RULS- AD- 1979 ~ 60
?/?/1979

Supplemental Appendix ~~to~~ Brief on Notice of Motion for Partial Summary Judgment

Pg. 42

THE ALLAN-DEANE CORPORATION, a Delaware corporation, qualified to do business in the State of New Jersey, Plaintiff, vs. THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, a municipal corporation of the State of New Jersey, et al., Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, SOMERSET COUNTY DOCKET NO. L 25645-75 P.W. Civil Action

RULS - AD - 1979 - 60

SUPPLEMENTAL APPENDIX TO BRIEF ON NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT

McCARTER & ENGLISH
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Attorneys for Defendants, Township of Bernards

INDEX

S-11203

FILED

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SOMERSET COUNTY
L. P. OLSEN, CLERK

ORIGINAL HEREOF FORWARDED FOR FILING WITH CLERK OF THE SUPERIOR COURT on July 1, 1976

A. THOMAS LEAHY, J.C.C.

Entd ✓ I. C. D. H.

Recorded Bk. Page

LAW OFFICES OF
LANIGAN AND O'CONNELL
A PROFESSIONAL CORPORATION
59 SOUTH FINLEY AVENUE
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(201) 766-5270
ATTORNEY FOR Plaintiffs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NOS. L-6237-74
S-11203 P.W.

THEODORE Z. LORENC, et al., Plaintiffs,	:	Civil Action
vs.	:	
THE TOWNSHIP OF BERNARDS, et al.,	:	ORDER
Defendants.	:	

This matter having been brought before the Court on Notice of Motion pursuant to Rule R.4:38-2(a) separating for the purposes of trial the issues relating the validity of Ordinance No. 347, as applied to plaintiff's property from the issues relating to the validity of the Bernards Township

Zoning Ordinance as a whole, and requesting that the trial initially be limited to the issues relating to Ordinance No. 347, in the presence of McCarter & English, Nicholas Conover English, Esq., appearing, and Richard J. McManus, Esq., attorneys for defendant Township of Bernards, and William W. Lanigan, Esq., attorney for plaintiffs; and the Court having considered the remarks of counsel and good cause appearing;

It is hereby Ordered on this 30th day of June, 1976, that such motion be and the same hereby is denied.

B. Thomas Leahy, J.S.C. (t/a)

We hereby consent to the form of the foregoing.

William W. Lanigan, Esq.
Attorney for Plaintiffs

McCARTER & ENGLISH
Attorneys for Defendants

By: Nicholas Conover English
Nicholas Conover English

Richard J. McManus, Esq.
Attorney for Defendants

S-1290

FILED

JUN 10 12 35 PM 1975

SOMERSET COUNTY
L. R. OLSON, CLERK

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

6/7/76

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

cnt'd ✓ I. C. D. ____

Recorded Bk. ____ Page ____

MASON, GRIFFIN & PIERSON
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(609) 921-6543
ATTORNEYS FOR Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L 25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a Delaware corporation, qualified to do business in the State of New Jersey, Plaintiff, vs. THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, a municipal corporation of the State of New Jersey, et als, Defendants.	Civil Action ORDER

THIS MATTER having come before the Court on motion by McCarter & English, Attorneys for Defendants, the Township of Bernards, the Township Committee of the Township of Bernards, and the Planning Board of the Township of Bernards, and the Court having reviewed the Complaint, the Briefs submitted by counsel and the argument of counsel;

IT IS on this 17th day of June, 1976, ORDERED as follows:

1. The Motion to Dismiss the Complaint on the grounds that the Complaint fails to state a cause of action, the plaintiff has no standing, and plaintiff has failed to join indispensable parties is denied without prejudice to defendants to renew their motion, after discovery, on the grounds that plaintiff lacks standing;

2. Plaintiff will be permitted to amend its Complaint and to include the Somerset County Planning Board as a party, providing such amendment is filed no later than ten (10) days following the Court's oral decision on this motion;

3. Defendants, the Township of Bernards, the Township Committee of the Township of Bernards and the Bernards Township Planning Board, are hereby granted a 30-day extension of time, which 30 days shall begin on April 30, 1976, to file their answer to the Complaint, or if plaintiff files an Amended Complaint, to the Amended Complaint.

B. THOMAS LEAHY, J.C.C. J.S.C.

FARRELL, CURTIS, CARLIN, DAVIDSON & MAHR
43 Maple Avenue
P.O. Box 145
Morristown, New Jersey 07960
(201) 267-8130
Attorneys for Defendants-Appellants
and Cross-Respondents

SUPREME COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET No. A-2718-77

THEODORE Z. LORENC, LOUIS J. HERR, SAM WISHNIE, MARION WISHNIE, Executrix of the Estate of Harry Wishnie, deceased, ALICE J. HANSEN, Trustee, WILLIS F. SAGE, WILLIAM W. LANIGAN and MERWIN SAGE,

Plaintiffs-Respondents and Cross-Appellants,

v.

THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, a municipal corporation of the State of New Jersey, and THE PLANNING BOARD OF THE TOWNSHIP OF BERNARDS,

Defendants-Appellants and Cross-Respondents.

Civil Action

NOTION OF MOTION FOR LEAVE TO APPEAL TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

TO: Messrs. Lanigan, O'Connell & Hirsch
150 North Finley Avenue
Basking Ridge, New Jersey 07920

SIRS:

PLEASE TAKE NOTICE that the undersigned, attorneys for Defendants-Appellants and Cross-Respondents, The Township of Bernards and the Planning Board of the Township of Bernards,

hereby make application to the Supreme Court of the State of New Jersey for leave to appeal from the decision entered by the Superior Court of New Jersey, Appellate Division, in this cause, on December 11, 1978.

PLEASE TAKE FURTHER NOTICE that in support of the within motion we will rely on the brief filed together with this Notice of Motion.

FARRELL, CURTIS, CARLIN,
DAVIDSON & MAHR

By James E. Davidson
James E. Davidson
43 Maple Avenue, P.O. Box 145
Morristown, New Jersey

Attorneys for Defendants-Appellants and Cross-Respondents, Township of Bernards and the Planning Board of the Township of Bernards.

I hereby certify that the foregoing Motion presents substantial questions and that it is filed in good faith and not for the purpose of delay.

FARRELL, CURTIS, CARLIN,
DAVIDSON & MAHR

By James E. Davidson
James E. Davidson

IN THE

SUPREME COURT OF NEW JERSEY

THEODORE Z. LORENC, LOUIS J. HERR, SAM WISHNIE, MARION WISHNIE, Executrix of the Estate of Harry Wishnie, Deceased, ALICE J. HANSEN, Trustee, WILLIS F. SAGE, WILLIAM W. LANIGAN and MERWIN SAGE,

Plaintiffs-Respondents

v.

THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, a municipal corporation of the State of New Jersey, and THE PLANNING BOARD OF THE TOWNSHIP OF BERNARDS,

Defendants-Petitioners.

ON PETITION FOR CERTIFICATION TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

SAT BELOW: Lynch, Crane & Horn, JJA.D.

PETITION FOR CERTIFICATION AND SUPPLEMENTAL APPENDIX

FARRELL, CURTIS, CARLIN,
DAVIDSON & MAHR
43 Maple Avenue, P.O. Box 145
Morristown, New Jersey 07960
Attorneys for Defendants-
Petitioners, Township of Bernards

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INDEX TO APPENDIX

SDa refers to Defendants-Appellants, Cross-Respondents supplemental appendix.

STATEMENT OF MATTER INVOLVED

TO the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey,

Defendant-Appellant, Township of Bernards, respectfully shows:

This matter involves an action by plaintiffs attacking an amendment to the zoning ordinance of defendant-appellant, Bernards Township which created a planned residential neighborhood zone (hereinafter referred to as PRN) located in the southern portion of the Township and also the entire Township zoning ordinance on the alleged grounds of being exclusionary.

The Trial Court and the Appellate Division directed the municipality to increase its density in the PRN zone to meet the decisions of Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975); Oakwood at Madison v. Tp. of Madison, 72 N.J. 481 (1977).[1/] The municipality contends that another zone (the BRC zone) provides for low and moderate income housing (least cost) and that the appropriate variety and type of housing is provided in the zone plan.

STATEMENT OF FACTS

Bernards Township is 23.5 square miles and is located in the north central area of the state 28 miles due west of

1/ This Petition is being filed on the theory that the judgment of the Appellate Division is a final judgment because it directs the municipality to amend its zoning ordinance to increase the density in the PRN zone, thereby deciding the matter as to all parties. The remand is supplementary thereto and does not affect the finality of the Court's mandate. Compliance by the municipality would result in mooting the issues set forth herein and prevent appeal.

New York. In 1970, it had population of 13,305 and current population is estimated to approximate 14,000. (D18a-15)

Most of the existing development in the Township is located in and between the villages of Basking Ridge and Liberty Corner (Ex. P-26, maps following pp. 6 and 11, D49a) and is served to a considerable extent by an existing sewer system (Ex. P-26, p. 28 and following map, D49a). The serviced area includes the 2-A, R-40, R-30 and R-20 residential zones. The 3-A (3-acre) residential zone covers the west and south area of the Township and a portion of the 3-A zone lies east of Basking Ridge and is largely occupied by a golf course, municipal and county parks, and floodplain.

The zoning ordinance also permits a PRN zone (the zone under attack in this matter), which provides for various types of housing at medium density, and a BRC zone, which is a floating zone intended to provide the municipality with its fair share of "least cost" housing. Additionally, a small percentage of the land is zoned to permit office-lab and business.

A

BRC ZONE

The BRC zone as now set forth in Ordinance #425[1/] (SDa6) (and formerly in Ordinance #385) permits low and moderate income balanced residential complexes to be located in resi-

1/ Ordinance #425 (and other later relevant zoning amendments) have been included in Petitioner's appendix to be considered by the Court. S & L Associates v. Tp. of Washington, 35 N.J. 224 (1961)

dential zones 2-A, R-40, R-30 and R-20. The ordinance was adopted for the purpose of complying with Mount Laurel and Oakwood at Madison and to permit the construction of least-cost housing as therein defined throughout a substantial part of the Township. The BRC's are floating zones and there are a number of available sites throughout the Township for such zones. (November 29, 1976 T105-15; Ex. D-79; D301(a)). The ordinance permits up to 531 of such units to be approved within the Township in complexes ranging from 75 units to 150 units. A complex may include single-family houses, on lots as small as 6,000 square feet; twin houses; town houses; and, multiple family dwellings. The minimum gross site area (excluding access and other major roads) for a 150 unit complex is 25 contiguous acres. The gross site area is proportionately reduced for complexes of lesser size and can be as small as 12 1/2 acres for a 75 unit complex.

The ordinance (in attempting to comply with Mount Laurel and Oakwood at Madison) provides for distribution of dwelling unit size to be consistent with the demography of the area from time to time. (Ord. #425, §2(k); SDa 6)

B

PRN ZONE

The Planned Residential Neighborhood ("PRN") zone established by Ordinance No. 347 (Ex. D-49, D221a), is not designed for low and moderate income, nor least cost housing. Approximately half of the PRN zone is floodplain. (Ex. P-46; D51a; Ex. P-26, map following p. 11, D49a). The PRN Ordinance

controls density or intensity of land use by prescribing the floor area ratio ("FAR") i.e., the ratio between the area of all floors in buildings (including garages and outdoor parking spaces) and the area of the tract on which the buildings are located, rather than by the minimum size of the lot per dwelling unit (Ex. P-26, p. 13; D49a).[1/]

The PRN Ordinance calls for a PRN to have approximately an equal percentage of 1, 2, 3 and 4 or more bedroom units (Ex. D49, Par. 3(b) (4)(ii); D221a); the purpose is to meet the demographic needs of the population (e.g., childless young couples, older couples and smaller families) (July 1, 1976 T114-4 to T117-1; November 8, 1976 T46-5 to T49-171; Ex. P-26 pp. 8 and 15 (D49a); Since the FAR determines the density of development, the number of dwelling units per acre is necessarily related to the size of the individual units.

Under the PRN Ordinance, after taking into consideration the floor area ratio and other regulations, 1.39 dwelling units per gross site acre (i.e., which includes unbuildable floodplains) are permitted in the PRN-6 zone, and 1.86 dwelling units per gross site acre are permitted in the PRN-8 zone (Ex. P-46, D51a). However, since about half of the PRN zones are floodplain (lands which are otherwise marginally usable if at all), the permitted density of those portions which are actually buildable is approximately

1/ There are actually two PRN zones, PRN-6 and PRN-8. The number refers to the FAR percentage in each zone.

double those figures, or 2.78 and 3.72 units per acre.

As indicated above, the PRN zones were enacted prior to Mount Laurel and Oakwood at Madison and are not intended as a response to those decisions. The zones are intended to permit the clustering of developments at a medium density and includes single-family dwellings, town-houses, twin houses, condominiums and other similar type dwelling units on land which is marginal in nature due to the existence of the flood plain throughout a substantial portion of the zones. The zones were intended as a sound and reasonable development technique for that particular piece of property.

QUESTIONS PRESENTED

(1) Whether, where a municipality has amended its zoning ordinance to comply with Mount Laurel and Oakwood at Madison and has made provision for its fair share of least cost housing, the decision of the Trial and Appellate Courts below invalidating the density regulations in another non-Mount Laurel zone without any finding that those invalidated regulations were arbitrary and in the face of strong, unchallenged evidence that such regulations were, in fact, designed for the public health and welfare, is in direct conflict with this court's decision in Mount Laurel and Oakwood at Madison and subsequent cases interpreting them.

(2) Whether the Trial and Appellate Courts' decision below that undisputed environmental evidence was not a relevant

consideration for a court in reviewing a municipality's zoning provisions, but was the sole concern of the Department of Environmental Protection and the Environmental Protection Agency, is in direct conflict with this court's decision in Mount Laurel and Oakwood at Madison.

(3) Whether even if, arguendo, certain of a municipality's zoning regulations are found to be contrary to the cost-generating requirements of Mount Laurel and Oakwood at Madison, the remedy of the Trial and Appellate Courts below directing the municipality to increase the dwelling unit density in the non-Mount Laurel zone is an improper invasion of the municipality's legislative function and is in direct conflict with well-established standards of judicial deference in this State, recently reaffirmed in Mount Laurel, Oakwood at Madison and Pascack Association, Ltd. v. Washington Township Mayor & Council, 74 N.J. 470 (1970).

ERRORS COMPLAINED OF

The Petitioner contends that the Appellate Division and trial courts determinations are contrary in several respects to Mount Laurel and Oakwood at Madison cases and other cases interpreting those decisions. The Petitioner contends that it has adequately made provision for its fair share of least cost housing as shown by the unchallenged evidence at trial and (1) that in that circumstance the decision of the lower courts directing the Township to increase the density in a non-Mount Laurel zone is improper; (2) that

the failure of the lower courts to consider undisputed evidence relating to the environmentand location of the flood plain in the PRN zone is improper; and (3) that a remedy directing the municipality to increase its density in a specific zone in order to comply with Mount Laurel is an improper invasion of the municipality's legislative function.

REASONS WHY CERTIFICATION SHOULD BE ALLOWED

The Petitioner contends that the determination of the lower courts are contrary to Mount Laurel and Oakwood at Madison and that a decision or clarification of the issues is necessary for the orderly administration of the problems that have arisen in complying with the dictates of such cases.

COMMENTS WITH REGARD TO APPELLATE DIVISION OPINION AND ANALYSIS OF COURTS' DECISION BELOW

At the trial level, the court entered judgment in favor of plaintiffs to the extent and in particulars as set forth in letter opinion of the court dated January 23, 1978. (D16a) The court, after reviewing the Township's zone plan and its efforts to zone in compliance with Mount Laurel and the Township's method of estimating its fair share of low and moderate housing, concluded as follows:

> "Viewing the Bernards Township zoning ordinance broadly and weighing its general principles, this court finds it to be a basically sound and valid enactment reflecting a reasonable resolution by the municipal officials

> of the various interests and goals which must be accomodated when such a document is drafted and enacted. The ordinance provides for a variety of nonresidential uses; it designated certain portions of the municipality for large lot single family dwelling use; it provides for multi-family housing and for some low and moderate income family housing. The judgment of the responsible municipal officals should be respected and this court has no right to substitute its judgment for theirs in matters that are properly subject to diverse opinions and judgments under the constitution and statutes of this State. Bow and Arrow Manor v. Town of West Orange, 63 N.J. 335, 343 (1973); Vickers v. Tp. Com. of Gloucester Tp., 37 N.J. 232, 242 (1962), cert. den. and app. dism. 371 U.S. 233, 83 S. Ct. 326, 9 L.Ed. 2d 495 (1963); Kozesnik v. Montgomery Tp. 24 N.J. 154, 167 (1957). (D21a)

Notwithstanding this conclusion, the court found that some provisions of the ordinance rendered it impossible to introduce into the Township that appropriate housing mandate by Mount Laurel and least-cost housing mandated by Oakwood at Madison. These included:

(a) the requirement in both the PRN and BRC zones that multi-family dwellings must be served by public sewers was unreasonable. This requirement has since been removed by an amendment to the Bernards Township zoning ordinance. (SDa9)

(b) Various sections of the PRN ordinance and BRC ordinance repose discretionary authority without expressing objective standards. The relevant sections of the ordinance have since been amended to comply with

the court's decision. (SDa7)

(c) The minimum floor area as required by the PRN ordinance (but not the BRC ordinance) combined with the Schedule of Size and Space Regulations limit the number of dwelling units to be located per acre in the PRN 6 and PRN 8 zones. The court found that this was contrary to Mount Laurel and Oakwood at Madison. (D24a)

The court apparently assumed that the density in the PRN zones must comply with Mount Laurel and Oakwood even though the Township did not intend them to comply with Mount Laurel and Oakwood at Madison (since compliance is achieved by the BRC floating zones).

The Appellate Division found that the PRN regulations created a density in the zones which did not comply with Mount Laurel and Oakwood at Madison without regard to the consideration that the PRN zone is not intended to be "least cost" housing nor to effect the municipality's fair share of such housing. (SDa1) The Appellate Division instructed the trial court to direct the municipality to increase the density in the zones. (SDa4)

ARGUMENT

POINT I

THE MANDATE OF MOUNT LAUREL AND OAKWOOD AT MADISON IS THAT A DEVELOPING COMMUNITY PROVIDE IN ITS ZONING REGULATIONS FOR ITS FAIR SHARE OF LOW AND MODERATE INCOME (OR LEAST COST) HOUSING.

The duty of a developing municipality, in designing its land use scheme, was outlined in Southern Burlington County N.A.A.C.P., et al. v. Township of Mount Laurel,

67 N.J. 151 (1973). That court required the municipality to "make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income." More specifically, the Supreme Court in Mount Laurel held that a developing municipality, in its zoning regulations, must affirmatively afford the opportunity for low and moderate income housing to the extent of the municipality's fair share of the present and prospective regional needs therefor. The Mount Laurel court devised no formula for estimating "fair share", but left the matter to the municipality to apply the expertise of the "municipal planning advisor, the city planning boards and the state planning agencies." (Id. at 190)

In Oakwood at Madison v. Township of Madison, 72 N.J. 481 (1977), the Supreme Court grappled with many of the questions raised by the Mount Laurel decision and attempted to explicate the judicial role in determining whether a municipality has made provision, in its zoning ordinance, for a fair share of the region's low and moderate income housing. The court directed that trial courts, in reviewing the constitutional validity of a local ordinance, give attention "to the substance of the zoning ordinance under challenge and the bona fide efforts towards the elimination or minimization of undue cost-generating requirements in respect of reasonable areas of a developing municipality." (Id. at 499).

The court, recognizing that in the absence of governmental subsidization private enterprise is unlikely to build housing within the financial reach of low and moderate income families,

adjudged that it was at least incumbent upon the municipality "to adjust its zoning regulations so as to render possible and feasible 'least-cost' housing." (Id. at 512). Least cost housing is that housing which is consistent with mininum health and safety requirements, yet unfettered by unnecessary cost-generating requirements. (Id. at 512). The logic behind this requirement is the hope that building new housing within the reach of moderate income families will have a beneficial "filtering down" impact on housing for lower income families.

POINT II

UNDISPUTED EVIDENCE INDICATED THAT BERNARDS TOWNSHIP SATISFIED THE FAIR SHARE REQUIREMENTS OF MOUNT LAUREL AND OAKWOOD AT MADISON BY MEANS OF ITS BRC ZONE.

Based on the courts' mandates in Mount Laurel and Oakwood, Bernards Township sought to develop a land use scheme which would meet the municipality's obligations for least cost housing based on its projected fair share of low and moderate income units. The mode of analysis used in arriving at a number of 350 units for the Township's fair share obligation for least cost housing for the ensuing six years went unchallenged at trial and was, in fact, commended by the trial judge as a "conscientious effort through a rather sophisticated method to reach what can be argued as a reasonable figure as to the number of low and moderate income housing units for which Bernards Township should currently be expected to provide through its zoning and planning ordinances." (Da 20) As already mentioned, no evidence rebutting this analysis or its conclu-

sion was proffered at trial, nor has the fair share allocation ever been challenged.

Bernards Township's response to its fair share obligations, as those obligations were outlined in Mount Laurel and Oakwood, is its BRC Ordinance #425.(SDa6) The BRC Ordinance, as discussed above, is a bona fide attempt by Bernards Township to make provision for up to 531 units of least cost housing, 50% more than the projected fair share of the municipality. All kinds of housing, multi and single family, of all sizes, with allowed densities of up to six dwelling units per acre, are permitted by the ordinance. All extra cost-generating requirements have, at this time, been eliminated. By so providing for its fair share (with an additional cushion) of least cost housing, Bernards Township has met the mandate of Mount Laurel and Oakwood. In fact, both the trial and appellate courts below held that the BRC ordinance #425 was valid (except for certain technical provisions which have already been corrected and the public sewer requirement which has at this point been removed). Hence, the trial and appellate courts necessarily adjudged that the quantity of least cost housing provided for in the BRC ordinance complies with Mount Laurel and Oakwood.

POINT III

GIVEN BERNARDS TOWNSHIPS COMPLIANCE WITH THE MANDATES OF MOUNT LAUREL AND OAKWOOD AT MADISON, THE FINDING OF THE COURTS BELOW THAT THE ZONING RESTRICTIONS IN THE TOWNSHIP'S PRN ZONE WERE INVALID WAS UNSUPPORTED AND CONTRARY TO THE DECISIONS OF THE SUPREME COURT AND OTHER COURTS IN THIS STATE.

While, on the one hand, accepting the reasonableness of the Township's land use regulations and the good faith efforts made by the defendant in bringing its BRC zone into compliance with the requirements of Mount Laurel and Oakwood, the courts below went far beyond the holdings of either of those cases and found the Township in violation of its zoning responsibilities because it had failed to zone its PRN zone to provide for least cost housing. Such a finding that a municipality which has concededly met its fair share of least cost housing by the creation of a least cost housing zone is further required to provide for least cost housing in another zone where the court deems it beneficial is outside the rationale of Mount Laurel and Oakwood and is an improper encroachment by the judiciary upon the municipal legislative function.

The role of the court in reviewing the validity of a zoning ordinance has been the subject of extensive judicial comment. A precise distillation is found in Bow and Arrow Manor v. West Orange, 63 N.J. 335 (1973), in language recently quoted at length in the case of Pascack

Association, Ltd. v. Washington Township Mayor and Council, 74 N.J. 470 (1977).

> "It is fundamental that zoning is a municipal legislative function, beyond the purview of interference by the courts unless an ordinance is seen in whole or in application to any particular property to be clearly arbitrary, capricious or unreasonable, or plainly contrary to fundamental principles of zoning or the statute, N.J.S.A. 40:55-31, 32. It is common place in municipal planning and zoning that there is frequently, and certainly here, a variety of possible zoning plans, districts, boundaries, and use restriction classifications, any of which would represent a defensible exercise of the municipal legislative judgment. It is not the function of the court to rewrite or annul a particular zoning scheme duly adopted by a governing body merely because the court would have done it differently or because the preponderance of the weight of the expert testimony adduced at a trial is at variance with the local legislative judgment. If the latter is at least debatable it is to be sustained."

The Appellate Division, in its opinion, accepted Judge Leahy's finding that the density restrictions in the PRN zone[1/] were too low under Mount Laurel and Oakwood and remanded to the trial court with instructions that the

1/ The Township's PRN ordinance #347 provides for a variety and choice of housing in an environmentally senstive area of the municipality. The PRN zone is not meant to provide for the Township's fair share of least cost housing--the BRC ordinance was created for that purpose--although in terms of net-acre density allowed in the PRN zone, moderate income housing is certainly economically feasible were a developer inclined to develop it thus.

defendant Township review the PRN zone to appropriately increase the number of dwelling units per site-acre. In doing so, the appellate court clearly stepped outside the well-established standards for judicial review of municipal zoning regulations cited above; in the face of undisputed evidence that the Township had made more than adequate provisions in its BRC ordinance for its fair share of least cost housing and therefore satisfied its court-mandated zoning responsibility, the court intruded upon the prerogatives of the municipal legislature in requiring a rezoning of the PRN zone. The court so acted without any finding whatsoever that the PRN zoning regulations so invalidated were arbitrary or unreasonable and in the face of compelling and unrebutted evidence regarding the delicate environmental considerations with which the Township concerned itself in developing a feasible and creative land use scheme for the zone.

Apparently the courts below, in reaching their determination regarding the Township's PRN zone, were motivated by the misapprehension that Mount Laurel and Oakwood require a developing municipality to provide for its fair share of least cost housing in every developable zone. Mount Laurel, however, expressly holds to the contrary, stating that a municipality need not provide for low cost housing in all of its zones in order to comply with that court's mandate. In emphasizing the municipality's duty to pro-

vide the opportunity for low and moderate income housing, the Mount Laurel court did not negate the propriety of providing for more costly and luxurious housing. The court said:

> "There is no reason why developing municipalities like Mount Laurel, required by this opinion to afford the opportunity for all types of housing to meet the needs of various categories of people, may not become and remain attractive, viable communities providing good living and adequate services for all their residents in the kind of atmosphere which democracy and free institutions demand. They can have industrial sections, commercial sections and sections for every kind of housing, from low cost and multi-family to lots of more than an acre with very expensive homes. 67 N.J. at 190.

The opinion of Judge Wood in Southern Burlington County N.A.A.C.P. et al. v. Township of Mount Laurel, et al. 161 N.J.Super 317 (Law Div. 1978) (Mount Laurel II) is in accord with this interpretation. In upholding the retention, virtually intact, of the exclusive PUD zone earlier criticized by the court in the first Mount Laurel case, Judge Wood stated, at page 346:

> "The very essence of zoning is the creation of areas for different types of activity, so that they will not infringe on each other to their mutual disadvantage. Thus, business, industrial, commercial and residential zones are always separated; and within the residential classification various types of residences, single family, multi family, apartments, etc., are likewise separated."

The Judge then went on to discuss his understanding of the Supreme Court's requirements in the first Mount Laurel case.

"The court criticized generally a number of provisions of the P.U.D. and P.A.R.C. ordinances which it characterized as 'restrictive' and 'cost generating.' These criticisms were cited as factors supporting the court's conclusion that the Mount Laurel Zoning Ordinance was, overall, unconstitutionally exclusionary. . .

The court, nevertheless, did not declare invalid the restrictions which it criticized. In a footnote (67 N.J. at p. 167) it explained:

> 'We refer to the Mount Laurel PUD projects as part of the picture of land use regulations in the Township and its effect.'

However, I do not understand these directions to mandate a change or modification in existing PUD ordinances, so long as the zoning ordinance as a whole includes provision for zones wherein such housing is permitted." Id. at 346-347.

Consistent, as well, with this view of Mount Laurel is the case of Montgomery Associates v. Township of Montgomery, 149 N.J. Super 536 (Law Div. 1977). There it was held that where a defendant Township zoning ordinance provided for its fair share of the regional housing needs of low and middle income housing by designating a single zone for multiple unit dwellings, the ordinance was not arbitrary or capricious and the planning decisions of the municipality were entitled to judicial deference. In its opinion, the court rejected the defendants contention that Mount Laurel's requirement that a municipality make realistically possible an appropriate variety and choice of housing meant that a municipality must scatter multi-unit housing

throughout the municipality. The court characterized this argument as essentially a dispute over differing planning concepts rather than a constitutional challenge.

In essence, the present suit involves a dispute over differing land planning concepts which has been improperly infused with constitutional dimensions. The holdings of the courts below in requiring Bernards Township to rezone to meet requirements of Mount Laurel and Oakwood in one zone, despite the fact that the Township has already met those requirements in another, is contrary to present zoning law as set forth in Mount Laurel and Oakwood and as subsequently interpreted by lower courts in this state.

POINT IV

THE COURTS BELOW ERRED IN REFUSING TO CONSIDER ENVIRONMENTAL EVIDENCE WHEN RULING ON THE VALIDITY OF THE TOWNSHIP'S PRN ZONE REGULATIONS.

In its decision, the trial court ignored substantial environmental evidence relating to run-off, non-point pollution and other factors which had motivated the municipality in setting the densities and allowing for clustering and other planning devices in the PRN zones. In its oral opinion, dated February 24, 1978, the court reaffirmed its decision to ignore such evidence and stated:

> "As to whether or not such zoning would be misleading to potential developers or purchasers of land because there is no possibility

> that such development would ever be possible in light of the need to protect the river and water quality, I am satisfied that the Department of Environmental Protection and the Environmental Protection Agency can and will appropriately and adequately protect the water quality of the review and that zoning is not needed for that purpose." (Da 34)

The Appellate Division failed to comment on this issue. The position of both courts is clearly contrary to Mount Laurel, supra, at p. 187 and Oakwood at Madison, supra, at P. 544, both of which indicate that such environmental considerations are germane and important considerations for a municipality in deciding the location of zones and the densities therein. In the present situation, the property which is zoned PRN is located near (and borders upon) both the Passaic River and the Dead River, and a substantial portion of the zone itself is located within the floodplain. To direct that the municipality not consider the environmental problems attendant to such location, and to leave the same to the DEP and EPA is contrary to the specific language of the case law in New Jersey and to any reasonable approach to the problem.

POINT V

THE REMEDY DIRECTED BY THE COURTS BELOW IS CONTRARY TO THE HOLDING OF MOUNT LAUREL

In its decision, the Appellate Division (and the trial court) directed an amendment to the Bernards Township zoning ordinance to increase the density in the PRN zone, a non-

Mount Laurel zone. This form of legislating is contrary to Mount Laurel, supra at p. 191-92, Oakwood at Madison, supra, at p. 552-53 and Pascack, supra, at p. 481. These cases are clear that where a zoning ordinance is found to violate the "least cost" concept (either by failure to meet its fair share or by the existence of cost-generators or combination thereof) a municipality should be directed to amend its ordinance to meet its fair share or to remove cost generators. This does not include a directive to specifically increase the density in a specific zone, especially where such zone is not intended to provide "least cost" housing. As indicated in Mount Laurel, supra, at 491,

> "It is the local function and responsibility, in the first instance at least, rather than the court's, to decide on the details of the same [i.e., amendments to the zoning ordinance to correct deficiencies therein] within the guidelines we have laid down."

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court grant Certification of this matter.

Respectfully submitted,

FARRELL, CURTIS, CARLIN,
DAVIDSON & MAHR

By _____
James E. Davidson
Attorneys for Defendant-Petitioner

I hereby certify that the foregoing Petition presents a substantial question meriting certification, and that it is filed in good faith and not for purposes of delay.

By _____
James E. Davidson
Attorneys for Defendant-Petitioner

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS SDal

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2718-77

THEODORE Z. LORENC; LOUIS J. HERR; SAM WISHNIE; MARION WISHNIE, executrix of the estate of Harry Wishnie, deceased; ALICE J. HANSEN, trustee; WILLIS F. SAGE; WILLIAM W. LANIGAN, and MERWIN SAGE,

Plaintiffs-Respondents/
Cross-Appellants,

v.

THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, a municipal coporation of the State of New Jersey, and THE PLANNING BOARD OF THE TOWNSHIP OF BERNARDS,

Defendants-Appellants/
Cross-Respondents.

Argued: Oct. 24, 1978 - Decided: DEC 11 1978

Before Judges Lynch, Crane and Horn.

On appeal from Superior Court, Law Division, Somerset County.

Mr. Nicholas Conover English argued the cause for appellants/cross-respondents (Mr. Richard J. McManus and Messrs. Mc Carter & English, attorneys; Mr. Richard J. McManus, on the brief).

Mr. William W. Lanigan argued the cause for respondents/cross-appellants (Messrs. Lanigan, O'Connell and Hirsh, attorneys; Mr. Daniel F. O'Connell, on the reply brief).

PER CURIAM

This is a Mount Laurel-type zoning case.[1] At the conclusion of the trial resulting from plaintiffs'-landowners' in-lieu action challenging two ordinances of defendant Township of Bernards (township), #347 and #358, the judge upheld the validity of the township's general zoning scheme but specifically directed that said zoning ordinances be amended within 60 days (1) to permit densities of six and eight dwelling units per gross site-acre[2] in the Planned Residential Neighborhood (PRN) zones and (2) to eliminate the requirement of public sewering for multi-family housing projects. Defendant township and its planning board duly appealed from the judgment embodying these rulings. Plaintiffs cross-appealed to "preserve the right to argue" that the judge erred because he:

> 1. Failed to set aside the underlying 2-acre zoning in the PRN-6 zone.
>
> 2. Failed to order a zoning of 20,000 square feet in the PRN-8 zone as underlying zoning rather than remand such matter to the Township Committee.
>
> 3. Failed to grant plaintiffs the relief they requested of directing the issuance of building permits to plaintiffs upon application and provided the same is in compliance with State and Federal regulations.

Before we heard oral argument defendants withdrew as a ground of appeal the second issue mentioned above, relating to the elimination of public sewering, because after the notice of appeal was filed the township adopted an ordinance which appears to satisfy the terms of the trial court's directive as to same. On the principal appeal,

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[1] So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975), app. dism. and cert. den. 423 U.S. 808 (1975). The parties have stipulated that Bernards Township was a "developing municipality" within the scope of Mt. Laurel.

[2] As defined in said Ordinance #347.

validity of the
therefore, there remains before us the single issue - the court's mandate that the ordinances be amended to permit six and eight dwelling units per gross site-acre in the PRN zones.

We have no difficulty in agreeing with Judge Leahy's findings that the minimum floor area required by Ordinance #347 combined with the schedule of size and space regulations limits the number of dwelling units to 1.39 per acre in the PRN-6 zone and 1.86 per acre in the PRN-8 zone, and that these density restrictions are too low under the Mount Laurel and Oakwood at Madison pronouncements.[3]

We are unable to conclude, however, that the record sufficiently supports the judge's mandate that the township should permit densities of six and eight dwelling units per gross site-acre in the PRN zones or that the court at this stage should usurp the normal powers of the township's governing body to enact zoning regulations.[4] Pascack Ass'n Ltd. v. Mayor & Counc. Washington Tp., 74 N.J. 470, 485 (1977), held:

> *** [I]t is not for the courts to substitute their conception of what the public welfare requires by way of zoning for the views of those in whom the Legislature and the local electorate have vested that responsibility. The judicial role is circumscribed by the limitations stated by this court in such decisions as Bow & Arrow Manor [v. Town of West Orange, 63 N. J. 335, 343 (1973)] and Kozesnik [v. Montgomery Twp., 24 N. J. 154, 167 (1957)] ***. In short, it is limited to the assessment of a claim that the restrictions of the ordinance are patently arbitrary or unreasonable or violative of the statute, not that they do not match the plaintiff's or the court's conception of the requirements of the general welfare, whether within the town or the region.

[3] Oakwood at Madison, Inc. v. Tp. of Madison, 72 N.J. 481 (1977).

[4] We desire to make it eminently clear that in so stating we do not hold that it may not ultimately be determined that six and eight dwelling units per gross site-acre in these zones are reasonable and appropriate.

But we perceive that judicial respect for the governing body's discretion does not mean that governing bodies may unduly obstruct, impede or delay the required action.

Where there has been undue "foot-dragging" on the part of municipal officials, a court may take such action as will preclude its continuance. In the present case the judge did not posit his determination upon a finding of procrastination on the part of defendants' officials, although there is evidence in the record of utterances of defiance of the courts by some of defendant township's officials which would indicate a tendency to unnecessarily delay the adoption of appropriate density regulations.

This matter should now be concluded expeditiously. Accordingly, we vacate that part of the judgment from which appellants appeal. We remand the case to the trial court for the purpose of directing defendant township to review the PRN zones to appropriately increase the number of dwelling units per site-acre and to enter a final judgment, a copy of which to be supplied to us on or before March 15, 1979. If defendant municipality fails to follow said directive to be made by the trial court, the latter may then invoke the alternative suggested in Oakwood at Madison, supra at 553-554 - the appointment of an impartial zoning and planning expert or experts, who shall be directed "to file a report or to testify, as the court may deem appropriate, as to a recommendation for the achievement by defendant[s] of compliance with [the court's] opinion or with any further directions by the court pursuant thereto." We retain jurisdiction for the purpose of aiding the

court and the parties to reach a final determination.

We will hold determination of plaintiffs' cross-appeal in abeyance until the final disposition of defendants' appeal. We conceive that if defendants shall fail to observe the spirit and intention of Mount Laurel and Oakwood at Madison the effective action of this court will remove all improper barriers to a final disposition.

A TRUE COPY

Elizabeth M. Langhin

Clerk

ORDINANCE NO. 428

AN ORDINANCE AMENDING THE LAND USE ORDINANCE TO PROVIDE FOR LEAST COST HOUSING

Be It Ordained by the Township Committee of the Township of Bernards that Chapter XI, Section 5.4n of the Revised General Ordinances of the Township of Bernards be amended and supplemented to read as follows:

n. Balanced Residential Complexes. Balanced Residential Complexes are permitted within the R-2A, R-40, R-30 and R-20 Zones as permissible conditional uses, and their approvals shall be subject to the exclusive jurisdiction of the Planning Board as set forth in the Municipal Land Use Law. The purpose of this section is to permit the construction of "least cost" housing as defined by the Supreme Court of New Jersey in **Oakwood at Madison, Inc. et als. v. the Township of Madison et al.**, N.J. (1977).

1. Definitions.

(a) Applicant — A private developer, non-profit corporation or duly constituted housing authority.

(b) Approving Authority — The Planning Board.

(c) Balanced Residential Complex — A residential development providing multi-family units and, optionally, single-family units. If the development is subsidized by State or Federal funds, up to one-third of the units may be committed to very low income housing and up to two-thirds of the units to a combination of very low and low income housing. The distribution of subsidized units in any complex as a whole shall likewise apply within each category of dwelling unit size set forth in Section 11-5.4n.2(k) below.

(d) Very Low Income Housing — Housing which, with appropriate purchase or rental subsidy, is economically feasible for families whose income level is categorized as very low within the standards existing from time to time and promulgated by The United States Department of Housing and Urban Development, The New Jersey Housing Finance Agency or other generally accepted State or Federal Agency. At the time of adoption of this ordinance, an annual income for a family of four of not more than $9,050.00 qualified such family for admission of very low income housing.

(e) Low Income Housing — Housing which, with appropriate purchase or rental subsidy, is economically feasible for families whose income level is categorized as low within the standards existing from time to time and promulgated by The United States Department of Housing and Urban Development, the New Jersey Housing Finance Agency or other generally accepted State or Federal Agency. At the time of adoption of this ordinance, an annual income for a family of four of not more than $14,480.00 qualifies such family for admission to low income housing.

(f) Family — a group of persons related by blood or marriage or otherwise lawfully living together in a dwelling unit. For purposes of this ordinance, family shall also be deemed to include and apply to an individual residing alone.

(g) Floor Area Ratio (F.A.R.) — The ratio between the gross floor area and either the gross site area or the net residential site area as applicable.

(h) Gross Site Area — The total site area within property lines shown on the Township Tax Map. The area of existing streets, however, is excluded.

(i) Gross Floor Area — The plan projection of all roofed areas on a site, whether fixed or temporary, multiplied by the number of habitable stories under each roof section, plus the area of all required parking spaces not under roof. Overhangs of 4 feet or less are not included.

(j) Net Residential Site Area — The gross site area less all common open spaces required to be established pursuant to the terms hereof.

(k) Common Open Space — An open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development as hereinafter more particularly set forth.

(l) Twin House (Duplex, Side-by-Side, Semi-detached, not "one over one") — A structure containing two dwelling units separated by a party wall in a vertical plane and each unit susceptible to sale on an individual lot.

(m) Town House — A contiguous structure or structures including three or more dwelling units, each separated by plane vertical party walls and having direct access to the outside and a street without use of a common hall, passageway or land and so laid out that each is susceptible to sale on an individual lot.

2. General Requirements.

In reviewing applications made hereunder, the Approving Authority shall require the following:

(a) Each Balanced Residential Complex shall provide for not less than 75 nor more than 150 dwelling units. A total of not more than 531 such units shall be approved within the Township, unless any higher legislative or executive authority shall finally determine that the Township's fair share of the regional need for least cost housing is less than 354 units, in such latter case, the total number of units permitted under this ordinance shall be proportionately reduced.

(b) Balanced Residential Complex development shall be, consistent with the other standards set forth herein, located in various areas of the Township. To assist in accomplishing the foregoing, complexes which result in the construction of the first one half of the total number of units authorized herein shall be so located that no portion of any complex shall be within one mile of any other complex. In no event shall the Distance separating complexes be reduced below one-half mile. The presently approved Ridge Oak multi-family project shall be considered a Balanced Residential Complex for purposes of applying the standards set forth in this subparagraph.

(c) Each Balanced Residential Complex shall be served by public sewer and public water facilities.

(d) Each Balanced Residential Complex shall be reasonably accessible to essential residential and community services and available transportation forms.

(e) Each Balanced Residential Complex may include: (1) Single family houses susceptible to sale on an individual lot of not less than 60x100 feet, (2) twin houses susceptible to sale on two such lots, (3) town houses, and (4) other multiple-family dwellings.

(f) Wherever a Balanced Residential Complex abuts residential zone, an open space buffer shall be provided in order that there be an effective transition between the density and scale of housing in the complex and the adjoining neighborhood. The design of the buffer shall utilize the existing topography and vegetation on the site as well as additional plantings which contribute to such a transition.

(g) The minimum gross site area, not including access or other major roads, for a 150 unit complex shall be 25 contiguous acres. The minimum gross site area of contiguous acreage for complexes of lesser size shall be reduced proportionately.

(h) A minimum of 25% of the gross site area of any Balanced Residential Complex shall become such common open space and shall be suitable for active recreation. Such space shall be held by an organization established for the ownership and maintenance thereof, or dedicated to the municipality.

(i) The common open space may be improved with facilities for outdoor sports consistent with the residential character of the neighborhood, such as, but not limited to, tennis, baseball, soccer, bicycling, walking paths, and the like, and accessory buildings such as pavilions and clubhouses. Such buildings may not cause an excess of permitted floor area for the entire tract when added to all other buildings.

(j) The Approving Authority may require common open space to be consolidated or linked with open space in adjacent tracts.

(k) The distribution of dwelling unit sizes shall be consistent with the demographic requirements of the area from time to time. Until superseded by subsequent census data, the distribution of dwelling units shall conform to the following schedule which reflects 1970 census data:

Size of Dwelling Unit	Percentage within Each Complex
One bedroom units	25 to 30%
Two bedroom units	25 to 30%
Three bedroom units	25 to 20%
Four or more bedroom units	25 to 20%

(l) The following "Schedule of Size and Space Regulations" shall apply to Balanced Residential Complexes:

Maximum F.A.R.
On Gross Site Area — 25%
On Net Residential Site Area — 35%

Schedule of Minimum Room Areas

As promulgated from time to time by New Jersey Housing Finance Agency or any successor thereto.

Maximum Height — 2½ stories

(m) The Approving Authority may permit variations from the schedules in subsections (k) and (l) above in conjunction with its approval of a conditional use.

3. Findings for Balanced Residential Complex.

No Balanced Residential Complex shall be approved unless the Approving Authority shall find and determine that the application can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

4. Standards for the Establishment of Open Space Organization

See subsection 11-5.4l.4.

5. Design Standards.

The following design standards, in addition to those site plan standards of general application, shall be observed.

(a) Wherever appropriate to the intended complex, the site plan shall divide the development into visually small groups by such features as quadrangles and courts. Monotonous repetition elements should be avoided to enhance the variety and attractiveness of the development. Not more than five free-standing housing structures shall be placed in a row having the same setback from a straight street line. Irregularly varying setbacks shall be provided.

(b) Solid trash and its disposal facilities shall be screened from public view and covered.

(c) All collective parking lots for 10 or more cars shall be concealed from public view by permanent structures, such as masonry garden walls, landscaped earth berms or green chain link fences screened by suitable landscaping of such height as to ensure that cars parked therein will not be seen from nearby public streets and walks.

(d) Landscaping shall be provided satisfactory to the Planning Board and its proper maintenance and/or replacement shall be guaranteed by the applicant for 2 years.

(e) All electric and telephone lines shall be underground, but electric distribution transformers and utility service pedestals may be above ground.

(f) To protect privacy, no window shall be visible from another in a different structure at a distance of less than 20 feet, and no bedroom or living room windows of one unit may look into those of another unit at a distance of less than 60 feet.

(g) See subsection 11-5.4l.2(d) (10).

(h) Privacy within structures having more than one dwelling unit of 3 bedrooms or larger shall be protected by the following provisions:

(1) Every unit shall have direct access to the ground without sharing a hallway, stairway, elevator or fire escape with another unit.

(2) No unit or portion thereof may be placed above another unit or portion thereof.

(i) Lateral sound protection between units shall be provided by construction having equivalent value as a sound barrier to that of an 8" masonry wall.

(j) One paved or unpaved parking space, indoor or outdoor, 10'x20' shall be provided for each bedroom, and included as 200 s.f. each in F.A.R. computations, if not under roof.

(k) Air conditioning equipment shall be screened in such a manner as may be required by the Planning Board.

6. Filing Fee.

Applicants for approval of a Balanced Residential Complex shall pay to the Township of Bernards a filing fee of $50.00 per acre plus $.02 per square foot of gross floor area, payable upon submission of the application to the Approving Authority.

Be It Further Ordained that all other portions of Chapter XI shall remain in full force and effect.

And Be It Further Ordained that this ordinance shall take effect upon passage and publication according to law.

Passed on first reading 5/3/77.

PUBLIC NOTICE

Notice is hereby given that the above ordinance was duly read and passed on final reading and adopted at a meeting of the Township Committee of the Township of Bernards in the County of Somerset, held on the 17th day of MAY one thousand nine hundred and seventy-seven.

Robert M. Deane
Mayor

Attest:
James T. Hart
Township Clerk

5/26/11

ORDINANCE NO. 453

AN ORDINANCE AMENDING THE TOWNSHIP LAND USE ORDINANCE TO COMFORM TO THE OPINION OF THE COURT IN LORENC ET ALS. V. TOWNSHIP OF BERNARDS ET ALS.

Be It Ordained by the Township Committee of the Township of Bernards that Chapter 11 of the Revised General Ordinances of the Township of Bernards (1968) be amended and supplemented as follows

1. Section 11-5.4l.2(a) shall be amended to read:

(a) In the PRN-6 and the PRN-8 districts either the provisions of the R-2A or R-40 districts, respectively, with or without the provisions of open space clusters, may be followed, or an owner-applicant may develop a Planned Residential Neighborhood to serve the foregoing purposes, subject to the following provisions:

(1) The aggregate gross floor area permitted on the total tract, (i.e. the Gross Site Area of the tract, not including pre-existing streets, times the Floor Area Ratio) may be concentrated on portions of the tract so as to provide permanent unoccupied open space on the remainder of the tract. Gross Floor Area as used herein shall be the plan projection of all various roofed areas on a lot, whether fixed or temporary, multiplied by the number of actual stories under each roof section (plus the area of all required parking spaces not under roof.) Basements are included only in non-residential buildings or when used for parking. The Floor Area Ratio for each Zone District is set forth in the Schedule of Size and Space Regulations.

(2) Such floor area shall be used in a variety of types of dwelling units, including free-standing single-family houses, twin houses (side by side two-family), town houses and other multiple types.

2. Section 11-5.4l.2(d) (6) shall be amended to read:

(6) The Planned Residential Neighborhood shall be landscaped so as to create an aesthetically attractive environment. Such landscaping may include trees, shrubs or fencing or a combination thereof and replacement of same shall be guaranteed by the owner-applicant for two years by a cash deposit in the maount of 10% of the replacement value and a bond for the remainder.

3. Section 11-5.4n.5(d) shall be amended to read:

(d) The Balanced Residential Complex shall be landscaped so as to create an aesthetically attractive environment. Such landscaping may include trees, shrubs or fencing or a combination thereof and replacement of same shall be guaranteed by the owner-applicant for two years by a cash deposit in the amount of 10% of the replacement value and a bond for the remainder.

4. Section 11-5.4l.2(d) (15) shall be amended to read

(15) Air conditioning equipment shall be screened

5. Section 11-5.4n.5(k) shall be amended to read:

(k) Air conditioning equipment shall be screened.

6. Section 11-5.4l.4(a) shall be amended to read

(a) The developer shall establish an organization for the ownership and maintenance of any residual open space for the benefit of residents of the development. Such organization shall not be dissolved, and shall not dispose of any open space, by sale or otherwise, except to an organization which is conceived and established to own and maintain the open space for the benefit of the residents of such development, and which thereafter shall not be dissolved or dispose of any of its open space except by dedicating the same to the municipality wherein the land is located. The developer shall be responsible for the maintenance of any such open space until such time as an organization established for its ownership and maintenance shall be formed and functioning and shall be required to furnish a performance guarantee for the estimated costs of maintenance for a period of two years after the acceptance of all public streets in the development. The term maintenance as used herein shall include but not be limited to the mowing, fertilizing and reseeding of grassed areas, the care of trees and shrubs, the removal of leaves and litter, and the repair of walkways or structures shown on the site plan. The estimated costs shall be based on Dodge's Construction Estimate Guide, most recent edition, and the guarantee shall consist of a cash deposit of 10% of the estimated costs and a bond for the remainder. The guarantee shall not exceed 15% of the cost of the applicable improvements.

Be It Further Ordained that all other portions of Chapter XI shall remain in full force and effect.

And Be It Further Ordained that this ordinance shall take effect upon passage and publication according to law

Passed on first reading 3-7-78

PUBLIC NOTICE

Notice is hereby given that the above ordinance was duly read and passed on final reading and adopted at a meeting of the Township Committee of the Township of Bernards in the County of Somerset, held on the 21st day of March, one thousand nine hundred and seventy-eight

Bernards Township Committee
Joanne Howell, Mayor

Attest
James T. Hart
Township Clerk

3/30/1

SDa8

ORDINANCE NO. 463
AN ORDINANCE AMENDING
THE LAND USE ORDINANCE WITH
RESPECT TO SIDEWALKS, WATER MAINS,
MINIMUM HOUSE SIZE AND CLUSTER PROVISIONS

Be It Ordained by the Township Committee of the Township of Bernards that Chapter 11 of the Revised General Ordinances of the Township of Bernards be amended and supplemented as follows:

1. Section 11-4.6a.3 shall be amended and supplemented by the addition of the following sentence:

Sidewalks shall not be required where all lot sizes in the subdivision are larger than one acre.

2. Section 11-4.6a.9 shall be amended and supplemented by the addition of the following sentence:

The installation of water mains shall not be required where all lot sizes in the subdivision are larger than one acre provided the subdivider can demonstrate the availability of water as set forth above.

3. Section 11-5.3q. shall be deleted.

4. Section 11-5.4(m) (2) (c) shall be amended and supplemented so that the "Schedule of Minimum Lot Sizes and Dimensions" shall read:

Zone In Which Located	Note	R3A	R2A	R40	R30
Min. Lot Area (A) (Sq. Ft.)		2	40,000	30,000	20,000
Max. FPAR Tract (%)	a	5	6	8	10
Max. FPAR av. Res. Lot (%)	a	6	8	11	12
Max. FPAR Single Res. Lot (%)	a,b	7	9	12	13
Min. Yard, Front (Ft)	c	50	40	30	30
Min. Yard, Other (Ft)	c	30	20	20	15
Min. Lot Size (Ft)		225	150	125	100

5. Section 11-5.4m2(c) (3) shall be deleted.

Be It Further Ordained that this ordinance shall take effect upon final passage and publication.

Passed on first reading 5-2-78.

PUBLIC NOTICE

Notice is hereby given that the above ordinance was duly read and passed on final reading and adopted at a meeting of the Township Committee of the Township of Bernards in the County of Somerset, held on the 16th day of May one thousand nine hundred and seventy-eight.

Bernards Township Committee
Joanne L. Howell, Mayor

Attest:
James T. Hart, Township Clerk

5/25t1

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ORDINANCE NO. 496

AN ORDINANCE ELIMINATING THE REQUIREMENT FOR CONNECTION TO PUBLIC SEWER AND WATER SUPPLY IN BALANCED RESIDENTIAL COMPLEXES AND PLANNED RESIDENTIAL NEIGHBORHOODS

Be It Ordained by the Township Committee of the Township of Bernards that Chapter XI of the Revised General Ordinances of the Township of Bernards be amended as follows

1 Section 11-5 41 2(d) shall be amended to delete the following sentence.

"(7) Connections shall be made to public sewer and water supply "

2 Section 11-5 4n. 2 shall be amended to delete the following sentence:

"(c) Each Balanced Residential Complex shall be served by public sewer and public water facilities "

Be It Further Ordained that this ordinance shall take effect upon passage and publication

Passed on first reading 10-3-78.

PUBLIC NOTICE

Notice is hereby given that the above ordinance was duly read and passed on final reading and adopted at a meeting of the Township Committee of the Township of Bernards in the County of Somerset, held on the 17 day of Oct. one thousand nine hundred and 78

Bernards Township Committee
Joanne L. Howell
Mayor

Attest:
James T. Hart,
Township Clerk

10/26t1

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SUPREME COURT OF NEW JERSEY
M-739 SEPTEMBER TERM 1978

THEODORE Z. LORENC, et al,

Plaintiffs-Respondents,

vs.

THE TWP. OF BERNARDS, etc., et al,

Defendants-Movants.

O R D E R

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to appeal is denied.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 27th day of February, 1979.

Clerk