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Plaintiff's Comments on Draft of Proposed Land Development Ordinance of Bedminster

Pgs. 75

BRENER, WALLACK, ROSNER & HILL
ATTORNEYS AT LAW
15 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540
(609) 924-0808
CABLE "PRINLAW" PRINCETON
TELEX: 642244

HARRY BRENER
ALAN M. WALLACK
EDWARD J. ROSNER *
MICHAEL D. MASANOFF **
HENRY A. HILL
ROBERT A. FELMEISTER
GULIET D. HIRSCH
NATHANIEL L. FULK

3 BURNT MILLS ROAD
POST OFFICE BOX 506
PLUCKEMIN, NEW JERSEY 07978
(201) 658-4130

* MEMBER OF N.J. & N.Y. BAR
** MEMBER OF N.J. & PA. BAR

May 20, 1980

The Honorable B. Thomas Leahy
Somerset County Court House
Somerville, New Jersey 08876

Re: Allan-Deane et al v. Bedminster et al.
Docket Nos. L-36896-70 P.W.; L-28061-71 P.W.

Dear Judge Leahy:

In accordance with the Revised Order For Remedy in the above entitled action, we hereby submit our comments with respect to the proposed revised land use ordinances which we understand were filed with the Court on May 16, 1980. We are also formally requesting that Bedminster be adjudged to have failed to comply with the Order For Remedy entered on March 6, 1980 and further requesting that the powers of the Master, previously appointed, be extended, pursuant to N.J. Court Rule 4:59-2(a), so as to permit him to revise the land use ordinances which Bedminster has submitted to bring them in conformance with the Order For Remedy, the Municipal Land Use Law and reasonable planning and design principles.

SUMMARY OF PRINCIPAL AREAS OF NON-COMPLIANCE

The principal areas of non-compliance are:

1. The proposed ordinance does not provide for some medium and many very small lots for detached one-family and two-family units as required by paragraphs C(1) and (2) of this Court's Order For Remedy.

2. Bedminster has not provided for "a planned development zone which will float and be applicable throughout the corridor" as provided in this Court's Order but has instead arbitrarily bisected Allan-Deane's property with two planned development zones designed to limit density on the top and prevent the use of the slope for open space credit for the P.U.D. zone. Furthermore, and of primary

importance to Allan-Deane, the planned development regulations proposed are not "appropriate" as required in the Order and are in contravention of N.J.S.A. 40:55D-39(b) because they preclude flexibility and economy in layout and design and would result in a rigid and monotonous plan.

3. The revised development standards permit substantially less on a gross acreage basis, than five units per acre throughout the corridor and on the Allan-Deane property, and therefore do not comply with Paragraph D of the Order.

4. The proposed ordinance is replete with subjective standards and provisions which illegally delegate discretionary authority, in lieu of any standards at all, to Township officials, in contravention of Paragraph E of the Order and State Law.

5. Bedminster has failed to comply with Paragraph B of the Order for Remedy and this Court's Opinion of December 13, 1979, with respect to the treatment of the slopes on the Allan-Deane property, in that they have prohibited all uses, including common open space (see Sections 605E and 105) or a meaningful density transfer credit with respect to the slopes.

6. The draft ordinance is replete with cost generative provisions which bear no relationship with health safety and welfare.

7. Bedminster has not complied with the intent of Subparagraph C of the Order For Remedy which required the Township to "submit for comment by the Court-appointed planning expert and the parties" the land development regulations. Nothing but boiler-plate materials (Sections 100, 200, 700, 800, 900, 1000, 1100, 1200, 1300 and 1400) were distributed to the parties until May 3, 1980, when a district map without regulations was first unveiled. The district regulations (Section 400) were not made available until May 13, 1980, and the all-important planned development regulation (Section 600) under which Allan-Deane proposed

to develop, was not distributed until May 15,1980, one day before they were submitted to the Court. Although Allan-Deane has made numerous recommendations for changes in provisions and submitted a proposed planned development ordinance, the Township chose to reject all but a handful of minor recommendations, without comment or response.

8. The Bedminster draft ordinance contains a number of provisions and procedures which have the effect of nullifying or making discretionary with the town other inclusionary and court mandated provisions. This ordinance, for instance, would allow multi-family housing on the Allan-Deane property provided such housing is served by a sanitary sewer system (603A and 604B) and the development includes the required percentage of, inter alia, subsidized senior citizen housing. Public utility uses and senior citizen housing uses, however, are not permitted as of right but are conditional uses (See 601A and 601B), which can be denied on discretionary gounds and thus preclude development of all multi-family housing.

   Another example of such a provision is Section 803E.6. (page 800-21) which permits the Planning Board to require revision of any development application prior to any further review which it believes might lead to the "possibility of an adverse effect". (See also definition of adverse effect, page 200-1). "Adverse effects" are determined through the review of exhaustive required Environmental and Community Impact statements. Literally interpeted, these provisions would permit the Township to refuse to review any applicant who threatened to have an "adverse effect" on the Township's school population (see 803D.1., page 800-19), the Township tax rate (803D.6., page 800-19), or would result in an increase in the township population (803D.1.).Of course, there is no statutory authority which would allow a municipality to require Community or Environmental Impact Statements. It is a generally accepted legal and planning principle that applicants who seek to build a permitted use in a given zone should

not have to prove that the land has the environmental capacity to support that use and that the use is suitable in terms of community impacts. The Master Planning process takes these factors into account when determining appropriate land use intensities and consequent zoning districts. The developer should not have to prove again the validity of the Master Plan and zoning designation.

ARGUMENT

Introduction

We have attached to this letter a checklist entitled "Illegal and/or Impractical Provisions of the Bedminster Land Development Ordinance Draft, May,1980" in which we have attempted to identify all provisions of the ordinance in the sequence in which they appear, which violate this Court's Orders, the Municipal Land Use Law, the case law of this State, or which bear no relationship with legitimate public health, safety or welfare concerns and are cost generating or impractical. We take the position that none of these provisions are, using the operative word in this Court's Order, "appropriate" to the achievement of the result intended, which was to make it possible to develop on the Allan-Deane property a variety and choice of housing, including least cost and subsidized units, at gross densities of between 5 and 15 units per acre and at the same time develop a high quality land use plan and living environment for Allan-Deane's future residents.

In this section we have attempted to illustrate, through the use of examples in their order of significance, from our "checklist" the inadequacies of the proposed ordinance. Due to the fact that the provisions most important to Allan-Deane were not made available to it until May 15, 1980, we have not had the time to thoroughly analyze, research and discuss every provision for the purpose of this Motion.

POINT I

THE PLANNED DEVELOPMENT REGULATIONS PROPOSED ARE NOT "APPROPRIATE" AS REQUIRED IN THE ORDER AND ARE IN CONTRAVENTION OF N.J.S.A. 40:55D-39(b) BECAUSE THEY PRECLUDE FLEXIBILITY AND ECONOMY IN LAYOUT AND DESIGN AND WOULD RESULT IN A RIGID AND MONOTONOUS PLAN.

From Allan-Deane's perspective the most poorly conceived provisions of the proposed Bedminster Land Use Ordinance are those which control design under the Planned Unit Development and Residential Cluster options.

A. Effect of Height and Slope Treatment on Design

Since early March, 1980, Allan-Deane has been developing under the direction of the Court-appointed Master, test site plans for their property. The purpose of this exercise, as conceived by the Master, involving literally hundreds of hours of Allan-Deane's consultant's time and weeks of the Master's time, has been to establish a site plan consistent with good planning principles and to develop design standrds appropriate to permit a well-planned development within the parameters of this Court's Order. All of the test plans incorporated buildings with a mix of 3 1/2 stories or floors (45 feet) and 2 1/2 stories (35 feet) and were reviewed and commented upon by Bedminster's consultants. As a result of this process and the comments and review by the Master, the test plans were repeatedly modified and a plan evolved around which there was a general consensus by all the design consultants involved. The modification process resulted in a loss of units by Allan-Deane but adhered to the principle that the higher density structures would be as high as 3 1/2 stories (45 feet) and that there should be one or more senior citizens mid-rises of up to 6 stories.

On May 13, 1980, after these planning principles had been reached at the Thursday technical meetings at George Raymond's office, the Township, without benefit of review and comment by the Master, distributed District Regulations (which, among other points outlined hereinafter) prohibited structures over 2 1/2 stories or 35 feet in height.*

The result of this summary action by the Township was to remove one story from all of Allan-Deane's higher density

*(Under Bedminster's very restrictive definition of "Building Height" (see page 200-2), height is measured in some cases from the street line to the highest point on the roof, rather than from the mean elevation from the finished grade to the average height of the roof as is usual. The result is that in some cases (where the units are on a grade above the street line) only ranches are permitted.

buildings, shown on the test plans, and thus increase by one--third the building coverage over the entire site, which would be needed to accommodate the proposed Township design principles with regard to separation between buildings, location, nature and extent of open space, required parking, and setbacks. The result of this one action alone has been to reduce either the achievable densitites or the resulting quality of life within the development.

Another critical provision of Bedminster's zoning regulations is the treatment of the slope and the planned development overlays on Allan-Deane's property. The property is all zoned R 1/4, yet the planned development provisions call for the higher density planned unit development overlay on the bottom and the much lower density residential cluster option on the slope and uplands.

This arbitrary bisection of Allan-Deane's property by a zone line at the base of the slope was apparently intended to prevent Allan-Deane from attempting to make use of the wooded slope area as a recreational "common open space" amenity for residents on the bottom and from building structures which have one dwelling unit over another on the top of the slope. The result is that the principal, unusual and attractive amenity of this property, the slope area which Allan-Deane had intended to use as open space with hiking trails and picnic areas, cannot be counted or used towards the required 30% "open space" requirement by the bottom development. Through this mechanism, Mr. Coppola has made his prophesy expressed during the trial self-fulfilling. That is, the Allan-Deane development could not be integrated and developed as a whole. This bisection furthermore drastically effects density on the bottom since it, in effect, requires Allan-Deane to provide the entire 30% open space requirements on otherwise developable lands. Allan-Deane's recommendations for resolving this issue is to have a planned unit development overlay for the entire property.

B. Design Standards-

The major problem with these design standards is their application of the standards for each building type from other zone districts to the planned unit development and residential

cluster options. For example, the rigid lot dimensons and bulk requirements for a single-family detached unit may be appropriate for the regulation of individual existing lots and lot by lot development, but they are not applicable to planned development.

As noted in the Municipal Land Use Law (MLUL) the standards for planned developments should encourage and promote flexibility, and economy in layout and design. The arbitrary application of rigid design standards from some other zone districts to the planned development option does not meet the MLUL objective. The proposed Bedminster Ordinance planned development option is merely a permitted mixing of unit types from other zone districts, using the design standards of those zone.

If one of the purposes of the planned development option is to maximize good design, flexible design standards are essential. The Bedminster design standards are far too rigid to permit imaginative, innovative design.

Attached to this letter is a memo dated May 7, 1980, from Ken Mizerny outlining our suggestions for building setback design standards (for townhouse and medium density multi-family structures) which illustrates the flexibility needed to achieve the MLUL objectives for planned developments. Although the development of design standards, as in this example, would require considerably more effort than that shown by the Bedminster Ordinance, this approach is essential for both parties if a desirable end product is to be realized.

The following are typical examples of the design problems associated with the Bedminster Ordinance:

A. Single Family Detached. Section 404d

1. Relationship of lot area, lot width, lot depth, front yard, and rear yard.

a. The min. 80' lot depth is not practicable in light of the front and rear yard requirements since it would only leave space for a 15 foot deep dwelling.

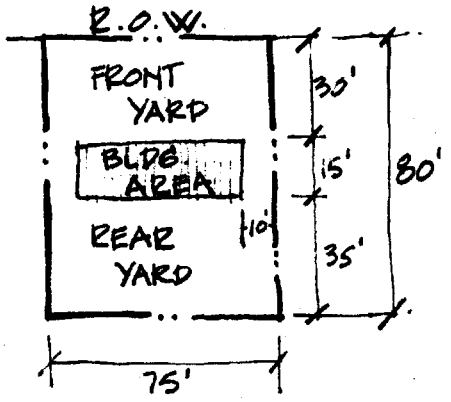

FIG. 1

b. Assuming then a more realistic average single-family unit depth of 30' the range in lot depth is between 95-100' since the lot width cannot go below 60' and the lot area cannot go below 6,000 sq. ft.

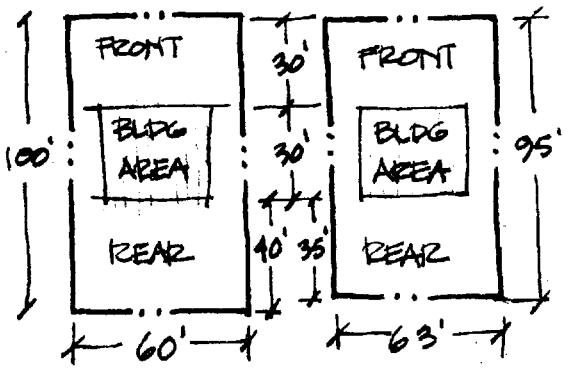

FIG. 2

The effect then is to mandate uniform lotting and yard areas if the developer is to achieve required densities.

2. The lot frontage requirement of 60' precludes the use of court yard cul-de-sac design, since the resultant design would be inefficient and cost generative.

a. Design with Bedminster standards.

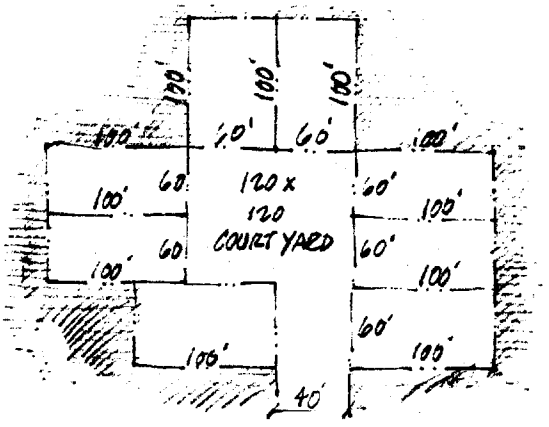

FIG. 3

Note: The provision of a 25% frontage reduction is not applicable since on court yards, curvolinear road alignments ae not used (see Section 200 "frontage" definition).

b. Design with flexible frontage standards.

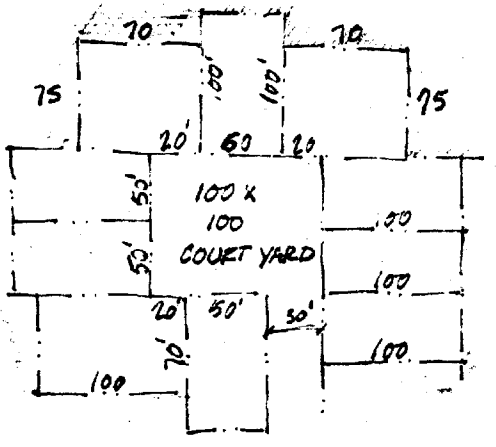

FIG. 4

This design shows 2 more units and a smaller court yard area.

3. Effect of side yards. The 10' min. side yard requirements prevent the option of zero lot line single family detached homes.

4. Effect of front yards. The 30' min. front yard setback is unnecessarily restrictive. It would require a uniform minimum setback for all frontages, irrespective of need. As an example, it would preclude the following design option:

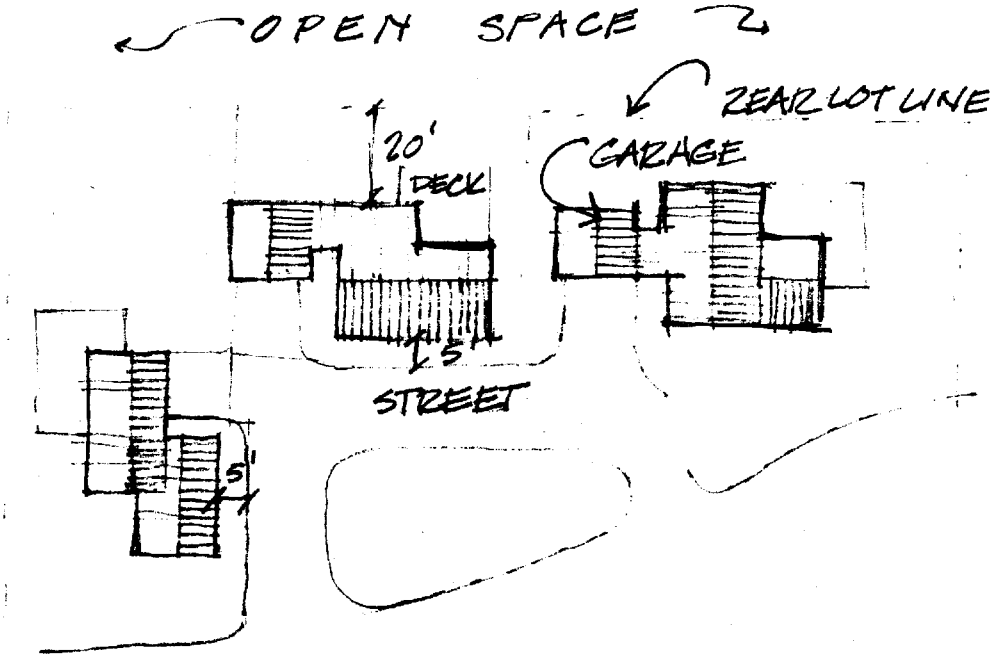

FIG. 5

Two Family Dwelling Units Section 404D

1. The standard does not allow 2 family units attached side by side on separate fee simple lots.

2. The criticisms relative to the single family detached unit are equally applicable to the two family dwelling units.

B. Townhouses and Garden Apartments Section 606(5-b)

Front yard - 30 feet
Side yard - 15 feet
Rear yard - 25 feet

The minimum yard requirements of this section are the same for townhouses and garden apartments, permit no design flexibility and would result in a rigid barrack-like design that would from a practical standpoint reduce achievable net densities.

1. Front Yard - The requirement for a 30' front yard which cannot be used for parking is contrary to accepted design practice. It also precludes the use of detached garage.

   a. Bedminster Design Standard

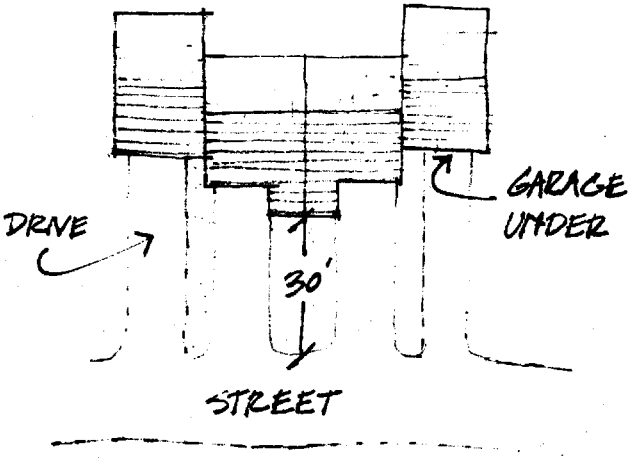

FIG. 6

   b. Accepted Design Practice

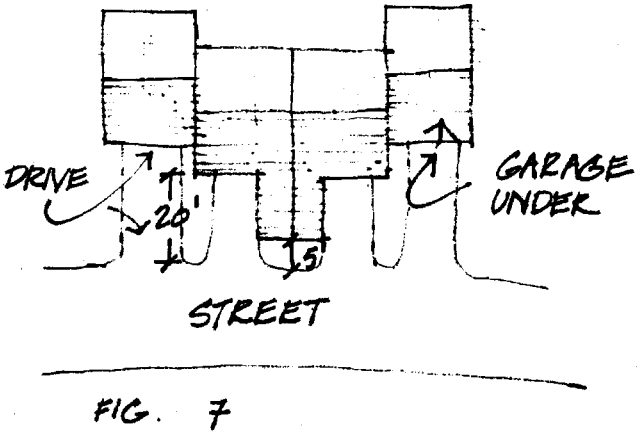

FIG. 7

2. The yard standards do not provide full flexibility in recognizing mitigating circumstances.

   a. Building Off-set

      The ordinance allows that if front yards and rear yards are off-set by 20 degrees or more, these yards can be reduced to side yard dimension. No reduction in side yards due to building offsets is permitted. This is inconsistent and should be permitted.

   b. Landscaping is an effective method of reducing yard requirements while insuring privacy. No recognition of this principal is contained in the ordinance.

3. Private road setback - The required road setback of 20 ft. produces rigid design and reduces density.

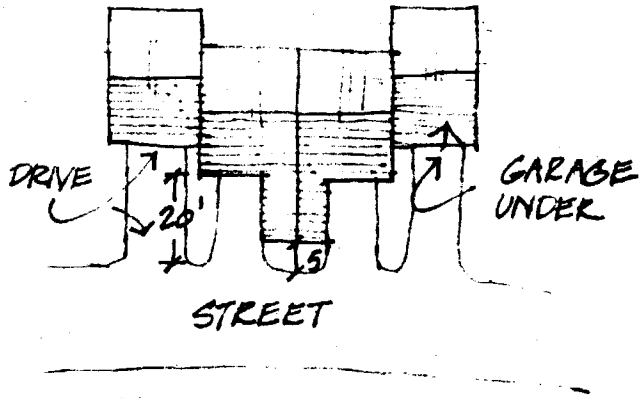

FIG. 7

The above design cannot be accomplished under Bedminster's standards. In addition, a fee simple plotting for this design would not be permitted since each lot must front on an approved public street (505B).

Point II

THE PROPOSED ORDINANCE IS REPLETE WITH SUBJECTIVE STANDARDS AND PROVISIONS WHICH ILLEGALLY DELEGATE DISCRETIONARY AUTHORITY, IN LIEU OF ANY STANDARDS AT ALL TO TOWNSHIP OFFICIALS.

Paragraph E, of this Court's Order For Remedy, dated March 6, 1980, required Bedminster Township to do the following:

> "...review its subdivision, site plan, and health ordinances, and other pertinent land development regulations and revise them so as to eliminate subjective standards and to replace them with objective standards." (Emphasis added).

This directive to Bedminster Township is required by the due process guarantee that land use ordinances be clear and explicit in their terms, setting forth adequate standards to guide the applicant, and to prevent arbitrary and indiscriminate interpretation and application by local officials and was specifically ordered as a result of their previous disregard of these principles. (See J.D. Construction Company v. Board of Adjustment, Township of Freehold, 119 N.J.Super 140 (LawDiv., 1972); Schack v. Trimble, 48 N.J.Super 45 (App.Div., 1957), Aff'd. 28 N.J. 40 (1958); Morristown Rd. Associates v. Mayor of Bernardsville, 163 N.J. Super 58 (LawDiv., 1978).

The following provisions are illustrative of the type of subjective standards which must be removed in order to comply with the Court's Order of March 6, 1980; subjective language is underlined:

1. Section 200, "Adverse Effect: - "Conditions or situations creating, imposing, aggravating or leading to impractical, unsafe or unsatisfactory conditions on a property..." (pg. 200-1)

2. Section 506C, "Natural Features": - "Stripping trees from a lot or filling around trees on a lot shall not be permitted unless it can be shown that grading or construction requirements necessitate removal of trees." (Pg. 500-6)

3. Section 508C.k.d., "Surfacing and Curbing": - "The applicant shall agree in writing on the submitted plan to save any or all of the non-paved parking areas at the request of the Board at any time." (pg. 500-8)

4. The following sections attempt to substitute the Township's Engineer's unlimited discretion for objective standards:

   a. Section 502B Pg. 500-2
   b. Section 502C Pg. 500-2
   c. Section 502D Pg. 500-2
   d. Section 502F Pg. 500-2
   e. Section 508C.2. Pg. 500-8
   f. Section 805B.4.b. Pg. 800-25
   g. Section 805B.4.c Pg. 800-25

5. Section 601A.2., "Public Utility Uses" - "The proposed installation in a specific location must be reasonably necessary for the satisfactory provision of service by the utility to the neighborhood or area in which the particular use is to be located. (Pg. 600-1)

6. Section 601A.3., "Public Utility Uses": - "The design of any building in connection with such facilities must conform to the general character of the area and are not adversely afect the safe, comfortable enjoyment of property rights." (Pg. 600-1)

7. Section 604A., "Townshouses": - "Each building and combined complex of buildings shall have a compatible architectural theme with variations in design to provide attractiveness to the development..." (Pg. 600-4)

POINT III

THE ORDINANCE CONTAINS NUMEROUS PROVISIONS AND PROCEDURES WHICH NULLIFY OR MAKE DISCRETIONARY WITH THE TOWNSHIP THE MANDATED INCLUSIONARY PROVISIONS INCLUDING AN ENVIRONMENTAL IMPACT AND COMMUNITY IMPACT REVIEW PROCESS THAT WOULD REQUIRE ALLAN-DEANE TO PROVE TO THE TOWNSHIP THAT THE LAND HAS THE ENVIRONMENTAL CAPACITY TO SUPPORT THE COURT MANDATED USE AND THERE WOULD BE NO ADVERSE "COMMUNITY IMPACTS".

From a legal perspective, as opposed to the design perspective outlines in Point I, the most outrageous provisions in the latest Bedminster Land Use Ordinance are the Environmental Impact Statement (Sec. 804C, pages 800-14 through page 800-18) and Community Impact Statement (804G, pages 800-18 through 800-19) review process. These provisions must be read in conjunction with the definition of "Adverse Effect" (Page 200-1) and Sections 804E.6. (Page 800-21) which prohibits any development "determined by the Board to be creating, imposing, aggravating, or leading to the possibility of an adverse effect."

The oportunities presented by this language for a denial of the Allan-Deane application boggle ones imagination. Not only must the applicant prove no "adverse effect" on the Township Master Plan but on that of adjacent municipalities, the Somerset County Master Plan, the Regional and State Planning Guides and "other pertinent planning documents". (See page 800-15). The applicant must analyze soils, geology, vegetation, wildlife, subsurface water, unique, scenic and/or historic features and existing air quality and noise levels (see pages 800-16 to 800-17). The applicant must adopt "energy conservation measures", "noise reduction techniques", which are not further defined or qualified (pages 800-17) and avoid adverse impacts on any of the 15 areas (see page 800-17, 800-18) including "disruption of wildlife habitats", "destruction of scenic and historic features", "air quality degradation", "noise levels", "energy utilization", "health safety and welfare of existing residents" or "regional development policies". Since one new resident who owned a car, breathed air and had other human qualities might lead, on a theoretical basis, "to the possibility of an adverse effect" with respect to some of these parameters, imagine the impact which an imaginative Planning Board might find with respect to a development the size of Allan-Deane.

The Community Impact evaluation process presents even more opportunities for a site plan denial since it requires the Planning Board to find no "adverse effect" with regard to population impact, school impact, facilities impact, services impact, traffic impact and the municipal tax rate (financial impact). Bedminster has here chosen not only to ignore such cases as Rutgers vs. Piluso, 60 N.J. 142 (1972) and Mt. Laurel see 67 N.J. at 185 (1975) which directly prohibits what they describe as "fiscal zoning" but requires applicant to do what was previously surreptitious homework, the actual measurement of the tax-cost of each development.

Clearly, neither environmental impact statements nor community impact statements are authorized under the Municipal Land Use Law either directly or by implication. Clearly also reliance on a community impact statement to deny a development proposal of an otherwise permitted use would be a per se exclusinary act. To require such information as part of the application process, rather than after approval prior to issuance of building permits, when such information could conceivably be useful for long-term capital planning purposes, is clearly inappropriate. Both the community impact requirements and the environmental impact requirements are, furthermore, entirely devoid of any standards at all against which impacts are to be measured and therefore subjective due to their very ambiguity.

Section 804E.6., which permits the planning board to require the revision of any development plan which might "lead to the possibility of an adverse effect" can in addition be used to require the applicant to continuously revise his plans and thus prevent the clock from running with respect to the time a municipality has to grant or deny site plan approval.

It is clear from a review of the Community Impact and Environmental Impact requirements that what Bedminster is trying to do is to move the forum in which this nine year conflict has taken place out of the courtroom, where the focus has been on zoning provisions, into the planning board room, with the focus on impacts. Some of the issues are the same - regional planning, water quality, population, effect on tax rate, effect on school populations, effect on trees, farmlands, meadows and streams. Only in Bedminster's forum the issues of exclusionary zoning, variety and choice of housing, etc. would not be considered. "Why should they be considered in a community or environmental impact review process", Bedminster will argue. The ordinance permits multi-family housing providing you don't cut down any trees, bring in new residents to breath the air or impact on their school population or tax rate.

The environmental impact and community impact process, in effect, requires a developer to affirmatively prove that the lands and the community have the capacity to absorb, without "adverse effect" a permitted use. To require Allan-Deane, which this Court has ruled is entitled to specific corporate relief, to prove to the Bedminster Township Planning Board that their project is sociologically and environmentally compatible with the Township's goals is certain to result in further litigation unless these provisions are now invalidated or Allan-Deane is exempted from this process.

POINT IV

THE REVISED ORDINANCE IS STUDDED WITH A MULTITUDE OF PROVISIONS WHICH ON THEIR FACE VIOLATE THE ENABLING STATUTE AND CASE LAW OF THIS STATE

At page 30 of this Court's decision in Allan-Deane v. Bedminster (December 13, 1979), the Court indicated its intent to have the new Bedminster Land Development Ordinance be free of such defects as violations of the enabling act and relevant case law. Even if this requirement had not been part of the Court's decision, it is a long-standing principle of zoning law in New Jersey that municipalities which exercise land use powers delegated to them by the legislature must observe all limitations of the grant and the standards which accompany it. Conversely, zoning regulations which violate the Enabling Act are theoretically invalid under the State Constitution, Taxpayers Association of Weymouth tp., 71 N.J. 249 (1976); Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp., 67 N.J. 151 (1975); Reid Development Corp. v. Parsippany-Troy Hills Tp., 10 N.J. 229.

The following provisions of the Bedminster Land Development Ordinance illustrate the range of MLUL and case law violations therein:

1. Section 200 - "Housekeeping Unit" - This limit on the number of unrelated persons who may occupy a dwelling unit was explicitly invalidated in State v. Baker, 81 N.J. 99 (1979): (Pg. 200-6).

2. Section 505B and Section 514A.1., - These sections violate N.J. 40:55D35 which requires only that a dwelling unit front on a street giving access; municipalities may not require that units front on public as opposed to private streets: (Pgs. 500-5, 500-14).

3. Section 601 - This violates N.J.S.A. 40:55D67a, which requires definite specification and standards to control conditional uses: (Pg. 600-1).

4. Section 802B.(a) - This section violates N.J.S.A. 40:55D-37a which requires that subdivisions and

individual lot applications for detached one and two dwelling unit buildings be exempt from site plan approval: (Pg. 800-2).

5. Section 802D.3. - This volates recent MLUL amendments (eff. 2/1/80) which prohibits the charging of fees for infoohibits the charging of fees for informal review of the concept plan: (Pg. 800-2).

6. Section 502G and 804B.13(a) N.J.S.A. 40:55D-22b which mandates that municipal approvals be conditioned upon State/federal regulations: (Pg. 500-3).

7. Section 804A(1) and 805A(1) which prohibits even the filing of an application for development with the Clerk of municipality, except during a four-day period each month, which four-day period varies with the schedule of the planning board, violates N.J.S.A. 40:55D8 requiring reasonable administrative procedures.

It should be pointed out that these violations of the enabling act and case law were critiqued in written memorandums to Bedminster's consultant during the review process but were ignored in the succession of revised drafts which evolved into the final ordinance presented to the Court.

POINT V

UNDUE COST-GENERATIVE PROVISIONS

One of the central precepts of inclusionary zoning for the general welfare of the region expounded in Oakwood v. Madison, Inc. v. Tp. of Madison, 72 N.J. 481 (1977) is that developing municipalities must make bona fide efforts toward the elimination of undue cost-generating requirements. The Bedminster Township Land Development Ordinance presented to this Court is replete with cost-generative provisions, examples of which are the following:

1 Section 403D requires excessive lot areas, frontage, widths, etc. for all planned development options thereby unjustifiably adding to costs and effectively prohibiting housing on very small lots and other "least-cost" alternatives best provided in planned developments. (Pg. 400-5)

2. Section 502 - Requires the use of "hardware" solutions to solve drainage problems add to development costs where natural solutions are less expensive. (Pg. 500-1)

3. Section 508A.3. - Landscaping requirements are

excessive. i.e. trees with branches no lower than seven feet at planting. (Pg. 500-8)

4. Section 514A.8. - Cul-de-sac standards arbitrary limit density and incrase infrastructure costs for this low-cost design option. (Pg. 500-16)

5. Section 514A.10 - These paving standards are very excessive and cost-generative. (Pg. 500-16) (See attached standards)

6. Section 804B contains many requirements which are unduly cost-generative at the preliminary approval stage thereby potentially prhibiting development from taking place at all because of very high front-end costs. (Pg. 800-9; 800-14)

7. Section 804C and 804D require "Environmental Impact Statements" and "Community Impact Statements" for all planned developments and ae unduly cost-generative. (Pg. 800-14. 800-18) (Pg. 800-18, 800-19)

POINT VI

THE PROPOSED ORDINANCE DOES NOT PROVIDE FOR MANY VERY SMALL LOTS FOR DETACHED ONE-FAMILY AND TWO-FAMILY UNITS OR FOR A DENSITY, ON A GROSS ACREAGE BASIS, OF FIVE UNITS PER ACRE THROUGHOUT THE CORRIDOR.

It should be obvious from a glance at the new zoning map and at the permitted densities in the various zones that Bedminster has not even come close to the kind of rezoning mandated by the Court Order of March 6, 1980. The smallest lots permitted as of right, in the R 1/4 zone, which requires a lot frontage of 90 feet and a lot depth of 120 feet, is 10,800 square foot lots (see 403D, page 400-5). In Mt. Laurel, minimum lot sizes of 9,375 to 20,000 sq. feet (or 2-5 units per acre were declared not to be "very small lots" (67 N.J. at 170); in Madison, minimum lot sizes of 7,500 sq. ft. (or 6 units per acre) were implied to be "small" but were not considered to be a bona fide attempt at least cost housing because they were permitted on only 2% of the vacant developable land (72 N.J. at 505).

BEDMINSTER"S CRITICAL AREA REGULATIONS ARE STILL CONFISCATORY

The proposed ordinance differs from the ordinance just invalidated by this Court in the treatment of the steep

slope areas in the following respects:

1. It prohibits forestry (Sec. 605E, pg. 600-6 and Section 105, Pg. 100-2) the only use which was previously found to be "practical" by this Court. (See Opinion of December 13, 1979, pg. 27)

2. It prohibits all agriculatural uses except floriculture, horticulture and silva culture which were previously allowed.

3. It prohibits golf courses and tennis courts which were previously allowed.

4. It permits "passive restricted uses in the nature of wildlife preserves, hiking trails and picnic areas..." provided site plan approval is acquired from the Township.*

5. Detached dwellings are allowed on a minimum of 5 acres which have access to a "street" (which means under this ordinance, a street approved by Bedminster; see "street" definition at p. 200-11) provided the floor ratio does not exceed 1 1/2% or the lot coverage 1/2%.

Conclusion

For the reasons stated above, Allan-Deane respectfully requests, based on the documents herein provided, that Bedminster

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*Bedminster's new requirement to the effect that land with slopes in excess of 15% can be used for wildlife preserves, hiking or picnicing only provided "site plan approval is obtained from the township" is puzzling, coming as it does from the pens of "country people" (see Robert Grqff Testimony T-XXVII-191 -3).

be adjudged to have failed to comply with this Court's Order For Remedy of March 6, 1980 and that the powers granted to the Court-appointed Master be enlarged to permit him to redraft the Land Development Ordinance by May 31, 1980, to bring it into conformance with this Court's Order and State law. Allan-Deane further respectfully requests that this Court thereafter order Beminster Township to enact the completed ordinance into law.

Respectfully yours,

Henry A. Hill, Jr.

HAH/vwa
Enclosures
cc: Alfred Ferguson, Esq.
Edward Bowlby, Esq.
Gary Gordon, Esq.
Mr. George Raymond
Mr. Gerald Lenaz
Mr. James Murar
Mr. John Kerwin
Dean Gaver, Esq.

ILLEGAL AND/OR IMPRACTICAL PROVISIONS OF BEDMINSTER LAND DEVELOPMENT ORDINANCE DRAFT (MAY, 1980)

Page	Section	Comment
100-2	104	Fails to recognize that ordinance standards do not govern where pre-empted by State/federal statute/regulations; we recommend statement to this effect....; see AD memo of 3/26/80.
200-1	Intro.	Defines "lot" and "tract" to be synonomous; "tract" later defined as "one or more lots...."; this sentence making them synonymous should be removed....
200-1	200	"Adverse Effect" is definition subject to arbitrary interpretation due to ambiguous words such as "aggravating", "impractical", "unsafe".... this term is used in Section 804E.6. and 803C.4. to delay approval processes beyond M.L.U.L. time limits and adds to unnecessary expense in preparation....
200-2	200	"Building Height" - this definition is inappropriate for buildings on slopes; we recommend substitution of the definition included in the "Proposed Additions to the Bedminster Land Development Ordinance" submitted to Bedminster and Master on April 24, 1980.
200-3	200	"Coverage, Lot" - clarify by adding word in brackets to last sentence: "All [Required] parking areas, paved or unpaved, shall be included in the computation of lot coverage."
200-3	200	"Dwelling Unit" - this definition prohibits the use of outside stairs; this unduly limits design flexibility, prohibiting, for example, stairs up to a deck or patio; we recommend that language of "And shall not require the use of outside stairs" be deleted.

Page	Section	Comments
200-4	200	"Garden Apartment" - height and story limits should vary from zone to zone and are inappropriate in a definition; additionally, prohibition or "more than two (2) dwelling units, or parts thereof",.... "situated in any vertical plane" unduly limits flexibility in design and density.
200-4	200	"Two-Family" - requirement that each building be on a separate lot and each have entrances on the first floor unduly limits flexibility in design.
200-4	200	"Townhouse: 1) minimum of 4 connected units unduly restricts flexible design; 2) requirement that units be "compatibly" designed but "distinct" by various design features is inconsistent and is so ambiguous as to permit arbitrary enforcement; 3) height and story limits should be related to the zone and are appropriate in a definition.
200-6	200	"Housekeeping Unit" - definition explicitly prohibited by State v Baker, 81 N.J. 99 (1979); see A.-D. memo of 4/28/80 submitted to master. Should be deleted.
200-7	200	"Lot Frontage" - required relationship of frontage to width (frontage to be at least 75% of width) unduly limits flexible cul-de-sac designs; we recommend deletion of entire second sentence or inapplicability to Planned Developments.
200-7	200	"Lot Width", required relationship of width to frontage (width at least 75% of frontage) unduly limits flexible designs; additionally, if lot width and frontage definitions are read together, (F greater than 75% W and W greater than 75% F) the solution to both equations is frontage equals width. We recommend that standard be 33% or inapplicable to Planned Developments.

Page	Section	Comment
200-8	200	"Parking Space" - length of space need be no longer than 19 feet (largest car ever produced); the second-to-last sentence should be deleted to limit impervious coverage by permitting bumper over-hang.
200-9	200	Insert after "Public Purpose Use": "Public utility: a closely regulated private enterprise with an exclusive franchise for providing a public service."
200-9	200	"Restaurant, Drive-In", the last sentence prohibits this use in all zones and is inappropriate in a definition.
200-10	200	"Setback Line" - the word "public" should be inserted to modify the word street whenever used, or Planned Developments should be exempt from setbacks so that hammer-head lots and other flexible designs are achievable along private roads.
200-10	200	"Sight Easement at Intersection" - we recommend that the prohibition of grading and planting be removed to permit planting at a reasonable height to prevent unsightly intersections.
200-11	200	"Story" - this definition is unclear regarding "half-stories"; we recommend the following definition of half story: "A space under a sloping roof and wall face not more than three (3) feet above the floor level, and in which space the possible floor area with head room of five feet or less occupies at least 40% of the total floor area of the story directly beneath.

Page	Section	Comments
400-3	403A.5	Control over profitability of schools is not permitted through zoning; "not operated for profit" phrase should be deleted.
400-4	403C.	If mandated densities are to be achieved, flexibility of design allowed, and open space maximized, building height should be increased to 45 feet and 3.5 stories.
400-5	403D.	Lot Frontage - R 1/2 and R 1/4 require excessive frontages. We recommend reduction to 30 foot minimum.
400-5	403D.	Lot Width, Lot Depth - requirements for R 1/4 prevents achievement of mandated densities by requiring 10,800 sq. ft. lot (plus roads); we recommend 70 ft. width, 100 ft. depth.
400-5	403D.	Side Yards - are wasted space; no more than 10 ft. on each side is necessary for R 1/4 and R 1/2.
400-5	403D.	Front Yards - are also wasted space with little utility for homeowner; we recommend reduction to 30 ft. off public road for R 1/2 and 20 ft. off public road for R 1/4, and 5 feet off private roads for both R 1/4 and R 1/2 to permit hammer-head lots.
400-5	403D.	Rear Yards - excessive for R 1/4; we recommend 30 ft. minimum.
400-5	403D.	Building Coverage - arbitrarity limits to house footprin of about 1,300 sq. feet in R 1/4 and 2,400 sq. feet in R 1/2; we recommend increase to 15% in R 1/2 and 20% in R 1/4; instead of separate building lot coverage stan for accessory buildings, an impervious lot coverage limi

Page	Section	Comments
400-6	403E.	The second sentence arbitrarity limits flexible lot design; we recommend this be deleted since twin houses may reasonably have common drives.
400-6	403E. and 403F.	Off-street Parking And Signs should not be part of district regulations thereby requiring a showing of hardship to obtain a zoning variance to alter said standards for a given lot.
400-7	404B.	Public utilities should be a permitted accessory use.
400-7	404C.	If mandated densities are to be achieved, flexibility of design allowed and open space maximized, building heights should be increased to 45 feet and 3.5 stories.
400-8	404D.	These area and yard requirements apply to Residential clusters (see 606,B.5(a)), Planned Residential Developments (see 606,C.5(a)) and Planned Unit Developments. In order to permit "very-small lots", high density multi-family units, achievement of permitted densities, to ensure design flexibility, we suggest the following schedule:

404 D. Area and Yard Requirements

Principal Building Unit	Detached Dwelling Unit	Zero Lot Line Detached	(Side by side or vertical) Two Family on One Lot	(Side by side) Two Family on Two Lots
Lot area	5,000 sq. ft.	4,000 sq. ft.	6,000 sq. ft.	3,000 sq. ft.
Lot frontage	20	20	20'	15'
Lot Width	40	40	50'	25'
Lot Depth	70	70	70'	70'
Side Yard	7.5'	1 side 15' 1 side 0'	7.5'	0' one side 15' one side
Front Yard	5'	5'	5'	5'
Rear Yard	20'	20'	20'	20'
Accessory Building Unit				
Dist. to side line	5'	5'*	5'	5'*
Dist. to rear line	10'	10'	10'	10'
Dist. to other bldg.	5'	5'	5'	5'
Bldg. coverage principal bldg.	40% or 45% with attached garage.	40% or 45% with attached garage.	45% or 50% with attached garage.	45% or 50% with attached garage.
Bldg. coverage of accessory bldg.	5% or 10% with detached garage.	5% or 10% with detached garage.	5% or 10% with detached garage.	5% or 10% with detached garage.

*Can be zero if attached to same accessory used in adjacent lot.

Page	Section	Comments
400-13	406E.3.	This section should be made more flexible and less open-ended by: 1) removing the word "suitably" before landscaping; 2) inserting after "landscaping" the following: "for example with shrubs, ground cover, seeding or similar plantings, terraces, plazas, sculpture or art. 3) The last sentence should be deleted as an arbitrary limit on design and density.
400-13 to 400-14	406F through 406I	Should be in Section 500 design standards to alleviate the need for unnecessary zoning variances.
400-13	406F.1.	A more reasonable, current standard for off-street parking in relation to net habitable floor area used for offices is one (1) space per 250 sq. ft. used for offices, rather than one (1) space per 200 sq. ft.
400-14	406F.2.	The requirement of one (1) space per company vehicle is unnecessary since company vehicle's will not be present on-site during regular work hours and may utilize other spaces after hours; this section should therefore be deleted.
400-14	406G.2.	This section does not concern off-street loading and is unreasonable since it in fact requires an accessory structure for storage of trash. We recommend deletion of this section and replacement with a new section 406I. to read: "Trash and Garbage Pick-Up There shall be adequate provision for trash and garbage pick-up."
400-14	406H.1.	This section unduly limits the placement of signs; the last clause should permit signs anywhere on the lot outside of sight easement triangles.

Page	Section	Comments
500-1	501B.	There is no justification for prohibiting the construction of accessory buildings prior to the principle buildings; in fact, many times accessory structures must be constructed to hold tools and equipment to prevent the site from becoming an eyesore during construction of the principle building; this section should therefore be deleted.
500-1	501E	Accessory buildings should be permitted in front yards to allow a flexible design such as a garage at the front-lot line with a private court-yard between the garage and the residential building; this section should therefore be deleted.
500-1	502	Drainage "hardware" or structural solutions should not be encouraged over non-structural solutions such as swales; this introductory section should therefore be removed.
500-1	502A	In order to make this section legal and to clarify its intent, the following clause should be added at the end of the first sentence: "in their current state of development."
500-2	502B	Replace "shall be approved by Township Engineer" with "shall meet performance standards in this section" (see attached material)
500-2	502C	Delete "unless otherwise directed by Township Engineer " replace "shall be designed for minimum flow capacities" with "shall be designed for a flow of a 100 year storm of 24 hour duration." The third row under the first sent should be replaced with: "Drainage Systems In Open Channels - 25 year storm"

Page	Section	Comments
		(1) "drainage infrastructure improvements" should be defined.
500-2	502D	"unless otherwise specified by Township Engineer" should be deleted from first sentence. Second sentence should be replaced with: "Modification or changes of these specifications may be granted by the reviewing municipal authority"
500-2	502E	Remove "and into streets, where possible" from first sentence and "and to extent possible, water shall not flow across adjacent property lines" from second sentence as meaningless surplussage.
500-2	502F	Delete second sentence because it gives unfettered authority to Township Engineer.
500-3	502G	Required provision of letters of approval prior to final approval violates NJSA40:55D-22b which mandates that municipal approvals be conditioned upon State or federal permits.
500-4	502H	Requirement of dedication "to accomodate expected runoff based upon reasonable growth potential" is an illegal exaction and incomprehensible standard to guide the applicant.
500-4	502I	This requirement is meaningless in light of Section 502F.

Page	Section	Comments
500-1 to 500-4	502A-502I	Alternatively, the entire section on Drainage should be replaced with Section 607 of the "Proposed Additions to the Bedminster Land Development Ordinance" submitted to Bedminster and the Master on April 24, 1980.
500-4	503B	This section should be changed to permit grading and planting up to a given height to prevent unsightly conditions.
500-5	505B	The M.L.U.L., N.J.S.A.40:55D-35 merely requires that a lot abut a "street giving access"; since there is no justification for requiring lots to front on public as opposed to private streets, this section should be deleted or changed to read: "Each lot must front upon a street.".

Page	Section	Comments
500-5	505C	This section should be deleted in its entirety since it is merely a restatement of the purposes of the subdivision process.
500-6	505D	The requirement of concrete monuments at all corners of lots is unduly cost-generating, especially in higher density subdivisions, so this section should therefore be deleted or revised to read: "Concrete monuments shall be installed in accordance with applicable state statutes."
500-6	506C.	The first sentence has no content and should be deleted. The second sentence which requires that an applicant prove that grading/construction requirements "necessitate" removal of trees is an impossible burden to meet and should be replaced with the statement that "maintenance and preservation of existing trees is encouraged". Additionally, required species should be stated in the ordinance, not "required by the Board."
500-8	508A.1.	Landscaping requirements in this section are too inflexible, cost-generative, and rigid; we recommend replacement of the "dense evergreen material" requirement with: "A screen planting or other landscape feature such as berms, art, fences, sculpture, walls, etc.
500-8	508C.	Should be entitled "Parking".
500-8	508C.1.a.	There should be no limit on permissable reduction of paved areas; at any rate, a 20% limit is entirely arbitrary and unjustified.

Page	Section	Comment
500-8	508C.1.d.	This section does not sufficiently control planning board discretion as to paving of reserved spaces; we recommend substitution of the phrase: "when existing parking facilities are over-utilized" for the current phrase "at any time".
500-9	508C.2.	This section gives the Township Engineer unbridled discretion; it should be modified to read; "All parking and loading areas and access drives shall be paved as outlined below unless the approving authority waives any requirement."
500-9	508C.2. a. to 508 C.2. c.	It is excessive to require parking and loading areas to be paved to Highway specifications.
500-10 to 500-12	509	These performance standards are excessive if applied to all uses; they should apply only to non-residential uses.
500-12	511A.	The last sentence may require an applicant to do something beyond its control, namely, to force PSE&G Co. to replace existing lines with underground lines; also, underground installation may not be feasible due to site conditions such as bedrock close to the surface; we recommend that replacement of existing overhead utilities be required underground only "where feasible and in accordance with P.U.C. rules and regulations".
500-12	511B.	Utility easements should be permitted in other than rear yards since it would be more acceptable for maintenance trucks to tear up front yards than rear yards used by residents for recreational and other purposes.

Page	Section	Comments
500-14	514A.1.	The M.L.U.L., N.J.S.A.40:55D-35 does not require that developments be served by "public" streets; we recommend that this section be changed to read: "All developments shall be served by paved streets in accordance with an approved subdivision or site plan".
500-15	514A.2.	The intent of this provision would be more clear if it read: "No development shall be approved which land-locks an adjacent tract".
500-15	514A.4.	The last sentence should be deleted or clarified....
500-15	514A.5.	The fourth column is meaningless unless "shoulder" and "gutters" are defined.
500-16	514A.6.	A more reasonable and flexible design standard would result if the following phrase was added to the first sentence of the first paragraph: "or a radius of 700 feet;" standards contained in the second paragraph are being checked....
500-16	514A.7.	These standards are being checked....
500-16	514A.8.	These standards are entirely unreasonable if applied to planned developments.
500-16 to 500-17	514A.10	These paving standards are entirely too high; we recommend replacement with the following:

Street Construction

The following standards shall apply to street construction:

1) Subgrade shall consist of native in-place material compacted to a minimum density of 90%.

2) Pavement

a) The pavement base course shall consist of New Jersey Department of Transportation Mix No. 1, bituminous concrete, compacted to a minimum thickness as follows:

Classification	Minimum Thickness
Collector	5 inches
Minor	4 inches
Private	4 inches

b) Damaged or ruptured pavement base shall be removed and replaced prior to construction of the surface course.

c) After the surface of the base course has been thoroughly cleaned, a tack coat consisting of RS-1 asphalt emulsion or other approved material shall be uniformly applied to the base course surface.

d) The pavement surface course shall consist of New Jersey Department of Transportation Mix No. 5, bituminous concrete, compacted to a minimum thickness of 2 inches for collectors, minors and privates.

Page	Section	Comments
500-17 to 500-18	514B.	Standards being checked....
600-1	601.	This introductory section requiring consideration of..."all reasonable elements which could affect public health, welfare, safety, comfort and convenience, such as.." in granting conditional uses violates NJSA 40:55D-67a which requires "definite specifications and standards which shall be clearly set forth with sufficient certainty and definiteness to enable the developer to know their limit and extent."
600-1	601A.	Public utilities should not be conditional uses in high-density residential zones since public utilities such as sewage treatment plants are absolute prerequisites and are specifically required in this ordinance (see Sections 603A 604B) for high density development. Although most of the "standards" listed for public utilities are too indefinite to qualify as performance standards, we recommend that public utilities be permitted as principal or accessory uses in high density districts subject to reasonable performance standards.
600-1	601A.1.	This section should be in definitions (Section 200); see page 3 of these comments.
600-1	601A.2.	This section should be deleted because of ambiguous language ("reasonably necessary", "satisfactory provision", "neighborhood or area" and also because this decision is part of the public franchise grant process not zoning.
600-1	601A.3.	Due to excessively open-ended language, this section contains no standards to guide the Planning Board in its decision, for ex: "conform to general character", "adversely affect", "safe comfortable"; we recommend deletion.
600-1	601A.4.	Delete first sentence; superfluous.
600-1	601A.5.	Delete and substitute: "Landscaping shall be as required in Section 500".
600-1	601A.7 (new)	Add: "Public utilities exempt from building requirements".

Page	Section	Comments
600-2	601B.	As with Public Utilities, Senior Citizen housing is mandatory (Section 606 D,10a) but at the same time is a conditional use.
600-2	601B.5.	Recreational area requirements are high and waiver should be permitted when projects are located within 300 feet of proposed as well as existing park or recreational areas.
600-2	601B.7.	What are "applicable" requirements? We recommen that "applicable" requirements be specified and that the following statement be added to this section: "provided they don't conflict with current state or federal regulations".
600-2 to 600-3	602A.	The 10% addition is insufficient to cover ordina mechanical structures which must be placed on th roof.
600-3	603D.	Space within each building for laundry equipment is not necessary or reasonably required for condominiumized units or for buildings with few uni
600-4	603F.	Minimum floor area requirements are exclusionary see Madison.
600-4	604A.	This section contains so many subjective standar as to require deletion in its entirety; see Morristown Road Assoc. V. Bernardsville.
600-5	604G.	Minimum floor area requirements are exclusionary see Madison; additionally, this section currentl reads to require a specified net habitable floor area, i.e., units can be neither larger nor smaller than the size set out in this table.
600-5	605A.	This section should be included in the Section 200 definition section.
600-5 and 600-6	605D. and 605E.	The permitted use of one detached dwelling unit per five acres is illusory since the 1/2% lot coverage limit permits the dwelling, patio, driveway and accessory structures to cover only 1,089 sq. ft. Clearly, since the environmental limitations of flood plains are different from "steep slopes", permitted uses in these areas should vary. Note that no density transfer cred are provided and since the A.D. steep slope land is not included in a planned development overlay zone, this land cannot be used to satisfy open space requirements for land in the planned development overlay zone.

Page	Section	Comments
600-8	606B.6.c.	Delete: Section 508 applicable to non-residentia uses only.
600-9	606C.2.a.	Reference to rear yards should be deleted- limits flexible design.
600-9	606C.3.	Arbitrary limits on building heights prevents achievement of permitted densities and flexible designs; we recommend increasing building height to 45 feet and 4 stories.
600-10	606C.5.b	Excessive standards limit flexible design and achieveable densities; for example, the requirement that "combined distance of two abutting yards exclude driveways or vehicular access" adds at least 60 feet to the required 60 feet sideyard distance between townhouses and garden apartments; since the simplest townhouse design has access and parking in "side yards", spacing of 120 feet would be required. This requirement alone reduces achievable densities by one-half!
600-10	606C.6.c	Delete: Section 508, applicable to non-residentia uses only.
600-11	606C.9.b.	Mandatory bedroom distributions are illegal; see Madison.
600-11	606D.1.c	Public utilities should be permitted not conditional uses; see previous discussion.
600-12	606D.3.	Building heights arbitrarily limit achieveable densities and design; we recommend height limits of 50 feet and 4 stories.
600-13	606D.9.	Open space for PUD's is as required in Section 606E which has been deleted from this draft; a previous draft included this section and our comments on it are as follows:
	(Deleted) 606E.1.	1. Second sentence contains too many subjective standards and should be deleted in its entirety. 2. Permitted use of critical areas to satisfy up to 1/2 minimum open space requirements is illusory since PUD zones are defined on the zone map to exclude critical areas.
	(Deleted) 606E.3.a., through 3.f.	These sections are incompetent attempts by a lay man to define complex legal relationships. Substitute the following: "Membership in any open space organization by al property owners or tenants who are granted right in such open space shall be mandatory. Such

Page	Section	Comments
		memberships shall be in writing with each member agreeing to his/her pro rata share of assessment for benefits. The Township shall have all right set forth in NJSA 40:55D-43. Legal documents ma be reviewed by the Planning Board attorney for conformance with NJSA 40:55D-43."
600-13	606D.10.c.	Delete and substitute: "c. Any units for sale which contain two bedroom or more and which will sell for a price not exceeding 2-1/2 times the median family income for Somerset County in the year of sale shall be considered as meeting the provisions of this section. d. Any units for sale which contain less than tw bedrooms and which sell for a price not exceedin 2-1/2 times 80 percent of the median family income for Somerset County in the year of sale shall be considered as meeting the provisions of this section."
700-3	702F.1.	This section violates the M.L.U.L. by requiring majority vote of the full authorized membership rather than a quorum for issuance of a construct permit for building in bed of street/drainageway reserved by official map; see previous memo.
800-1	801A.2.b.	Second statutory reference should be to NJSA 40:55D-32.
800-2	802B.(a)	Fails to exempt subdivision applications of sing family, two family detached dwelling units as re quired by NJSA 40:55D-37a; should read: "site pl review shall not be required for subdivision or individual lot applications for detached one or two dwelling unit buildings". (See A.D. memo of 4/28/80).
800-2	801D.3.	Violates M.L.U.L. Amendment (eff. 2/1/80): "At the request of developer, the Planning Board shall grant an informal review of a concept plan for a development.... The developer shall not be required to submit any fees for such an informal review." (See A.D. memo of 4/28/80).
800-9	804B.	Fails to distinguish between submissions reasonably related to subdivision approval versus site plan approval; for example:
800-12	804B.17	1. not appropriate for subdivision application since it concerns use of land on each lot, not how tract is subdivided into lots;

Page	Section	Comments
800-12	804B.19.	2. not appropriate for subdivision application;
800-12	804B.20	3. not appropriate for subdivision application;
800-13	804B.21	4. not appropriate for subdivision application;
800-14	804B.29.	5. not appropriate for subdivision application;
800-9	804B.	Contains many requirements which are inappropriate (see NJSA40:55D-46 and 40:55D-48 language concerning "tentative form for discussion purposes"),and unduly cost-generative during preliminary approval stages, for example:
800-10	804B.12	1. second sentence - requirement is appropriate for final site plan approval only;
800-11	804B.13b.	2. if appropriate at all, only at final subdivision approval stage;
800-11	804B.13d	3. too burdensome for preliminary stage;
800-12	804B.14	4. too burdensome for preliminary stage;
800-13	804B.23a	5. profiles of sewer lines appropriate for final approval stage;

Page	Section	Comments
800-14	804B.26	6. details of streets appropriate only at final stage.
800-9	804B	Other problems with Section 804B requirements:
800-10	804B.11	1. "dimensions" of natural features is burdensome requirement;
800-10	804B.12	2. a. twelve (12) inch caliper is more reasonable definition of a "significant" tree;
		b. identification of species associations not species should be required, otherwise applicant must identify each tree, more valuable to know stage of each grouping rather than each tree.
800-11	804B.13a.	3. N.J.S.A.40:55D-22 requires municipal agencies to make their approval conditional upon subsequent action by State or federal agencies such as the New Jersey Department of Water Policy and Supply.
800-11	804B.13 c	4. the total acreage of drainage basins should only be required where water course is adjacent to the tract "if tract is within drainage basin of said watercourse".
800-11	804B.13d	5. unduly burdensome

Page	Section	Comments
800-11	804B.13f	6. burdensome unless "adjacent" is replaced with "within 200 feet of tract".
800-12	804B.18	7. clarify by adding after "all dimensions" the following: "of proposed buildings"; replace "yard areas" with "building envelope as defined by setback lines, etc".
800-12	804B.20a	8. a. this contains site plan standards and doesn't belong here;
		b. prohibition of above-surface structures is an unreasonable limit on use of berms, fences, etc.
		c. subsection 1) doesn't consider potential combination with berms (which would require lower planting heights); height should be related to topography of site.
		d. Required buffering makes integration of design between residential and non-residential areas difficult and presupposes a negative impact due to proximity of uses; a more reasonable provision would permit waiver of buffers to permit integration of residential and non-residential areas in a planned development.
800-13	804B.20a. 2)	e. This is appropriate for a separate property maintenance ordinance, not a Land Development Ordinance.

Page	Section	Comments
800-13	804B.22	f. clarify by adding word "proposed" before word "device" in last clause of sentence.
800-13	804B.23b	g. with regard to soil conservation devices, merely repeats requirement of Section 804B.15.
800-13	804B.25	h. plans of gas, telephone, electricity should be limited to feasible connections for the same.
800-14	804B.26	i. "vertical data specified by Township Engineer" is insufficient standard; replace with: "U.S.C.S. vertical datum"; delete rest of sentence as a redundant requirement.
800-14	804C	Environmental Impact Statement; see A-D memo 4/28/80 regarding legality of EIS requirement and lack of authorization under M.L.U.L.; objections to specific sections are as follows:
800-15	804C.2.	1. "material pertinent to evaluation of regional impacts" is an insufficient standard and should be deleted;
800-15	804C.2.	2. Replace sentence beginning "All applicable material on file..." with "The Township shall list all environmental studies, reports, documents, etc. on file and provide said list to the applicant; and the applicant shall consult the same."

Page	Section		Comments
800-15	804C.2.a.	3.	in subsection C.2.a. - delete requirement concerning residential population, etc. as duplicative of Community Impact requirement.
800-15	804C.2.a.	4.	in subsection C.2.a. 2) through 5) - delete in entirety because township master plan incorporates all these documents and indicates conformity therewith.
800-16	804C.2.b.1)	5.	Subsection C.2.b.1) Types of Soils - substitute for second sentence: "Applicants shall utilize S.C.S. data; data from field studies may be used in lieu of S.C.S. data at applicant's discretion."
800-16	804C.2.b.4)	6.	Subsection C.2.b.4) Vegetation - add "General" before "location";
800-16	804C.2.b.5)	7.	Subsection C.2.b.5) Wildlife - either adequately define "unique" or provide data as to where unique habitats are, or change requirement to "identify endangered species".
800-16	804C.2.b.6)	8.	Subsection C.2.b.6) - Subsurface Water - This data is very expensive to produce; water quality parameters must be listed in order to make this requirement reasonable; New Jersey Division of Water Resources pre-empts the control of ground water quality, so this requirement is extremely cost-generative where applicant must monitor in order to provide the data; not applicable where public water to be utilized.

Page	Section		Comments
800-16	804C.2.b.)7)	9.	Unique Scenic and/or Historic Features - "unique", "scenic" undefined; requirement only justified where N.R.I. provides data.
800-17	804C.2,b)9)	10.	Miscellaneous - "when warranted" is insufficient standard; should read "when required by State or Federal regulations.
800-17	804C.2.c.	11.	This section concerning environmental performance controls should come after current section d) which concerns impacts, in order to prevent unnecessary duplication and also because the environmental impacts determine what controls are necessary; subsection C should be deleted and replaced with "Describe methods to mitigate impacts listed in previous section"; see A.-D. memo of 4/28/80 for discussion of legality of these requirements.
800-17	804C.2.d.	12.	this list should be limited by replacing language "shall be considered" with "shall be limited to"; generally, the listed requirements contain no standards to limit data which must be provided and is therefore too open-ended.
800-15	804C.2.d.11)	13.	Without provision of base-line data by township or other source, this requirement is extremely expensive to comply with; additionally, state of art in air quality modelling is too undeveloped to approximate impacts; perhaps a general qualitative discussion could be required.

Page	Section	Comments
800-18	804C.2.d.14)	14. Too open-ended....
800-18	804C.2.d.15)	15. Too open-ended....
800-18	804D	Community Impact Statement - as to general legality of requirement, see A.D. memo 4/28/80;
		Specific Comments:
800-19	804D.2.	1. Change second sentence to read: "The information furnished within the Community Impact Statement shall serve to influence the design of necessary municipal facilities and their coordination with the proposed development.
800-19	804D.2.	2. Analysis of number of pupils to be added as a result of development is possible; rest should be deleted as dependent upon municipal policy decisions regarding school construction, staffing, etc.
800-19	804D7 (new)	3. It is <u>essential</u> that the following statement be added to prevent the planning board from illegally disapproving an application because of the so-called detrimental community impact:

Page	Section	Comments
800-19		"Disposition by the Board The Board shall review the information furnished in the Community Impact Statement, said information to be used solely as a data base for future Township policies and not to limit population or dwelling units, etc. in the proposed development."
800-21	804E.6.	See A.D. memo, 4/28/80 regarding general legality; note that Township can and should protect itself against "Adverse Impacts" by disapproving rather than delaying development applications which violate ordinance standards; disapproval is preferable to delay because the Board must state sufficient reasons in its resolution, and the applicant may appeal said disapproval; at any rate, insufficient definition of "adverse impacts" prevents fair and impartial administration of this provision.
800-25	805B.4.b.	delete "As approved by the Township Engineer"
800-25	805B.4.c.	delete "As approved by the Township Engineer"
800-25	805B.4.d.	Revise third sentence to reflect better reference: "At least one corner of the subdivision shall be tied horizontally to the New Jersey State Grid Coordinate System and vertically to U.S.G.S. benchmarks...."

Page	Section	Comments
800-25	805B.5.a.	Tax Collector not Assessor is charged with this duty.
800-26	805B.5.c.	This section replicates requirements of section 805B.5.d. below and grants unbridled discretion to Township Engineer; all but the last sentence before 1) should therefore be deleted.
800-30	807B.4.	Only points of connection to existing lines for electric, gas and telephone may be feasibly shown or required at this stage.
800-30	807B.6.	The intent of this section would be clarified if revised to read: "An Open Space and Recreation Plan shall be submitted, indicating minimum acreage to be devoted to open space, conservation, and recreational purposes within each land use category."

MEMORANDUM

TO: George Raymond
Raymond, Pine, Parish & Weiner, Inc.

FROM: Henry A. Hill, Jr., Esquire

RE: Planned Unit Development Preliminary Site Plan Approval Option

DATE: May 1, 1980

As previously discussed, the Allan-Deane Corporation is recommending that Bedminster Township include in its land development regulations an optional planned unit development preliminary site plan approval procedure. The recommended procedure would grant a planned unit development the option of complying either with preliminary site plan approval procedures contained in Section 804 of the Revised Land Development Regulations as proposed by Richard Coppola in his Memorandum 6-80, or in lieu thereof, of complying with our proposed Section 804 C through F.

Proposed Section 804 C requires a planned unit development applicant to submit maps and plans which describe various features of the proposed development. Pursuant to proposed Section 804 F, the planning board is given the power to grant preliminary site plan approval to a conceptual land use plan which shows the total gross area and the maximum number of dwelling units and divides the entire development area into land use components showing the maximum number of dwelling units per component and the total net building square footage for each commercial component. The circulation, drainage and utilities map is also approved by the planning board at this stage; this map must show the major collector roads, major retention and detention basins and the location of major sewer and water lines, sewage treatment plants and water storage facilities. A staging schedule and map is also approved in this preliminary site plan stage.

We recommend this optional preliminary site plan approval procedure as a flexible tool which will assure compliance with community planning objectives and eliminate the risk of stifling innovation and creativity in the planned development process. This optional provision allows the planning board

to focus, first of all, on a conceptual land use plan and on the capacities of the various sections of the planned development. Additionally, this optional approval process is clearly authorized, encouraged and mandated by the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).

The requirements for preliminary site plan approval are contained in N.J.S.A. 40:55D-46a, which reads as follows:

> "An ordinance requiring site plan review and approval shall require that the developer submit to the administrative officer a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met. The site plan and any engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval. If any architectural plans are required to be submitted for site plan approval, the preliminary plans and elevations shall be sufficient."

The language of this section which mandates that the site plan and other documents which are required to be submitted be in "tentative form for discussion purposes" leaves no doubt that the legislature intended that an application for preliminary site plan approval contain less detailed and less complete information than is required to be submitted in an application for final site plan approval. This section of the Municipal Land Use Law therefore grants municipalities the power to define the requirements necessary for preliminary site plan approval with one proviso: that applicants not be required to submit site plans or other documents in other than a tentative form.

Another section of the Municipal Land Use Law deals more directly with the question of preliminary site plan approval for planned development. N.J.S.A. 40:55D-39c(1) permits a municipal ordinance providing for site plan approval of planned developments to contain provisions:

> "Setting forth any variations from the ordinary standards for preliminary and final approval to provide the increased flexibility desirable to promote mutual agreement between the applicant and the planning board on the basic scheme of a planned development at the stage of preliminary approval."(emphasis ours)

This section authorizes exactly the type of optional preliminary site plan approval procedure which we are recommending for inclusion in the Bedminster Township ordinances. The use of the language "basic scheme" in this statute together with the language "tentative form" in N.J.S.A. 40:55D-46a indicates a legislative intention that the planning board focus on a conceptual land use plan at the preliminary approval stage rather than final engineering and site plan documents showing the kind of detail required under Mr. Coppola's draft ordinance.

Much of the technical literature on planned unit developments recognizes the need for a greater flexibility in the preliminary site plan approval process for planned developments. As early as 1965 this flexibility was recognized as essential to a planned unit development in an article by Professor Krasnowiecki.* In this article Professor Krasnowiecki said as follows:

> "It is clear that an orderly process towards final approval on a larger project requires at least one intermediate step-the presentation at which the larger lines and more important features of the project can be settled, so that the developer knows what will be required of him on final approval before he embarks on further expenditures and the preparation of detailed plans. A tentative approval procedure is now incorporated in all of the better ordinances, and has been given recognition in a number of the enabling acts...The purpose of a tentative approval procedure, as I mentioned above, is to fix the broad outlines of the proposed project so that the developer may know where he stands before he undertakes substantial expenditures and commitments associated with the preparation of detailed plans. One of the reasons why developers find it necessary to proceed to final approval for a larger project by sections is that it enables them to limit the period during which substantial investments in the project are carried without a return. The proposal presented as tentative approval, therefore, cannot be required to contain all the detail which is required at final approval, otherwise much of the purpose of two-stage (tentative-final) approval procedure is compromised."(emphasis ours)

*Krasnowiecki, "Planned Unit Development: A Challenge to Established Theory and Practice of Land Use Control", 114 University of Pennsylvania Law Review 147 (1965).

Another eminent commentator on planned unit development, Frank A. Aloi, has also recommended greater flexibility in the preliminary site plan approval process.** Mr. Aloi's comments are as follows:

> "Simply by reason of the magnitude of the project, the developer may intend to proceed only with very limited portions in terms of the actual implementation in the foreseeable future after rezoning. For example, the developer may begin with single family and multifamily residences as well as certain recreational elements, leaving complete implementation of commerical or light industrial elements for later developing or staging. Under the circumstances it might be economically prohibitive to compel the developer to incur the substantial engineering and architects fees necessary to complete detailed site plans for the entire projected PUD. Practially speaking, it may not be wise to pin a developer to a detailed site plan at the outset, since his experience in developing the initial stages might well dictate decisions on the remaining stages different from those projected at the outset...The intent of the (preliminary site plan) provision is, as indicated, to permit the municipality and the developer to reach agreement on the basic design; naturally, the plan would include the locations of the projected uses, the interior transportation network, detail on the residential areas, dwelling types, and a computation of defined residential density. Also, the sketch would indicate the open space and recreational system, grading, drainage, water and sewage network of the community at large, accessory school, fire, police, cultural and other community facilities and some indication of the use and ownership of abutting lands."

**Aloi, "Implementation of a Planned Unit Development", 2 Real Estate Law Journal, Number 2, page 523 (1973).

Conclusion

As the above discussion indicates, much of the planning literature on planned developments, indicates that a preliminary site plan application process, under which the planning board focuses on a conceptual land use plan showing the broad outline or basic scheme of the development supported by engineering documents in tentative form for discussion purposes is necessary to make planned developments flexible and viable for development over a period of years. The optional preliminary site plan application process recommended by Allan-Deane for addition to Section 804 of Richard Coppola's ordinance, fully complys with the Municipal Land Use Law provisions concerning preliminary site plan approval and will provide the necessary flexibility to make large planned developments viable.

MEMORANDUM

TO: George Raymond
Raymond, Parish, Pine & Weiner, Inc.

FROM: Guliet D. Hirsch, Esquire

RE: Route 202-206 Bypass of Pluckemin Village
Bedminster, New Jersey

DATE: May 1, 1980

The purpose of this memorandum is to clear up the misunderstanding which has arisen concerning Bedminster Township's right to reserve the land necessary for the future construction of the Pluckemin Bypass, east of Route 202-206 through the Allan-Deane property without condemnation and payment of just compensation.

I. The Need For A Bypass

On April 3, 1980, Mr. Robert M. Rodgers, a traffic engineer retained by the Allan-Deane Corporation, presented a detailed report to the Master, his staff, and representatives of the town and the Allan-Deane Corporation. Mr. Rodgers concluded at this time that the need for the Pluckemin Bypass would be generated by future development in Bridgewater Township to the south of Bedminster Township. This conclusion was based upon Carl Lindbloom's projections of nonresidential land use in Bridgewater in 1990, said projections assuming that all vacant and currently nonresidentially zoned land in Bridgewater Township would be developed to full capacity.

The result of this full development scenario would be to create excess traffic through Pluckemin Village along Route 202-206. Numerous alternatives have been presented to ameliorate the flow of traffic through Pluckemin Village; the alternative of widening Route 202-206 through Pluckemin Village was not recommended because it might require the destruction of historic buildings along this route. In Mr. Rodger's letter of April 16, 1980 to Mr. George Raymond, an alternative was recommended which involves neither the widening of Route 202-206 through Pluckemin Village nor construction of a "bypass" either east or west of Route 202-206, namely the construction of three ramps in the following locations:

1. A ramp from I-78 westbound to U.S. 202-206 southbound;

2. A ramp from 202-206 (south of I-78) to I-287 northbound; and

3. A ramp from I-287 northbound to Route 202-206 (south of I-78).

In light of this recommendation, we think it fair to say that even assuming the full development scenario in Bridgewater Township described above, a conclusive need for a bypass through Bedminster Township has not been proven. Furthermore, there is no dispute that the need for the bypass is generated by future development in Bridgewater Township south of Bedminster and not by the proposed Allan-Deane development in Bedminster and Bernards Township; the bypass would not serve or alleviate the need for an internal circulation system within the development. The proposed bypass through the Allan-Deane property, conversely, will not benefit the Allan-Deane property and will, due to the need for setbacks and noise abatement, substantially damage, in monetary terms, the value of the remainder.

II. Authority To Reserve Right-Of-Way Through Subdivision

Given the above conclusions, Bedminster Township may not claim that the following section of the Municipal Land Use Law grants them the authority to reserve a right-of-way for the Pluckemin Bypass through the Allan-Deane property:

N.J.S.A. 40:55D-38 Contents of Ordinance

> "An ordinance requiring approval by the planning board of either subdivision or site plans or both shall include the following... b. Provisions insuring:...(2) Streets in the subdivision or land development of sufficient width and suitable grade and suitably located to accommodate prospective traffic and to provide access for firefighting and emergency equipment to buildings and coordinated so as to compose a convenient system consistent with the official map, if any, and the circulation element of the Master Plan, if any;..."

In Brazer v. Borough of Mountainside, 55 N.J. 456 (1970), the New Jersey Supreme Court construed the source law for N.J.S.A. 40:55D-38, which was then N.J.S.A. 40:55-1.20 of

the Municipal Planning Act. The New Jersey Supreme Court said as follows in that case:

> "The sum and substance of defendant's position is that the mere fact of a subdivision application automatically brings the quoted statute and ordinance provisions into play, thereby permitting the imposition of a reservation of a proposed street shown in a Master Plan map, regardless of the need of the subdivided lots for the new street. They concede, however, that if no subdivision application at all were made, the municipality would have to purchase or condemn the strip for the proposed street.
>
> Plaintiffs, on the other hand, contend that these statute and ordinance provisions are intended to be applicable, and can have validity, only where the proposed street shown on the Master Plan map bears a realistic relation to or is reasonably made necessary by the subdivision. The corollary is that, where, as here, such is not the case, a requirement of right-of-way reservation solely because a proposed street is shown on a Master Plan amounts to a taking of private property without compensation. We think plaintiff's position is the correct one.
>
> Of course, there has never been any doubt in this state that the statutory provisions authorizing a municipal requirement of approval of subdivision plats, including the design and location of streets, as well as of the installation by the developer of streets and other specified kinds of improvements, are valid exercises of the police power...But the plain rationale of these cases is that as was said in the context of offsite improvements in Longridge Builders, Inc. v. Planning Board of Princeton Township, 52 N.J. 348, 350 (1968), a subdivider may be compelled only to assume a cost 'which bears a rationale nexus to the needs created by and benefits conferred upon, the subdivision ...beyond that, planning board impositions, although purportedly authorized by the Planning Act or the local ordinance, amount to impermissible exactions.'

> Therefore the provision of N.J.S.A. 40:55.1.20 and the implementing ordinance relied upon by defendants here is validly applicable solely where the proposed street shown on the Master Plan is necessary to serve and benefit subdivided lots. Conversely, the quoted sentence must be construed to mean only that, where a new street or streets are necessary by reason of and to serve the subdivided lots, the planning board may require the location and design of such streets to conform to proposals shown on the Master Plan. Otherwise, the municipality, if it desires to implement the Master Plan must pay compensation to the land owner for the right-of-way it desires to reserve for future use."(emphasis ours)

III. Option And Condemnation

If Bedminster Township chooses to reserve a right-of-way for the Pluckemin Bypass pursuant to N.J.S.A. 40:55D-44, this section of the Municipal Land Use Law requires that the town purchase an option for said reservation period, and requires that the fair market value of the reservation include, but not be limited to, consideration of the real property taxes apportioned to the land reserved and prorated for the period of reservation. The developer is also required to be compensated for:

> "The reasonable increased cost of legal, engineering, or other professional services incurred in connection with obtaining subdivision approval or site plan approval, as the case may be, caused by the reservation."

Pursuant to this section, a municipality must either condemn or reach an agreement concerning purchase price within one year after the approval of the final plat.

Conclusion

Since the need for the Pluckemin Bypass is generated by future growth in Bridgewater Township and is not attributable to the proposed development on the Allan-Deane property, Bedminster Township does not have authority pursuant to N.J.S.A. 40:55D-38 to require the Allan-Deane Corporation to reserve a right-of-way for the Pluckemin Bypass on its site plan or subdivision without payment of an option price for said reservation, and condemnation of the right-of-way within one year pursuant to N.J.S.A. 40:55D-44. Allan-Deane will

have the right to compensation for damages done to the remainder of their property, and to the fair market value of the property condemned together with interest and costs for legal, engineering and other professional services incurred by reason of this reservation and condemnation.

Johns-Manville
Properties Corporation

P. O. Box 72
Far Hills, New Jersey 07931
(201) 234-1377

MEMORANDUM

TO: George Raymond and Gerald Lenaz

FROM: Ken Mizerny - Johns-Manville Properties Corporation

DATE: May 7, 1980

RE: Building Separation Standards

In order to allow design flexibility we would recommend the following building separation standards be employed in the revised Bedminster Land Development Ordinance.

I. Definitions.

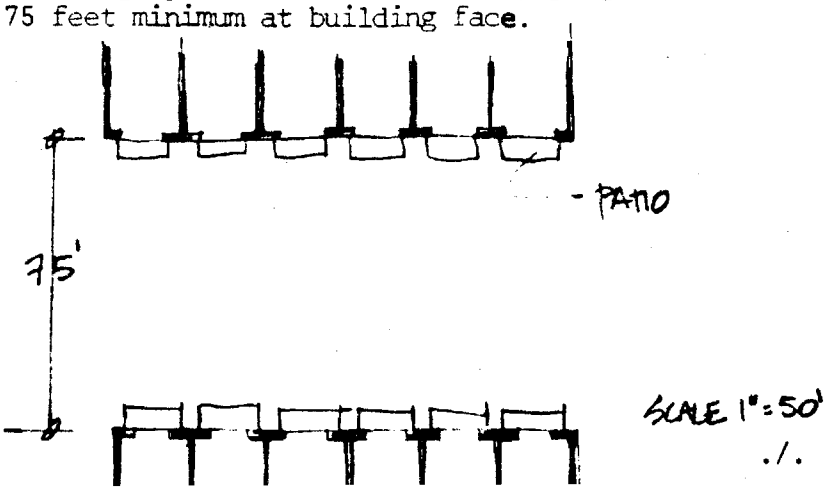
Angle between building: The amount of divergence, in degrees, of lines drawn parallel to the facing walls of adjacent buildings.

Landscaping: A screen consisting of fences walls or planting or any combination there of. The height of the screen shall be 4' for walls or fences; 2½ - 3' for shrubs at planting, 5' for evergreen trees at planting and 2½' caliber for deciduous trees at planting. The screen shall occupy 70% of the building face where the building faces are 50' or less apart.

II. Building Separation Standards for Residential Cluster 1 and Residential Cluster 2.

A. Outdoor living area to outdoor living area.

1. Buildings parallel with no landscaping between buildings; 75 feet minimum at building face.



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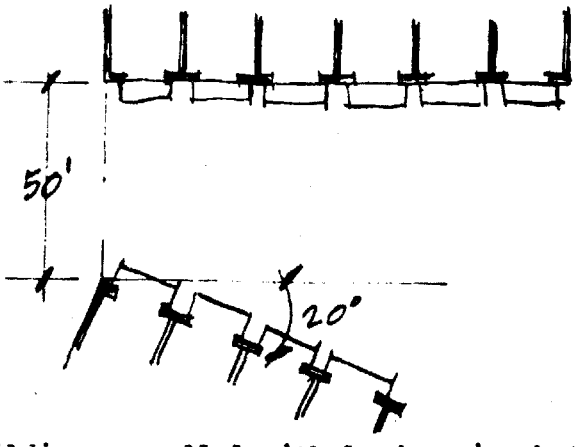
To: George Raymond and Gerald Lenaz

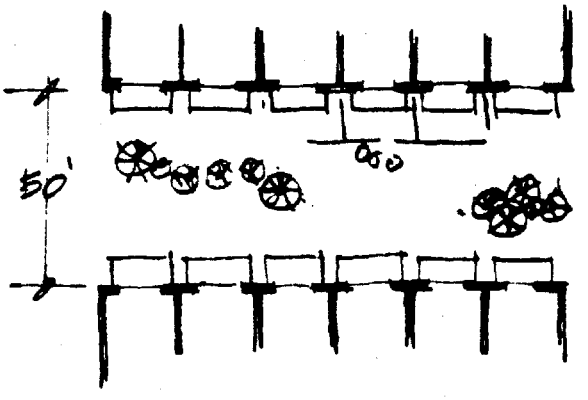
May 7, 1980

2. An angle of 20 degrees or more between buildings and no landscapin between buildings; 50 feet minimum at building face.



SCALE 1"=50'

3. Buildings parallel with landscaping between buildings; 50 feet minimum at building face.



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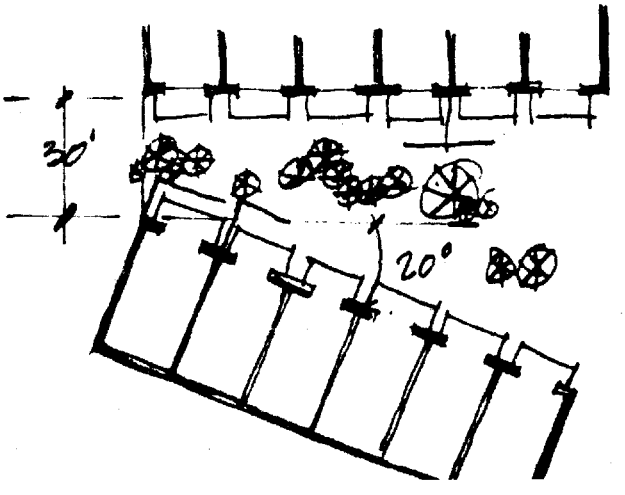
4. An angle of 20 degrees or more between buildings and landscaping between buildings; 30 feet minimum at building face.



SCALE 1"=50'

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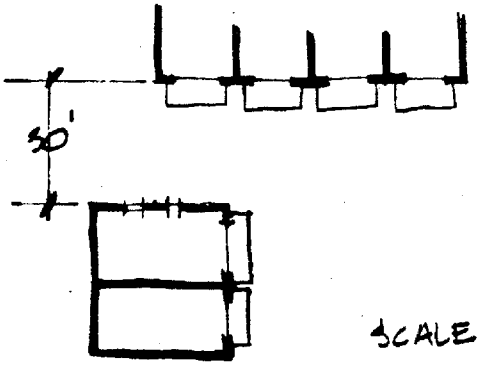
To: George Raymond and Gerald Lenaz

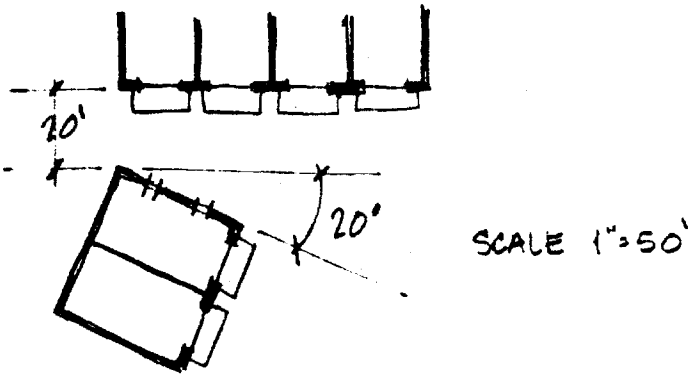
May 7, 1980

B. . Outdoor living area to window wall

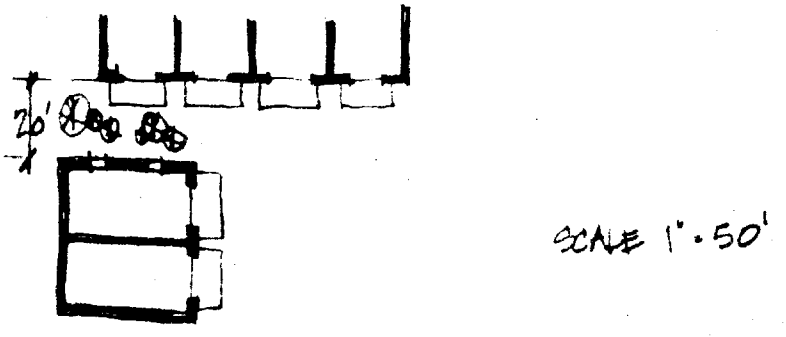
1. Buildings parallel with no landscaping between buildings; 30 feet minimum at building face.



2. An angle of 20 degrees or more between buildings and no landscaping between buildings; 20 feet minimum between building faces.



3. Buildings parallel with landscaping between units; 20 feet minimum between building faces.



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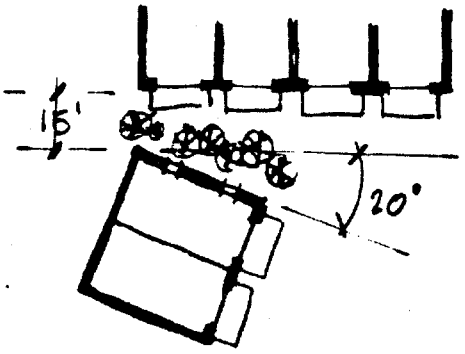
4. An angle of 20 degrees or more between buildings and landscaping between buildings; 15 feet minimum between building faces.

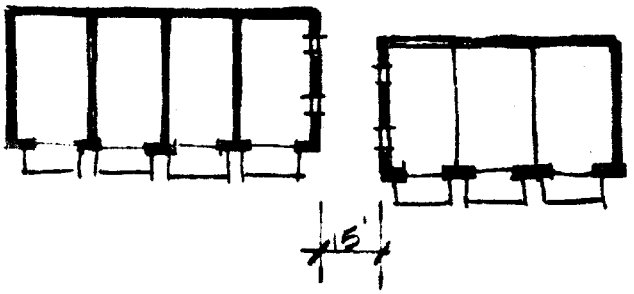


SCALE 1" = 50'

End

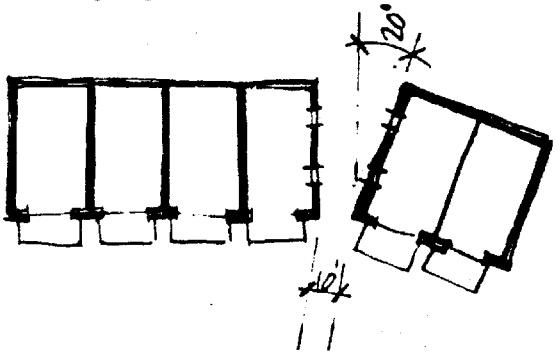
C. Window wall to window wall.

1. Buildings parallel no landscaping between buildings; 15 feet minimum.



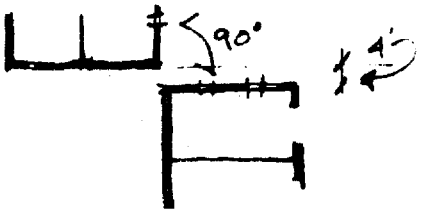
SCALE 1"=50'

2. An angle of 20 to 80 degrees between buildings and no landscaping; 10 feet minimum.



SCALE 1"=50'

3. An angle of 80 degrees or more between buildings with or without landscaping. 4 feet minimum.



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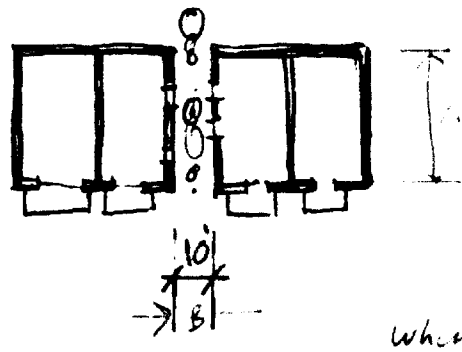
4. Buildings parallel with landscaping; 10 feet minimum.



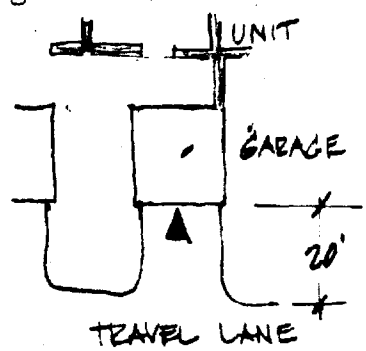
SCALE 1" = 50'

When H exceeds 40 feet increase B by 1 foot for every 4 feet, or portion thereof, of excess over 40 feet.

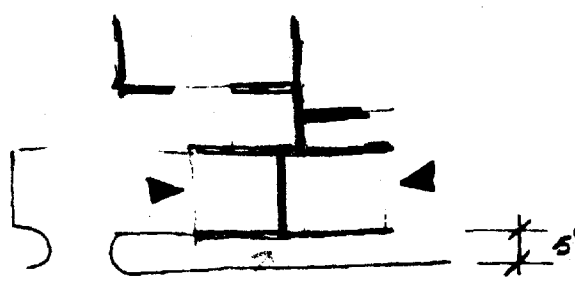
D. Blank wall to blank wall. 10 feet

E. Building wall with main entrance and attached or detached garages.

1. Garage entrance of attached or semi attached garage facing travel lane of private drive or public street. - 20 feet minimum, to garage entrance.



2. Garage entrance of attached or semi attached garages, not facing travel lane of private drive - 5 feet minimum.



To: George Raymond and Gerald Lenaz

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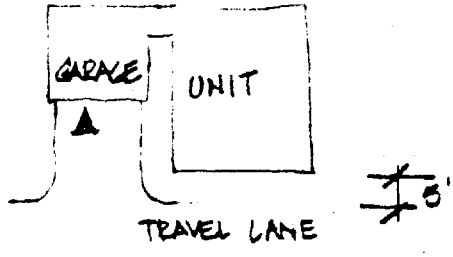
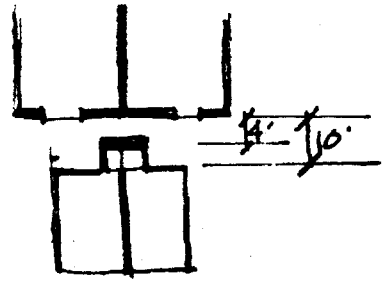
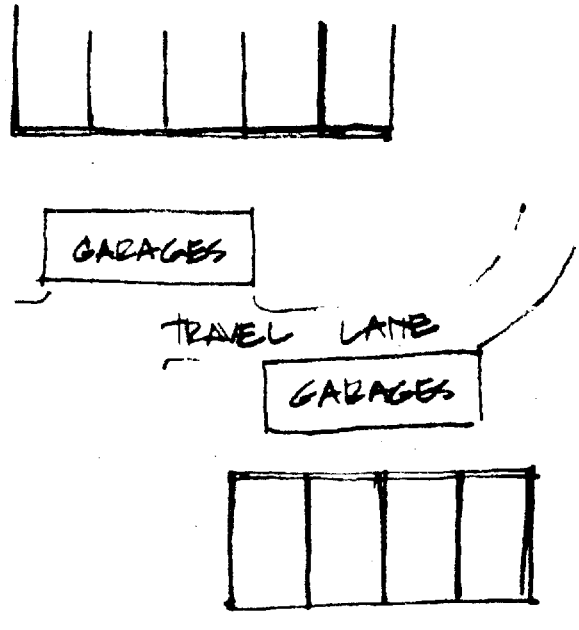
3. Building facade which is not part of a garage; 5 feet minimum between building and travel lane.



4. Building facade to detached garage; 10 feet minimum. If an extention of the building facade or garage is less than 50% of the width of the facade the minimum separation shall be 4 feet.



5. Garage entrance of detached garages: no setback between travel lane and garage entrance.



MEMORANDUM

TO: George Raymond
Raymond, Parish, Pine & Weiner, Inc.

Gerald Lenaz
Raymond, Parish, Pine & Weiner, Inc.

Alfred L. Ferguson, Esq.
McCarter & English

Edward Bowlby, Esq.

Richard Coppola

FROM: Henry A. Hill, Jr., Esq.

RE: Revised Land Development Regulations
Memorandums 5, 6 & 7

DATE: April 28, 1980

In order to expedite the ordinance revision and analysis process, we are at this time setting forth our comments with regard to those sections of Richard Coppola's proposed "Land Development Ordinance" which are set forth in Memorandums 5-80 to 7-80. Early attention to various procedures and substantive matters which are in controversy will allow us to meet the deadline contained in the Court Order for submission of the Township's proposed ordinance and the Master's comments thereon.

Memorandum 5-80, Dated March 19, 1980

1. Section 1002-Enforcement

Subsection A requires construction permits for any structure or building improvement which exceeds $200 in cash value. Because this minimum is set so low, virtually any improvement to an existing structure would require a construction permit. The cumulative effects of this requirement will be to overburden the construction official and to force the town to bear an unjustified administrative cost. We recommend that the minimum dollar value for construction which requires a building permit, be set at around $500 in cash value.

Subsection B1 of Section 1002 concerns construction permits. The requirement that three sets of plans with specific details accompany a construction permit application is unduly burdensome and unjustified. This subsection also indicates what details must be shown on a plot plan although the last requirement reads as follows:

> "and such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this Ordinance."

Perhaps when the District Regulation Section of the Revised Land Development regulations are completed, the above general and excessively open-ended requirement may be firmed up.

Subsection C of Section 1002 deals with certificates of occupancy which are not covered by the Municipal Land Use Law but rather the BOCA Code which the Township has adopted. We suggest you omit this entire section so as not to have overlapping regulations. Our specific comments regarding this section are as follows:

1. Section 1002 C.1.c. - There is no legal authority for this requirement. N.J.S.A. 40:55D-39 does not apply.

2. The requirement that the utility company issue a letter to the township stating that the utility has been inspected, has been installed in accordance with the approved plan and is ready for use raises the question of whether private utility companies will inspect water lines, sewer and interceptor lines and connections. Perhaps this requirement needs to be narrowed down to the specific facilities that a utility company is required to inspect, or perhaps a certification from a licensed engineer that the utility lines have been installed in accordance with plans should be considered sufficient in lieu thereof.

3. The requirement that a certificate of occupancy be issued upon completion of various improvements required in conjunction with any subdivision or site plan, fails to account for planned developments which will be constructed in stages in accordance with the original subdivision approval. A requirement that specified improvements be installed throughout the entire development before any unit in stage 1 of said development can receive a certificate of occupancy would unduly burden any staged development and, in turn, any large planned development without a correlative public health, safety or welfare reason.

4. We understand that Subsection C10 of Section 1002 is being deleted. We concur for the reasons discussed.

II. Section 1003-Subdivision Approval Certificates

Subsection A allows any interested person to apply for subdivision approval certificates for land which has been part of the subdivision since January 1, 1976. This date conflicts with N.J.S.A. 40:55D-55 which requires municipalities to issue subdivision approval certificates for land which has been part of a subdivision since three years before the effective date of the Municipal Land Use Law, ie., since August, 1973.

III. Section 1005-Penalities

Subsection A2 attempts to impose liability on tenants and occupants of buildings and structures for "anything" which violates this ordinance. This section additionally imposes liability on any architect, builder, developer, contractor, agent, person or corporation engaged in connection with the building or structure "who assists" in the commission of any violation of the ordinance. First of all, it may be unreasonable to hold a tenant or occupant of a building responsible and liable for defects or ordinance violations which he has not caused and has no notice of. Secondly, the question of liability for architects, builders and other agents with regard to violations is a matter properly left to contractual provisions between the parties. It is not in the best interests of the municipality to enforce its ordinances by holding large numbers of people responsible for a single violation.

Memorandum 6-80, Dated March 27, 1980

I. Section 801-Jurisdiction of Responsibility During Development Application Review

This section contains various incorrect references to the Municipal Land Use Law, including:

a. Subsection A.2.a provides that the Planning Board shall have the power when reviewing applications for subdivision, site plans or conditional uses to grant variances in lieu of the Board of Adjustment. The statutory references in this section should be to N.J.S.A. 40:55D-70c and not to N.J.S.A. 40:55D-60c.

b. Subsection A.2.b. gives the Planning Board the power to issue permits for buildings and structures in areas reserved in the official map. The second statutory reference should be to N.J.S.A. 40:55D-32 and not to N.J.S.A. 40:55D-34.

c. Subsection B fails to reflect the recent amendments to the Municipal Land Use Law (effective February 1, 1980) and should read as follows:

> "The Zoning Board of Adjustment shall have the power to grant, to the same extent and subject to the same restrictions as the Planning Board, site plan, subdivision or conditional use approval whenever proposed development requires approval by the Board of Adjustment of a variance pursuant to N.J.S.A. 40:55D-70d."

II. Section 802

Subsection A generally exempts "single family detached dwelling units" from site plan review, except that it does not make clear that subdivision applications for one or two dwelling unit buildings are also exempt, as required by N.J.S.A. 40:55D-37a. This ordinance section also explicitly fails to exempt single family two dwelling unit buildings since "single family detached dwelling units" are defined in Section 200 to exclude two dwelling unit buildings, or detached buildings used for more than one housekeeping unit. We recommend that Subsection A be changed to read as follows in order to comply with the Municipal Land Use Law:

> "Site plan review shall not be required for subdivision or individual lot applications for detached one or two dwelling unit buildings on a lot and the customary accessory buildings incidental to farms."

Subsection D of Section 802 deals with informal review by the Planning Board of a concept plan. This section, as it presently reads, is an attempt to get around the requirements of the new Municipal Land Use Law amendments by mandating that costs incurred in the informal review process be carried forward and billed to the applicant at the time of submission of a formal subdivision or site plan application. This requirement is in clear derogation of the Municipal Land Use Law amendment which reads in pertinent part as follows:

"At the request of the developer, the planning board shall grant an informal review of a concept plan for a development for which the developer intends to prepare and submit an application for development. The developer shall not be required to submit any fees for such an informal review."

The Municipal Land Use Law amendments reprint published by the Division of Planning of the Department of Community Affairs indicates that the Assembly Committee on County and Municipal Government specifically changed this section to add the provision that fees not be charged for such informal review. The intent of the legislature could not have been clearer in this regard. This provision should therefore not be in the new Bedminster Ordinance.

III. Section 804-Submission of Preliminary Major Subdivision Plats and Preliminary Major Site Plans

Subsection B - Details Required for Preliminary Major Subdivision Plats and Preliminary Major Site Plans.

This procedure and the details required are not suitable for the preliminary approval of planned developments and we have drafted and submitted alternative submission requirements for this purpose. In addition, we have the following comments:

1. 804 B12 requiring the locations of all existing trees having a caliper of eight inches or more is ridiculous and burdensome.

2. 804 B15 should not be a requirement for preliminary approval since the Soil Conservation Service will not review a preliminary plan. This requirement should be rewritten to require Soil Conservation Service approval instead of a duplicative and unauthorized review by both the planning board and the Soil Conservation Service.

3. 804 B20 This section belongs in the design standards and should not be placed under processing procedures. Section 804 B20(c) should be eliminated since it is not necessary unless it purports to be a standard in which case it is not permitted under the terms of Judge Leahy's Order.

4. 804 B23 should be included in the final plan, not the preliminary plan.

5. 804 B25 is entirely inappropriate for a preliminary application. This information should be required at final approval only. If the board wants some information at the time of preliminary approval, they should require major infrastructure only such as location of major collectors, detention basins, potable water storage facilities, major above ground electrical towers, etc.

6. 804 B26. These plans should be required only at the time of final approval.

7. 804 B27. This section is open-ended, prohibited by the terms of Judge Leahy's order and unauthorized by the Municipal Land Use Law. Applicants have a right to know what information is required to be supplied before they apply.

Environmental Impact Statement

For reasons which will be treated separately as part of a separate memorandum, we take the position that this EIS requirement is unauthorized by the Municipal Land Use Law and cannot in any case be required of Allan-Deane and that applicants cannot be required to prove after land has been zoned for a particular use that those lands are environmentally suited for that use. The following is a discussion of the technical problems of the EIS requirements as written which ignores this threshold problem.

Subsection C deals with the environmental impact statement requirements for preliminary major subdivision plats and preliminary major site plans. Subsection C.2. which deals with the submission format requires the applicant to retain one or more "competent" professionals to perform the necessary work. Since the decision as to who is a competent professional may allow the planning board to unduly discriminate against unpopular applicants, it should only be required that professionals be licensed to practice in their field of expertise.

Many of the required elements of the Environmental Impact Statement may properly be required of an applicant for subdivision or site plan approval, such as a project description, soil data, topography, geology, etc. Our specific comments on the various environmental impact statement elements are as follows:

a. Site Description and Inventory

1. The first site condition which must be listed is soil and percolation data; where soils are of moderate or severe limitation, a complete mapping of all soil types is required.

This requirement would generate much unnecessary expense in a large development unless reliance upon county soil conservation data is permitted. If county soil data is acceptable to the planning board, it should be stated in this section.

2. Other site conditions which are required to be listed are: topography, geology, vegetation, wildlife, surface water, unique scenic or historic features and existing development features. These requirements might be valid requirements in a municipality which had compiled this data in a natural resources inventory. In a town such as Bedminster Township, generation of this data by the individual developer may add unnecessary expense to the subdivision or site plan process.

3. The requirement that "unique" habitats be identified and described is particularly problematical because "uniqueness" is a particularly subjective concept. Does unique mean unique in terms of the national distribution, state distribution or regional distribution? A less ambiguous requirement would be that the habitats of endangered or rare species on the property be shown and described.

4. In regard to surface water, this section requires the applicant to locate and give the depth, capacity and water quality of all existing water wells on the site and within 500 feet of the site. First of all, data as to the depth, capacity and water quality may not be available for water wells which date back more than 50 years.

Secondly, unless there is some data source we are not aware of, an applicant would only be able to provide information concerning water quality in wells within 500 feet of the development site with the permission of adjacent owners or by unauthorized trespass.

5. Regarding unique scenic and/or historic features, once again, "unique" is not defined in the ordinance, and what is a "unique" scenic or historic quality to the town may not coincide with what is unique to the developer.

6. The last site condition which is required to be listed is an analysis of existing air and noise levels "when warranted." This provision would be valid, but perhaps unnecessary, if it read instead:

> "When required by federal or state regulations, an analysis shall be conducted of existing air

quality and noise levels.

b. Environmental Performance Controls (Section 804 C.2.c.

The next subsection deals with environmental performance controls which will be employed by the developer during the planning, construction and operation phases to minimize negative impacts. This subsection requires that the developer detail such things as energy conservation measures and noise reduction techniques. If a developer is expected to supply this data, some terms such as "energy conservation measures and noise reduction techniques" should be more clearly defined. For example, does energy conservation measures include requiring people to drive small cars or does it just refer to energy conservation measures within buildings on the property? Do noise reduction techniques include techniques to control off-site generation of noise or just noise generated on-site?

c. Impact (Section 804 C.2.d.)

Subsection d requires the applicant to discuss both negative and positive impacts including the following: soil erosion, flooding, degradation of surface water quality, ground water pollution, etc. The planning board is required by this section to disapprove any application unless it determines that the proposed development a) will not result in appreciate harmful effects to the environment; b) has been designed and conceived with a view towards the protection of regional sources; and c) will not place a disproportionate or excessive demand upon the total resources available for the proposal and for future proposals. These standards are so vague and indefinite that an applicant cannot anticipate when the environmental impact of the proposed development is so great that it is likely to be disapproved. In the case of Morristown Road Associates v. The Mayor of Bernardsville, 163 N.J.Super 58 (LawDiv.,1978) the Court summarized a long line of caselaw in New Jersey which requires that zoning ordinances be clear and explicit in their terms, setting forth adequate standards to prevent arbitrary and indiscriminate interpretation and application by local officials. Restrictions contained in a zoning ordinance are required to be clear and capable of being understood and complied with by the property owner who seeks to meet its provisions:

> "The right of a landowner to utilize his property should not depend upon the outcome of litigation after the event in which a provision, which he apparently fully meets, assumes a new and different

significance by a process of refined interpretation." Jantausch v. Verona, 41 N.J. Super 89, affirmed 24 N.J. 326 (1957).

In light of the Township's lack of a natural resources inventory or Master Plan based upon such inventory, and its previous ajudication as an exclusionary municipality, the lack of standards in this section is especially problematical.

Community Impact Statement

Subsection D of Section 804 requires an applicant for preliminary major subdivision approval for more than ten lots and all applicants for preliminary major site plan approval to provide a Community Impact Statement which indicates why the proposed development is in the public interest as well as providing data and opinions concerning: population impact, school impact, facilities impact, services impact, traffic impact and financial impact of the proposed development on the town. Although some of the required information may be of interest to the planning board, the requirement that the applicant demonstrate why the proposed development is in the public interest completely subverts the subdivision and site plan application process for the following reasons:

1. When there is an application for subdivision or site plan approval for a use which is permitted in a given zoning district, there is a conclusive presumption that the municipal legislative body has determined that such permitted use is in the public interest, so long as developed in accordance with all ordinance standards.

2. More significantly, although some of the specific community impacts which are required to be detailed including population impact, school impact, facilities impact, etc. may be of interest to the planning board in the Master Plan process, the New Jersey Supreme Court in the Mount Laurel case has held that such "fiscal" factors may not serve as a reason for exclusionary zoning or for disapproval of a high density development.

Therefore, since the planning board may not even consider such data if produced by a planned development applicant, the Community Impact Statement may be viewed as an invalid exaction if required as a condition for subdivision or site plan approval.

Final Major Site Plans

One of the documents required to be submitted for final major subdivision or final major site plan approval is a statement from the Township Engineer that he is in receipt of

a map showing all utilities and exact location and elevation, that he has examined the drainage plan and found that "the interest of the Township and of neighboring properties are protected." (Section 805 B.5.v.). The language in quotes provides a much too open-ended standard and we propose that the following language be inserted instead:

> "In accordance with requirements or standards of applicable ordinances."

Memorandum 7-80, Dated April 10, 1980

We have the following comments concerning various definitions:

1. Adverse effects: All adverse effects listed in this definition are appropriate considerations for site plan or subdivision approval (see N.J.S.A. 40:55D-38). Unfortunately, this definition as it now reads is so open-ended that such considerations as downstream water pollution, air pollution and noise pollution might also be considered a sufficient reason for denying minor site plan or minor subdivision approval. If the "but not limited to" language were removed from this definition, it would be entirely satisfactory and would add enough substance to Section C.4. to alleviate any objection concerning that section's lack of standards.

2. Common Property: This definition is very similar but not exactly the same as the Municipal Land Use Law definition of Common Open Space. One of the specific differences between the two definitions is the requirement in the proposed Bedminster definition for Common Property, that the land be intended for the ownership, use "and" enjoyment of the residents and owners of the development. Clearly, some types of open space may be enjoyed by residents although it may not be "used", such as steep slope land.

3. Floor Area - Gross (G.F.A.): This definition arbitrarily reduces the true gross floor area for a dwelling unit by permitting the use of only two parking spaces in the calculation of the G.F.A. for residential dwelling units regardless of the number of parking spaces required by the ordinance.

4. Housekeeping Unit: This definition provides that more than five persons, exclusive of domestic servants, not related by blood, marriage, adoption or approved foster care arrangements shall not be deemed a "housekeeping unit." The New Jersey Supreme Court in the case of State v. Baker, 81 N.J. 99

(1979) invalidated a provision in the Plainfield Zoning Ordinance which prohibited more than 4 unrelated persons from sharing a housing unit. This proposed definition for housekeeping unit attempts to get around the decision in State v. Baker by defining housekeeping units, rather than families, to exclude more than five unrelated people; our judgment is that this provision would also be held invalid if challenged.

5. Non-conforming Buildings or Structures: This definition varies the caselaw definition of non-conforming buildings or structures by failing to require that a structure so defined has at some previous time complied with zoning ordinance standards.