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Opinion of A.D. v. Bedmaster (Supreme Court)

41 pages

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY
Docket No. L 36896-70 P.W.
& No. L 28061-71 P.W.

THE ALLAN-DEANE CORPORATION, a Delaware corporation qualified to do business in the State of New Jersey; and LYNN CIESWICK, APRIL DIGGS, W. MILTON KENT, GERALD ROBERTSON, JOSEPHINE ROBERTSON and JAMES RONE,	)	
Plaintiffs,	)	Civil Action
-v-	)	OPINION
THE TOWNSHIP OF BEDMINSTER, a municipal corporation of the State of New Jersey, its officials, employees, and agents, THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BEDMINSTER and THE PLANNING BOARD OF THE TOWNSHIP OF BEDMINSTER.	)	
Defendants.	)	

DECIDED: February 24, 1975.

MR. WILLIAM W. LANIGAN, appeared for plaintiff, The Allan-Deane Corporation, (Daniel F. O'Connell on the brief; William W. Lanigan, attorney);

MRS. LOIS D. THOMPSON, of the New York Bar, admitted pro hac vice and MR. PETER A. BUCHSBAUM appeared for plaintiffs Lynn Cieswick, April Diggs, W. Milton Kent, Gerald Robertson, Josephine Robertson and James Rone, (Mr. Peter A. Buchsbaum, American Civil Liberties Union of New Jersey, attorney);

MR. EDWARD D. BOWLBY and MR. NICHOLAS CONOVER ENGLISH appeared for defendants, (Mr. Bingham Kennedy of counsel; McCarter & English, attorneys).

LEAHY, J.C.C. (temporarily assigned).

This is a suit consisting of two consolidated actions in lieu of prerogative writ attacking the validity and constitutionality of the zoning ordinance of Bedminster Township in Somerset County.

Plaintiffs Cieswick et al. assert that the ordinance is unreasonable and fails to promote the general welfare because it fails to make provision for development of housing for low and moderate income persons and fails to respond to the regional need for housing for such persons. They also assert that the ordinance discriminates against persons of low and moderate income and persons of minority status in violation of their rights under the state and federal constitutions and the state zoning enabling act.

Plaintiffs Allan-Deane Corporation, the owner of 467 acres in the township, asserts that the ordinance is arbitrary and unreasonable in that it limits the use of said parcel to 1.2 dwelling units per acre.

The defendant municipality argues that the ordinance is a reasonable exercise of statutory zoning powers, in accordance with a comprehensive plan, which promotes the general welfare by protecting the natural environment and the water quality of the Raritan River public water supply, a compelling state goal. The township denies that plaintiffs Cieswick et al. have standing and further denies that they have any legally enforceable right to live in Bedminster or to demand that Bedminster make provision for housing for non-residents.

The New Jersey Commissioner of Environmental Protection, through the Attorney General, filed a brief amicus curiae with leave of the court. Eschewing comment on the environmental soundness of either the ordinance or the plaintiffs' positions in relation thereto, the commissioner argues the need to consider environmental factors in land use decisions.

Bedminster Township is a community of 26 square miles, located in the "Somerset Hills," with a 1970 census population of 2,597. The atmosphere, extent of development and general characteristics of this municipality were nicely described in Fischer v. Township of Bedminster, 11 N.J. 194 (1952). The population of this predominately rural community has not doubled since its 1830 population of 1,453 and has increased by little over 50% since its 1950 population of 1,613. The villages of Bedminster and Pluckemin contain between 450 and 550 homes and between 1,700 and 2,100 people. These villages lie in a corridor less than one mile wide extending approximately four miles along New Jersey State Highway Routes 202-206. Between 350 and 400 residences, with between 500 and 900 occupants, are scattered throughout the remaining 22 square miles of the township.

It is necessary to determine the issue of plaintiffs Cieswick's standing, as non-residents, to attack the zoning ordinance.

In this state litigation is confined to those situations where the litigant's concern with the subject matter evidences "a sufficient stake and real adverseness." Due weight is given to the interests of individual justice and the public interest, while favoring a just and expeditious determination on the ultimate merits. Crescent Park Tenants Association v. Realty Equity Corporation of New York, 58 N.J. 98 (1971). A retail seller of trailer homes in business four miles from the municipality was permitted to bring suit attacking the zoning ordinance in Walker, Inc. v. Stanhope, 23 N.J. 657 (1957). The court found

that referring to the substantial nature of the interference with the plaintiff's business and the serious legal questions raised, "in the interests of the public as well as the plaintiff, the ultimate merits should be 'passed upon without undue delay.'" Id. at 666. The right of a non-resident who seeks an opportunity to obtain reasonable housing is no less recognizable than the right of a retail merchant seeking opportunity to market his goods. The individual plaintiffs have standing to bring this action.

The Cieswick plaintiffs proved the existence of a serious housing shortage for low and moderate income families in the Somerset County area.

Three of the plaintiffs testified as to their personal difficulties in obtaining proper housing. The first was the mother of seven children who worked as Outreach Director for the Somerset Community Action Program. She and her husband had combined annual incomes of $18,500 and had had considerable difficulty finding any housing in the Somerset County area. They were living in a three-bedroom apartment which necessitated placing two of her children with their grandmother.

The second was the director of the Morris Housing Investment Fund. He and his wife had a combined annual income of $17,500, yet when he tried to move from Trenton to the area around Morristown it took ten months to find adequate housing for his family. For three months he commuted daily. He then took a room at the Y.M.C.A. Eventually he found an old house in Morristown which he rented and

redecorated. After eight months this house was sold for a business use. He seeks a house with some space around it in the $30,000 to $35,000 price range. The organization for which he works is one providing mortgage assistance and he is a graduate housing specialist. Despite this, he has been unable to find a home for himself and his family.

The third was a divorcee, with two sons aged eight and ten, who lives in student housing at Rutgers University where she is a senior majoring in childhood education and social services. She, herself, had been raised in the rural atmosphere of the municipalit immediately adjacent to Bedminster Township and would like to raise her sons in such a community upon her graduation and obtaining full-time employment. Prior to obtaining space in the married students quarters at Rutgers she had lived for a period of time with her mother under crowded conditions and prior to that had rented a house in Somerville, New Jersey, which she was forced to vacate when it was sold. Her current income consisted of Aid to Dependent Children assistance and a grant to attend college. Despite efforts to find housing for herself and her sons, she was unsuccessful in the Somerset County area and had found none available in Bedminster Township where she would like to live and where she has cousins residing.

The Cieswick plaintiffs also presented the testimony of the Director of the Somerset County Housing Association and that of the first president of the Somerset County Human Rights Council who is also an executive board member of the Somerset County

Chapter of the N.A.A.C.P. and was instrumental in forming the Housing Association, an incorporated non-profit association which receives state and federal funds to assist in improving housing opportunities for county residents. Efforts have been made for years to persuade local officials to approve and support efforts to provide low and moderate-income housing through state and federal assistance programs. Only one municipality of twenty-one in Somerset County ever adopted a Resolution of Need, which is a prerequisite to state and federal funding to assist in construction of such housing. A proposal approved by the New Jersey Housing Finance Agency and the United States Department of Housing and Urban Development was denied a variance by that municipality and a greater number of privately financed apartments were later constructed on the same site.

The specific experiences of these five witnesses were statistically corroborated by the Director of City Planning for Plainfield, New Jersey, and by the findings contained in a study and report, "Suburban Zoning Practices Surrounding Plainfield," prepared in 1971. Of Plainfield's 50,000 population, 20% were non-white in 1960 and 35% in 1970, and 65% of the City's housing supply was built before 1900. Plainfield has experienced an exodus of upper and middle-income families and an influx of low and moderate-income families. The median family income in Plainfield in 1970 was $11,000. There is a high incidence of abandoned buildings in that city and the high real estate tax rate, coupled with mortgage amortization costs, cause the monthly cost to carry a $25,000 home, without heat or utilities, to be $300 to $325 per month. The marked growth in industry and employment opportunities

in the Plainfield region attracted low and moderate-income families but the lack of appropriately priced housing elsewhere resulted in such families concentrating in Plainfield. The projected 30% increase in population of the region around Plainfiel between 1970 and 1980 will consist of persons who will not be able to afford suburban homes now available and being built under current zoning restrictions in communities around Plainfield.

A planning and housing professor who serves also as a planning consultant and as research associate with the County and Municipal Government Study Commission of New Jersey and who was previously special assistant to the executive director of the New Jersey Housing Finance Agency and chief of the Office of Program Development in the New Jersey Department of Community Affairs testified. He established, in depth and in detail, the general cost levels of multi-family housing units and the cost level standards for availability of state and federal financial assistanc to moderate and low-income housing projects and compared these general costs and standards with the requirements set forth in the Bedminster Township zoning ordinance.

In the course of his testimony he highlighted the findings reflected in the "Housing Crisis in New Jersey, 1970," a report prepared under his direction by the Department of Community Affairs This report was prepared partly with the use of federal and partly with the use of state tax funds in compliance with a requirement imposed by the federal government on all states receiving federal planning assistance funds.

The housing situation in New Jersey is a housing crisis; vacancy rates are so low that it is extremely difficult for persons

to find homes in the State and so low that they create an inflationary effect on the housing market generally. Sub-standard housing in the State has been increasing and housing production in the State has been clearly inadequate to meet the existing and forseeable needs of the people of New Jersey. More recent statistics evidence no improvement since the preparation of the report. The situation applies to Somerset County as well as to the remainder of northern New Jersey.

The Bedminster Township Zoning Ordinance mandates that any housing built in compliance with the ordinance will be more expensive than housing similarily constructed elsewhere because of the density and floor area ratio requirements, the open space requirements and the complex and expensive environmental impact statement required under the ordinance.

Generally town houses are developed at a density of eight to twelve per acre and garden apartments are developed at densities between ten to fifteen per acre, sometimes as high as eighteen to twenty per acre. Under the Bedminster ordinance in the R-6 zone average density of a standard mix of two and three-bedroom townhouses is limited to 1.6 units per acre and in the R-8 zone average density is limited to 2.1 units per acre.

In the R-8 zone, if land were purchased at a per acre cost of $20,000, land costs plus site improvements necessary to begin construction would result in expenditures of $16,000 per unit. Under standard density, with the same land cost, land plus site improvements would result in the expenditure of approximately $5,000 per unit, or a difference of approximately $11,000 per unit. If land were obtained for $10,000 an acre the comparable figures would be approximately $11,000 to $12,000 a unit versus $3,000 to

$3,500 per unit or a difference of approximately $8,000 per unit. These factor alone would result in rental differentiations in two-bedroom units of approximately $125.00 per month on $20,000 per acre sites and $100.00 to $110.00 per month on $10,000 per acre sites. Such differentials would render any multi-family housing project ineligible for mortgage assistance under the state Housing Finance Agency or under any federal program. Persons with annual family incomes in the $17,000 to $18,000 bracket would not be able to afford to purchase or rent housing built under the Bedminster ordinance: housing could be built in Bedminster, using the same per acre land costs, if it were built at standard densities and such housing would be within the financial reach of persons with such annual family incomes.

Additional statistical proof was presented through the testimony of the Director of the Suburban Action Institute, a charitable trust which promotes research, study and action to encourage change in the suburbs to resolve national problems of poverty and racial isolation in the central cities. This witness was a professional planner and had taught urban planning at Hunter College, Yale, Princeton and the University of Pennsylvania and has been a member of the Board of Governors of the American Institute of Planners.

He cited figures from the 1970 Census reflecting that the median, or mid-point, income of families in Somerset County was $13,433.00 and in Bedminster Township was $15,612.00 while the mean, or average, family income for the county was $15,156.00 and for Bedminster Township was $27,475.00. 1960 Census figures reflect that thirty-six per cent of the inhabitants of Bedminster and Far

Hills fell within the top twenty per cent bracket of state incomes for that year while the 1970 Census figures reflect that forty-two per cent of the inhabitants of those two municipalities fell in the top one-fifth of state family incomes and forty-three per cent of those residing in Bedminster Township in 1970 fell within that category. Of twenty-five residential sales in Bedminster Township in the year 1973, nineteen were in the $50,000 and over category and only one home sold for less than $30,000. Based on the assumption that a family can afford a house costing twice the family's income, eighty per cent of the New Jersey population is excluded from the Bedminster Township housing market.

A February, 1970 report by the Somerset County Planning Board indicated that housing needs in the county, based on employment projections, for the 1970-1980 decade would be 27,500 units. The board estimated that 2,500 units per year would be needed during the first five years of the decade and 3,000 units per year during the last half of the decade. During the years 1970 through 1973 between 700 and 850 housing units were actually built in the county each year.

An analysis of the Bedminster Township zoning ordinance reflects that the minimum net habitable floor area requirements and the unit density per ground area requirements exclude construction of housing for low or moderate-income families. The Bedminster ordinance does not prescribe a maximum number of units per acre. It expresses maximum density in terms of the function of the interrelationship of minimum lot size and floor area ratio.

Minimum lot size is expressed in minimum diameter, that is the diameter of a circle which can be inscribed within the lot.

In the R-3 zone the minimum diameter is 350 feet, in the R-6 it is 225 feet and in the R-8 150 feet. Since land cannot be subdivided into a series of contiguous circles and then effectively conveyed in its entirety, it is necessary to translate the diameter into rectangular or square terms. In the R-3 zone, which permits only single family homes, the 350 foot diameter requirement can be met with a square lot of 2.81 acres. In the R-6 zone a minimum size square lot would be 1.6 acres and in the R-8 zone such a lot would require one-half acre. Subdivision into square lots where the front property street line is as long as the side yard lines inflates the developmental costs of the land because a greater street paving and frontage cost is imposed upon the individual lot.

The floor area ratio is determined by the relationship of the building's gross floor area to the lot area and the Bedminster ordinance defines the gross floor area in terms of dwelling unit size, plus 10% for storage, plus 200 square feet of parking area per bedroom. Thus a two-bedroom unit,which must have a minimum of 900 square feet, plus 90 square feet of storage and 400 square feet for parking, has a minimum gross floor area of 1,390 square feet. In the R-3 one-family zone 3% development density is permitted. The result is that the ordinance permits .94 two-bedroo units per acre in that zone. In the R-6 zone the ordinance permits 1.88 two-bedroom units per acre and in the R-8 it permits 2.5 two-bedroom units per acre.

Similar computation reveals that in the R-6 and R-8 zones, where multi-family dwelling is permitted under the ordinance, such use is limited to three one-bedroom units per acre in R-6 and 4.04 one-bedroom units per acre in R-8. Three-bedroom units would

be permitted at a density of 1.3 per acre in R-6 and 1.8 per acre in R-8.

Plaintiff Allan Deane, in addition to relying upon and adopting the portions of the Cieswicks plaintiffs' proofs which support its position, also established that its property consisted of approximately 100 acres in the lower, flat portion near Route 202-206 and approximately 80 acres on the top of a steep slope on an overlook of the Watchung Mountain range above the village of Pluckemin. Of the 467 acres owned by Allan Deane, approximately 240 are not useable because of the excessive 40% to 50% slopes which render installation of roads and sewers impractical.

The property is capable of being developed and served by a separate sewage disposal plant in the nature of an advance waste treatment system which would satisfy requirements of the New Jersey Department of Health. Since there are no sewers available to the village of Pluckemin at this time, a cooperative approach to sewering that village and the plaintiff's tracts is recommended by the plaintiff and its engineer and planning consultant. It was stipulated that an application for construction of a package sewer plant submitted by American Telephone and Telegraph Company for its headquarters complex now under construction adjacent to Pluckemin has been approved by the Bedminster Township Board of Health and submitted to state officials. A.T.&T. has agreed to utilize a municipal sewer system if a decision were made to construct the same before A.T.& T. constructs its package plan.

Plaintiff's planning consultant, a past president of the New Jersey Institute of Planners, who has served as planning consultant for seven municipalities in Somerset County and seventy

municipalities in the State of New Jersey, testified. He indicated the unique character of the parcel in that it is segregated from the balance of the Township, along with the village of Pluckemin, by Interstate Routes 287 and Route 78. The area surrounding Allan Deane's parcel to the south and to the west consists of the village of Pluckemin which includes a small shopping center, a number of older homes, a church, offices, antique shops, a tavern, gas stations and a New Jersey Highway Maintenance Yard and Heliport. The village is developed on lots ranging between fifty to one hundred and fifty feet in frontage and averaging a half an acre each. It is an old and relatively historical village. During the 1778-1779 winter encampment of the Continental Army, General Knox and the artillery corps were encamped on the heights above Pluckemin.

Very little property in the Somerset Hills area is zoned or developed for multi-family use but such uses are available elsewhere within Somerset County, primarily in the older, high density communities. These older towns are the hub of activity in the county, near industrial uses, have sanitary sewers available and have a political climate which is more amenable to multi-family uses. In his opinion, an appropriate development of the plaintiff's tract incorporating the village of Pluckemin and compatible with it, would be possible. In his judgment, 540 units consisting of half two-bedroom and half three-bedroom town houses could appropriately be built on the 455 acres owned by Allan Deane and zoned for residential purposes. He fully agreed with the municipal planning consultant's 1964 report that this tract presented an opportunity for improving the housing mix in the township without damaging in any way the character of the balance of the township.

In his experience multi-family uses were permitted in densities between 10 and 22 per acre in most communities which permitted them in New Jersey and town houses were permitted in densities of between four to ten per acre, as opposed to Bedminster's authorization of 1.5 apartment units per acre and 1.2 town houses per acre. In his judgment, a reasonable density permissible in Bedminster would be four units per acre, primarily town houses with some garden apartments. Such density would have no adverse impact on traffic, drainage or utilities and any sewer facility could provide the added benefit of introducing sewers to the village of Pluckemin which is in need of the same.

The defendant Township presented the testimony of the Director of the Water Sources Research Institute of Rutgers University to establish certain effects which resulted from population growth near streams. His research, which included monitoring the flow and content of various portions of the Millstone, Upper Raritan and Upper Passaic River Basins, had disclosed that water pollution in the nature of biochemical oxygen demands and nutrients were entering the streams in quantities far greater than could be accounted for by identified sources of pollution. Biochemical oxygen demand is the common measure of organic pollution in water and is significant in that it measures the total amount of biodegradable or organic matter which, when degraded by bacteria, can deplete the oxygen of a stream and cause objectionable conditions. Nutrients are basically phosphates and nitrates which serve as nutrients for plant life, thereby engendering the growth of algae which cause eutrophication. Eutrophication is the process of organic aging by which nutrients cause vegetable matter to accumulate in a body

of water. Excessive eutrophication can cause a reservoir to become anaerobic which renders the available water non-potable.

It was his conclusion that in addition to pollution from identifiable sources such as sewage treatment plants and industrial waste treatment facilities there are sources of pollution in populated areas which provide an additional two-thirds of water pollution in the three rivers he monitored. These pollution runoffs are comparable in nature to discharge from secondary treatment plants and, in the first flush of runoff from a heavy rain, can be as high as one-half the pollution content of untreated sewage. The average is much lower, however. Possible sources of such pollution from unidentified sources are urban runoff, leakage from sewer systems, agricultural runoff and waste from small industries and businesses.

His conclusion was that there is a direct correlation between population density and stream pollution and any increase of population in a watershed is almost sure to increase pollution coming into streams regardless of sewage treatment. There are methods to cope with such pollution including aeration, swales, settling ponds and treatment of storm water runoff. Each of these methods, however, would be extremely expensive.

The Executive Director of the Upper Raritan Watershed Association established the soil and geological character of Bedminster Township. The Association is concerned with the study and protection of approximately 190 square miles, constituting 30% of New Jersey's area, which sheds into the North Branch of the Raritan River and into the Lamington River in Somerset, Morris and Hunterdon Counties. A water quality survey of the Upper Raritan Watershed was done in 1967 and a water quality study of the Upper

Raritan Watershed was completed in 1969. A natural resource inventory of the Upper Raritan Watershed was also completed in 1969.

The best water supply areas in the watershed are located within Bedminster Township. Most of the area comprising Bedminster Township is severely limited as to ability to accommodate septic tanks successfully. Leaching fields must be larger for soils with such low percolation rates. Since Bedminster soil is mostly shale, three acres is the minimum lot size for safe well water supply. The water quality in the North Branch of the Raritan River is the key to well water supply in the township since it is North Branch water which refills the aquifers which exist in the municipality.

The North Branch of the Raritan River as it passes through the village of Pluckemin is already overloaded with nutrients such as nitrogen and chemicals by reason of pollution sources already existing.

The streams within the Upper Raritan Watershed are "flashy" in that they flow variably and the result is that the water quality is extremely variable. Because of regional water relationships it is extremely important to minimize or eliminate the discharge of treated sewage. It is important to relate the water quality in the North Branch of the Raritan River to the state confluence reservoir to be built immediately downstream near South Branch. This reservoir, in conjunction with the Round Valley reservoir, will be used to supply water for the communities of northeastern New Jersey along State Highway Route 22 easterly toward Newark.

This witness emphasized the importance of the conclusion in the report of March, 1973, by the New Jersey County and Municipal Government Study Commission entitled "Water Quality Management: New Jersey's Vanishing Options." The Commission stressed that land use policies in New Jersey have tended to cancel benefits of funds spent

on treatment plants. The Commission found that sewage treatment plants are not the total answer in solving water quality problems in the state but that regulation and limitation of land use is also necessary if the state is to maintain water quality.

> Land use and community development planning continues to be incoherent as long as water quality is not viewed as an equal, basic factor in decision making. The failure of water quality management to date *** reflects a need to re-assess basic land use planning principles if there is to be more orderly and beneficial development in the future. [Id. at 8]

Phosphate levels in the North Branch of the Raritan River as determined by the New Jersey Department of Health, the United States Department of Environmental Protection and the Academy of Natural Sciences are at a level of 2.5 milligrams per liter which constitutes a grave threat to the quality of the proposed confluence reservoir because .05 milligrams per liter is the maximum permissibl phosphorus level and amounts in excess thereof would have a devastating effect on a reservoir.

The defendant township also presented the testimony of the president of an ecological consulting firm who had written the environmental impact assessment statement for the New Jersey Sports Authority Development. He had studied the potential environmental impact of urbanization of Bedminster Township and written a report for the defendant in connection with A.T.&.T.'s application. He emphasized the fact that streams are conduits and part of a water circulation system. They are replenished both by direct surface runoff and by infiltration seepage. During low flow periods they are supported primarily by seepage through the soil, while in high flow periods the primary source of flow is from surface runoff

There are relationships between ground cover and amount of stream recharge. Highly impermeable or paved surfaces have an adverse effect on seepage and accelerate runoff thereby upsetting the balance of the stream circulation mechanism. The height and frequency of floods are increased and dry bed periods are frequently increased which lowers the ability of the stream to assimilate wastes since some organisms are destroyed by pollutants during low flow periods. Urbanization of Bedminster Township would result in greater runoff and low stream flow and could result in insufficient water reaching the Elizabethtown Water Company intake point downstream. Water quality would be substantially lowered and it would be far more costly to render the water potable.

The villages of Bedminster and Pluckemin are already, in his judgment, urbanized in that they are developed to a relatively high density. He acknowledged that some amount of urbanization is possible without degrading the environment and estimated that a growth of Bedminster Township to population between 18,000 and 19,000 would be an approach to over-urbanization.

Dr. Ruth Patrick, Chief Curator, Department of Limnology, and Chairman of the Board of Trustees of the Academy of Natural Sciences, testified concerning the assimilative capacity of the upper Raritan River. Her report entitled "Water Quality Survey, 1972, of the Upper Raritan Watershed" was submitted in evidence. Dr. Patrick testified in detail and with great clarity concerning the inter-relationships between land use and the assimilative capacity of bodies of water and the inter-relationships involved in ground water and stream systems. It would be impossible to set forth at length in this opinion the substance of her testimony. However, she established conclusively that it is essential to

maintain open space and exercise great care in land planning and development within the Upper Raritan Watershed if the outflow from the North Branch of the Raritan River and the Lamington River are to be satisfactory to serve the confluence reservoir and to be thereafter useable for potable water supplies. She emphasized the desirability of ground leaching of water as a form of purification and effectively rebutted the concept that sewage treatment plants can accomplish the task of purifying water adequately for it to be returned to streams. She indicated clearly that sewering of waste water and of storm water has an adverse effect on ground water levels and thus on recharging of stream flow. She eloquently and convincingly explained the importance of careful control of population density in relation to water supply and stressed the desirability of waste treatment through holding pools and spraying of treated waste water so that it can effectively pass through the ground before re-entering flowing streams.

She did not oppose growth and development but emphasized that residential location and density ought to be based on the natural characteristics of the land rather than on economics. Careful consideration of the inter-relationships between land use and water supply is essential as populations increase and areas become more and more crowded.

The director of the Somerset County Planning Board testifi regarding the Somerset County Master Plan of Land Use and its relationship with and comparison to regional plans and state plans as well as the comparison of the provisions of the Bedminster Township zoning ordinance to the county plan.

The Somerset County Master Plan of Land Use was completed and adopted in November, 1970. It was prepared pursuant to N.J.S.

40:27-2, which reads as follows:

> The county planning board shall make and adopt a master plan for the physical development of the county. The master plan of a county, with the accompanying maps, plates, charts, and descriptive and explanatory matter, shall show the county planning board's recommendations for the development of the territory covered by the plan, and may include, among other things, the general location, character, and extend of streets or roads, viaducts, bridges, waterway and water-front developments, parkways, playgrounds, forests, reservations, parks, airports, and other public ways, grounds, places and spaces; the general location and extent of forests, agricultural areas, and open-development areas for purposes of conservation, food and water supply, sanitary and drainage facilities, or the protection of urban development, and such other features as may be important to the development of the county.
>
> The county planning board shall encourage the co-operation of the local municipalities within the county in any matters whatsoever which may concern the integrity of the county master plan and to (sic) advise the board of chosen freeholders with respect to the formulation of development programs and budgets for capital expenditures. (Emphasis supplied.)

It was preceded by a County Water Resources Study completed in 1958 and a County Transportation Plan completed in 1967. The County Planning Board professional staff used a variety of data, studies and resources to prepare a draft plan which was then reviewed by the County Planning Board, municipalities within the county, and representatives of regional planning agencies. The three watershed associations within the county were also involved in meetings on the plan and it was reviewed with the planning departments of adjoining counties. Public hearings were held before its adoption.

"The Second Regional Plan" of 1968 prepared by the Regional Plan Association reflects the position that representatives of that association took at meetings held to review the Somerset County Pla

The Tri-State Planning Commission, a federally funded regional planning agency for New York, New Jersey and Connecticut also reviewed the plan. The "Regional Development Guide" of 1969 and the "Plan for Water, Sewage, Air and Refuse" 1970 of the Tri-State Planning Commission were considered in preparing the County Plan as was the report "New Jersey's Future: Goals and Plans," 1967, prepared by the Bureau of Statewide Planning, Division of State and Regional Planning, New Jersey Department of Community Affairs. It is the common view of the state report and of the regional plans that sprawling subdivisions throughout northern New Jersey are to be deplored and clustering development is to be favored. Each of these agencies advocate retaining open areas in low density development in parts of the Somerset Hills, Hunterdon County and Morris County.

The Somerset County Master Plan of Land Use has been cross-accepted by the Tri-State Planning Commission and the Somerset County Planning Board has cross-accepted the Tri-State Regional Plan This was done in compliance with the requirement of the Department of Housing and Urban Development.

The county plan suggests rural, low density development for the southwest and northwest portions of Somerset County where development has not yet occurred. This would include the major part of Bedminster Township and the headwaters of the Raritan River. This proposal is made to provide for maintaining regional air quality and water quality. The Raritan River is New Jersey's major undeveloped water source.

The Elizabethtown Water Company alone obtains 80 million gallons of water per day from the Raritan River to serve approximately 500,000 people in Union, Middlesex and Somerset Counties. Plans and projections of Elizabethtown Water Company indicate the

need for more water from the Raritan River in future years and the company will probably seek an increase in its present water grants within the immediate future.

The state plans for a confluence reservoir at the juncture of the North and South Branches of the Raritan River and for a reservoir at Six Mile Run in Franklin Township are intricately involved and coordinated with the use of water from the Raritan River and Round Valley and Spruce Run Reservoirs.

The maintenance of tracts of wooded land in the Bedminster area are vital factors in maintaining satisfactory air quality for the region.

In 1972 the Somerset County Planning Board prepared the "Sewerage Systems Report: Somerset County, New Jersey" and in 1973 prepared the "Water Supply and Distribution Report" for Somerset County. Each of these documents undergirds the county land use plan. Each of them anticipates a need for sewers and water supply systems along the New Jersey State Highway Route 202-206 corridor through the villages of Pluckemin and Bedminster, but neither anticipates sewer or water service in the balance of Bedminster Township.

In the opinion of the County Planning Director the Bedminste zoning ordinance generally complies with the County Master Plan in that it provides for a mixture of uses along the Route 202-206 corridor and preserves open spaces in the balance of the township. The approximately three-acre provisions in the low density zone are slightly low if open space is to be appropriately preserved according to county, state and regional planning goals.

There is a county-wide need for multi-family housing but

that need should be met in appropriate areas. Development should cluster around transportation facilities including the village areas set forth on the county plan, among which are Pluckemin and Bedminster.

The village of Pluckemin has a definite sewage disposal problem and a sub-regional plant, involving ground disposal or lagoon treatment, to serve Pluckemin, Bedminster and Far Hills would be advisable. If such a facility complied with the existing Bedminster Health Code standards the water entering the Raritan River would be acceptable.

Though the County Master Plan of Land Use does not directly address the problem of housing for the poor, it does advocate that housing for all income levels be provided within the county. It is not comprehensive planning for every community to provide a full range of housing. Planning for a full range of housing needs within the county is imperative, but not throughout the county. The 1970 county planning board study "Housing and Jobs in Somerset County" revealed the existence of a lack of housing for those with incomes under $15,000 per year, that is, a lack of houses available for less than $25,000 and rental units available for under $200. In 1974 terms that would mean a shortage of housing for those with incomes less than $18,000 to $20,000 per year.

The Somerset County Master Plan of Land Use designated the Pluckemin and Bedminster areas of Bedminster Township as village areas with development to a density of between five and fifteen units per acre in those portions of the community. Granted, the retention of the balance of the Township in the R-3 zone requiring approximately three acres per home would preclude people of limited

income in that zone. However, this is required if that area is to be retained as low density development to achieve the goals of protecting the watershed, preventing downstream flooding, preserving air quality, preserving some agricultural land and preserving water quality.

The planning consultant for the Township of Bedminster testified that he was familiar with the county master plan, the state report and the plans of the Tri-State Regional Planning Commission and Regional Plan Association. His proposals to the township officials were based upon considerations of existing population density, demography, existing community character, ecology, economics, technology and the location of the township. His recommendations were based upon a determination that Bedminster should not be a community composed exclusively of one-family homes. In his judgment the provisions for the R-6 and R-8 zones provide for the introduction of the appropriate housing mix. He anticipates that sewage disposal collection and treatment facilities will be developed within the R-6 and R-8 zone areas of the township. Upon cross-examination he conceded that he agreed with the County Master Plan concept of a density of five to fifteen dwelling units per acre in village areas but he would interpret this to mean such density after clustering and in the developed portions, not over the entire tract or parcel.

The defendant township also presented the testimony of the secretary-treasurer of a general contracting firm who had exercised responsibility for estimating construction costs for thirty-four years. He was familiar with construction costs for housing projects in general and for low and moderate-income housing in particular.

Land costs usually represent approximately 6% of the overall project cost but can go as high as 10% in some instances. On cross-examination he acknowledged that he had never seen town houses constructed at a density as low as three units per acre and that in his judgment such a density requirement would result in the construction of no town houses whatsoever.

In summary, the Cieswick plaintiffs proved that a housing shortage crisis exists in New Jersey which is both extensive and serious and the adverse effect of which falls most heavily on low and moderate income families. The problem extends into Somerset County and into the Township of Bedminster. A disproportionately small number of low and moderate income families reside in Bedminst and a disproportionately high number of high income families reside in Bedminster, as compared to the rest of the county and the state. This situation is becoming more accentuated over the years. The Bedminster Township zoning ordinance, though not the sole or primary cause of the situation, exacerbates it and revision of the zoning ordnance would be a necessary condition of altering the situation.

The plaintiff Allan-Deane proved, in addition to the above, that it owns a tract of land suitable for development in conformity with multi-family concepts embodied in the R-6 and R-7 zones of the Bedminster Township ordinance. The tract could be developed in conformity with the existing development around it and compatibly with the character of the balance of the township. Multi-family housing could not, however, feasibly be built upon the tract in accordance with the density and floor area ratios of the zoning ordinance now in effect.

The defendant township proved that important ecological considerations exist which are accommodated by the provisions of the zoning ordinance. Both the existing character of the local community and certain recognized regional, state and county planning goals are protected and encouraged by the zoning ordinance. Low-density development within Bedminster Township would clearly serve the legitimate public purpose of protecting and preserving water supplies and open space needs.

In essence, the court is faced with a clear contest among conflicting rights; i.e. the right of minorities and those of limited income to fair housing opportunity, the right of a landowner to the reasonable use of its private property, the right of a community to plan and zone for its future as it envisions that future should ideally be and the right of all to have ecological necessities recognized and respected.

The conflicts among and between these competing interests are not susceptible of simplistic solutions. The question is not one of right against wrong but is one of rights against rights -- each worthy of legal recognition and of legal protection.

Plaintiffs Cieswick's assertion that their rights under the United States Constitution have been violated is rebutted by Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S.Ct. 1536, 39 L. Ed. 2d 797 (1974), wherein it was held that municipal exercise of the zoning ordinance under state police power is a matter of

economic and social legislation where reasonable distinction can be drawn without violating the 14th Amendment so long as the distinction bears a rational relationship to a permissible state objective. No proof was presented that the state zoning statute or the municipal zoning ordinance authorized or drew any unreasonable distinctions in this case.

There is no inherent municipal authority to enact zoning ordinances. Kirsch Holding Company v. Bor. of Manasquan, 111 N.J. Super. 359 (Law Div. 1970), rev'd on other grounds, 59 N.J. 241 (1971); Piscitelli v. Tp. Comm. of Tp. of Scotch Plains, 103 N.J.Super. 589 (Law Div. 1968). Municipal zoning authority is limited to that delegated by the State legislature under the provisions of N.J.S.A. 40:55-32. Kohl v. Mayor and Council of Bor. of Fair Lawn, 50 N.J. 268 (1967).

A municipality, being a creature of the State, is permitted to exercise only those powers granted to it by the Legislature. Wagner v. Mayor and Council of City of Newark, 24 N.J. 467 (1957); Moyant v. Paramus, 30 N.J. 528 (1959). Justice Hall, in his dissent in Vickers v. Tp. Comm. of Gloucester Tp., 37 N.J. 232 (1962) summarized this doctrine succinctly and clearly:

> ... municipalities are still governmental units carrying out only those state functions and duties delegated to them by the Legislature either expressly, by necessary or fair implication, or as incidental or essential to powers expressly conferred. The new constitutional provision did not create a new concept of limitless home rule or give omnipotence to a local government to do

> anything it desires without regard to the limits of the delegated power supposedly exercised. Magnolia Development Co., Inc. v. Coles, 10 N.J. 223 (1952); Fred v. Mayor and Council, Old Tappan Borough, 10 N.J. 515, 518 (1952); Grogan v. DeSapio, 11 N.J. 308, 316-317 (1953); Wagner v. Newark 24 N.J. 467, 476-478 (1957), [at 257-258]

On the other hand, it is essential to recognize that the judicial role in reviewing a zoning ordinance is tightly circumscribed. The strong presumption in favor of its validity is not overcome except by a clear showing that the ordinance is arbitrary or unreasonable. Harvard Ent., Inc. v. Bd. of Adj. of Tp. of Madison, 56 N.J. 362 (1970); Morris v. Postma, 41 N.J. 354 (1964); Napierkowski v. Gloucester Tp., 29 N.J. 481 (1959); Zampieri v. Rivervale Tp., 29 N.J. 599 (1959); Bogert v. Washington Tp., 25 N.J. 57 (1957); Kozesnik v. Montgomery Tp., 24 N.J. 154 (1957); Pierro v. Baxendale, 20 N.J. 17 (1955); Yanow v. Seven Oaks Park, Inc., 11 N.J. 341 (1953); Cobble Clothes Farm v. Bd. of Adj. of Middletown Tp., 10 N.J. 442 (1952); Schmidt v. Bd of Adj., Newark, 9 N.J. 405 (1952). The judicial role and standard of review were aptly described in Kozesnik v. Montgomery Tp., supra:

> The zoning statute delegates legislative power to local government. The judiciary of course cannot exercise that power directly, nor indirectly by measuring the policy determination by a judge's private view. The wisdom of legislative action is reviewable only at the polls. The judicial role is tightly circumscribed. We may act only if the presumption in favor of the ordinance is overcome by a clear showing that it is arbitrary or unreasonable. [at 167]

The standard against which a municipal zoning ordinance must be measured is that set forth in the enabling act adopted by the Legislature, N.J.S.A. 40:55-32:

> Such regulations shall be in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; secure safety from fire, flood, panic and other dangers; promote health, morals or the general welfare; provide adequate light and air; prevent the overcrowding of land or buildings; avoid undue concentration of population. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout such municipality.

The ordinance must be designed to satisfy at least one, and possibly more, of the purposes set forth. Roselle v. Wright, 21 N.J. 400 (1956); Cresskill v. Dumont, 15 N.J. 238 (1954).

As an exercise of the police power, the enactment of a zoning ordinance must be in reasonable furtherance of the public health, safety or general welfare. Kirsch Holding Co. v. Bor. of Manasquan, 59 N.J. 241 (1971); Fischer v. Bedminster Tp., supra; Monmouth Lumber Co. v. Ocean Tp., 9 N.J. 64 (1952); Oakwood at Madison, Inc. v. Tp. of Madison, 117 N.J.Super. 11 (Law Div. 1971).

> Zoning is simply one broad segment of the police power, exerted for the public welfare. Schmidt v. Board of Adjustment, Newark, 9 N.J. 405, 414 (1954). All police power legislation, including zoning, is subject to the constitutional limitation that it be "reasonably exercised," i.e., conditioned by the demands of due process--

> that the regulation "not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. Ibid." [Gabe Collins Realty, Inc. v. City of Margate City, 112 N.J.Super 341, 346-347 (App. Div. 1970).]

The "general welfare," in the context of municipal exercise of zoning power, has been defined as including consideration of factors external to the municipality: Duffcon Concrete Products v. Bor. of Cresskill, 1 N.J. 509 (1949), most appropriate use of particular property depends upon conditions internal to municipality and upon the nature of the entire region in which the municipality is located; Cresskill v. Dumont, supra, municipality owes a duty to hear and consider rights of residents of adjoining municipalities, when making zoning decisions; Kozesnik v. Montgomery Tp., supra, municipalities may cooperate in a matter of common interest when exercising zoning power; Andrews v. Ocean Tp. Bd. of Adj., 30 N.J. 245 (1959), municipality may meet a need common to neighboring communities and itself; Roman Catholic Diocese of Newark v. Ho-Ho-Kus Borough, 47 N.J. 211, 218 (1966), municipal authorities must reconcile local interests and regional private school needs "as the Legislature must have intended, with due concern for values which transcend municipal lines," Kunzler v. Hoffman, 48 N.J. 277, 287 (1966), municipalities "should be encouraged to consider regional needs and be supported by the courts when they do so for sound reasons."

"Special reasons" for granting a variance pursuant to N.J.S.A. 40:55-39(d) have been defined as the purposes set forth in N.J.S.A. 40:55-32, Kunzler v. Hoffman, supra; Andrews v. Ocean Tp., supra; Ward v. Scott, 11 N.J. 117 (1952), and the promotion of the "general welfare" has been deemed a "special reason" warranting the granting of a variance for semi-public housing. DeSimone v. Greater Englewood Housing Corp. No. 1., 56 N.J. 428 (1970). In that decision the court stated,

> We specifically hold, as matter of law in the light of public policy and the law of the land, that public or, as here, semi-public housing accommodations to provide safe, sanitary and decent housing, to relieve and replace substandard living conditions or to furnish housing for minority or under-privileged segments of the population outside of ghetto areas is a special reason adequate to meet that requirement of N.J.S.A. 40:55-39(d) and to ground a use variance. [at 442]
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> * * *
>
> "Special reasons" is a flexible concept; broadly speaking, it may be defined by the purposes of zoning set forth in N.J.S.A. 40:55-32, which specifically include promotion of "health, morals, or the general welfare."[at 440]

Ordinances which preclude privately financed housing for low and moderate-income families have been held to be violative of the "general welfare" requirement of zoning as an exercise of the police power. Southern Burl. Cty. NAACP v. Tp. of Mt. Laurel, 119 N.J.Super 164, (Law Div. 1972), Oakwood at Madison, Inc. v. Tp.of Madison, supra. These trial court decisions are, however, under appeal.

The Bedminster Township zoning ordinance under attack in this matter must, therefore, be measured against the standard of whether its provisions go beyond reasonable furtherance of the public health, safety or general welfare as exercises of the police power under the zoning enabling act. In this regard we must decide whether the Township may limit its view to internal factors or whether it is required to give due consideration and weight to realities outside its municipal boundaries.

The issue was posed, more than a decade ago, in light of the statutory scheme then in effect, by Justice Hall in his dissenting opinion in Vickers v. Tp. Comm.of Gloucester Tp., 37 N.J. 232 (1962):

> And this gets to the nub of what this, and similar cases, are really all about, i.e., the outer limit of the zoning power to be enjoyed by these municipalities most in need of comprehensive authority. What action is not legitimately encompassed by the power and what is the proper role of courts in reviewing its exercise? [at 254]
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> * * *
>
> In land use regulation, the Legislature has specifically defined and delineated the objects and methods of municipal action in accordance with expressed standards. *** We are not here concerned with the physical scope of the zoning power *** but rather with the propriety of its exercise in the light of the prescribed statutory scheme and standards and other inherent limitations. It is a misapplication of the constitutional mandate to utilize it *** for the purpose of glossing over or watering down the requisite inquiry as to reasonableness with reference to the particular action under review. [at 258]
>
> * * *

> ***"the presumption of validity *** is only a presumption and may be overcome or rebutted not only by clear evidence aliunde, but also by a showing on its face or in the light of facts of which judicial notice can be taken, of transgression of constitutional limitation or the bounds of reason." Moyant v. Paramus, 30 N.J. 528, 535 (1959) [at 259]
>
> * * *
>
> Proper judicial review to me can be nothing less than an objective, realistic consideration of the setting -- the evils or conditions sought to be remedied, a full and comparative appraisal of the public interest involved and the private rights affected, both from the local and broader aspects, and a thorough weighing of all factors *** that is what judges are for -- to evaluate and protect all interests, including those of individuals and minorities, regardless of personal likes or views of wisdom, and not merely to rubber-stamp governmental action in a kind of judicial laissez-faire. [at 260]
>
> * * *
>
> Certainly "general welfare" does not automatically mean whatever the municipality says it does, regardless of who is hurt and how much.
>
> And no matter how broadly the concept is viewed, it cannot authorize a municipality to erect a completely isolationist wall on its boundaries. [at 262]
>
> * * *
>
> *** "general welfare" transcends the artificial limits of political subdivisions and cannot embrace merely narrow local desires. [at 263]

In addition to satisfying the police power requirement of furthering public safety, health and general welfare and satisfyin the enabling act requirement of serving one of the enumerated purposes (which include the promotion of health, morals or the general welfare,) a zoning ordinance must also satisfy the enabling act requirement that it be "in accordance with a comprehe

sive plan." N.J.S.A. 40:55-32.

The meaning of that statutory requirement was definitively set forth in Kozesnik v. Montgomery Tp., supra at 166. No legislative intent was found that the comprehensive plan be portrayed in any way outside the zoning ordinance itself. If the comprehensive plan was revealed in the zoning ordinance, the statutory requirement was deemed met.

Yet, our courts have continually referred to the necessity to consider factors outside the community. Duffcon Concrete Products, Inc. v. Bor. of Cresskill, supra; Cresskill v. Dumont, supra; Roman Catholic Diocese of Newark v. Ho-Ho-Kus Borough, supra; Kunzler v. Hoffman, supra; Hochberg v. Bor. of Freehold, 40 N.J. Super. 276 (App. Div. 1956).

Legislative intent reflected in recent statutory enactments must be considered in determining the present meaning of the requirement that a zoning ordinance be in accordance with a comprehensive plan. In 1965 the New Jersey Legislature joined in adopting the Tri-State Transportation Committee Compact and in 1971 the Transportation Committee was replaced by the Tri-State Regional Planning Commission. The purposes of Tri-State are to continue regional transportation and related land use studies, to be responsible for comprehensive planning for a region including parts of Connecticut, New York and New Jersey (including Somerset County) and to assure continued qualification for federal grants.

N.J.S.A. 32:22B-2. The Commission is to act as an official comprehensive planning agency for the region and is to prepare plans for development of land and housing among other things and is to act as liaison to encourage coordination among governmental and private planning agencies in solving problems connected with land development. N.J.S.A. 32:22B-6.

N.J.S.A. 52:27D-1 et seq., enacted in 1966, effective March 1, 1967, established the New Jersey Department of Community Affairs. The department is charged with the duty of assisting in the coordination of state and federal activities relating to local government, maintaining an inventory of data and acting as a clearing house and referral agency for information on state and federal services and programs (N.J.S.A.52:27D-9). Through the Office of Community Services, the department is to collect, collate and disseminate information pertaining to the problems and affairs of local government, including information as to all available state, federal and private programs and services designed to render advice and assistance in furtherance of community development projects and other activities of local government. (N.J.S.A. 52:27D-17)

The department includes the Division of State and Regional Planning (N.J.S.A. 52:27D-26) which has the responsibility of promoting programs to insure the orderly development of the state's

physical assets by, among other things, stimulating, assisting and co-ordinating local, county and regional activities. N.J.S.A. 13:1B-15.52. See also N.J.S.A. 52:27C-21, N.J.S.A. 13:1B-6 and 7, and N.J.S.A. 40:27-9.

These statutory provisions appear to implement the policy set forth in N.J.S.A. 13:1B-5.1 which reads in part as follows:

> The Legislature hereby finds and determines that:
>
> a. The rapid urbanization and continuing growth and development of the State and its regions *** have created, and are creating a need for continuing assembly and analysis of pertinent facts on a State-wide basis pertaining to existing development conditions and trends in economic growth, population change and distribution, land use, urban, suburban and rural development and redevelopment, resource utilization, transportation facilities, public facilities, housing and other factors, and has created and will continue to create a greater need for the preparation and maintenance of comprehensive State plans and long term development programs for the future improvement and development of the State.
>
> * * *
>
> c. Local, county and regional planning assistance is a function of State Government and a vital aspect of State planning. *** There is also a vital need for stimulating, assisting and co-ordinating local, county and regional planning activities as an integral part of State development planning to insure a permanent and continuing interaction between and among various governmental activities.

The importance of the comprehensive planning program embodied in these legislative enactments is emphasized when reference is made to the provisions of United States Bureau of the Budget Circular No. A-95, July 24, 1969, which provides for the evaluation, review and coordination of federal assistance

programs and projects, pursuant to the provisions of the Demonstration Cities and Metropolitan Development Act of 1966, 80 Stat. 1255, 42 U.S.C.A. §3301 et seq., and the Inter-governmental Cooperation Act of 1968, 82 Stat. 1103, 42 U.S.C.A. §4231 et seq. Circular A-95 imposes the requirement that all projects for which federal assistance is being sought must be reviewed by a designated regional planning agency for comment and recommendations regarding whether the project is consistent with comprehensive planning and regarding the extent to which the project contributes to the fulfillment of such planning. Those comments must then be reviewed by the agency of the federal government to which the application for aid is submitted to determine whether the application satisfies the provisions of federal law which govern the making of the loan or grant requested. Among programs covered by this requirement are open space, hospitals, airports, libraries, water supply and distribution, sewerage facilities and waste treatment, highways, transportation facilities, water development and land conservation, law enforcement facilities and assistance programs in the areas of planning for public works, community renewal, urban mass transportation systems, comprehensive areawide health, air pollution control, solid waste disposal, and juvenile delinquency prevention and control.

The importance of this integrated federal, state and local planning scheme is demonstrated by the testimony of the Somerset County Planning Director, that:

> The Tri-State Regional Planning Commission is the official regional planning agency for the region, and because it is such a complicated region, the Tri-State Regional Planning Commission -- to comply with their planning

> requirements -- they require the counties in New York and New Jersey to comply with their planning requirements, and the regions in Connecticut. Tri-State must adopt plans. Counties must adopt plans. And then they must be compatible, and they must be cross-accepted by the respective constituent agencies. *** H.U.D. carries a club of rejecting any municipal application for any federal grant, for more than 100 federally funded programs. In other words, if we haven't done what they said we should do, if (a municipality) applies for a storm drainage grant, they would tell (the municipality), "you can't have this storm drainage grant, because Somerset County has not gone through the planning operation as we have required." So, it is a big club they carry.

Wherever possible, statutes dealing with the same general subject should be both recognized and harmonized. Loboda v. Clark Tp. 40 N.J. 424 (1963); Henninger v. Bd. of Chosen Freeholders of County of Bergen, 3 N.J. 68 (1949); Cuprowski, et al. v. City of Jersey City, 101 N.J. Super. 15 (Law Div. 1968). Statutes in pari materia must be viewed together in seeking the legislative intent. They must be considered as a single and complete statutory arrangement. "Such statutes should be considered as if they constituted one act, so that sections of one act may be considered as though they were parts of the other act, as far as this can be reasonably done." [Id. at 20]

Certainly the police power to zone cannot have been delegated to municipalities to be exercised in conflict with the declared public policy of the State as embodied and reflected in state and federal legislation. The Zoning Enabling Act, N.J.S.A. 40:55-32, must be read in pari materia with N.J.S.A. 32:22B-2, N.J.S.A. 52:27D-1 et seq. and N.J.S.A. 40:27-2. Read thusly, the phrase

"in accordance with a comprehensive plan" necessarily creates a standard of review for municipal zoning ordinances requiring that they reflect reasonable accord and harmony with county, state and regional plans. Not only must a local zoning ordinance further one or more of the stated purposes recited in the enabling act, it must not be in conflict with or tend to frustrate planning goals adopted at the county, state and regional level in compliance with state law and federal funding requirements, that is, it must be in accordance with those comprehensive plans.

When, as here, plaintiffs have established by overwhelming proofs that the municipal zoning requirements constitute severe restrictions on the use of private property and an apparent frustration of the general welfare needs of the region for housing, while other proofs just as clearly establish the importance of this highly restrictive zoning to protect natural resource assets of the region, and the court may not impose its own subjective standard as to what is reasonable and right, it becomes clear that the appropriate objective standard against which to measure the ordinance is the comprehensive, coordinated plan mandated by the various statutes referred to above.

The county land use plan recognizes and accommodates the pressing housing need as well as the important ecological factors which must be respected in planning for development of the county. It allows for reasonable use of property while providing for a carefully distributed variety of housing with densities prescribed where they can and should be best located.

Concededly, county plans are susceptible to the same possibilities of human error as are municipal master plans and

zoning ordinances. It may be assumed that any court presented with proof of such error, demonstrated in any arbitrary, capricious or unreasonable feature of such a plan, would reject that aspect of the plan as an objective criterion of the validity of a municipal plan or ordinance. Certainly, county acts are as susceptible to prerogative writ review as are municipal acts.

Measured against the existing objective standards of planning reflected in the Somerset County Master Plan of Land Use and the plans of the Tri-State Regional Planning Commission, which have been cross-accepted pursuant to federal requirements, the Bedminster Township Zoning Ordinance of 1973 is an exercise of the zoning power valid in part and invalid in part.

The maintenance of the bulk of the Township in an R-3 zone having single family housing on large lots reflects and is in compliance with county, state and regional planning. The introduction of R-6 and R-8 zones in the vicinity of Bedminster and Pluckemin Villages around the existing business and research-office zones is in apparent compliance but the density and floor area ratio limits embodied in the ordinance make a nullity of the apparent compliance. The Township declared an intent to follow the comprehensive plans, but its specific requirements negate that intent

The county plan reasonably projects Village Neighborhood development along the Bedminster-Pluckemin corridor of New Jersey Route 202-206. The proofs establish that this type of use anticipates five to fifteen dwelling units per acre whereas the ordinance as adopted permits no more than three units per acre. The proofs clearly establish that multi-family housing, subsidized or private, cannot and will not be built at densities of one and

one-half to three units per acre.

While maintenance of low density, large lot, single family use throughout most of the township will preserve an essential watershed, the proofs clearly establish that previous development and the existing situation in the Bedminster-Pluckemin corridor mandate construction of sewage treatment facilities to serve that area and to protect the water quality of the North Branch of the Raritan River. The proofs also clearly establish that this facility can be designed and constructed to accommodate appropriate densities of multi-family housing which are clearly needed to help meet the pressing housing needs of the county and state.

The Bedminster Township Zoning ordinance as it applies to the area of the Township east of a line drawn parallel with, and 3,000 feet west of, New Jersey State Highway Route 202 is hereby declared to be arbitrary, capricious and unreasonable. The Township is hereby directed to review and revise the zone map and zone district use restrictions within that area and to adopt a revision to its zoning ordinance applicable to that area which shall be in reasonable compliance with the standards and goals set forth in the Somerset County Master Plan of Land Use. Such revision shall be adopted within 180 days of the entry of the order for judgment in this matter. Morris County Land, etc. v. Parsippany-Troy Hills Tp., 40 N.J. 539 (1963).

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NOS. L-36896-70 P.W. and
L-28061-71 P.W.

THE ALLAN-DEANE CORPORATION, a Delaware corporation qualified to do business in the State of New Jersey; and LYNN CIESWICK, et al.,

Plaintiffs,

-vs-

THE TOWNSHIP OF BEDMINSTER, et al.,

Defendants.

Civil Action

FINAL JUDGMENT

The above entitled actions having been tried before the Court sitting without a jury, and the Court having considered the testimony, documentary exhibits, briefs and arguments of counsel, and the Court having filed its written opinion under date of February 24, 1975, and in accordance therewith except as modified by the decision of the Supreme Court of New Jersey in N.A.A.C.P. of Southern Burlington County v. Township of Mt. Laurel, decided

March 24, 1975,

It is on this day of May, 1975 ORDERED that

1. The Bedminster Township zoning ordinance is hereby declared to be valid in part and invalid in part under Article I, Paragraph I of the Constitution of the State of New Jersey;

2. The Bedminster Township zoning ordinance, as it applies to the area of the Township east of a line drawn parallel with and 3000 feet west of United States Highway Route 202, is hereby declared to be arbitrary, capricious, unreasonable, and in violation of Article I, paragraph 1 of the State Constitution;

3. With regard to the area described in paragraph 2 above, the Township of Bedminster is given ninety days from the date of entry of this final judgment to adopt a revision of its zoning ordinance and zoning map applicable to said area. Such revisions shall ensure that Bedminster meets a fair share of the present and prospective regional need for low and moderate income housing by permitting multi-family housing, without bedroom or similar restrictions, small dwellings on very small lots, and low cost housing of other types, at all gross densities between five and fifteen residential units per acre as provided for in the Somerset County Master Plan. Said ordinance revisions shall also take whatever additional action encouraging the fulfillment of Bedminster's fair share of the present and prospective regional need for low and moderate income housing as may be necessary and advisable;

4. The defendants have the right to apply for reasonable and necessary additional time, not to exceed ninety days, to enact the revisions specified in paragraph 3 above;

5. Service of the ordinance revisions shall be made upon attorneys for the plaintiffs within five days of the enactment thereof;

6. Plaintiffs may challenge the validity of the ordinance revisions by supplemental complaint filed and served in either or both of these two actions within thirty days of the service upon their attorneys of said revisions.

B. THOMAS LEAHY, J.C.C. T/A