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3/15/78

Brief in support of Order to Show Cause

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SUPERIOR COURT OF NEW JERSEY

LAW DIVISION - SOMERSET COUNTY

Docket Nos: L-36896-70 P.W.
L-28061-71 P.W.

THE ALLAN-DEANE CORPORATION, et al Plaintiffs, vs. THE TOWNSHIP OF BEDMINSTER, et al. Defendants.	Civil Action

BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE

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PRELIMINARY STATEMENT

The Affidavits accompanying this application allege a clear and deliberate violation by the Township of Bedminster of this Court's previous orders.* They allege that not only has the Township failed to provide "for a variety and choice of housing compatible with the needs of its region", as ordered by this Court, but has actually enacted a zoning ordinance which permits, as of right, no multi-family housing units and allows, as a conditional use, fewer multi-family housing units than the ordinance previously invalidated by this Court.

The new Zoning Ordinance, the affiants unreservedly swear, is more exclusionary by every objective criterion than the ordinance which this Court has already invalidated. It permits, as a conditional use, a lower number of multi-family units, it is more cost-generating, the gross densities "permitted" are lower, the amount of land in districts where only large lot residential construction or no construction at all is permitted has been increased, the procedural requirements for applicants have been expanded and made more cost-generating, bedroom restrictions designed to limit family size have been imposed on multi-family units, a floating "historical zone" where no private construction is per-

*For purposes of reference the previous Court Orders (Order for Judgment 10/17/75, the Stay entered 1/29/76, and the Order Vacating Stay dated 9/28/77) are attached as Exhibits to this Brief.

mitted has been created and the Municipal Land Use Law has been repeatedly violated. Plaintiff and its experts have been amazed by the enormity of the Township's evident contempt for this Court's previous rulings, the New Jersey Supreme Court's mandate and the State Legislature's enactments with regard to the very purposes of land use regulation, the permissible limits of zoning and the orderly procedures to be afforded applicants.

The purpose of this Application is to request the Court to proceed summarily, by Order to Show Cause, and to go beyond mere invalidation of the new Bedminster Township Land Use Regulations and to grant Plaintiff definite relief. If in fact the new Zoning Ordinance provides for fewer multi-family housing units and is more cost generating than the previously invalidated ordinance, as the affiants have unreservedly sworn, after six and a half years of litigation, including appeals to the New Jersey Supreme Court, the Court should consider not only the remedy of invalidating the new "bad faith" Ordinance but the invocation of a remedy which would insure construction, in the foreseeable future, of some portion of the Township's fair share of housing for families in the middle and lower income spectrum of the population. For the reasons set forth herein Plaintiffs contend that it is now appropriate for this Court to proceed under Rule 1:10-5 of the Rules governing New Jersey Courts, by Order to Show Cause, and to

determine that Defendants have not in good faith attempted to comply with this Court's previous Orders, and if they have not, to consider the appropriate judicial relief which should be granted to the Plaintiffs in this case.

Plaintiff will present testimony on the return date of this Order to Show Cause which will establish:

(a) That under the new zoning ordinance there are (i) less multi-family units permitted and (ii) higher costs exacted than under the 1973 Ordinance which this Court invalidated in 1975.

(b) That specific corporate relief is justified in this case.

(c) That Plaintiff is prepared to provide housing on its site at a cost considerably below that of housing now available in the Township and to allocate at least twenty (20%) per cent of the units proposed in its plan to low and moderate income housing or, if federal and state mortgage and rent subsidies are available, to "least cost" housing.

PROCEDURAL HISTORY

Over eight years have elapsed since Plaintiffs first applied to the Township of Bedminster Planning Board and Township Committee for a zoning change and nearly six and a half years have elapsed since Defendants commenced this litigation. The Procedural History in this case is a matter of court record and is chronologically summarized in "Appendix A".

STATEMENT OF FACTS

A. Introduction

The Affidavits filed in support of this Order to Show Cause demonstrate:

(1) That the new Zoning Ordinance permits fewer multi-family housing units of all varieties and types than the ordinance previously invalidated by this Court because it failed to provide for a variety and choice of housing compatible with the regional need. (See Affidavit of Alan Mallach, paragraph 7(a), Affidavit of Carl Lindbloom, paragraph 13(a)).

(2) The 1977 Zoning Ordinance is more cost generative to build under than the 1973 Zoning Ordinance which was previously invalidated by this Court. (See Affidavit of E. James Murar, paragraphs 7, 8(b), 8(c) and Affidavit of Alan Mallach, paragraph 7(c)).

(3) The 1977 Zoning Ordinance effectively precludes the possibility that housing eligible for Federal or State subsidies could be built in Bedminster (See Affidavit of Alan Mallach, paragraph 8).

(4) The new land use regulations contain numerous provisions which are on their face invalid and violative of the Municipal Land Use Law and the State and Federal Constitution (See Point II of this Brief).

(5) The 1977 Zoning Ordinance cannot, since it is more exclusionary by every objective criterion than the previous ordinance which this Court has invalidated, represent a bona fide effort to provide for the Township's fair share of the regional need for least-cost housing.

Because this Court's previous rulings in this action are extensive and because the new Zoning Ordinance of Bedminister

Township is by no means carefully drafted, mapped, internally consistent, or logically organized, a review of this Court's previous findings and a comparison of the new and the old zoning ordinances is in order.

B. This Court's Previous Findings

The Trial Court made extensive findings of fact in the Opinion handed down on February 24, 1975 (pages 1-26 of that Opinion) which findings of fact were expressly reaffirmed in the letter opinion dated October 17, 1975.

These findings are summarized in the following excerpts from the Opinion itself:

1. There is a housing crisis in New Jersey and the Bedminster Zoning Ordinance is Exclusionary.

> 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 Bedminster 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 ordinance would be a necessary condition of altering the situation. (Letter Opinion, Feb. 24, 1975, p.25).

2. The Allan-Deane Tract is suitable for multi-family development.

> The plaintiff Allan-Deane proved, in addi-

tion 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. (Letter Opinion, Feb. 24, 1975, p.25).

3. Significantly higher densities are required for the production of multi-family housing.

. . .Village Neighborhood Development "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 a half to three units per acre. (Letter Opinion, Feb. 24, 1975, p.40).

4. Water quality protection is compatable with multi-family development.

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 a 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 accomodate appropriate densities of multi-family housing which are clearly needed to help meet the pressing housing needs of the County and State. (See pages 40 and 41).

In the Supplemental Opinion dated October 17, 1975, the Court acknowledged the recent Mt. Laurel decision and reached the following additional conclusions:

1. Bedminster is a developing municipality and must meet regional housing needs.

I find that Bedminster, covering 26 square miles, is of sizeable land area and is outside the central cities and older built-up suburbs of New Jersey.

Bedminster is in the path of inevitable future residential, commercial and industrial demand and growth is not likely to remain rural for any appreciable period considering its location approximately 30 miles from New York City and considering its accessibility now that Interstate Routes I-287 and I-78 pass through and intersect within it and give it a most strategic location.

. . .Clearly, Bedminster is a developing municipality which must, by its land use regulations, make realistically possible a variety and choice of housing compatible with regional needs.

2. Bedminster is part of a nine county region.

The appropriate region is found to be the area contained within the counties of Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset and Union as set forth in N.J.S.A. 32:22B-13 as the New Jersey portion of the Tri-State Regional Planning Commission's jurisdiction. . .

3. Bedminster's Land Use Regulations Are Exclusionary.

I find that the proofs established that the effect of Bedminster's land use regulations has been to prevent various categories of persons from living in the township because of the limited extent of their income and resources.

Bedminister has not, as a matter of fact found by this court, provided for a variety and choice of housing compatible with the needs of its region. Therefore, there has been a violation of substantive due process or equal protection under the state Constitution and the heavy burden falls upon the

township to validate its land use regulations.

4. Multi-Family Development Can Be Provided In a Manner Consistent With Ecological Objectives.

The evidence presented in this case amply supports the existence of strong ecological reasons for preserving much of Bedminster Township in an open, lightly-populated status. On the other hand, however, the existing drainage and sewer situation in the Pluckemin and Bedminster Village corridor along U.S. Highway 202 is such that a comprehensive sewer program in that corridor is already an absolute essential. The proofs establish that an appropriate solution to the drainage and sewer problem can be effectuated in a manner compatible with reasonably dense housing development.

It is clear that Bedminster Township has an obligation to afford the opportunity for decent and adequate housing of all types including low and moderate income housing to the extent of its fair share of the present and prospective regional need therefor.

The Order for Judgment filed October 20, 1975 required Bedminster to revise its zoning ordinance to comply with State law, including the mandate of Mt. Laurel. The Appellate Division opinion required Bedminster to comply with Supreme Court guidelines promulgated in any case(s) decided prior to the revision of its ordinance. The Madison case was the vehicle for these guidelines. The order entered on September 26, 1977 vacating the previous stay requires Defendants to comply with state law and expressly the mandate of the Supreme Court set forth in the Mt. Laurel and Madison decisions. (See Exhibit "A").

C. The 1977 Bedminster Zoning Ordinance

1. The Township's exclusionary intent is revealed by the stated purposes of the zoning ordinance which are at variance with the Municipal Land Use Law.

Bedminster Township does not even pretend that the 1977 Zoning Ordinance was designed to fulfill regional responsibilities or to meet the needs of all New Jersey's citizens as required by the Municipal Land Use Law. (40:55D-2(e) and (g)). The stated purposes of the ordinance vary significantly from the authorized purposes of all land use regulations:

> 2.3 to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhood, communities; [and regions]. (The bracketed phrase is part of N.J.S.A. 40:55D-2e, but left out of the 1977 Ordinance)
>
> 2.4 To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational and commercial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all Township residents [New Jersey Citizens]. (The bracketed phrase appears in N.J.S.A. 40:55D-2g in place of the underlined pharase in the 1977 Ordinance)

The Township, furthermore, omits entirely the statutory purposes of land use controls set forth in 40:55D-2 (k), (l) and (m) which have to do with the encouragement of

planned unit development, senior citizen housing and "lessening the cost" of development.

The deliberate departure from the authorized purposes of zoning is significant as evidence of the Township's intentions, and because no application for multi-family housing can be approved under Article 11, section 3 of the 1977 Ordinance unless it conforms, in the opinion of the Planning Board, with the "purposes set forth in the Zoning Ordinance and are approved by the Board of Adjustment".(1)

2. Zoning Districts Established by the 1977 Zoning Ordinance.

The Bedminster Township Zoning Ordinance adopted on December 19, 1977 abolishes the 1973 Ordinance's R-3, R-6 and R-8 residential zoning under which clustering and multi-family housing were permitted in all zones, and establishes seven new districts: four residential districts (R-3, R-6, R-8 and R-20); a business district (B); a research and office district (RO); and a critical area district (C). The size,

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(1) Under the 1977 Bedminster Ordinance all multi-family housing is a "conditional use" permitted in certain zoning districts upon a showing by the applicant that such use will comply with the conditions and standards set forth in the ordinance for such use, and upon the issuance of an authorization therefor by the Planning Board. (See Zoning Ordinance 11.1 and N.J.S.A. 40:55D-3, "conditional use.") The additional requirement, in the Bedminster Ordinance that the Board of Adjustment also approve the use is, of course, not authorized by the Municipal Land Use Law and violates, on its face, 40:55D-67, 40:55D-3 ("conditional use") as well as the concept of the one-step approval process, the single most important purpose of the new law.

location and extent of development in each of these seven districts is present in the following chart:

Characteristics of 1977 Zoning Districts

Zone (1)	Size (Acres)	% of Township Area	Principle Location	No. of Acres Vacant (2)	% of Total Vacant Land (2)
R-3	12,613.09	73.81%	West of 202-206	9869.19	76.92%
R-6	362.57	2.12%	NW of Bedminster Village	92.89	.72%
R-8	240.36	1.41%	Pluckemin & Bedminster Village; Pottersville	107.88	.84%
R-20	261.67	1.53%	Pluckemin & Bedminster Village	171.10	1.33%
Crit. Area	3,331.90	19.50%	Throughout Township	2,557.24	19.93%
Business	79.91	.47%	Bedminster & Pluckemin Village	14.00	.11%
Research-Office	198.50	1.16%	North of I-287	18.36	.14%
	17,088	100%		12,830.66	99.99%

(1) For detailed analysis of zones see Affidavit of Carl Lindbloom.

(2) Includes land classified as agricultural.

3. Permitted Uses and Lot Sizes in Residential Zones.

The sole use permitted by right in all four residential zones under the 1977 Ordinance is that of detached

single-family houses. The theoretical minimum lot size allowed in each zone is as follows:

Zone	Theoretical Minimum Lot Size
R-3	2.8 acres
R-6	1.2 acres
R-8	22,500 sq.ft.
R-20	10,000 sq.ft.

The term "theoretical" is used because minimum lot size is determined by the ordinance requirement that it be feasible to inscribe a circle with a specified diameter within the lot lines. For example, in the R-3 district (comprising 74% of the Township) it is required that a circle with a 350 foot diameter fit with the lot lines. Although a perfectly square lot of 2.8 acres will meet this requirement, it is obviously unlikely that a subdivision will result in all lots being squares of 2.8 acres. As a consequence of this geometric rigidity the achievable densities will be lower than the theoretical minimum would suggest.

4. Limited Uses in Critical Zone.

The only permitted uses in the newly enacted Critical Zone (comprising 19.5% of the Township) are specifically enumerated agricultural and recreational uses. In direct conflict with the recommendations contained in the Defendant's Master Plan no portion of a critical area tract may be applied as density credit or open

space for land in an adjoining district.

5. The 1977 Ordinance Permits No Cluster or Multi-Family Housing as of Right.

By classifying all multi-family housing types as "conditional uses" permitted only upon a showing to the Planning Board that such use will comply with vague environmental and sociological standards the approval of specific projects is left to the discretion of the Planning Board and Zoning Board of Adjustment (ses footnote No. 1) and the burden of proof that a specific project will "preserve the environment" or "promote the establishment of appropriate population densities" is placed squarely upon the applicant. This "conditional use" technique is employed by Bedminster to persuade the court that provisions have been made to meet the municipal housing obligation, while retaining the ability to reject applications on discretionary grounds. Such conditional uses are:

1. Single family clusters in R-3, R-6, R-8, and R-20
2. "Twin" houses in R-3, R-6, R-8, and R-20
3. Village Neighborhoods involving a variety of housing types in R-6, R-8 and R-20 (Required Dwelling Unit Mix in R-20)
4. Compact Residential Clusters, at 30% FAR in R-20. (Only in Pluckemin Village, at a required Dwelling Unit Mix)

The zoning ordinance explicitly states that "Compact Residential Clusters", permitted on a first-come first-serve basis up to a cumulative limit of 300 units satsify the Township's least-cost housing responsibility. These units may only be located in clusters of 50-150 units in R-20 zones in Pluckemin Village and must meet many stringent requirements.

6. The Two Largest Zones, Comprising 97% of All Vacant Land, Unconditionally Prohibit Multi-Family Housing.

By far, the largest zone in the Township is the R-3 Zone. It is 78% undeveloped, it comprises 77% of the Township's vacant land, and it unconditionally prohibits multi-family housing. The sole permitted use by right is for minimum lots of 2.8 acres, and if conditional approval for clustering is obtained a maximum density of one unit per 2.5 acres may be achieved.

Of the Township's remaining 23% vacant land, 20% is encompassed by the Critical Area Zone, the second largest district in the Township. The Critical Area Zone allegedly includes only areas with slopes in excess of 15% or flood plain areas, and prohibits all structural development. Thus of the Township's vacant land, a full 97% patently prohibits multi-family and subsequently "least cost" housing.

Of the Township's remaining 3% vacant land, the ordinance requirement that Village Neighborhoods be adjacent to a business (B) district effectively prohibits all multi-family housing from all vacant parcels in the R-6 Zone and from all but 24 acres in the R-8 Zone. Only these 24 acres in conjunction with the vacant land in the R-20 Zone provide for the opportunity of multi-family housing. Together they comprise less than 1.6% of the Township's vacant land.

7. The Historic Overlay Zones Further Restrict Multi-Family Housing.

In addition to the 7-zoned districts, the 1977 Ordinance also introduces two amorphous overlay zones. In the Pluckemin Historic Zone, which covers a significant portion of the acreage zoned R-20 for "least cost" housing, the Plannning Board is granted unbridled discretion in regulating construction. The "Artillery Park" Zone, lacking in defined boundaries, is also created, and all private construction is prohibited within its limits. There is no provision in the ordinance which would allow an applicant owning such land to take a density credit or use it for required open space.

D. Comparison of Permitted Densities Under the 1977 Ordinance and the 1973 Ordinance.

1. The 1977 Ordinance Permits Fewer Multi-Family Units than the Ordinance Invalidated by this Court.

If it is assumed, for the purpose of preliminary

analysis, that all undeveloped land in R-6, R-8 and R-20 zones can meet all of the criteria necessary for planning board approval of the highest density conditional use,(2) the multi-family dwelling unit yield under the new ordinance would be 278 fewer units than under the 1973 Ordinance.

The following chart thus illustrates (using the unit mix prescribed by the 1977 Ordinance) the minimum reduction of multi-family units under the 1977 Ordinance:

	Zone	Undev. Acres	Hypothetical Density/Acre	Multi-family Dev. Unit Yeild
1973	R-6	780	1.88	1,466
	R-8	131	2.51	328
		911		1,794
1977	R-6	93	1.75	162
	R-8	108	2.34	252
	R-20 (1)	137	5.86	802
	R-20 (1)	34	8.79	300
	TOTAL	372		1,516

(1) Assuming two "Compact Residential Clusters" with 150 dwelling units in each.

2. Permitted Densities Substantially Reduced on Allan-Deane Property.

A detailed site plan conforming to the various provisions of the 1977 Ordinance was prepared for the Allan-Deane property. This analysis revealed that the interaction of the new zoning and subdivision ordinances

(2) This assumption is not realistic and extremely generous to the Township. Plaintiff is prepared to prove that there is a drastic reduction in the number of units obtainable when all provisions of the 1977 Ordinance are met.

result in a significantly lower yield of multi-family units than indicated by the hypothetical zoned capacity. A comparison of the zoned capacity of the Allan-Deane property under the invalidated 1973 Ordinance and the 1977 Ordinance showed an astounding loss of 506 multi-family dwelling units. The following charts summarizes this analysis[1]:

Maximum Density Based on Specific Site Plan

	Zone	Undev. Acres	Density	Multi-Family Unit Yield	Single Family Unit Yield
1973	PRN-6	449	1.88	844	
	B	12	-	-	
	TOTAL	461	1.88	844	
1977	R-3	102	.29		30 (2)
	R-8	66	1.36		90 (2)
	R-20	45	4.14	188	
	R-20 (CRC)	23	6.52	150	
	B	10	-	-	
	C	207	-	-	
	New 202/ 206 Bypass	8	-	-	
	TOTAL	461	.99	338	120

(1) See Affidavit of E. James Murar

(2) Cannot meet provisions for multi-family housing

The hypothetical zoned capacity of the Allan-Deane property for multi-family housing under the 1977 Ordinance is 653 units. That only 338 units can be realized (48% less), as determined by the specific site plan reflects the extreme intractability of the 1977 Zoning Ordinance, Site Plan Ordinance and Subdivision requirements.

E. The Effect of the 1977 Ordinance on Housing Costs.

1. Site Development Costs.

The cumulative effect on housing costs of the 1977 Zoning Ordinance and subdivision regulations is best demonstrated by a comparison of the site development costs and resulting sales price under the 1977 Ordinance, the 1973 Ordinance, and the plan proposed by Allan-Deane.

The following chart summarizes this comparison:

Estimated Per Unit Site Cost for Allan-Deane Property(1)

	Invalidated Ordinance	1977 Ordinance	Proposed Site Plan
Density	1.88	.99	4.01
Land cost per unit	6,724	12,391	3,070
Site development costs	6,471	11,197	6,012
Carrying costs	1,423	2,230	-
	$14,618	$25,818	$9,082

(1) See Affidavit of E. James Murar

The per unit site development costs on the Allan-Deane property under the 1977 Ordinance are 77% higher than under the invalidated Ordinance, and 184% above those incurred under the Allan-Deane Site Plan.

Since a finished site generally represents 25% of the sales price of a residential unit, the average sales price per unit would approximate $103,000.00 under the new Ordinance as opposed to $58,000.00 under the old Ordinance.

2. Cost Exactions.

Bedminster's currently effective land use regulations contain a variety of complex cost generating provisions, in addition to those which directly reduce density, which have the effect of driving up housing costs. These exactions can be roughly categorized as follows:

(a) Standards not reasonably related to the promotion of health, safety and welfare.

(b) Unreasonable fees assessed for Site Plan and Subdivision Review.

(c) Time consuming procedural requirements resulting in costly delays.

A. Unreasonable Health, Safety and Welfare Standards.

An extensive study of Bedminster land use regulation reveals an intricate maze of exceptional standards prepared under the guise of, but not directly related to, traditional or reasonable health, safety and welfare standards. A few of these are highlighted below:

Ord. Section	
10.3.1; 10.3.3	1. Net Habitable Floor Area - Vastly exceeds minimum floor areas promulgated by U.S. Department of Housing and Urban Development.
10.3.2	2. Prohibition of Studio - Efficiency Apartments

Ord. Section		
10.3.4	3.	Bedroom Limitations Imposed on Garden Apartments and Row Houses - Garden Apartments are limited to one bedroom, Row Houses are limited to three bedrooms.
10.3.4	4.	Dwelling Unit Mix - a required mix of multi and single family units and a regulated number of bedrooms per dwelling unit type in Compact Residential Clusters and Village Neighborhoods in the R-20 Zone.
10.3.4	5.	Excessive Setback Requirements from Street Lines and Property Lines.
10.3.9	6.	Imposition of a "Floor Area Ratio on Net Site" - Severely restricts flexibility and reduces achievable density.
11.6.3.2 10.3.4(4)	7.	Prohibition of units on top of each other - applies only for multi-family units with 2 or more bedrooms.
11.6.4; 16.1	8.	Excessive Parking Requirements - one space per bedroom, included in the Floor Area Ratio (reduces density).
11.6.6; 11.6.7	9.	Excessive Screening Requirements for Collective Parking - screening must be at least 7 feet high, or of greater height so that cars cannot be seen from public streets or walks.

B. Unreasonable Fees Assessed for Site Plan and Subdivision Review.

Processing fees for implementation of the Allan-Deane site plan of 1849 units under the newly adopted Bedminster ordinances would require payments of $686,685 (or $371 a unit), as set forth below:

SKETCH PLAT (required)	$ 50
DESIGN LAYOUT (required) ($50 + 1,849 X $10)	$ 18,540
CONSTRUCTION PLAT (required) (1,849 X $320/lot if new street improvement involved)	$591,780
FINAL PLAT (required) ($100 + 1,849 X $10)	$ 18,540
SITE PLAN APPROVAL (required for cluster development) ($50 + 1,849 @ $.02/sf, based on average 1,561 sf unit; 1,849 X $31,22)	$ 57,775
TOTAL FEES	$686,685

C. Time Consuming Procedural Requirements.

A critical concern after 6 years of attempts by the applicants to obtain satisfactory zoning are cost exactions generated by prolonged processes. The court in Madison identified any more than two procedural stages as an exaction. Bedminster has a four step procedure plus an additional review by the Board of Adjustment.(3) While the virtual absence of any construction or development activity in Bedminster during the past eight years makes analysis of

(3) See Affidavit of John Rahenkamp, paragraph 8, (h), 7 and Madison at 72 N.J. 523-524. Also see Niccollai v. Wayne, 148 N.J. Super 150 (1977) holding that residential cluster is a term of "planned unit development" and must comply with enabling legislation. Also see footnote No. 1.

actual processing time difficult to estimate, the protracted judicial proceedings serve as some guide that the five step review procedure coupled with broad reservations of discretionary power (i.e. historical zone, all multi-family being "conditional uses", lack of definite standards) would result in a perpetual "Catch 22" making production of least cost housing impossible.

F. Cost of Delay

As the Procedural History indicates, over 8 years have elapsed since Allan-Deane first applied to the Bedminster Township Committee and Planning Board for a zoning change shortly after they purchased property. The total capital investment on that property, including the Bernards portion, totalled $10,914,445.00 as of December 31, 1977 and the total carrying costs incurred by Allan-Deane during 1977 alone, including legal fees, development costs, general and administrative costs, property taxes, and imputed interest on the investment was $1,142,162.00. That figure translates to a daily cost of $3,129.00 per day which cost is estimated, for the year 1978 to over $3,500.00 per day.

ARGUMENT

POINT I

RELIEF TO LITIGANT, PURSUANT TO NEW JERSEY COURT RULE 1:10-5, IS A JUSTIFIED REMEDY FOR DEFENDANT'S WILLFUL DISOBEDIENCE OF THIS COURT'S ORDER OF SEPTEMBER 28, 1977.

Rule 1:10-5 of the New Jersey Courts provides the only effective remedy to force an uncooperative litigant to perform a duty in the nature of mandamus. This rule reads as follows:

> 1:10-5. Relief to Litigant
>
> Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action. A judge shall not be disqualified because he signed the order sought to be enforced. If an order entered on such an application provides for commitment, it shall specify the terms of release. An application by a litigant may be tried with a proceeding under R.1:10-2 only with the consent of all parties and subject to the provisions of R.1:10-4.

In contrast to a contempt proceeding under R.1:10-2 to R.1:10-4, a proceeding in aid of litigants rights under R.1:10-5 does not seek punitive action against a contumacious litigant, but merely asks the court to provide equitable relief to the prevailing litigant from the consequences of the action or non-action of an uncooperative defendant. See N.J. Dept. of Health v Roselle, 34 N.J. 331 (1961) for a complete discussion of these distinctions.

The remedy of proceedings to enforce litigants rights as embodied in R.1:10-5 and its source, R.R. 4:87-5 has long been available to enforce court orders. See Ashby v. Ashby, 62 N.J. Eq. 618 (Ch.1901); Thompson v. Pennsylvania R.R. Co., 49 N.J. Eq. 318 (E.&A. 1892). The New Jersey Supreme Court described the equitable underpinnings of R.1:10-5 as follows:

> "Without the prospect of prompt prosecution the prevailing litigant could be delayed in the enjoyment of his rights, or even denied them in times and places in which those rights are in low popular regard" In re Buehrer, 50 N.J. 501, 515 (1967)

It is also clear that a prevailing litigant may utilize R.1:10-5 against defendants who are public officials. This right was reaffirmed in Essex County Bd. of Taxation v. Newark, where the Appellate Division wrote:

> "It is of no momemt that the recalcitrant defendants are public officials. On the contrary,. . .proceedings in aid of litigants rights are universally recognized as particularly appropriate in the case of public officials who have violated court orders in the nature of mandamus requiring the performance of duties imposed by law." 139 N.J. Super 264, 271 (App.Div. 1976), rev'd. on other grounds, (N.J. Supreme Court, Dkt. No. A-218, March 31, 1977).

The Supreme Court majority opinion in the Essex County case considered various kinds of relief which might be granted when public officials disobey a court order; the Court granted specific relief because it found that

the public interest required resort to any expeditious and effective remedy. After over six years of litigation in Bedminster, the public interest in housing construction to alleviate the critical state and regional shortage requires that grant of specific corporate relief to Allan-Deane.

POINT II

THE BEDMINSTER ZONING ORDINANCE ENACTED DECEMBER 24, 1977 VIOLATES STATE LAW AND IS THEREFORE A PATENT VIOLATION OF THIS COURT'S ORDER.

A. The following specific violations of the Mt. Laurel and Madison mandates are apparent:

Number 1. The provisions in the Bedminster Township Zoning Ordinance prohibiting the construction of least cost housing in the form of efficiency units, two or more bedroom garden apartments or four or more bedroom townhouses and otherwise limiting the number of bedrooms in new housing are all clearly illegal under the Mt. Laurel case. See Sections 10-3.2 and 10-3.4(4).

Number 2. The Bedminster Township Zoning Ordinance permits, as of right, no multi-family least-cost housing at all and thus fails to affirmatively provide for "least cost" housing. All multi-family housing types are "conditional uses" which are only permitted upon a showing to the Planning Board that such use will comply with vague environmental, historical and sociological standards contrary to N.J.S.A. 40:5D-67 and the Mt. Laurel case.

Number 3. The 1977 Zoning Ordinance does not represent a bona-fide effort towards the provision of the Township's fair share of the regional need for least-cost housing because it does not zone reasonable areas for multi-family housing at achievable densities consistent with the municipal responsibility.

Number 4. The 1977 Zoning Ordinance and the accompanying Subdivision and Site Plan Ordinances impose unreasonable cost exactions, in excess of minimum standards of health, safety and welfare which operate as impediments to least cost housing construction in violation of the mandate of Madison.

Number 5. The maximum number of 300 "least cost" units permitted under the ordinance is arbitrary and does not correspond with the Township's fair share of the regional need for least cost housing.(4)

Number 6. Housing eligible for Federal or State subsidies cannot be built under the new ordinance because of undue cost-generating requirements and the failure of the Township to provide public sewerage service to areas proposed for multi-family development.

Number 7. Bedminster has not provided, through its land use regulations, for an appropriate variety and choice of housing since over 96% of its vacant and developable land is zoned for minimum lot sizes of 2.8 acres or larger.

B. The following specific violations of State constitutional provisions are apparent:

Number 1. Defendant's critical-area zoning provisions as applied to land with slope in excess of 15% have the primary purpose and effect of maintaining such land in its natural state for public benefit and therefor violate the due process clause of the New Jersey Constitution (Article I, par. 20).

Number 2. Defendant's critical area zoning provisions constitute an arbitrary and unreasonable abuse of the power to zone because the means selected do not have a real and substantial relation to the object of flood and erosion control.

Number 3. Adoption of Article 8 (Critical Area Zones) violates due process as an unauthorized exercise of the municipal power to zone granted by N.J.S.A. 40:55D-62; This article is excessive because it prohibits density credits for land in Critical Areas, and is thus substantially inconsistent with the duly adopted Land Use Element of Defendant's Master Plan.

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(4) The Supreme Court in Madison, 72 N.J. at 519 concludes that for a municipality to actually provide for its "fair share" sound planning requires that they overzone and provide "a reasonable cushion" over the number of units deemed necessary to meet the need.

Number 4. Adoption of the Zone Map violates due process as an unauthorized exercise of the municipal power to zone granted by N.J.S.A. 40:55D-62, because map densities in the Pluckemin Area are substantially inconsistent with Defendant's Master Plan recommendations for the area.

Number 5. The Bedminster Township Committee's adoption of Article 7 concerning the "Historic Village of Pluckemin" is an arbitrary abuse of the police power because the exclusive purpose of this zone is the aesthetic preservation of a portion of a zoning district.

C. The following specific violations of this Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) are apparent:

Number 1. Article 7 of the 1977 Zoning Ordinance violates N.J.S.A. 40:55D-62 because the carving out of an historic district within limited areas of other zoning districts causes a substantial deviation from the requirement that regulations in a zoning ordinance be uniform throughout each district.

Number 2. Article V of Defendant's Subdivision Ordinance and Section 12.11 of the Site Plan Ordinance violate N.J.S.A. 40:55D-8(b) because a subdivision application process fee of $300 plus $340 per lot and a site plan fee of $50/acre plus a fee per gross floor area has no rational relationship to the processing costs of such applications, and therefore cannot be considered "reasonable" fees.

Number 3. Article V, paragraph 4 of the "Land Subdivision Ordinance of the Township of Bedminster" requiring completion of all improvements prior to the granting of final subdivision approval is illegal under N.J.S.A. 40:55D-53 which provides that the approving authority "shall accept" a performance guarantee in an amount not to exceed 120% of the cost of such improvements.

Number 4. Bedminster has failed, as required by N.J.S.A. 40:55D-65, to adopt subdivision and site plan ordinances incorporating the planned development provisions of Article 6 of the Municipal Land Use Law prior to the adoption of a zoning ordinance providing for planned developments.

Number 5. Article II of Defendant's Zoning Ordinance, which contains the statement of purpose, on the ordinance violates N.J.S.A. 40:55D-2 because the stated purposes do not incorporate any language about regional or statewide concerns;

Number 6. The Zoning Map violates N.J.S.A. 40:55D-2(d) because the density in the Pluckemin area on such map conflicts with the Somerset County Master Plan density for this area, and so would lead to development that would conflict with county development and general welfare.

Number 7. Provisions of the 1977 Ordinance dealing with Open Space Clusters, Village Neighborhoods and Compact Residential Clusters violate N.J.S.A. 40:55D-2(k) and (m) which require a municipality adopting regulations concerned with "planned developments" to encourage flexibility and economy in design and layout and also violate other sections of the Municipal Land Use Law dealing with Planned Development.

POINT III

CIRCUMSTANCES RELEVANT TO THIS LITIGATION, INCLUDING INORDINANT DELAYS, THE EXPENSE OF TWO TRIALS AND DEFENDANT'S SECOND BAD FAITH EFFORT AT REZONING REQUIRE THE COURT TO GRANT SPECIFIC CORPORATE RELIEF TO ALLAN-DEANE.

The New Jersey Supreme Court in the Madison case authorized specific corporate relief in particular circumstances:

> "The Defendant was correctly advised by the trial Court as to its responsibilities in respect of regional housing needs in October, 1971, over five years ago. 117 N.J. Super 11. It came forth with an amended ordinance which has been found to fall short of its obligation. Considerations bearing upon the public interest, justice to the Plaintiffs and efficient judicial administration preclude another generalized remand for another unsupervised effort by the Defendant to produce a satisfactory ordinance. The focus of the judicial effort after six years of litigation must now be transferred from theorizing over zoning to assurance of the zoning opportunity for production of least cost housing. Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481, 552 (1977). (Emphasis ours)

The Court recognized that this remedy was necessary because without judicial supervision, an uncooperative community may employ a variety of techniques to forestall the production of needed housing. Clearly a municipality through these techniques may "play games until a developer gives up and goes elsewhere". As William L. Brach, a recent commentator

has noted, municipalities which construe the precepts of Mt. Laurel as something to be resisted, defeated or at least indeterminately delayed, have drawn together a kit of "development frustrators" such as;

(a) claiming a municipality is not developing;

(b) asking the Court for more time to plan;

(c) constantly making new zoning amendments; and

(d) "camouflage zoning", or calling a district "least cost" which cannot be so developed. (1)

Mr. Brach points out that the real purpose of these "frustrators" is to drive up carrying costs in the hope of victory through attrition. The author also notes that even in the seven communities which have had their land use regulations invalidated under Mt. Laurel criteria, no construction has yet begun; this is still true today.

Accompanying this Brief are Affidavits alleging that the new Bedminster Township Zoning Ordinance represents a giant step backward and is considerably more exclusionary, more cost generating and provides for less multi-family units than the Ordinance invalidated by this Court after a long trial. In addition, Plaintiff believes that it can prove through analysis of the

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(1) Brach, William, L., Esq., "There's a Long, Long Trail Awinding - Mt. Laurel From the Developers View" After Mt. Laurel - The New Suburban Zoning (CUPR, 1977)

ordinance and statements at public meetings by public officials that Bedminster's most recent "effort" is in bad faith and was in fact designed purposefully to preclude development.

Allan-Deane has been in litigation with Bedminster for over six years and the Defendants were correctly advised by the trial Court in February, 1975 as to their responsibility with respect to regional housing needs; that opinion has been sustained on appeal. Bedminster has come forth with two amended ordinances. Defendants submit that if this second package of land use regulations is found to fall short, then the public interest in housing production which will contribute to the alleviation of a severe housing crisis requires a remedy which will assure the production of such housing in the forseeable future.

If judicial review of local exclusionary zoning action is to result in anything more than a farce, courts must be prepared to grant definitive relief. As Mr. Brach recommends:

> "As a practical matter landowners and developers cannot be expected to wait until the millenium arrives in the form of well-conceived legislation. They have a right to build, at least to the extent that the 'general welfare' dictates."
>
> In the first instance, Courts must build into their decisions and applicable orders that which will truly implement the policy enunciated in Mt. Laurel. Having picked

> up the cudgel of Mt. Laurel, the Courts cannot disown the delivery system. High sounding principles can be turned into ashes by simply obstructive tactics. Our judicial system, having written the recipe, should aid those who would attend to baking the cake.

Plaintiff respectfully submits that specific corporate relief is both necessary and appropriate in this case.

The Supreme Court recognized, in the Madison case that;

> "A consideration pertinent to the interests of justice in this situation, however, is the fact that corporate plaintiffs have borne the stress and expense of this public-interest litigation, albeit for private purposes, for six years and have prevailed in two trials and on this extended appeal, yet stand in danger of having won but a phrrhic victory. A mere invalidation of the ordinance, if followed only by more zoning for multi-family or lower income housing elsewhere in the township, could well leave corporate plaintiffs unable to execute their project. There is a respectable point of view that in such circumstances a successful litigant like the corporate plaintiffs should be awarded specific relief. . . .There is also judicial precedent for such action. . . . Such judicial action, moreover, creates an incentive for the institution of socially beneficial but costly litigation such as this and Mount Laurel, and serves the utilitarian purpose of getting on with the provision of needed housing for at least some portion of the moderate income elements of the population." 72 N.J. 552-553.

In requesting specific corporate relief, the Allan-Deane Corporation acknowledges that it is asking this Court to

confer upon it a private benefit based on a public policy and public need and is prepared to take under this court's supervision its share of the public responsibility.

E. James Murar, the President of both Allan-Deane and Johns-Manville Properties, has stated in his Affidavit, with the authority of his Board of Directors, that Allan-Deane is prepared to give an option to a non-profit or limited dividend corporation at a price acceptable under the New Jersey Housing Finance Agency and federal programs to enable such an entity to purchase sufficient land to construct 20% of the units as low or moderate income housing on the Allan-Deane property if specific corporate relief is granted so as to permit the corporation to build under the plan previously filed with the Township and now being filed with this Court. The company will, furthermore, cooperate with such a legal entity and use its best efforts to insure that its financing applications are approved. (See Affidavit of E. James Murar, paragraph 11(a)).

In the event Bedminster Township refuses to cooperate with such an entity and adopt a resolution of need or grant tax abatements (See Oakwood at Madison, supra., page 546 and 547) or these options are not exercised for any other reason, the Plaintiff will agree to market 20% of the units constructed on the site as least cost housing. Thus, the

company is prepared to forego the most profitable utilization of its lands in order to insure that approximately 20% of the housing constructed on its site is constructed and marketed to meet the lowest possible income spectrum of the population.

CONCLUSION

For the reasons set forth above, we respectfully urge this Court to sign the Order to Show Cause.

Respectfully submitted,

MASON, GRIFFIN & PIERSON

By: Henry A. Hill, Jr.
Henry A. Hill, Jr.

Appendix "A"

PROCEDURAL HISTORY

The Procedural History of this case is a matter of court record and can be chronologically summarized as follows:

1. December, 1969 - Allan-Deane formally approached the Township of Bedminster Planning Board and Township Committee with a proposal for the rezoning of its property to permit multi-family uses.

2. August 23, 1971 - After waiting 21 months without response from Defendants, Allan-Deane filed a Complaint in Lieu of Prerogative Writ alleging that the Bedminster Zoning Ordinance was invalid.

3. December 25, 1971 - Allan-Deane applied to the Bedminster Board of Adjustment for variances under N.J.S.A. 40:55-39 (CND).

4. May 26, 1972 - Bedminster Board of Adjustment denied the variance application primarily because the requested changes were so substantial as to require implementation through the Zoning Amendment process.

5. June, 1972 - The Cieswick Plaintiff's filed a Complaint, also alleging the invalidity of the Bedminster Township Ordinances and ought to consolidate it with the pending Allan-Deane acts. This motion was denied, appealed and eventually remanded. See Allan-Deane Corp. v. Township of Bedminster, 121 N.J. Super 288 (App.Div. 1972), remanded 63 N.J. 591 (1973).

6. November 27, 1972 - The trial on the first Complaint is adjourned at Defendants request on their express representation that the Township would rezone.

7. April 16, 1973 - Bedminster Township adopts a new Zoning Ordinance.

8. May 31, 1973 - Allan-Deane files a new Complaint attacking the new ordinance.

9. September 4, 1973 - Bedminster Township adopts minor amendments to new Zoning Ordinance.

10. September 13, 1973 - Allan-Deane's action is consolidated with similar action brought by Cieswick Plaintiffs.

11. March 4 thru March 28, 1974 - Trial of the consolidated action takes place.

12. February 24, 1975 - The Court issued written opinion requiring Defendant to rezone an area which included the Allan-Deane property to comply with standards and goals of the Somerset County Master Plan.

13. October 17, 1975 - The Court issues a supplementary opinion in view of the Supreme Court decision case of Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) and an Order requiring Bedminster to rezone by January 31, 1976.

14. November, 1975 - Bedminster appeals to the Superior Court, Appellate Division.

15. January 29, 1976 - Order of October 17, 1975 is stayed by trial Court pending appeal.

16. January 21, 1977 - The Superior Court, Appellate Division enters per curiam decision affirming the trial Court's decision.

17. May 3, 1977 - Defendants petition for certification to the New Jersey Supreme Court is denied.

18. September 28, 1977 - Order entered

vacating the stay of January 29, 1976 and Defendants ordered to rezone by December 31, 1977.

19. November 14, 1977 - Defendants adopt a new master plan.

20. December 19, 1977 - Defendants adopt a new Zoning Ordinance.

Exhibit "A"

ORIGINAL PAPER FORWARDED
FOR FILING WITH CLERK OF THE
SUPERIOR COURT on

10/20/75

B. THOMAS LEAHY, J.C.C. t/a

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY
Docket Nos. L-36896-70 P.W. &
L-28061-71 P.W.

THE ALLAN-DEANE CORPORATION, et als

Plaintiffs,

v.

TOWNSHIP OF BEDMINSTER, et als.

Defendants.

Civil Action

ORDER FOR 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 a written opinion under date of February 24, 1975, and a supplemental written opinion under date of October 17, 1975, and in accordance therewith;

It is, on this 17th day of October, ORDERED and ADJUDGED that:

1. The Bedminster Township Zoning Ordinance is not valid.

2. The Township of Bedminster is hereby directed to revi its zoning ordinance on or before January 31, 1976, in order tha the same shall comply with state law; said compliance to express include compliance with the mandate of the Supreme Court of New Jersey contained in Southern Burlington County N.A.A.C.P. et als v. Township of Mount Laurel, ___ N.J.___ (1975), Supreme Court of New Jersey, A-11, September Term, 1973, decided March 24, 19

Exhibit "B"

Edward D. Bowlby and
McCarter & English
550 Broad Street
Newark, NJ 07102
(201) 622-4444

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY
Docket Nos. L-36696-70 P.W. and
L-28061-71 P.W.

THE ALLAN-DEANE CORPORATION, et al. Plaintiffs -vs- TOWNSHIP OF BEDMINSTER, et al. Defendants	Civil Action ORDER FOR STAY

The Court having entered its order for judgment, dated October 17, 1975, in which it was ordered and adjudged, among other things, that the Township of Bedminster revise its zoning ordinance on or before January 31, 1976; and

Defendants having seasonably filed a notice of appeal from said order for judgment; and

Application being made and good cause appearing,

It is ORDERED on this 29th day of January, 1976, that so much of the order for judgment dated October 17, 1975 as directed the Township of Bedminster to revise its zoning ordinance on or before January 31, 1976 be and the same is hereby stayed until the final resolution of the appeal and until further order of the Court.

s/ B. Thomas Leahy
B. Thomas Leahy, J.C.C. t/a

We consent to the entry of the foregoing order.

William B. Lanigan
Attorney for plaintiff, Allan-Deano Corporation

Marilyn Morheuser
Attorney for plaintiffs Cieswick, et al.

By Lois D. Thompson
Lois D. Thompson

Edward D. Bowlby and
McCarter & English
Attorneys for Defendants

By Nicholas Conover English
Nicholas Conover English
A Member of the Firm

Exhibit "C"

ORIGINAL HEREOF FORWARDED FOR FILING WITH CLERK OF THE SUPERIOR COURT on

9/29/77

B. THOMAS LEARY, J.C.C. t/a

MASON, GRIFFIN & PIERSON
201 NASSAU STREET
PRINCETON, N. J. 08540
(609) 921-6543
ATTORNEYS FOR Plaintiff, the Allan-Deane Corporation

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

THE ALLAN-DEAN CORPORATION, et al.

Plaintiffs,

vs.

THE TOWNSHIP OF BEDMINSTER, et al.

Defendants.

Civil Action

ORDER VACATING STAY

This matter being opened to the Court upon application by Marilyn Morheuser, Esquire, attorney for the Cieswick Plaintiffs, and by Mason, Griffin & Pierson, attorneys for Plaintiff Allan-Deane Corporation, for an Order vacating and dissolving the Stay entered on January 29, 1976, in the within action, and all parties having agreed thereto;

1. It is ORDERED on this 28th day of September, 1977, that the Stay entered on January 29, 1976, in the above entitled action is hereby vacated and dissolved.

2. It is FURTHER ORDERED that so much of the Order for judgment dated October 17, 1975 as directed the Township of Bedminster to revise its Zoning Ordinance on or before January 31, 1976, be and the same is hereby modified to read as follows:

(1) The Bedminster Township Ordinance is not valid.

(2) The Township of Bedminster is hereby directed to revise its Zoning Ordinance on or before December 31, 1977 in order that the same shall comply with State law; said compliance to expressly include compliance to the mandate of the Supreme Court of New Jersey contained in Southern Burlington County N.A.A.C.P. vs. Township of Mount Laurel, (76) N.J. 151 (1975) and Oakwood at Madison, Inc. vs. Township of Madison, 72 N.J. 481 (1977).

3. It is FURTHER ORDERED that no further extension shall be granted by this Court.

B. Thomas Leahy J.C.C. t/a

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SOMERSET COUNTY
L. R. OLSON, CLERK

-36896-70

MASON, GRIFFIN & PIERSON
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ATTORNEYS FOR Plaintiff, the Allan-Deane Corporation

P.W.

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

THE ALLAN-DEANE CORPORATION, et al., Plaintiffs,	Civil Action
THE TOWNSHIP OF BEDMINSTER, et al., Defendants.	AFFIDAVIT OF JOHN RAHENKAMP IN SUPPORT OF ORDER TO SHOW CAUSE

RULS - AD - 1978 - 30

STATE OF NEW JERSEY)
) ss:
COUNTY OF MERCER)

JOHN RAHENKAMP, residing at 166 Saint Andrews Street, Mount Laurel, New Jersey, duly sworn, upon his oath, deposes and says:

1. I am president of RSWA, Inc., land use planning consultants.

2. I graduated from Michigan State University with a Bachelor of Science in Landscape Architecture and Urban

Planning; and from the University of Pennsylvania with a Master of Landscape Architecture and Regional Planning.

3. I am a member of the American Institute of Planners and the American Society of Landscape Architects.

4. I have taught at both the University of Pennsylvania and Drexel University as well as instructing planning courses sponsored by the American Institute of Planners.

5. I have written numerous published articles regarding land use and housing including:

> "Community Places for Peopel", in Papers from a Symposium on Land Use Planning, Design and Management, (Lubbock, Tex.: Texas Tech University, 1974), pp. 57-92.
>
> "Contour Clustering Is a Better Way to Create Open Space, and It Can Cut Costs Too", House and Home (39)5, May 1971, p. 68.
>
> "Economics of Land Use", Public Decision Making in Land Use Control: Ethics and Economics. Proceedings of the Fourth Environmental Leaders' Life Sciences and SUNY College of Environmental Science and Forestry, New Paltz, New York, April 4, 1975.
>
> "Every Suburb Can Absorb a Share of Lower-Cost Housing - and With a Minimum of Impact. . .the Answer Lies in Making Sure It's on a Fair-Share Basis", House and Home 41(5), pp. 30-32.
>
> "Fair Share Housing for Managed Growth", Land Use Law and Zoning Digest 27(6), 1975, pp. 30-32.

"Land Use Management", in National Growth: A Compendium of Papers (McLean, Va.: American Society of Landscape Architects, 1974), pp. 5-8.

"Land Use Management: An Alternative to Controls", in Future Land Use: Energy, Environmental, and Legal Constraints, edited by Robert W. Burchell and David Listokin (New Brunswick, N.J.: Center for Urban Policy Research, Rutgers University, 1975), pp. 191-199.

"Low Density, Per Se, Doesn't Hold Water as an Ecological Measuring Cup. . .A Better Criterion Is the Effect of Impervious Land Cover on Soil Absorption", House and Home 42(5), November 1972, p. 62.

6. I have provided expert testimony, and have been qualified as an expert witness on housing, planning, zoning and land use issues in a number of cases throughout the country including the following recent cases in New Jersey:

Round Valley, Inc. v. Township of Clinton, 1977

South Jersey Homebuilders League v. Township of Berlin et. al., 1977

7. In preparation for testimony in this action, I have analyzed the Zoning Ordinance passed by Bedminster Township on December 19, 1977, together with the Subdivision and Site Plan Ordinances and have reviewed numerous site plan designs prepared in an attempt to comply with the new Zoning Ordinance.

8. Based on this analysis, I have concluded that Bedminster Township's new Zoning Ordinance does not represent

a bona fide effort toward the elimination of exclusionary or undue cost generating requirements so as to provide the opportunity for the construction of its fair share or regional housing needs and/or of least cost housing. This general conclusion is based on the following specific conclusions.

a. Bedminster makes no provisions for planned developments, as established by the Municipal Land Use Law, and in spite of one of the expressly stated purposes of the Municipal Land Use Law being "to encourage planned unit developments" (section 40:55D-2).

b. Bedminster permits Open Space Cluster and Compact Residential Clusters, but discourages residential clusters by not including the procedural requirements and the type of standards required for planned development by Article 6 and Section 40:55D-65 of the Municipal Land Use Law.

(1) Section 40:55D-6 of the Municipal Land Use Law specifically defines "planned development" as including "residential clusters".

(2) As stated by the court in Round Valley v. Township of Clinton:

"While the ordinance lists a "Planned Development" (PUD or PURD) as a discretionary content for a municipal land use ordinance, it is important to point out that, once a municipality does provide for such planned developments, it must comply with the provisions of the statute. See Niccollai v. Planning Board of the Township of Wayne, 148 N.J. Super. 150 (App.Div. 1977)."

(3) Yet, Bedminster's ordinance concerning planned developments does not set forth any procedure for findings by a Planning Board with respect to such developments, as required by NJSA 40:55D-45. Thus, there are no standards to allow for departures from zoning regulations which would otherwise apply and no provisions for findings to protect both the residents and owners of the proposed development until completion of the development (the "right of vesting") as required by NJSA 40:55D-45.

(4) Further, the ordinance does not set forth variations from ordinary standards for the preliminary and final approval of PUDs, as required by NJSA 40:55D-39.

c. Bedminster unduly restricts density by eliminating areas of slopes of 15%+ from both development and calculations of the floor area ratio on adjacent land.

(1) This is in direct contradiction to Bedminster's 1977 Master Plan which states that "in fairness to private owners" the "inclusion of minimal credit in the gross floor area ratio calculations for the usable (non-critical) land on the same parcel or on one immediately adjacent in the critical parcel" should be permitted. The township's plan goes on to state that "this is justified because the increased number of residences on the non-critical land will enjoy and benefit from the light, air and view resulting from the immediately adjacent and visible open space".

(2) Moreover, in Mt. Laurel, the court's opinion stated that for environmental factors "to have a valid effect, the danger and impact must be substantial and very real (the construction of

every building or the improvement of every plot has some environmental impact) not simply a makeweight to support exclusionary housing measures or preclude growth".

d. Bedminster's density restrictions are not based on sound environmental considerations.

(1) The 1977 Bedminster Master Plan says that zoning densities are to be limited to those which "will permit on-site waste disposal without degradation of the water quality" even though the township Master Plan acknowledges that the extent to which the North Branch of the Raritan River can or should accept additional effluent without causing degradation of the water quality has not been determined by the township.

(2) Many methods of sewage disposal are possible; a better environmental criteria is the amount of impervious coverage, with adequate and defensible performance standards.

e. The bedroom and mix requirements clearly prevent

a great many housing types, notably those of least cost. Bedminster prohibits any efficiency units (section 10-3.2) and limits garden apartments to 1-bedroom units (schedule A footnote 4). No provision is made for housing units with more than 4 bedrooms in Village Neighborhood or Compact Residential Cluster developments. Presumably, twin houses are subject to the large lot requirements for "single lots", i.e., lots with diameter dimensions of 300', 185', 125', 75' and 60' in R-3, R-6, R-8, R-12 and R-25 districts respectively. Consequently, least cost housing of moderate to large size units are, in particular, not allowed. Least cost housing in the form of efficiency units, two or more bedroom garden apartments, or four or more bedroom townhouses is actually prohibited, while the required balance of units by number of bedrooms ensures that at least 25% of cluster developments will be relatively expensive twin or detached houses and not more than 35% will be apartments.

f. Permitted densities are too low to encourage least cost housing. The only possible exception is in Compact Residential Clusters,

however, only a maximum of 300 units are permitted in all Compact Residential Cluster developments combined.

g. Gross floor area requirements are also excessive and preclude least cost housing.

The U.S. Department of Housing and Urban Development provides minimum floor areas on a room-by-room basis. These standards are reproduced below:

MINIMUM ROOM SIZES

Minimum Room Sizes for Separate Rooms

Name of Space	Minimum Area (Sq. Ft.) LU with 0-BR	LU with 1-BR	LU with 2-BR	LU with 3-BR	LU with 4-BR	Least Dimension
LR	NA	160	160	170	180	11'0"
DR	NA	100	100	110	120	8'4"
BR (Primary)	NA	120	120	120	120	9'4"
BR (Secondary)	NA	NA	80	80	80	8'0"
Total areas, BRs	NA	120	200	280	380	-----
OHR	NA	80	80	80	80	8'0"
TOTAL	NA	460	540	640	760	

Minimum Property Standards for Multi-Family Housing (Washington: U.S. Department of Housing and Urban Development, 1973), p. 4-9f.;

Minimum Property Standards for One and Two-Family Dwellings, (Washington: U.S. Department of Housing and Urban Development, 1973), p. 4-6f.

h. The code imposes many undue exactions on developers:

(1) Fees: Subdivision Fees are:

$50 for sketch

$50 for design, plus $10 for each lot

$100 for construction, plus $20 for each lot, plus $300 per lot if new street improvements are involved, and

$100 for final, plus $10 per lot

For a 100 unit development, this amounts to $34,300 or $343/unit! In addition, cluster developments are required to receive site plan approval for which the fee is $50 per acre, plus 2 cents per square foot. On a 50 acre parcel with 100 units, at an average 1561 square footage, this amounts to $5622 or an additional $56.22 per unit!

In Round Valley, Inc. v. Township of Clinton, the assessment of fees on a $10 per lot basis was cited as an illegal exaction.

(2) Excessive minimum square footage requirements (see above).

(3) Excessive parking requirements (1 parking space per bedroom - sections 16.1 and 11.6.4.).

(4) Excessive screening requirements for parking lots (section 11.6.7).

(5) Excessive open space maintenance performance guarantee required by developer (section 12.1.1).

(6) Excessive limitation on the number of units in a development (150 unit maximum in R-20 and R-30) which requires developer to undertake separate approval processing for each 150 unit segment of his development.

(7) Excessive procedural requirements including a four (4) stage subdivision review (sketch, design, construction and final) plus site plan review and an Environmental Impact Statement. In Madison, the court held that a three stage approval process was "protracted" and "unduly cost generating".

(8) Excessive righ-of-way widths for internal roads (70 feet if parking, 60 feet without parking).

JOHN RAHENKAMP

Sworn to and Subscribed Before Me this 15th day of March, 1978.

Jerene V. Myrick

JERENE V. MYRICK
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MARCH 19, 1978