19. Just as the family which replaced the Diggs family was able to move into Parkside only after its previous housing

was destroyed, so plaintiff Diggs was able to move into Parkside only after the apartment in which she had then been residing was condemned by the Health Department (T. 43, 44).

20. Before moving to Pine Grove, the Diggs family looked for suitable housing in every Somerset County community in which the Diggs family knew of housing in that price range. The Diggs family did not look for housing in Bedminster, since they knew of no housing they could afford there. (T 48). They found no available housing they could afford anywhere in the county.

21. Plaintiff Milton Kent lives in Morristown with his wife and three children. (Kent T 453 (3/6/74)).

22. It took plaintiff Kent, and his family, who are black ten months to find a home when they first moved to Morristown from Trenton in 1970. This delay occurred despite the fact that Mr. Kent's family had an income of \$15,000 and had assistance in their search from many members of the Board of Mr. Kent's employer, the Morris Fair Housing Council.

23. The Kents found there were no three bedroom apartments they could afford and Mr. Kent felt that he could not get a two bedroom place since he wanted separate rooms for his son and two daughters. (Kent T 455, 456). One apartment he finally found after seven months was closed to him because the owner did not want a black tenant. (Kent T 457).

24. The house they found on Court Street in Morristown needed a good amount of interior work to make it livable. (Kent T 459).

25. For the first three months of this ten month house search Mr. Kent commuted from Trenton. After he was nearly killed when he fell asleep at the wheel of his car on Route 287, he stopped commuting and spent seven months at a YMCA in Morristown. During this time he did not see his family during the week. (Kent T 455).

26. The Kent family had to leave their Court Street Morristown house when it was sold in 1971. In all, they lived there only seven months which is less than the time it took to find the house.

27. The family was fortunate enough to have a co-worker who owned an apartment into which they moved in 1971 and in which they presently live. (Kent T 461). However, he expects the owner to reoccupy this dwelling within a year. (Kent T 462).

28. Thus, he has started looking around for housing again. The Kents might have started looking even if the owner were not re-occupying since they would prefer to own a place, and to live in a quieter area with more open space. The present house in one of the busiest streets in Morristown, has no front yard and its backyard is shared with a doctor and patients. (Kent T 462-463).



29. Mr. Kent has been in touch with brokers regarding homes in Morris and northern Somerset Counties but has found nothing for the \$30-35,000 he feels he can afford. (Kent T 463).

30. He is very interested in Bedminster; he is familiar with it since he has driven through it frequently and visited an acquaintance there. (Kent T 465-466).

31. Further, he believes Bedminster to be a good community in which to make an investment in housing. (Kent T 466). This is an important factor to him. Although black, he would prefer to live in a white community with stable or increasing property values than a black, inner city community which could become a ghetto. (Kent T 467).

32. Mr. Kent has, however, come across no homes in his price range in Bedminster. (Kent T 465).

33. Mr. Kent's inability to find housing he can afford is not due to lack of sophistication about the housing market. He is a graduate of the Housing Specialist Institute of American University, and has held responsible positions with the Morris Housing Investment Fund and the Morris County Fair Housing Council. Both of these jobs involved looking for moderate income housing and working with brokers in Morris and surrounding counties. (Kent T 469-471.)

34. Thus statements by Robert Stahl, a defense witness, that people with contacts can find moderate income housing are untrue -- at least with regard to individuals like Mr. Kent who are unwilling to settle for inner city housing.

35. This court finds that all of the plaintiffs are in need of decent, adequate housing of at least two bedrooms or more renting or selling at prices which they, as persons of low, moderate, and even middle income, can afford. This court further finds that none of the plaintiffs have been denied the opportunity to find housing at prices which they can afford which meets their needs.

36. Finally, this court finds that each of the plaintiffs has an interest in living in Bedminster Township and would benefit from the development of low and moderate income housing in the defendant Township.

II. THE NATURE OF BEDMINSTER TOWNSHIP AND THE  
REGION OF WHICH IT IS A PART

37. Bedminster Township is located in the northwestern corner of Somerset County, bordering communities in Morris and Hunterdon Counties, as well as communities in Somerset. (D-6, maps in pocket; D-52 at 2).

38. The Township has an area of approximately 26 square miles. (D-52 at 2).

39. Approximately 80% of Bedminster's land, or 13,723 acres, may be classified as vacant or open space. (Davidoff, T 387-389 3/5/74; D-30 at 2). In the Somerset County Master Plan, this land is categorized as vacant, agricultural or wooded (D-6 at 13; D-30 at 24); however, in terms of availability of such land for development, such categories, particularly "vacant" as compared to "agricultural" are of no great significance (Davidoff, T 389).

40. Bedminster Township...stands in the path of massive pressures for urban and suburban development... Two major interstate highways (I-78 and I-287) which are routed through Bedminster Township establish lines of easy access to and from heavily urbanized areas of New Jersey and Pennsylvania. (D-30 at 2). See map, P C-45. According to defendants' expert, Jack McCormick, "without question,

additional development will occur in Bedminster Township" (D 30 at 2). In anticipation of this growth, there are plans to bring city water and sewers to parts of Bedminster. Maps from D-13, D-14 Charles Agle T 118 (3/28/74).

41. According to one of plaintiffs' expert planning witnesses, Paul Davidoff, the fact that Interstate Highways 78 and 287 intersect in Bedminster places the Township in a very significant regional position. (Davidoff T 252-253). The area surrounding the intersections is likely to experience a substantial amount of growth, and may be referred to as a "growth node".

42. The Somerset County Office of Economic Development stressed the County's key location as a reason why industry should locate in Somerset. PC.44, PC. -45.

43. Industries have expressed an interest in locating near that intersection and within Bedminster. In 1970, for example, Western Electric optioned land in the Township and considered moving its corporate headquarters from New York City to Bedminster (Davidoff, T 253).

44. AT&T Long Lines presently is developing its corporate headquarters in Bedminster. It will relocate its offices from New York City to Bedminster. When the building is completed

it will house about 3,000 workers. (Davidoff, T 334). The preliminary work force projected at the Long Lines Offices is 2,800, which is close to the present total population of the Township. (T 334).

45. Similarly, major employers are moving to other nearby locations in the Somerset Hills area and along I-287. Thus, for example, AT&T currently is building an office facility in Bernards Township. It will relocate approximately 3,400 jobs from New York City (Davidoff, T. 284-285).

46. As of 1970, Bedminster had a total population of 2,597 persons (D-52 at 2; PC-1).

47. Bedminster has a population density of 99 persons per square mile. Bridgewater, one of the Somerset County municipalities which is adjacent to Bedminster, has a population density of 1,000 persons per square mile (McCormick, T 74, 3/20/74).

48. Bedminster has a substantially large animal population (as distinguished from dogs, cats and other household pets), equal to approximately one half of its human population (Davidoff T 394). This population includes 673 head of beef, 320 head of matured and young dairy cattle, 225 horses and ponies, and 215 head of sheep (PC-32; T 394).

49. This court finds that Bedminster's population is disproportionately white and disproportionately wealthy.

50. During the last decade, Bedminster non-white population grew from only 1% in 1960 to just 2% in 1970. Meanwhile, from 1960 to 1970, Somerset County's non-white population grew from only 3.3% to only 4.1% (Davidoff T 278, 280-281, PC-21).

51. Roughly three-quarters of Somerset County's entire non-white population lived in the two communities of Franklin and Somerville as of the date of the 1970 census (Davidoff T 296).

52. In the State of New Jersey as a whole, the non-white population has increased from 7% in 1950 to 9% in 1960 and 11% in 1970. (T 279, PC-21). Newark's non-white population grew from 17% in 1950 to 34% in 1960 and 56% in 1970. Part of this proportionate non-white population growth is accounted for by the fact that, as non-whites moved into Newark, whites moved out. Approximately 100,000 whites moved out of Newark in the decade 1960-1970. (Davidoff T 280-281, PC-10 at 21, 32).

53. Of New Jersey's entire population in 1970, 4.3% were characterized by the United States Bureau of the Census as Spanish-speaking. The comparable figure for Newark was 12% while it was 1.6% for Somerset County and 1.3% (or 35 people) for Bedminster. (Davidoff T 297).

54. According to the United States Census, the median family income for Bedminster's citizens was \$15,612 in 1970. Comparable figures for Somerset County and the State were \$13,433 and \$11,497 respectively. By contrast, the median family income for all families residing in Newark was \$7,735. (Davidoff T 297-298).

55. The non-white and Spanish speaking populations of Bedminster is so small that the 1970 census does not indicate what the median income of those members of these groups who lived in Bedminster was; however that information is available for Somerset County, Newark, and the State as a whole. (Davidoff T 298-299).

56. In New Jersey, as of the 1970 census, the median income for all non-white families was \$7,644. For Somerset County, the figure was \$9,678, and, for Newark, the figure was \$6,742 (Davidoff T 298-299).

57. In New Jersey, as of the 1970 census, the median income for all Spanish-speaking families was \$6,459. For Somerset County, the figure was \$9,731, and, for Newark, the figure was \$5,437. (Davidoff T 299).

58. In 1970, Bedminster had by far the highest average (mean) family income of all communities in Somerset County (D-1; Davidoff T 541-542).

59. Although it had the highest mean income, Bedminster did not have the highest median family income in the County in 1970. This difference is explained by the fact that Bedminster is an area in which families possessing great wealth are concentrated. The great wealth possessed by these families substantially increases the average income of the community (Davidoff T 548-549).

60. This court finds that in the decade 1960-1970 Bedminster became relatively more wealthy. Moreover, this court finds that Bedminster is comprised of a population that is disproportionately wealthy and whose relative wealth has increased significantly during the last decade (Davidoff T 300-305, 308).

61. By dividing the State of New Jersey's population into five equal groups, one can see the relative number of residents in any particular municipality who fall within each group or quintile, and thereby, the community's relative wealth. In 1960, 20% of Bedminster's population was in quintile I, the bottom quintile. By 1970, only 16% of the Township's population was in quintile I. Similarly, Bedminster's population dropped from 16% in quintile 2 in 1960 to 14% in 1970. Meanwhile, the relative number of people in quintile 5 increased from 36% in 1960 to 42% in 1970. It should be



noted that the 1960 data relates to both Bedminster and Far-Hills, since, in 1960, they comprised the same census tract. However, Far Hills in no way distorts the results since it is relatively small and since the 1970 data reveals that Far Hills and Bedminster's separate results are very close (Davidoff T 308).

62. Bedminster is a community that is overwhelmingly comprised of single-family residences, as compared to the surrounding county and to the state as a whole. (Davidoff T 313.)

63. As of the 1970 census, Bedminster's total housing stock was composed of 840 housing units (PC-1). Of these, 81.7% were classified as in structures of two units or more and 91.3% were classified as single family units. (Davidoff T 312).

64. Comparable figures for Somerset County were 26.1% multi-family and 73.4% single family units. For New Jersey as a whole, the figures were 41.5% multi-family and 57.9% single family units (Davidoff T 312-313).

65. Of the units in Bedminster classified as multi-family by the census, none are in structures of 3 units or more. Sixty-four are in structures of two or more units and 24 are in single family attached units. (PC-5)

66. During the decade 1960-1970, the housing stock

in the State of New Jersey increased by 19.5% and that in Somerset County increased by 37.8%. However, Bedminster's total housing stock increased by only 9.7%. Meanwhile, Newark's total housing stock decreased by 5.5%. (T 310-311).

67. As of the 1970 census, the median value of all single-family houses in Bedminster was \$39,667. The average (mean) value of these units was \$40,489. Of all Somerset communities, only the housing in Watchung Borough and Bernards Township had a higher mean value (Davidoff T 314; PC-1).

68. The median value of all single family houses in the State was \$23,400 in 1970. In Somerset County, the median value was \$29,700. In the City of Newark, the median value was \$17,100 (Davidoff T 314-315).

69. Deed registration slips for all single-family houses sold in Bedminster during calendar year 1973 reveal that the median sales price for that year was roughly \$65,000. There was only one sale in the price range between \$20,000 and \$30,000 and there were only three sales in the price range between \$30,000 and \$40,000. (Davidoff T 316)

70. By applying the standard rule of thumb that a family cannot afford a house which exceeds twice its annual income, one can see that only 20% of New Jersey's families can afford 80%

of Bedminster's housing and that a very significant proportion of the sales housing in the Township is out of the reach of all but approximately the top 7% of the State's population by income (Davidoff T 320-321; PC-25).

71. Persons over the age of 65 constitute 10% of Bedminster's total population and 50% of the Township population which is classified by the Bureau of the Census as having taxable incomes of below \$3,000. It can be assumed that these individuals have not recently moved to Bedminster, but, rather, are long-time residents of the Township. They would not be families who have had to put forth in recent years the funds necessary to acquire housing in Bedminster. (Davidoff T 322; PC-6).

72. The villages of Pluckemin and Bedminster in Bedminster Township are in a condition which can be described as urbanized (McCormick T 63, 3/20/74). They need water and sewer lines. (Agle T 118) They also could support mass transit, specifically a busline (William Roach T 811-813, 3/13/74).

73. The Deep Haven subdivision in Bedminster would also be considered urbanized. (T 66, 3/20/74)

74. The Village of Pluckemin in Bedminster Township presently has homes constructed at relatively high densities.

Lot widths vary from 50 to 150 feet, with the average being about 75 feet. In some cases dwellings are separated by 20 feet or less. (Catlin, T 619-621, 3/21/74).

75. The immediate region in which Bedminster is located is the area of Somerset County and portions of Morris County that immediately abut the township. (Davidoff T 274-275.) Morristown is now about 15 minutes from Bedminster by car (T 342).

76. Bedminster is closely related to the much larger region of the New York metropolitan area by reason of the existence of the two new interstate highways, (D-T 275.) and by the Erie Lackawanna and Jersey Central Railroads. (Roach T 816.)

77. Bedminster is part of a region that is New Jersey and it is part of a larger, thirty-one county region that is the tri-state New York, New Jersey, Connecticut region. (T-275)

78. All parties have looked to analyses performed by the Tri-State Regional Planning Commission and the Regional Plan Association in defining Bedminster's place in the region. Those organizations look to a large multi-county, three-state area in their planning. This court will look to that same area in assessing defendant Bedminster's regional role.

### III. THE NEED FOR HOUSING IN THE BEDMINSTER REGION

#### A. The Housing Crisis

79. The Somerset County Housing Association (hereinafter SCHA) operates a number of programs in an attempt to help moderate income families obtain housing. These include a down payment assistance program and a program to rehabilitate and resell housing foreclosed by the FHA (Horvath T 63, 64; 71. 3/4/74). At one time the SCHA also tried, unsuccessfully to build some moderate income housing (Horvath T 89).

80. Of the 1500 family total caseload carried by the SCHA, of whom roughly half are black and half are white (Horvath T 87), and 1200 of whom are from Somerset County (T 100, 101) the agency has only been able to help 42 (Horvath T 92, 6-9). The reason for this lack of effectiveness is the lack of available housing.

81. With regard to rental inquiries, which are not included as part of the 1500 family caseload, but which consists of about 180 phone calls per year, SCHA has been able to do absolutely nothing (Horvath T 76-77).

82. No more than three of the 42 total placements under the down payment assistance program were made after early 1972, since there is no longer any housing in the program's price range (Horvath T 63-64).

83. During 1970, 1971, and early 1972 a fairly active market existed for housing in the price range covered by the SCHA's down payment assistance program, i. e. three bedroom homes costing up to \$21,000 and four

bedroom houses selling for up to \$24,000 (Horvath T 60, 62).

84. Although the need for housing in these price ranges remains (Horvath T 58, 14), the supply which, at best, was not ample (Horvath T 62-63), has completely dried up (Horvath T 59, 15-22; 61, 4-14).

85. Getting mortgages has not been a stumbling block to the down payment assistance program; the finding of houses has been the barrier (Horvath T 66-67).

86. Only five houses have been made available to the SCHA through the Department of Housing and Urban Development sponsored rehabilitation program. All were in the \$21-24,000 price range. All had been badly vandalized and were in need of substantial work (Horvath T 71, 21-25; 73, 1-5).

87. In an attempt to find additional properties suitable for the rehabilitation program, the SCHA wrote to all of the 21 Somerset County municipalities. Of the fourteen which replied, only two had properties which have been suitable and these were not for sale at the moment (Horvath T 70). Bedminster, which was sent a letter, did not even reply to it. (Horvath T 71--6-13).

88. Contacts with realtors and searches in the newspapers have also produced nothing for the rehabilitation program (Horvath T 70--23-26; 71--1).

89. So the SCHA's only source of housing for its rehabilitation program has been H. U. D. which only gives the SCHA inferior dwelling (Horvath T 71--3-5).

90. On the basis of the above, this Court finds as a fact that for sale housing in the price range of \$21,000 for a three bedroom unit and \$24,000 for a four bedroom house is unavailable today in Somerset County. It further finds that the apparent availability of such housing disclosed by the 1970 census no longer exists since the supply has almost totally dried up during the 1970's. Compare, testimony of Robert Stahl.

91. Only two apartment complexes with three bedroom apartments in Somerset County can be afforded by families of moderate or low income. They are Pine Grove in Franklin Township and Brookside in Somerville (Horvath T 79--5-19; 80--19-25).

92. Apartments in these complexes are not readily available since the waiting list at Pine Grove includes approximately 400 families and that at Brookside, which had vacancies during the 1960's (Solow T 168-169), had a waiting list of approximately 150 at last count. Furthermore, applicants are subject to a credit check which they may fail without notice (Horvath T 82-5 to 83-12).

93. There is only one public housing complex in Somerset County. That one, Parkside, located in Franklin Township, has only 100

units, of which forty are reserved for senior citizens.

94. Despite the requirement at Parkside that vacancies be filled only by persons who have been residents of Franklin for at least two years, there is a long waiting period for the sixty units available for families. Because of the waiting list, SCHA has been unable to place people in Parkside (Horvath T 85-25 to 86-19).

95. There are no plans to construct additional public housing in Somerset County (Horvath T 85 - 12-21).

96. According to the 1970 census, every municipality in Somerset County has people who can only afford subsidized housing. Therefore, every municipality should enact a resolution of need which would enable developers to receive grants from the State of New Jersey to construct such housing (Horvath T 87-12 to 88-16).

97. However, when in 1970, the SCHA wrote the 21 Somerset County municipalities to request that they enact resolutions of need, 19 of them, including Bedminister, ignored the letter while the other two responded negatively (Horvath T 87-14 to 89-11).

98. The one attempt by the SCHA to build moderate income housing failed because, despite state and federal support for the project,



Somerville refused to grant the necessary zoning variance (Horvath T 89; Solow T 186-187; 193-195).

99. Existing and operating federal subsidy programs make feasible the construction of housing for low income groups in Somerset County. Only local zoning and lack of municipal cooperation stand in the way. (Horvath T 97-23 to 98-11).

100. Racial discrimination in housing was rampant in Somerset County as late as the mid-1960's (Solow T 166-11 to 168-9; 169-170).

101. Such discrimination in the form of refusal of access to housing, or threats and violence directed to black families who obtained housing in white communities was a significant barrier to the movement by economically well-off black persons into all-white neighborhoods in the County ( Solow T 170 -3 to 171-8). There were at least 35 Somerset County housing cases processed successfully through the Division on Civil Rights during the mid 1960's (T 178-19-24).

102. Of a group of 100 welfare or working poor Somerset County families visited by Ms. Rita Solow, a Somerville resident who has worked for years to help solve problems of poor persons in the county, in the 1960's, 80 lived in overcrowded or otherwise substandard housing and some lived in extremely poor dwellings (Solow T 174-14 to 176-13). This group of

100 represented typical housing conditions for poor people in Somerset County during the 1960's (Solow T 176--14-20).

103. Racial discrimination in housing took place in those mid-County communities that blacks could afford; in the Somerset Hills towns, such as Bedminster, housing was beyond the market range for black families (Solow T 179 -- 3-13).

104. Thus, racial discrimination has operated to bar blacks from southern Somerset, while high housing prices have produced the same result in northern Somerset, including Bedminster.

105. The magnitude of the housing problem in Somerset County even during the better days of the 1960's, was evidenced by the hundreds of phone calls Ms. Solow received from people with housing problems (Solow T 176-21 to 178-5).

106. The size of the problem led people active in housing and the SCHA in particular, to conclude that new construction of low and moderate income housing was desperately needed (Solow T 179-15-24; 181- 1-6).

107. The situation has gotten worse since the SCHA evaluated it in the late 1960's, but no subsidized housing has yet been built in the County. See Horvath findings - and especially Ms. Solow's present(1974) efforts to help low and moderate income people who cannot afford rents exceeding \$200

a month or houses above the sales price of \$25,000 to find housing are absolutely unsuccessful (Solow T 198-199).

108. Persons advocating the construction of low or moderate income housing in Somerset County may expect violence and economic reprisals to be directed at them (Solow T 196 -15-25).

109. The only way such housing will be built in Somerset County is through court action. Voluntary cooperation from individual communities cannot be expected (Solow T 202-25 to 203-7).

110. In Somerset County, where moderate and even low income people have come to rely on the automobile, access to mass transit is not a crucial factor in deciding where to locate low-cost housing (Solow T 218-21 to 219-24). For this reason, and because amenities such as sewers can be installed, the Somerset Hills region is an appropriate place for absorption of some of the County's housing need (Solow T 218 - 1-10).

111. If anything, the housing market in Morris County, which adjoins Somerset, is even worse.

112. According to Milton Kent, the downpayment assistance program, which was effective in Somerset until 1972, never worked in Morris since there never was any housing on the market costing less than the program maximum of \$24,000. In fact, while Kent's organization, the Morris Fair

Housing Council processed over 200 applications for downpayment assistance, it was able to bring about only one closing (Kent T 47, 3/6/74).

113. The few - about 10 per year - three bedroom apartments that come on the market in or around Morristown invariably rent for \$300 - \$500 (Kent T 472).

114. The nineteen houses on which Kent arranged inexpensive second mortgages through the Morris Housing Investment Fund were predominantly located in black areas of Morristown because that is where there are homes costing less than the program's maximum of \$36,000 (T 477).

115. The regional nature of the housing problem is reflected by the close cooperation that existed between Kent and Theresa Horvath who, as noted earlier, was an official in the Somerset counterpart of the Morris Fair Housing Council (T477).

116. The regional nature of the housing shortage was also testified to by Allan Mallach, a planning consultant for the County and Municipal Government Study Commission who is also a professor of management science at Stockton College and a former official in the New Jersey Department of Community Affairs. Mr. Mallach's background is generally set forth at T 79-85, 3/14/74.

117. The vacancy situation in northern New Jersey, including Somerset County, has deteriorated since the late 1960's to the point at which it significantly interferes with housing choice, except for the most affluent people. The rate has dropped well below the 3-5% the federal government believes to be the minimum for good operation of the housing market (Mallach T 93, 94, 130, 131). The vacancy situation has its most severe impact on the supply of moderately priced housing since there is an excessive demand for such housing (T132. PC-46 at iii).

118. There has been very little construction of subsidized housing in New Jersey although such housing would alleviate the shortage. While subsidized housing starts have recently accounted for 21-24% of all starts nationally, they have accounted for only 6-10% in New Jersey (Mallach T 135-136). There have been absolutely no subsidized housing starts in Somerset County for quite some time (T 137), also (T 50, 3/18/74).

119. The tightness of the housing market for low and moderate income families is compounded by the fact that much of the housing available to such families is substandard. Of the 10,400 low income (under \$5,000 per person) families in Somerset County, at least half lived in substandard housing (T 137-138). Statewide, 2/3 - 3/4 of New Jersey's 500,000 low income families lived in substandard housing (T 137-138).

120. There has been a drastic statewide decline in all housing starts, conventional and subsidized, since the late 1960's (PC-46 at 2). Somerset County has been particularly hard hit by this decline (PC-46 at 10-11, 13). During the early 1970's, Somerset County substantially missed the recommended level of 2,500 housing starts per year (Roach T 20-21, 3/14/74, PC-27).

121. The decline has hurt low and moderate income persons by reducing the supply of used housing that becomes available to them when more affluent persons purchase new homes. (Stahl, T 456, 463 3/26/74).

122. Aside from its failure to provide any subsidized multifamily housing, (.3% of starts in the 1960's, as compared to 3.2% statewide) Somerset County has been deficient in its provision in all multifamily dwellings. (T 50-51, 3/18/74); PC 46 at 9. Only 23.5% of dwelling units authorized in Somerset County during the 1960's were of this variety as opposed to 37.5% statewide. Most of these units were in North Plainfield (PC-46 at 68).

123. Somerset County has also been deficient in its construction of another inexpensive housing type, mobile homes. Despite efforts to William Roach, Somerset County planning director, to secure acceptance of mobile or modular homes, municipalities in the County adamantly continue to exclude them. As a result, there are no new mobile or modular home sites in the county and only a few small old ones. (Roach T 30-32, 3/14/74).

124. Defense witnesses have confirmed the existence of a housing crisis encompassing Bedminster, Somerset County, and the entire metropolitan area. Thus, William Roach testified that Bedminster should enact a resolution of need for subsidized housing when the A. T. and T. plant comes in (T10, 3/14/74), and that he could see small amounts of public housing in Bedminster and Pluckemin villages (T72).

125. A report, PC-19, prepared under Roach's supervision found a lack of low and moderate income housing in Somerset County in 1970 (PC-19 at 2-9, 12-13). Mr. Roach testified that things had actually gotten worse since then, because persons earning \$17,000 or \$18,000 per year would now have difficulty finding housing in the county (T 13-14, 3/14/74).

126. Robert J. Stahl stated that there is a general housing scarcity in Somerset County and elsewhere, and that the need to alleviate that shortage might even make Bedminster an appropriate site for the construction of inexpensive housing (T 422, 438, 456, 463, 512-13). The Bedminster ordinance must be viewed, therefore, in the context of a general housing scarcity.

B. The Housing-Employment Gap and its Impact on the Cities.

127. During the three-year period 1968-1971, the last three year period for which data is available, Somerset County's employment growth of 11.2% (or 4,868 jobs) was a greater increase than that experienced in any of the other northeastern counties of New Jersey; Bergen, Essex, Morris, Hudson, Middlesex, Passaic, Somerset, and Union. (Davidoff T 325; See also PC-26).

128. Of the County's total work force of 56,771, 30.2% or 17,117 workers, commute into Somerset County from elsewhere, according to the United States Bureau of the Census. Of these, 1,768 come from the City of Plainfield alone. (Davidoff T 331).

129. There is a growing gap between the number of new housing units and the number of new jobs being produced in Somerset County (Davidoff T 328; P.C.-19).

130. According to the Somerset County Planning Board and the County Economic Development Commission, it is expected that employment will grow by about 32,000 jobs during the 1970's and that there will be a commensurate need for some 27,500 housing units in the County during the decade. 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 will be necessary to meet the need. PC-19. Actual housing production has in fact fallen far below that annual need in the period from 1970-1973, only 700-850 new units a year were built in the county. (T 328-330; PC-27)

131. Since the housing crisis impacts all the Somerset County labor market, commutation will not solve the housing problem facing Somerset County which problem has been created, in part, by the influx of new jobs. (PC-19 at 12).

132. Cities like Plainfield perceive that they and their citizens are suffering as a result of suburban zoning practices which prevent the development of housing which persons of low and moderate income can afford but which attract new jobs. (Weinstein 120, 3/4/74).

133. Many residents of Plainfield, including some residents of the City's public housing, work in Somerset County and commute there every day from Plainfield, which is, itself, on the tip of Union County, adjacent to both Middlesex and Somerset Counties. (Weinstein T 108, 145).

134. In 1971, the City of Plainfield embarked on a study to determine why low and moderate income families were moving into the city and middle income families were exiting (T Weinstein 128).

135. The city government had also observed that there had been a white exodus from Plainfield and that much of the city's new population was non-white. The city's 1970 population was between 30 and 35% non-white. In 1960, its non-white population had been about 20% of its total population. Approximately 80% of the city's public school population is now non-white (Weinstein T 108, 109, 141).

136. The Planning Division of the City government decided to find out why Plainfield seemed to be the only municipality in the area which was supplying housing for low and moderate income and minority families (Weinstein T 128).

137. The Division concluded that the communities around Plainfield did not allow the development of much, of any, multi-family housing and thereby put a burden on Plainfield, which allowed such housing to be built (Weinstein T 121).

138. After the Planning Division of the City of Plainfield completed its analysis of the zoning practices of suburban communities surrounding Plainfield, the Plainfield City Council adopted a resolution calling on those adjacent communities which zoned land for industry to also zone for low and moderate income multi-family and small lot development. (Weinstein T 115, PC-13, PC-14).

139. The report on suburban zoning practices prepared by the Planning Division was sent to and discussed with former Governor

Cahill's Housing Task Force (Weinstein T 133). The report was given wide circulation because the problems experienced by Plainfield are typical of those experienced by many other older cities .

(Weinstein T 134.)

140. Cities like Plainfield have very old housing stocks: for example, 60% of Plainfield's housing is more than 75 years old. Such housing is expensive to maintain. Faced with high taxes, as well as high maintenance costs, many owners are abandoning their housing. (Weinstein T 110, 111, 113, and 114).

141. There is little or no vacant land in cities like Plainfield on which new housing for persons of low and moderate income can be built, and redevelopment of already developed tracts is extremely expensive (T 142, 143 Weinstein).

142. It is for these reasons that Plainfield must look to the suburbs for the construction of new, moderately priced housing. It is also for these reasons that Plainfield's Planning Division has recommended to major employers in Somerset County that they attempt to develop moderate priced housing near their facilities for their employees (Weinstein T 121, 147).

143. There is generally a serious disparity between employment and housing opportunities in Somerset County, with jobs in the county outstripping housing available for workers. Roach, T 15, 19; (3/14/74) PC-19 at 6-9.

144. In-commutation cannot be expected to fill this gap because "the housing crisis impacts all of the labor market area", PC-19 at 12; Roach T 19, 3/14/74 and because workers should have the opportunity to live near their place of work so as to avoid air pollution, traffic congestion, and the rigors of lengthy commutation. Mallach T 12-13, 3/18/74 Agle. T 119-128, 153-155 3/28/74 .

145. Therefore, according to the plaintiffs witnesses and defendants own planner communities which have substantial employment should provide housing opportunities for the workers employed within their boundaries. Id.

146. It makes no difference whether employment in a municipality results from response to requests by industry to locate in it or active seeking of industry since in either event the municipality will have a substantial number of employees who have housing needs. Mallach, T 13.

147. Defendants' planner, Mr. Agle, agrees with this proposition since he opposed two pro AT&T requests for rezoning, one of which involved projected employment as large as AT&T's, T 119-128.

148. Bedminster has taken positive steps to ensure that AT&T locates there by rezoning a parcel of land for office use. At the very least, therefore, Bedminster has "accomodated AT&T. Roach T 57 (3/14/74).

149. Apart from its role with regard to the general need for housing which need was described in III A above, Bedminster has a specific obligation to provide low or moderate income housing by virtue of its becoming a major employment center. See Roach, T 10, 3/14/74).

150. On the basis of the facts set forth in parts I, II and III, the Court finds a pressing need for low, moderate, and even middle income housing in the Somerset County area in general and in Bedminster in particular.

#### IV. THE BEDMINSTER ZONING ORDINANCE

151. In April, 1974 Bedminster Township adopted a new zoning ordinance (PC-2).

152. The only form of residential use that is allowed as of right under that zoning ordinance is the single family detached dwelling. (Davidoff, T 345, 3/5/74; PC-29).

153. Increasingly, the single family detached dwelling is becoming exceptionally expensive to build. (Davidoff, T 345).

154. The attached garden apartment, townhouse or two-family house is the preferred form of housing for low and moderate income people. (Davidoff, T 346). These forms of housing are less

expensive to construct on a per unit basis than the single family detached dwelling.

155. Multi-family housing, including two family or "twin" houses, are allowed only by special permit. (Davidoff T 350; PC-2(B), article IV, 13).

156. When a use is permitted discretionarily, rather than as of right, the possibility of great and very costly delays in the approval process exists. Such delays particularly affect non-profit developers which have difficulty obtaining and paying for short term financing for construction. Furthermore, plans become open to negotiation and in such a circumstance, developers are likely to be pressured to build housing which will generate few school children and "pay its own way". The result of these discretionary procedures is often that the housing which is built is in fact restricted to families which are of relatively high incomes. (Davidoff, T 348-350); Mallach, T 123, 148-149, (3/14/74); T 55 (3/18/74).

157. The new Bedminster zoning ordinance creates three residential districts, the R-3, the R-6 and the R-8 (PC-2(A), Article II, 1). In addition, there exists a Business District (B) and a Research-Office District (RO). (PC-2(A), Article II,1).

158. The mapping of the new zoning ordinance generally

conforms with the mapping of the old zoning ordinance in that the old five acre zone generally is the new R-3 zone; the old two acre zone generally is the new R-6 zone and the old one acre zone generally is the new R-8 zone. The major deviations from this pattern occur with regard to the AT&T Long Lines tract which was rezoned RO from five acre residential and the Allan-Deane tract, most of which was rezoned R-6 from five acre residential. (Davidoff, T 387, 390; PC 2(a) and PC-12). There has also been a shrinkage in higher density residential zones around Pluckemin by conversion of some of that area to RO. Mallach, T 145.

159. As adopted in April 1974, the Bedminster zoning ordinance provided for planned residential neighborhoods including multi-family dwellings, upon approval of the Planning Board in the R-3 zone as well as in the R-6 and R-8 zones. The September, 1974 amendments to the ordinance deleted this provision, restricting multi-family development to the R-6 and R-8 zones. (Davidoff, T 366; PC-2(A) and PC-2(B)).

160. The lot size allowed for single family detached units in the residential zones under the new Bedminster ordinance is measured according to the diameter of a circle which may be fit into the lot. (PC-2(A), Article IX, Schedule A).

161. It is mandated that the diameter be at least 350 feet in the R-3 zone. This works out to be a three acre lot (2.81 acres) only if the lot is square. If the lot is rectangular, then it must be a minimum of five acres. (Davidoff, T 357, 359-360; PC-28).

162. Normally, lots are developed rectilinearly rather than as squares (Davidoff T 359).

163. The R-6 zone requires that lots be at least large enough to have a circle with a diameter of 225 feet inscribed within them. The minimum lot is therefore 1.6 acres for a square lot and 2 acres for a rectangular lot (Davidoff, T 360-361).

164. In the R-8 zone, the lot size is 150 feet - or 1/2 acre for a square lot and one acre for a rectangular lot (Davidoff, T 361.)

165. The floor area ratio (hereinafter "FAR") allowed under the new Westminster zoning ordinance is substantially less than that allowed under the pre-existing ordinance. Under the old ordinance, the FAR in the five-acre zone was 15%. Under the new ordinance, the FAR in the R-3 zone, or three acre zone, is 3%. In R-6, it is 6% and in R-8, it is 8% (Davidoff, T 362, 386-387; PC-2(A), Article IX, Schedule A).

166. The floor area ratio allowed in the Office Research



zone is greater than that allowed in any of the residential zones. In the Office Research zone, the ratio is 15%. This FAR represents an increase in the allowed FAR over what had been allowed in the new ordinance as originally enacted and a return to the pre-existing ordinance. (Davidoff, T 400, PC-2(A); PC-2(B); D-35 at 7).

167. Much of the area zoned RO is owned by AT&T and is the site of the new Long Lines facility. (Davidoff, T 399, 400).

168. The Bedminster zoning ordinance, in addition to setting maximum floor area ratios for each zone, also regulates the minimum size of dwelling units (PC-2(A), Article IX, C,1). These minima include required amounts of storage space and the provision of one 200 square foot parking space for each bedroom included in a dwelling unit. (PC-2(A), Article IX, C, 3; Article X, B, 4). All of these requirements must be included in the floor area ratio computation, which, in turn, determines the number of dwelling units of any given size, which may be constructed in any residential zone. (Davidoff, T. 362-363).

169. The residential densities permitted in the Bedminster ordinance are very low. The greatest number of units which can be built in any zone are 6.06 studio apartments to the acre in the R-8 zone, assuming construction of the smallest unit allowed by the

ordinance and the minimum amounts of parking and storage space. In that same zone, one can build a maximum of 4.04 one bedroom units to the acre; 2.5 two bedroom units to the acre; 1.8 three bedroom units to the acre; 1.35 four bedroom units to the acre; and 1.08 five bedroom units to the acre, again using the smallest dimensions allowed by the ordinance. Similarly, one can build a maximum of 4.5 studio units to the acre in the R-6 zone; or 3.0 one bedroom units to the acre; 1.88 two bedroom units to the acre; 1.3 three bedroom units to the acre; 1.0 four bedroom units to the acre; and .81 five bedroom units to the acre. (Davidoff, T 364, 366-367; PC-29).

170. Provisions of the zoning ordinance dealing with floor area ratio, minimum unit size, storage space, and parking have the effect of requiring such low densities and such large units that only luxury housing is likely to be built in the Township (Davidoff, T 350-351).

171. The effect of the density provision of the zoning ordinance is to preclude entirely the development of housing for families of low and moderate income and most probably for families of middle income even though such developments are feasible given land costs of \$10,000/acre in Bedminster. (Davidoff, T-356; Hymerling, T-117 (3/19/74); Mallach, generally T-140-171 (3/14/74);

See esp. 140-41, 143-144, 148, 151, 153, 155-171. Also T-53, 60 (3/18/74).

172. In fact, despite his claim that the ordinance provides for subsidized housing, Mr. Agle, who was familiar with such matters, admitted he has never seen subsidized housing at the densities allowed in the Bedminster ordinance. T-77 2/28/74)

173. Charles Agle's claim in D-56 that moderate income multi-family housing could be built at Bedminster densities must be rejected because he relied on unreasonably low land costs. He admitted that he did not know what a developer would pay today for land in the R-6 and R-8 zones and thus did not dispute plaintiffs' estimates of \$10,000 to \$20,000 as the price of land in such zones. He further admitted that the increase in density in those zones from the previous one and two acres would increase land costs beyond the \$3,500 paid by Allan-Deane in 1969. He also gave inflation as another factor increasing land price. Thus, his chart D-56 cannot be given weight as an accurate statement of development costs in Bedminster. See Agle, T-67, 177-179.

174. There is some question as to whether mobile homes are allowed in Bedminster under the new zoning ordinance. Even if they are permitted, the low minimum density requirement that

governing residential uses negate the economic benefits which would otherwise inhere in the use of mobile homes ad residences. The requirement that mobile homes be grouped at low densities probably takes those homes out of the reach of approximately 98% of the present mobile home occupants in the United States (Davidoff, T-397; Mallach, T-3-8; 3/18/74).

175. Article IX, C, 4 of the Bedminster zoning ordinance which allows the developer of federally or state subsidized housing to use the room and dwelling unit size standards of the relevant government program rather than the net minimum habitable floor area regulations set by the zoning ordinance does little or nothing to further the development of low and moderate income housing in Bedminster. Mallach T-147-149, 158-161, 3/14/74, T-3, 3/18/74.

176. The provision does not further the development of such housing because it does nothing to substantially alter the exceptionally low minimum residential densities set by the FAR provisions of the ordinance. Mallach Id.

177. Failure to materially increase densities is fatal since all existing programs have limits on per unit land acquisition and

development costs. (Davidoff T 369-370). Mallach Id.

178. Densities of 5 to 15 dwelling units per acre in the case of dwellings averaging three bedrooms each, are the densities which are appropriate to make possible the development of housing which families of low and moderate income can afford. (Davidoff T 445.

179. Article IX, C, 4 also fails to increase opportunities for the construction of housing in Bedminster which families of low and moderate income can afford because it does nothing to alter the requirement that there be one 200 square foot parking space for each bedroom included in a dwelling and that each such 200 square foot space be included in the FAR, and, therefore, the density computation.

180. The effect of requiring the size of each mandated parking space be included in the FAR computation is to cut down the number of housing units which may be produced under the ordinance. (Catlin, T 665.)

181. There is no sound planning reason for including the size of the required parking spaces in the FAR computation.

182. There is no planning principle which justifies the requirement in the Bedminster zoning ordinance that there be one parking space required for each bedroom in a housing unit.

183. The minimum net habitable floor area sizes set by the Bedminster zoning ordinance are themselves excessive, particularly when viewed in terms of the minimum living areas needed to protect public health and safety (Davidoff T 370-371).

184. The minimum floor areas set by the ordinance are significantly larger than those set by the American Public Health Association - Public Health Service (APHA-PHS) Recommended Housing Maintenance and Occupancy Code (Davidoff T 383, 384, PC-30).

185. The basic occupancy requirement under the APHA-PHS Code is that there shall be 150 square feet of floor space for the first occupant of a dwelling unit and at least 100 square feet of additional floor space for every additional occupant of the dwelling. (T 383; PC-30 at 98).

186. The APHA-PHS Code is intended to "apply uniformly to the construction, maintenance, use and occupancy of all new residential buildings and structures" as well as to the maintenance of all existing residential buildings. (Davidoff T 371; PC-30 at 73). This court therefore finds that the Code sets an appropriate standard against which to measure the Bedminster zoning ordinance.

187. Furthermore, the Bedminster standards are 15% above those relied upon by its planner, Charles Agle, in deciding how much

subsidized housing could be built under the ordinance. (D-55, 48, 49.

188. The zoning map, as well as the substantive provisions of the zoning ordinance, limit the potential for multi-family development and, particularly, multi-family development for persons of low and moderate income in Bedminster (Davidoff T 387-388).

189. Of the more than 13,000 acres of vacant land in Bedminster, only 121 acres are in the R-8 zone, and 750 in the R-6 zone, the two residential zones which permit multi-family development. All but a small amount of the remainder is in the R-3 zone. (Davidoff T 387-388; PC-47).

190. The fact that only a small amount of vacant land is in the R-6 and R-8 zones will have an effect on the ultimate price of housing built in these zones, particularly since the ordinance requires that a minimum of 25 acres of land be included in each Planned Residential Neighborhood (PC-2(B), Article X, A). There are four potential parcels of 25 acres or more in the R-6 zone, other than the Allan-Deane property and there are only two in the R-8 zone. None of these parcels is very large. The sales cost of those tracts which do exist will be inflated by the demand of developers. ( T 390-391) Furthermore, since the tract are small they will be relatively more expensive to develop. Mallach, T 134-144.

191. The amount of land zoned R-6 and R-8 is so small that it

will absorb only 1050 to 1450 of Bedminster's estimated population increase of up to 17,000 people. PC-52; T-Agle, 80-83, 85-89, 97-98, 101.

192. Mr. Agle more or less conceded the unreasonableness of the limited multi-family capacity when he called it a "starter", T-196, 3/28/74, and noted that it would have to be reviewed every ten years. T-87.

193. The exclusion of standard multi-family dwellings from the R-3 is not explained by ecological considerations, in view of the legislative history of the exclusion. Agle, T-145, 3/28/74. Nor can it be justified on other public policy grounds. Mallach, ( T-125, 3/14/74).

194. The newly enacted requirement that the Planning Board approve Planned Residential Neighborhoods and Open Space Clusters, including multi-family development in the R-6 and R-8 zones if they conform to the standards set forth in Articles X and XVI of the ordinance does virtually nothing to limit the exercise of discretion by the Planning Board since those articles, themselves, set no specific or readily ascertainable standards. Mallach, T-148, T-55 (3/18/74).

195. The Plan Review procedures of Article XVI of the zoning ordinance and particularly Article XVI, Q, concerning



the Environmental Impact Statement, fail to set proper standards to guide the municipality and the applicant. (PC-2(A); PC-49 at 3).

196. The Township has failed to set proper standards in Article X and XVI of the zoning ordinance despite the fact that it is capable of doing so. It has set concrete performance standards explicitly regulating the quality of effluent which may be discharged from any wastewater treatment plant operating in the Township (PC-9; compare with PC-2(A), Article XVI, Q).

197. Farm and agricultural uses, including crops, nurseries, poultry, and small animal and livestock raising and training, are allowed in all residential zones under the Bedminster ordinance. (PC-2(A), Article IV, 5). The ordinance does not restrict the number of livestock or poultry per acre although it does restrict the number of humans per acre through the FAR and other density controls (Davidoff, T-391-392).

198. As the ordinance appears to favor livestock over humans, so the ordinance appears to favor some aspects of research-office development over residential development. In calculating the FAR, in an RO zone, the developer is allowed to include land in common ownership and dedicated to permanent open space in an adjoining municipality in its computations (PC-2(A)). This has

the effect of allowing higher density development on RO land in Bedminster than would otherwise be the case. No such provision applies to residential development. The only reason for this discrepancy can be general hostility to residential development.

199. The planning consultant's reports appended to the Bedminster Master Plan and the Master Plan itself set forth Bedminster's concerns and its objectives in its planning and zoning. (Davidoff, T-411, PC-2(A)).

200. In a memorandum entitled General Considerations in Planning of Bedminster, appended to the Master Plan, the following is written:

"Bedminster is vulnerable to but not eminently suited for mass housing for employees of plants in the Somerville-New Brunswick-Woodbridge and Perth Amboy areas, using I-287 as a commuting route. Topographically and geologically, however, it is not as easy to develop for mass housing as areas in the southern half of the state, or even in the Hopewell-Belle Meade-Millstone valley.

"Because of its natural attractiveness and rolling character, it is eminently suited for a continuation of its present use: that for junior and senior executives, still employed in New York, and those to be employed in the future as manufacturing and industrial developments take place to the south."

201. The Master Plan states as one township goal that of protecting Bedminster's "chief assets, its reputation as a highly desirable place in which to live" (PC-3(A), Davidoff T-411). One of Bedminster's criteria for desirability appears to be that of being a place resided in by families of affluence (Davidoff, T-412).

202. Bedminster' concern with the fiscal aspects of higher density development is expressed in a memorandum entitled Preliminary Notes on Future Land Use, which is also appended to the Master Plan. That memorandum says:

"This does not mean, of course, that there is no market for land for small-lot development. Indeed, after 287 and 78 are completed, there will be increasing pressure for exploitation. But mass development of small houses would be disastrous to the tax base of the Township and in the long run would be incompatible with the proper rural density of this fringe of the Metropolitan district." (PC-35 at 3; T-423).

203. Under a section called "Regional Consideration" in the same memorandum, it is demonstrated that Bedminster's primary concern in studying the development of its neighbors is to determine whether they, too, have large lot zoning:

"A perusal of the composite zoning map of northern Somerset County and its surrounding municipalities...will give Bedminster some comfort and confidence. The consensus of surrounding municipalities fortifies the possible preservation of its large lot rural estate zoning indefinitely..." (PC-35 at 1, Davidoff T-422-423.)

204. In a memorandum entitled Considerations in Economic Development, written in 1970, the township planning consultant wrote:

"The beauty of the countryside attracts the upper-income corporate building committee which may or may not have personal housing plans or aspirations. Acceptance of the rateable should bring with it housing development of one sort or another for all workers, which will substantially change the peaceful countryside and low tax rates. If the rateable is accepted and the working population refused, this will invite the just wrath of the State, the Courts, and organizations interested in equitable social welfare, and expose the area to whatever corrective or punitive action measures may result from political pressure. (PC-37 at 5; Davidoff, T-431-432.)

205. AT&T Long Lines, now moving to Bedminster, is a major rateable. This court finds that Bedminster has not responded to its moral obligation, as set forth in the above-cited memorandum. The court finds that Bedminster has failed to zone for housing for the workers to be employed in that rateable (Davidoff, T-432.).

Further, this court finds that Bedminster has zoned in a manner which carries out the goals set forth in the 1964 Master Plan and appended documents - it has zoned to make Bedminster a highly desirable residential community for a very restricted, affluent sector of the population (Davidoff, T-424.)

206. The Floor Area Ratio is the most significant factor increasing construction costs in the Bedminster ordinance. (Mallach, T-170, 3/14/74). As compared with normal densities, the Bedminster ordinance adds \$6,000 - \$6,000 per unit to the cost of building apartments, townhouses and modular homes. Mallach, T-157-158.

207. The environmental impact statement requirement adds about \$1,000 per unit. T-147.

208. The habitable floor space requirements add \$2,500 to the cost of apartments or townhouses as compared with the cost of building such units in accordance with Housing Finance Agency floor space standards. T-169.

209. In terms of rental units, the additional costs imposed by the FAR would raise monthly rents by \$110-\$125; the excess in floor area over HFA standards would raise monthly rent \$10-\$15. T-157-158, 169.

210. These sale prices and rental increases make it impossible for plaintiffs Cieswick and Kent to live in conventionally financed housing in Bedminster, T-162-163, since they could afford to pay the prices or rents which would be charged at densities typical of garden apartments, townhouses or mobile homes.

211. As noted elsewhere, these cost increases would make projects built in Bedminster ineligible for state and federal subsidy programs. T-158-161.

212. If the residential densities allowed under the Bedminster zoning ordinance were greater, developers would have more flexibility in setting their sales prices and rent levels and would be able to use rent averaging or rent "skewing" to bring a certain percentage of the rentals within the reach of moderate income families. (Catlin, T-672-673, 3/12/74).

213. Rent averaging or skewing is not feasible under the Bedminster ordinance because of the low densities set by the ordinance. Those densities are so low that they preclude all consideration of skewing or averaging. (Catlin, T-683, Mallach, T-164-166.)

214. If the densities allowed under the ordinance were made more realistic, it would be possible even for the profit seeking developer like plaintiff Allan-Deane to skew rents to get

some in range of \$200-\$280 a month (T-683-684). Planning consultants would use a 20-25% income to rent ratio to calculate how much a family should earn in order to pay that rent (T-684; Davidoff, T-262, 3/5/74). (Mallach, T-164-166; 169-170).

215. It is also possible to encourage the development of moderate income housing units through a zoning ordinance by providing a density bonus for developers who build units for low and moderate income families. (Catlin, T-674, 3/12/74).

216. There are some communities in New Jersey which have already incorporated such provisions in their zoning ordinances. (Catlin, T-674), (Mallach, T-56-57, (3/18/74).

217. It is also possible to achieve the higher densities needed for the development of low and moderate income housing through transfer of development rights. Bedminster has recognized the validity of such a concept, although not for the development of moderately priced housing, in its zoning provision allowing RO developers increased building densities in Bedminster if they leave land outside Bedminster in permanent open space (PC-2(A)).

218. The State has recognized the value of the concept of transfer of development rights in the Report of the Blueprint Commission on the Future of New Jersey Agriculture. (D-11 at 17).

219. On the basis of all of the foregoing, this court finds that the Bedminster zoning ordinance is an exclusionary zoning ordinance and that in its planning and zoning, Bedminster has failed to identify and consider a range of alternative forms of development which would preserve its character as a desirable place to live while meeting the housing needs of low and moderate income families (Davidoff, T-266-267, 406, 3/5/74).

220. This court finds that the Bedminster planning process and zoning ordinance fail to take account of Bedminster's critical location in the region, at a major growth node created by the intersection of two major highways, and as a source of significant new job opportunities. (Davidoff, T-267-268).

221. This court finds that the Bedminster Zoning Ordinance tends to further the racial and economic segregation existing in Somerset County, and the region (Davidoff, T-267).

222. This court further finds that, contrary to good planning principles, as set forth in the American Institute of Planners Code of Professional Responsibility, the zoning ordinance and master plan of Bedminster reflect no concern or recognition of the special responsibility of all agencies charged with land use decisions to plan for the needs of disadvantaged groups (PC-38; Davidoff, T-436-437).



223. The court finds that less restrictive alternatives exist which will allow for preservation of open space. Mallach, T 8-11, 56-57 (3/18/74).

V. THE BEDMINSTER ZONING ORDINANCE AND REGIONAL PLANS FOR DEVELOPMENT

224. Defendant Bedminster relies on a number of regional development plans to attempt to justify its existing zoning ordinance. These include the Somerset County Master Plan, the so-called Horizon Plan, and documents prepared by the Tri-State Regional Planning Commission (hereinafter "Tri-State") and the Regional Plan Association (hereinafter "RPA"). (D-5, D-6, D-4, D-7 to D-9, and PC-20).

225. The Bedminster ordinance fails to allow in Pluckemin-Bedminster villages the kinds of densities recommended by the SCMP for village. It thus fails to provide housing in the SCMP for such villages. (Roach, T-27-29, 3/14/74; T-833, 3/13/74.)

226. The Bedminster ordinance fails to provide for an increase in the size of Bedminster and Pluckemin villages as recommended by the SCMP. Compare Roach, T-745, (3/3/74) with PC-2(A) and PC-12.

227. The Bedminster ordinance fails to allow multi-family housing as of right in these limited areas zoned for such housing. This is contrary to the policy of the Somerset County Planning Board. (Roach, T-39 and 42)

228. The Bedminster ordinance allows major research-office development although no such is shown in the SCMP. (Roach, T-57).

229. On the basis of the foregoing, this court finds that the Bedminster zoning ordinance deviates in several significant respects from the Somerset County Master Plan despite the fact that the county Master Plan, itself, is premised on the pre-existing zoning ordinances of Somerset communities (D-6 at 7; Roach, T-62).

230. The report, New Jersey's Future: Goals and Plans, does not present State policy. (D-5 at Foreward; Roach T-847).

231. This court therefore finds that the report is not of great assistance in evaluating the Bedminster zoning ordinance. This court further finds a certain inconsistency in the report which also limits its usefulness. At the same time that the report seems to advocate that growth be concentrated in centers, it also states: "Current development patterns indicate a growing separation of communities by income and ethnic characteristics... This trend appears to inhibit the democratic ideal of equal opportunity," (D-5,

New Jersey's Future: The Issues at 1), and "New Jersey is the most urbanized state in the nation and its urban centers have become overly representative of lower income groups. This pattern of socio-economic location can be expected to continue." (D-5, New Jersey's Future: The Issues at 2).

232. Tri-State has prepared maps which are general expressions of regional planning goals and which include Somerset County. (D-4).

233. The Bedminster zoning ordinance and land use plan do not conform with the Tri-State regional development plan since, with the inclusion of additional lands in the RO zone and the arrival of AT&T Long Lines, Bedminster is the site of economic activity. No such activity is provided for in the Bedminster area on the Tri-State Regional Development Plan. (D-4, Davidoff, T-545)

234. Nor is any economic development shown for Bedminster on RPA's Second Regional Plan, year 2000 development map (Davidoff, T-545; PC-20).

235. The economic activity cluster shown by the Tri-State Regional Development Plan in the Somerset Hills area coincides generally with where AT&T is locating its corporate headquarters in Bernards. (D-4; Davidoff, T-535.)

236. Bedminster seeks to justify its low density residential development in terms of the Tri-State Regional Development Plan, yet the Regional Development Guide explains that "substantial numbers of residences, mostly apartments," are expected to accompany the creation of centers of economic activity. (D-4 at 16, 14). RPA also calls for the location of apartments near jobs (PC-20).

237. In addition to finding the critical differences between the Bedminster zoning ordinance and the Tri-State and RPA plans this court also notes that Tri-State has itself been criticized for failing to plan to expand the opportunities of low and moderate income persons and that both organizations have been criticized for focusing development along the New York-Philadelphia axis. (Davidoff, T-535-536).

238. The concerns which shaped the RPA Second Regional Plan included the "growing separation of rich and poor, Negro and White" and the "growing separation of worker and workplace" (PC-20 at 8).

239. One of the regional housing policies set by RPA in the Second Regional Plan is that "Much more opportunity should be provided families with incomes below \$10,000 a year to live in the newly-developing areas of the Region, if they choose...." (PC-20 at 59).

240. The RPA has found that housing now being built for families with children consists predominantly of one-family houses on lots of one-half acre or larger and that "the principal reason that almost all new houses are set on large lots is that local governments require it." The result, RPA found, is "that almost no new housing is being built for families with incomes of under \$10,000 a year, except government subsidized housing, which is mostly in the old cities." (PC-20 at 11).

241. On the basis of all of the foregoing, this court finds that the existing Bedminster zoning ordinance fails in many significant respects to conform to the regional development plans cited above.

## VI. BEDMINSTER AND THE REGIONAL ENVIRONMENT

242. Evidence was introduced at trial relating to the function of the Upper Raritan Watershed, the quality and quantity of ground water and surface water in the watershed, the existing and projected sanitary sewer and public water systems in Bedminster, Somerset County and the Watershed, the state of the art of sewage treatment, and, to a lesser extent, the quality of the air in Bedminster.

243. Mayor Winkler of Bedminster did not appear at the trial; however, a portion of a deposition of the mayor was read into evidence. When questioned, the mayor could think of no natural resources in Bedminster which the zoning ordinance would conserve; nor did he know what an ecological system was (Reading of Winkler Deposition, at T33, T 159, 160, 3/19/74).

244. At its meeting of April 11, 1973, the Bedminster Planning Board recommended that the Township Committee adopt the zoning ordinance challenged herein (D-35).

245. While the court has read and considered the Planning Board minutes of April 11, 1973 and the documents related thereto, D-36 to D-43, it is constrained to place minimal weight on these documents. The court finds that the Planning Board meeting in question was held during the course of the instant litigation and that Bingham Kennedy, Esq., a member of the law firm

especially retained by defendant Bedminster Township to represent it for the purpose of this litigation served as Secretary to the Planning Board and prepared the minutes of the meeting. Moreover, each of the ecological or environmental documents listed in the Planning Board minutes as relevant to the new zoning ordinance was furnished to the Planning Board by McCarter and English, special counsel to defendant. See attachments referred to in D-38.

246. One of the documents presented to the Planning Board when it considered the zoning ordinance challenged herein included excerpts from a book entitled Urbanization, Water Pollution and Public Policy, (D-35). Among other things, these excerpts state:

--While existing practice dictates large sewage treatment plants located at downstream points in river basins, we question this policy from an environmental, an economic, and a planning perspective.

a. Environmental. The immense upstream assimilative capacity of the stream goes unused since upstream suburban areas are kept pristine at the expense of downstream urban areas. (D-36 at 5)

247. The full meaning of D-36 is unclear since only nine of at least 170 pages of the full report were before the Planning Board. However, to the extent that the report calls for limitations on development in order to preserve water quality, it appears to call for such limitations in downstream, not upstream areas (D-36 at 168). The study appears to call for growth curtailment in the tidal and possibly the Millstone valley areas of the Raritan, not in the Upper Raritan Watershed (D-36 at 168).

248. In fact, the study seems to call for increased development in areas like Bedminster (D-36 at 170).

249. The present Bedminster zoning map is not governed by ecological features since it allows high density in areas with poor drainage and water supply and requires low density in areas with abundant ground water and excellent septic drainage (Agle T 113-114, 3/28/74). The Court finds that protection of ecological systems and conservation of natural resources played little or no role in the formulation of the challenged Bedminster zoning ordinance and that the information supplied to the Bedminster Planning Board by its attorneys in fact indicated that continued sparse development in Bedminster in the face of continuing development in the downstream areas of the watershed might in fact be deleterious to the environment.

250. On the basis of the facts listed immediately below, this Court further finds that certain activities not limited by the challenged zoning ordinance may in fact be presently extremely deleterious to the environment.

251. As set forth, supra, findings this court has already found that the zoning ordinance does not limit the livestock or small animal population of the Township and that more than 1000 such animals are in the Township.

252. General William Whipple studied unrecorded sources of pollution in three New Jersey rivers, including the Raritan (T 7, 3/19/74).

253. He testified that the existence of 700 head of beef in Bedminster would certainly have an effect on unreported organic loading of the



river and that if the beef were concentrated, there might be a considerable effect ( Whipple T27).

254. Ecologist McCormick made the same observation, writing that activities associated with animal rearing, such as stock feedlots and kennels, also contribute to the pollution of surface water and ground water. The concentration of nutrients, solids, pathogenic organisms, and oxygen demanding materials in runoff from feedlots, for example, may be one or two orders of magnitude greater than in municipal sewage (D-30 at 22-23).

255. In a report to the Upper Raritan Watershed Association made in 1967, the Academy of Natural Sciences (hereinafter) "the Academy" recommended that livestock not be concentrated for long periods of time along waterways because a significant source of pollution, or enrichment, is livestock waste (Patrick T 53, D-25 at 20). Dr. Ruth Patrick of the Academy, who testified for defendants did not know whether Bedminster had adopted regulations limiting the areas in which livestock could be concentrated (Patrick T53).

256. Farm and agricultural uses are unfairly allowed in all residential zones in Bedminster (PC-2a, Article IV, 5). Yet agricultural areas could contribute as much organic pollution to streams (or even more) as that of urban-residential areas (D-23 at 3, Whipple T34).

257. According to the College of Agriculture and Environmental Science of Rutgers University, in Bedminster in 1972, there were 2,918 acres of cropped cropland and 3,927 of pastured cropland. In addition, there were an additional 3,424 of uncropped pastureland in the Township. (PC-32).

258. General Whipple testified that cropland in Bedminster would also contribute to the unreported organic loading of streams (Whipple T 27).

259. In its report, the Academy also noted that "care is needed to manage the land to prevent the erosion of nutrients." (Patrick T 53; D-25 at 20). At trial, Dr. Patrick did not know whether Bedminster had adopted any particular agricultural standards or ordinances intended to prevent the erosion of nutrients (T 53, 54).

260. The environmental experts asked to do studies of the environment of Bedminster and its surrounding area by defendants agree that it is possible to have urbanization which does not degrade the environment (McCormick, T 70, 3/20/74; Patrick T 23, D-22 at 22). In fact, ecologist Jack McCormick testified that a facility like that of A. T. and T. Long Lines can come to Bedminster without degrading the environment in an unacceptable manner and that, in certain respects, it can enhance the environment (T 113, 114; PC-49 at 2).

261. Ecologist McCormick further testified that it is "inevitable" that some degree of urbanization will occur in Bedminster (T 70) and that a degree of urbanization will come to Bedminster if it attains the holding capacity of its zoning ordinance, 18-19, 000 people (McCormick T 110, 111).

262. However, growing technical knowledge permits amelioration of many of the deleterious results of urbanization (D-30 at 25).

263. Thus, for example, in his studies, General Whipple found that while gross pollution increased with population growth, net pollution (the amount of pollution actually entering a river) did not (Whipple T 29). The total pollution entering the streams has not generally increased because the increases in gross waste were largely counterbalanced by improvements in efficiency of treatment of plants (D-22 at 20).

264. This finding led General Whipple to conclude that the projected increases in gross pollution levels which will accompany increased population growth should not be interpreted as meaning that the desired water quality standards cannot be met (D-22 at 22).

265. In this context, this Court further finds, on the basis of these facts set forth immediately below, that the forms of sewage treatment now being used in Bedminster and the watershed are not the most efficient available and are, themselves, degrading the environment.

266. In his study, General Whipple assumed that another unrecorded source of pollution was leakage from improperly constructed or poorly constructed septic tanks (Whipple T 25).

267. It was agreed in a stipulation of facts in the instant lawsuit that as of 1960, 43% of the septic tanks in the Pluckemin and Bedminster Village sections of the defendant township were malfunctioning. General Whipple testified that this certainly would have an effect with regard to unreported sources of pollution (Whipple, T 25-26; PC-51).

268. It was also stipulated by the parties that a number of septic tanks in Pluckemin and Bedminster Village discharge into French drains and storm drains. General Whipple testified that discharge into storm drains would contribute to unreported organic loading of streams (Whipple T 26; PC-51).

269. In his report to the defendants, ecologist McCormick made a similar observation concerning septic tanks. He wrote: "as many as one-third of all new septic tank installations fail within three or four years... Such failures result in the escape into surface waters or ground waters of malodorous, partially treated sewage. This leakage can produce higher nutrient concentrations, greater oxygen demands, and larger populations of pathogenic organisms in the water. Particularly if local land use were to become more intensive, therefore, sewage must be treated to a high degree of purity and the effluent must be discharged in an environmentally suitable manner (D-30 at 22).

270. Dr. Patrick also testified that malfunctioning septic tanks in Bedminster would have a deleterious effect on the quality of water in the Upper Raritan particularly if those malfunctioning septic tanks were within 300 feet of surface waters (Patrick T 52; D-47 at 34, 35).

271. At trial, Dr. Patrick did not know whether Bedminster prohibits, or has ever prohibited, septic tanks within 300 feet of any stream bed (T 53).

272. It was one of the recommendations of the Academy's 1967 report, D-25, that septic tanks be required to function well and be totally prohibited in flood plain areas (T53; D-25 at 20). This recommendation is repeated in the 1974 report (D-47 at 34).

273. Peter Larson, Executive Director of the Upper Raritan Watershed Association, testified for defendants at trial. Among other things, he testified that the amount of phosphorus in the Raritan River at one point was excessively high (Larson T 212, 3/19/74).

274. The point in the Raritan River which, Larson testified, has phosphorus in the amount of 2.5 mg/liter, is above the Far Hills, Bernardsville, and Mendham Borough sewage treatment plants (Larson T 212-213).

275. The Far Hills plant has the equivalent of secondary treatment. Far Hills is under court order to upgrade the facility (Larson T 215).

276. The treatment plant in Bernardsville gives standard secondary treatment. Bernardsville currently is attempting to upgrade that plant (Larson T 216-217).

277. The Borough of Mendham operates a relatively new secondary treatment plant. Larson has stated at public meetings that the level of treatment given in plants like that in the Borough of Mendham is inadequate to meet standards he would set for the Upper Raritan Watershed (Larson T 217-218).

278. The Peapack-Gladstone system is a secondary treatment system. The State has ordered that the level of treatment be upgraded (Larson T 218).

279. Larson knows of one package plant in the Pottersville area of Bedminster. Water quality samples of the Lamington River indicate that the plant provides the equivalent of secondary treatment (Larson T 219).

280. The treatment plant operated by the Bedminster Inn probably contributes to non point pollution of the Raritan River (Larson T 220).

281. The discharge from the Cowperthwaite Plant in Bedminster adds to pollution of the Middlebrook (Larson T221).

282. Larson suggested to Bedminster officials that the quality of the effluent being discharged from the Pottersville and Cowperthwaite plants should be improved (Larson T 219, 221-222). No direct action has been taken to improve the plants (Larson T 223).

283. The reading of 2.5 mg/l. of phosphorus to which Larson made reference in his direct testimony was a reading taken at one of nine of A. T. and T.'s water quality testing stations (No. 5). The reading was taken on Dec. 13, 1973. The readings taken at other stations were considerably less than 2.5 (Larson T 265).

284. Phosphorus is assimilated by water (Larson T 265).

285. Larson has made no readings of the extent of phosphorus downstream from Station No. 5; nor does he know the rate of assimilation of the phosphorus or the assimilative capacity of the river (Larson T 265-266).

286. Bedminster presently has no sanitary sewer system(D-13 at 11).

287. The Village of Pluckemin in Bedminster is one of the areas within the township with a relatively high population density and in need of sanitary sewers (Stires T 588, 589, 3/12/74; PC-8 at VIII-23). Agle, T 146-148 (3/128/74). Roach, T 829 (3/13/74).

288. The Academy's most recent study of water quality in the Upper Raritan Watershed, D-47, indicates that there are a number of things which one must do to maintain water quality. They are: the upgrading of existing sewage treatment plants; maintenance of open space; the upgrading of the effluent from treatment plants; the maintenance of natural corridors along streams to prevent silt erosion; and the maintenance of septic systems in good condition (Patrick T 56).

289. The report states that "a first step in reducing present nutrient loadings should be to upgrade existing sewage treatment plants (D-47 at 32).

290. The report, A Master Sewerage Plan for the Upper Raritan and Delaware Watersheds within Hunterdon, Morris and Somerset Counties, recognizes that the state plans to use the Raritan River as a major source of potable water (PC-8 at, e. g., II-18 and V-2) and states, that treatment plants contemplated in the Upper Raritan Watershed "will be returning effluent of high quality to the receiving streams." (PC-8 at V-5; Larson T 210, 3/21/74).

291. The report further states that municipalities in this study area will be participating in a major waste water re-use undertaking in that the highly treated wastes will eventually be reused as a potable water supply

not only within this water shed but also in areas, in other parts of the state (DC-8 at V-5, Larson T 210).

292. Modern sewage treatment plants can be designed and operated to give a total kill of pathogenic bacteria and remove up to 95% of suspended solids and BOD (bio-chemical oxygen demand, a significant measure of pollution) (PC-8 at II-3).

293. If advanced wastewater or tertiary treatment processes were added to the sewage treatment plants in the Upper Raritan, the assimilative capacity of the river would be improved (Patrick T62; D-47 at 32).

294. After tertiary or advanced wastewater treatment, effluent need not be discharged into a body of water like the North Branch of the Raritan. It can be placed in holding ponds or lagoons, or the processes of spray irrigation or deep well injection may be employed (Derrington T 93, 3/19/74).

295. Larson has advocated land disposal of the treated effluent (e. g. spray irrigation) where it can be done properly in the Upper Raritan Watershed rather than discharging treated effluent into bodies of water (Larson T 225-226).

296. And Dr. Patrick has observed that in terms of maintaining water flow and quality vis a vis storm and sanitary sewer systems, the most important thing is to keep water where it falls in the watershed (Patrick T 57).

297. If the effluent from large regional treatment plants were returned to several spray irrigation sites upstream, that procedure would



mitigate the problems of taking water out of a watershed or away from the upstream areas of the watershed to treat it (Patrick T 58).

298. Another way to deal with the problem of maintaining water quantity in a watershed is not to have a regional treatment plant at all, but to have a number of sub-regional plants (Patrick T 58).

299. In addition to using sub-regional plants rather than a large regional plant, to maintain water quality, effluent should be discharged on land rather than into the streams ( Patrick T 58-59, D-47 at 32, 35).

300. Dr. Patrick additionally recommends a series of "little lakes " particularly for storm water, all over the watershed, so that the storm sewers do not carry their water out of the watershed (Patrick T 57, 58).

301. On the basis of all of the foregoing this Court finds that Bedminster has failed to follow most of the recommendations made by the Academy since 1968 concerning means of improving water quality and flow in the Upper Raritan.

302. This court further finds that Bedminster seeks to take the extreme route of completely limiting population growth to protect the quality of the watershed, rather than the less onerous route of making sure that septic tanks do not malfunction, prohibiting the clear cutting of stream banks, etc., relying on permeability tests rather than zoning to determine the septic capacity of land.

303. This court further finds that were Bedminster to take these less onerous steps, it could accomodate more people without degrading the environment. According to the charts set forth in D-47, the area between

water monitoring stations 14 and 15 in the upper Raritan, which had the largest human population of any of the areas shown on the charts, had one of the best assimilative capacities with regard both to nitrogen and orthophosphate phosphorus budget (Mallach, T 8-11, 3/18/74; Patrick T 62-63, D-47 at 23, 24).

304. The area between the stations had almost five times the human population (5,930) and double the animal population of the next most populated area (D-47 at 23).

305. In the area between stations 14 and 15 on the Black River, which has a high assimilative capacity, there were quite a number of people in the watershed; however, there was not a very high density on the immediate banks of the river. Removal of the population back from the stream banks was one of the factors contributing to the high assimilative capacity of the river at that location (Patrick T 83).

306. The conclusion of the Natural Resources Inventory of the Upper Raritan Watershed prepared by the Academy in July, 1969 was that "if future development is carefully planned, many more people can be accommodated within the watershed without altering the rural character of the landscape or seriously compromising its natural resources." (D-27 at iv).

307. Similarly, in the introduction to the report, the Academy wrote that "although substantial increases in the population were anticipated, intelligent use of the natural resources would ameliorate the impact of more intensive land use on water quality." (D-27 at 1).

308. This court finds that Bedminster has failed to provide intelligently for population growth which will protect the environment.

309. This court finds that development of housing at those densities which permit the creation of housing opportunities for families of low and moderate income need not await the construction of public sewer lines and treatment plants in Bedminster, since individual or package treatment plants have been found to meet all applicable standards. (Stipulation between Allan-Deane and Township entered into in open court on 3/12/74; PA-6)

310. The tertiary or advanced wastewater treatment plant proposed for the Allan-Deane tract would remove 98 to 99% of BOD, (5 mg/l BOD). It would also meet the standard of removing up to 5 mg/l suspended solids and .5 mg/l phosphates (Darrington T 88-89, 3/19/74).

311. Engineering techniques exist which make it possible to avoid having a detrimental effect on the environment both during and after construction of a project (Stiles T 591-593, 3/12/74); McCormick T 95.

312. The Environmental Impact Statement Review Sub-Committee of the Bedminster Township Planning Board recognized this when it recommended that the Planning Board grant site plan approval to A. T. and T. Long Lines (PA-6).

313. Once a facility or community is constructed, swales, drains, settling and holding ponds can improve the quality of runoff before it enters the Raritan River (Whipple, T 33).

314. Brunswick shale underlies Bedminster (Larson T 235).

It is an average source of water (aquifer) for New Jersey, no more and no less (Larson T 236).

315. About 75% of Somerset County is underlain by Brunswick shale. Brunswick shale is Brunswick shale basically so its water-producing capabilities are the same in the county of Somerset as they are in Bedminster (Larson T 239, 241).

316. On the basis of the foregoing, this Court finds that the ground water underlying Bedminster is not a significant source of water. The Court further finds that these resources are substantially the same throughout Somerset County and therefore do not require any special attention in Bedminster as distinguished from the sound environmental planning which should occur throughout the county.

317. Trees and vegetation are necessary throughout urban areas to cleanse the air (McCormick T 80).

318. No studies of ambient air quality in Bedminster have been made (McCormick T 57).

319. This court finds nothing in the record which indicates that low density development is required in Bedminster in order to protect air quality. Additionally, this Court specifically finds that vegetation (and air quality) and development can be compatible: despite the heavy influx of people and

industry into Somerset County during the 15 year period from 1955 to 1969, woodlands in the county increased by 3,000 acres (D-6 at 20).

320. The Somerset County Planning Board's mapping of large areas of Bedminster for large lot zoning is arbitrary because it is not based on any data which correlates a given amount of development with a given amount of flooding, water pollution, air pollution, or destruction of scenic resources (Roach, T 48-51, 53, 56 ). Therefore, the SCHA Master Plan map does not significantly bolster Bedminster's defense.

321. Surface supply systems (i.e. rivers and streams) furnish the greatest amount of potable water in Somerset County (i.e. ground water sources and water from wells furnish lesser amounts of water). ( D-14 at 86).

322. The water systems serving Somerset County anticipate no problems in supplying the future water needs of the county (D-14 at 87-88).

323. As a practical matter, the Elizabethtown Water Company (together with the Bound Brook and Somerville Water Companies, which are now part of the Elizabeth Company) obtains 80,000,000 gallons of water per day from the Raritan River. With the aid of the present reservoirs (Spruce Run and Round Valley), the Raritan River has a safe yield of between 160,000,000 and 190,000,000 gallons per day. The proposed Confluence Reservoir would add about 50,000,000 gallons of safe yield and the Six Mile Run

Reservoir would add an additional 38,000,000 gallons (D-10 at Paragraphs 4 and 9).

324. Tentative drawings have been prepared to expand the Elizabethtown Raritan-Millstone treatment plant in Bound Brook to 300,000,000 gallons per day according to a company spokesman. It is feasible, if required, to expand the plant even further. Expansion is undertaken on an "as required" basis with the plant capacity a number of years ahead of anticipated needs (D-14 at 129).

325. In recent years, the dominant trend in new development has been for an increase in public water connections. The water purveyors serving the County report that extensions can be made economically even in large lot areas if development is not too sparse, and if excessively long connections to existing mains are not required. (D-14 at 105).

326. There presently is a public water system serving land in the R-3 zone in Bedminster along the east west axis of Rt. 512 as well as parts of the northwestern corner of the Township. Lines branch off the Rt. 512 north-south artery to serve other areas of the Township. These lines are illustrated on the map entitled Water Distribution Systems in Somerset County which is included in the Somerset County Planning Board document entitled Water Supply and Distribution (D-14).

327. The potential for full coverage by a public potable water supply in Bedminster increased with the Township's approval of the expansion of the Somerville Water Company's service area. (Somerville is part of the Elizabethtown system). (D-14 at 103).

328. Other of Elizabethtown's plans call for approximately 40,000 feet of new 12-inch main from Elizabethtown's primary subsidiary, the Somerville Water Company, to Pottersville and Bedminster Village (D-14 at 129).

329. In 1968, Bedminster had 748 persons getting public water from one or another water company serving the Township. It is expected to have 2,050 persons getting 30,000 gallons a day from all public water sources by 1985. (D-14 at 169, 177).

330. Most of the surface water supply in Somerset is treated by standard filtration methods, followed by chlorine disinfection before it is actually available as drinking water. A clarification stage is commonly used to treat turbid waters resulting from sedimentation and suspended organic matter in raw water sources. In several instances, activated carbon treatment is employed to reduce tastes and odors that can result from some of this organic matter. (D-14 at 86).

331. Elizabethtown subjects the water it makes available to a full range of treatment including: disinfection, coagulation, sedimentation, filtration, fluoridation, chlorination, iron or hardwater treatment, taste and odor treatment and clarification. (D-14 at 148).

332. On the basis of all of the foregoing, this court finds that Bedminster need not limit development so that its population will be served by water from local wells. Not only is it feasible to serve Bedminster with

public water; it is anticipated that this will occur. (D-14 Mays).

333. Finally this court finds that Bedminster's environmental defenses must be viewed in a regional context.

334. Another question of a critical nature facing the State is in terms of the overwhelming cost of sewerage systems as it relates to urban centers and their priorities. The condition of the collection systems in many older cities is extremely critical, as they are antiquated and deteriorating. Hoboken, in Hudson County, is a prime example of this phenomenon, having combined sanitary and storm systems, severe infiltration problems, and little money to pay for the needed rehabilitation of its system. (D-17 at 97); (Larson T 254-255).

335. The estimate for the rehabilitation of Hoboken's collection system in 1970 was \$19,412,000. Hoboken is only 1.3 square miles in area, has a population of 45,000, a per capita valuation of \$2,601, a tax rate of \$3.91 and a budget of \$14.8 million. It is simply not possible nor reasonable for a city with this fiscal profile to rebuild its sewer system on its own. (D-17 at 98).

336. The capital needs of the urban centers are extraordinarily higher than those of the other development types including suburbs like Bedminster. (D-17 at 98).

337. Costs in Somerset for 1972-1976 for five-year cumulative capital expenditures for waste water treatment and abatement (estimated) are \$253.4 million; they are \$998.8 million for Hudson County. For 1976-1981, the



estimated costs are \$93.7 million for Somerset as compared to \$498.0 million for Hudson. (D-17 at 98).

338. What has come about, in effect, is a situation where the municipalities which are already paying most heavily are being asked to pay even more, even though the economic base is clearly not available. (D-17 at 99).

339. On the basis of the foregoing, this court concludes that from an economic point of view it is more reasonable to expect that environmentally sound waste water treatment facilities can and should be created in Bedminster than that such systems should be rebuilt in cities like Hoboken. This court finds that the environment of the entire State will be enhanced if communities like Bedminster permit ecologically sound development and new population there while communities like Hoboken rebuild their antiquated systems to serve fewer people than presently reside therein.

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