

RULS-AD-1979-160

6/12/1979

- LETTER FROM HILL TO FERGUSON (2)
- LETTER FROM MALLACIT TO HILL (2)

PGS - 4

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June 12, 1979

McCarter & English  
550 Broad Street  
Newark, New Jersey 07102

Attention: Alfred L. Ferguson, Esq.

Re: Allan-Deane vs. Township of Bernards  
Docket No. L-25645-75 P.W.

Dear Mr. Ferguson:

In accordance with my letter to you of March 26, 1979, please find enclosed a copy of Alan Mallach's letter to me of June 6, 1979, setting forth the results of his Bernards' fair share analysis.

We will not request additional written reports from Mr. Mallach as we are as familiar as you are with his methodology.

We may request him, however, to furnish housing need figures for persons making between 120% and 200% of median income, or about \$22,500 to \$40,000. This was the group which you may recall, from the Bedminster testimony, Mr. Mallach identified as Group 3 or the "upper middle income" group which could not find housing in some municipalities in the region and which could not, unfortunately, find housing in Bedminster. If we find that Group 3 is also excluded largely from Bernards Township we will compare Mallach's housing need by income group with zoned capacities using a chart similar to that prepared for Bedminster (P-58).

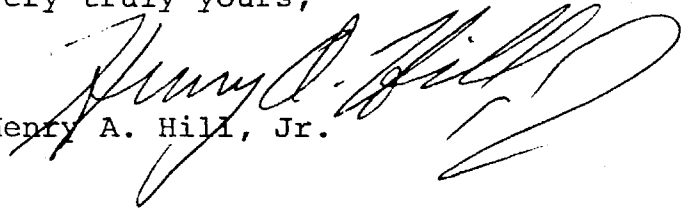
These preliminary numbers, as Mr. Mallach emphasizes, do not include any cushion over Bernards' formulaic fair share. This fair share must be, as Mr. Mallach points out, significantly exceeded in actual zoning capacity by the municipality.

We would appreciate it if you would advise us when Bernards intends to rezone in conformance with Judge Gaynor's Opin-

Alfred L. Ferguson, Esq.  
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ion in Austin vs. Bernards Township. It is clear to us that this Opinion has ramifications which go considerably beyond the zoning of the particular property or the specific plaintiffs and the Court's reasoning also invalidates the large lots residential zoning of substantial other areas of the Township within the State Development Guide growth area designation which, like the Austin plaintiffs' property, are within 2,000 feet of Interstate 287 and 78. We believe that the rezoning that the Township will be required to undertake in order to conform with this Opinion will be more relevant to the Allan-Deane litigation than the zoning change resulting from the Lorenc settlement and will be so extensive as to require additional substantial multi-family areas. We would therefore appreciate it if you would advise us, as much in advance of the trial as possible, as to what additional areas along Interstate 287 and 78 Bernards intends to rezone for commercial, office and industrial uses in conformance with this Opinion.

Very truly yours,

  
Henry A. Hill, Jr.

HAH/vwa  
Enclosure

cc: Dean A. Gaver, Esq.

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June 6, 1979

Henry A. Hill, Jr., Esq.  
Mason, Griffin & Pierson  
201 Nassau Street  
Princeton, New Jersey 08540

Dear Henry:

At your request I have reviewed the relevant information in order to determine the level of a fair share of low and moderate income housing for Bernards Township, that would be reasonable and in keeping with the direction of the Mt. Laurel and Madison decisions. Based on my analysis summarized below, I have concluded that a reasonable fair share allocation for Bernards Township of low and moderate income housing through 1990 should fall within a range from 2000 to 2600 dwelling units.

I have reviewed the methodology that I applied in the Bedminster litigation, and believe that it is still a legitimate, straightforward, approach; in other words, it incorporates all factors essential to a fair share analysis, does so in a sound and uncomplicated fashion, and includes no redundant elements capable of 'cluttering' what is, after all, an essentially straightforward concept. I believe a few comments, however, may be appropriate.

With regard to region, I believe that the four county region, to which reference has been made (Essex, Morris, Union, and Somerset) is not a logically defensible region for fair share purposes, despite its use in other contexts. Although there is a reasonable balance of housing need (in Essex and Union Counties) and the potential to meet needs (in Morris and Somerset) in that 'region', by excluding Hudson County it essentially makes it impossible to meet the housing needs located there; i.e., a somewhat arbitrary housing region made up of Hudson, Bergen, and Passaic Counties would have a substantial excess of need relative to the vacant land and other resources available to meet that need.

In other words, the principal future resource of Northeastern New Jersey - Morris and Somerset Counties (and to a lesser degree, Middlesex County) - must be linked to Hudson County in a single region if the latter's housing needs are ever to be meaningfully met. For this reason, either the eight county region used by the Division of State

Henry A. Hill, Jr., Esq. (2)

June 6, 1979

& Regional Planning (adding Bergen, Hudson, Middlesex, and Passaic), or the nine county region (to the above adding Monmouth) is clearly preferable.

Since Monmouth County adds a substantial resource of vacant land, without adding a comparable housing need, to the region, it has the effect of reducing the fair share allocations in the other counties. As a result, my estimate is that under the 8 county region Bernards Township's fair share would be in the area of 2600 units, and under the 9 county region, in the area of 2100 units.

It should be stressed that this figure deals only with the present and prospective need for housing for low and moderate income households; as used here, households with family incomes under 80% of the median income in the region. It does not include the large number of households whose incomes may be above that level, yet still well below what it takes today to afford housing in Bernards Township, or for that matter, in most or all of suburban northern New Jersey. It seems clear that the 'least cost' language of the Madison decision calls for taking the needs of this population, which may include families with incomes as high as 120% of the regional median income, into consideration. To do so in the context of Bernards Township may call for increasing the fair share goal by 1300 to 1600 housing units.

In addition, although not strictly speaking part of the fair share allocation process, the need for overzoning, as spelled out in the Madison decision, must be emphasized. If only that number of units that is determined to be the fair share allocation is provided through the rezoning of vacant and developable land, the likelihood of achieving the fair share goal is virtually nonexistent. The many factors that can work against that goal - the reluctance of owners to sell, the use of land for other purposes, the occupancy of 'least cost' units by affluent households seeking to economize, etc. - dictates that overzoning be by a considerable margin. Thus, the fair share is only a starting point, and must be significantly exceeded in actual zoning capacity by the municipality.

Please let me know if you have any questions.

Sincerely,  
  
Alan Mallach

AM:ms  
cc: Dean Gaver, Esq.