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Brief of π Allan-Deane on Issues of
Remedy & Specific Corporate Relief

w/ 3 exhibits

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO. L-36896-70 P.W. &
L-28061-71 P.W.

THE ALLAN-DEANE CORPORATION et al.,

Plaintiff,

vs.

THE TOWNSHIP OF BEDMINSTER, et al.,

Defendant.

BRIEF OF PLAINTIFF ALLAN-DEANE ON ISSUES OF REMEDY AND SPECIFIC CORPORATE RELIEF

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PRELIMINARY STATEMENT AND STATEMENT OF FACTS

On March 22, 1978, this Court entered an Order to Show Cause directing the defendants to demonstrate why an order should not be entered:

> " . . . invalidating Bedminster Township's land use regulations and directing the issuance, under the supervision of this Court, to the corporate Plaintiff of the permits for the development on their property of the housing project they proposed to the Township during the pendancy of the action . . ."

Having found, in an opinion dated December 13, 1979, that the defendants have failed to comply with the Court's orders directing the defendants to rezone in accordance with the principles enunciated in Southern Burlington County NAACP v. Tp. of Mount Laurel, 67 N.J. 151 (1975), app. dism. and cert, den. 423 U.S. 808, 96 S. Ct. 18, 46 L.Ed.2d 2028 (1975), the Court must now address the crucial issue of what particular relief the plaintiff is entitled to.

The Court is all too familiar with the tor-

tuous history of this protracted litigation.* Plaintiff, the Allan-Deane Corporation, first sought approval of a proposed project in 19691 Since that time, this single plaintiff has borne the expense of a comprehensive trial, an unsuccessful appeal and petition for certification, and a hearing on Order to Show Cause which consumed some 40 days. While plaintiff has, during the last 10 years, unrelentingly attempted to secure approval to construct its much needed project, Bedminster has engaged in two major rezonings, adopted a new site plan and subdivision ordinance, amended its zoning ordinances twice and adopted a new master plan and amended it subsequently thereto.

Succinctly stated, if plaintiff is not granted forthwith the permits necessary to commence construction of its proposed project, plaintiff will have received nothing more than the type of "pyrrhic" victory, which our Supreme Court sought to prevent by its decision in Oakwood at Madison, Inc. v. Tp. of Madison, 72 N.J. 481, 550 (1977). While a Mount Laurel zoning challenge

* A concise chronological history of this action is annexed hereto as Exhibit "A".

involves the vindication of "public" rights, Madison establishes beyond question that the "private" rights of the particular plaintiffs involved must be honored as well. 72 N.J. at 550. The private plaintiff herein, the Allan-Deane Corporation, has yet to receive any direct benefit as a result of its repeated expenditure of time and energy to prepare a viable proposal for the construction of its proposed project. It is now time for this court to take definitive action to ensure that the plaintiff receive the relief to which it is entitled.

ARGUMENT

POINT I

PLAINTIFF IS ENTITLED TO SPECIFIC CORPORATE RELIEF

There is universal agreement among commentators attuned to the area of developer-initiated exclusionary zoning challenges, that effective and meaningful relief must be accorded successful litigants.

> "Obviously, if judicial review of zoning actions is to result in anything more than a farce, the courts must be prepared to go beyond mere invalidation and grant definitive relief". Krasnowiecki, "Zoning Litigation and the New Pennsylvania Procedures", 120 University of Pennsylvania Law Review 1029, 1082 (1972).

See also, Hyson, "The Problem of Relief in Developer-Initiated Exclusionary Zoning Litigation", 12 Urban Law Annual 21, 41 (1976).

The purpose of such relief is clear — to provide definite and immediate provision of "least cost" and "variety" housing and to strip the uncooperative municipality of its arsenal of weaponry employed to

thwart development. In this way, persons are encouraged to mount "socially beneficial but costly [exclusionary zoning] litigation", and the regional needs are served by the effectuation of the "provision of needed housing for at least some portion of the moderate income elements of the population". Oakwood at Madison, Inc. v. Tp. of Madison, 72 NJ at 550-551.

As the history of the instant case graphically demonstrates, a mere order to a municipality to rezone in accordance with certain judicial principles or guidelines, will rarely, if ever, produce any positive results.

> "It is difficult to believe that a township that systematically has excluded all but the affluent would frame, much less administer, an ordinance that actively will encourage the entry of others. The informal and unwritten system of land use regulation will continue to exist, undercutting the professed goals of the judicially mandated amendments. The would-be sponsor of low or moderate income housing is ill equipped to afford the delays implicit in the inevitable municipal runaround."
>
> Mallach, "Do Lawsuits Build Housing: The Implications of Exclusionary Zoning Litigation", 6 Rutgers Camden Law Journal 653, 664 (1975).

Accord; Rubinowitz, "Exclusionary Zoning: A Wrong In Search of a Remedy", 6 Michigan Journal of Law Reform 625, 643 (1973).

The Township of Bedminster has amply demonstrated the legitimacy of this concern. On this record, little else is clearer than that Bedminster will not willingly permit or participate in the provision of least cost housing; to the contrary, it has employed every conceivable manner of planning rationalization and regulatory impediment to block realistic development.

A recalcitrant municipality seeking to avoid, or delay, recognition and acceptance of its fair share obligations will frequently "drag its feet" and employ a myriad of administrative and legislative devices aimed at delaying approval of the developer's proposal, in the hope that the single private plaintiff will not be able to economically endure the inordinate delays which the municipality can create.

> "The delay is often fatal. Few landowners or developers can wait years and endure the expense of continuing litigation. Options and conditional contracts run out; mortgage commitments expire; the cost of labor and materials zooms;

> and, like Pavlov's dogs, developers are trained to build what municipalities want, rather than what the public needs." A. Mytelka, "Judicial Remedies" in After Mount Laurel; The New Suburban Zoning, ed. Rose and Rothman, Center for Urban Policy Research, 1977.

The New Jersey Supreme Court obviously had the foregoing considerations in mind when it decided the Madison case, and thereby boldly and unequivocably embraced the doctrine of specific corporate relief as the most effective remedy in exclusionary zoning litigation.

> "[The] corporate plaintiffs have borne the stress and expense of this public interest litigation, albeit for private purposes, for six years and have prevailed in two trials and on this extended appeal, yet stand in danger of having won but a pyrrhic victory. A mere invalidation of the ordinance, followed only by more zoning for multi-family or lower income housing elsewhere in the township, could well leave corporate plaintiffs unable to execute their project."
>
> * * * * *
>
> "Such judicial action, moreover, creates an incentive for the institution of socially beneficial

> but costly litigation such as this and Mount Laurel, and serves the utilitarian purpose of getting on with the provision of needed housing for at least some portion of the moderate income elements of the population." 72 N.J. 549-551.

As discussed in more detail in the limited concurrence of Justice Pashman:

> ". . . granting the specific relief sought by the corporate plaintiff . . . will serve several important functions."
>
> "First, as previously noted, even after an exclusionary zoning provision has been invalidated, a shrewd, intransigent community may rezone plaintiff's property in such a manner as to frustrate the proposed use. Towns may also require lengthy approval procedures or withhold from the corporate plaintiff permits necessary to proceed with a project. As one court has noted, such actions 'effectively grant the municipality a power to prevent any challenger from obtaining meaningful relief after a successful attack on a zoning ordinance.' Casey v. Warwick Tp. Zoning Hearing Bd., supra, 328 A.2d at 468. By affording the corporate plaintiff specific relief, a remedial order will effectively prevent this form of harassment and will obviate the need for further litigation with respect to the property involved. See Sinclair Pipe Line

Co. v. Village of Richton Oaks, infra, 19 111. 2d 370, 167 N.E.2d 406 at 411. Moreover, it will furnish an important incentive for developers to bring suits in the public interest. As our own Court has recognized, 'unless the immediate litigant can hope to gain, there [will] be no incentive to challenge existing practices or prior holdings which, in the public interest, ought to be reviewed.'

Second, this remedial device directly advances the fundamental objective of promoting actual construction of low and moderate income housing. By allowing the corporate landowner to proceed with his project without further delay it offers one of the fastest and surest ways of accomplishing this objective. Mytelka & Mytelka, supra, 7 Seton Hall L. Rev. at 16.

Finally, issuance of a variance or building permit under these circumstances also serves to protect the interests of the municipality because it assures that the corporate plaintiff will undertake the proposed use and no other." 72 N.J. at 597-598.

The courts of numerous other jurisdictions have, as well recognized the practical necessity of granting site-specific relief to successful zoning challenges. Crow v. Brown, 332 F. Supp. 382, 395 (N.D. Ga. 1971), aff'd. 457 F.2d 788 (5 Cir. 1972) (court

orders issuance of building permits); Kennedy Park Homes Association v. City of Lackawanna, 318 F. Supp. 669, 697 (W.D.N.Y. 1970) (court enjoins activities on part of municipality which would impede the building of plaintiff's project); Franklin v. Village of Franklin Park, 19 Ill.2d 381, 167 N.E.2d 197 (1960) (court orders municipality to zone plaintiff's property for the use desired by plaintiff); Sinclair Pipe Line Co. v. Village of Richton Park, 19 Ill.2d 370, 267 N.E.2d 406 (1960) (court orders variance to permit use desired by plaintiff); Olson v. Warminster Twp., 338 A.2d 748 (Pa. Comm. Ct. 1975) (court evaluates compliance of plaintiff's site plan as a precursor to issuance of building permits); Casey v. Warwick Tp., 328 A.2d 464, 469-70 (Pa. 1974) (court orders issuance of a building permit subject to a showing of compliance with administrative requirements); Ellick v. Bd. of Supervisors of Worcester Tp., 333 A.2d 239 (Pa. Comm. Ct. 1975) (based upon statutory authorization of judicial approval of proposed use upon finding of infirm zoning ordinance, Pa. Stats. Ann. Tit. 53 §1011(2), court orders approval of plaintiff's proposed development, subject to finding that it is reasonable, and comports with valid administrative requirements).

The courts of New Jersey have, even prior to the Madison decision, recognized the efficacy of specific relief. In Pascack Associates v. Mayor and Council of Washington Tp., 131 N.J. Super. 195 (Law Div. 1974), rev'd. on other grounds, 74 N.J. 470 (1977), the remedy afforded a successful zoning challenger was an order directing, inter alia, that:

> "Upon proper application being made by plaintiff to the appropriate municipal departments and agencies, ... the Township of Washington is ordered and directed to issue to the plaintiff a building permit . . ." 131 N.J. Super, at 208.

Brunetti v. Mayor and Council of Madison Tp., 130 N.J. Super. 164 (Law Div. 1974), granted plaintiff the most specific remedy available, a variance, to construct multi-family housing. The "special reason", N.J.S.A. 40:55D-70(d), was the dire need in the area for middle income housing. Cf. Fobe Associates v. Mayor and Council of Demarest, 74 N.J. 519, 557 (1977) (dissenting opinion of Pashman, J.).

In R.H.H.Z.ii.Z. Inc. v. Tp. of Clinton, Superior Court of New Jersey, Law Division, Hunterdon

County, Docket No. L-29710-74 P.W., 1/13/78 (Beetel, J.C.C. T/A), the court relied heavily upon the Madison opinion in ordering the rezoning of plaintiff's land and appointing a master to oversee the imposition of the new ordinance. Id. at 85. (Relief portion of Court's opinion annexed hereto as Exhibit "B").*

Thus, both the commentators in the zoning field, and the case law of New Jersey and other jurisdictions, recognize the need for direct and emphatic judicial response to vindicate the rights of zoning challenge litigants in appropriate cases. This is not to say that every successful zoning challenger is entitled to specific relief. Granting the remedy is a matter of judicial discretion.

> "While it is not the function of courts to rewrite zoning ordinances, issue building permits or

*It should be noted that the Round Valley Court ordered specific, directive relief toward effectuation of plaintiff's project even though the trial was but the first challenge to the zoning ordinance. Herein, the fact pattern is far more extreme and the resultant equities in favor of the plaintiff are more compelling, because Bedininster, unlike Clinton, has had years to bring itself into constitutional compliance and to honor the prior orders of this Court.

> otherwise interfere with municipal control over zoning matters, [citations omitted], where there has been an adjudication of municipal zoning power, the court may (and, in some cases, must) intervene to the extent necessary to provide effective relief." Madison, supra, 72 N.J. at 597.

By all criteria set forth in Madison, and elsewhere, the instant case is clearly an appropriate instance in which to grant specific corporate relief.

The Madison opinion predicated its grant to specific corporate relief partially on the fact that the corporate plaintiff therein has " . . . borne the stress and expense of this public interest litigation, albeit for private purposes, for six years and have prevailed in two trials and on this extended appeal . . . " 72 N.J. at 549-550. The Allan-Deane Corporation has shouldered the burden, economic and otherwise, of the instant litigation for 8-1/2 years. Plaintiff first contacted the defendants with respect to a rezoning in 1969! The instant litigation has seen one trial, a hearing on Order to Show Cause which was the equivalent, in terms of time and effort, of a trial, and an unsuccessful appeal and Petition for Certification. While

there was one rezoning in Madison during the course of the litigation, the instant case saw two rezonings, two amendments to existing ordinances, adoption of a new site plan and subdivision ordinance, and the adoption and amendment of a new master plan by the municipality. In terms of Madison's "objective" criteria, the instant litigation is more protracted, and the machinations and gyrations of the municipality have been far more abundant, than the situation which prompted the grant of specific relief in Madison.

Justice Pashman also felt that the grant of specific corporate relief was proper in Madison in order to ensure that the lower cost housing would actually be built in the municipality. 72 N.J. at 597-598. An analysis of these criteria in terms of the factual record before the court in this case also militates in favor of a grant of site specific relief to plaintiff. By all accounts, the Pluckemin area of the Township is, and has been, in serious need of sewering to solve an existing health problem. No multi-family housing has been permitted under the ordinance in the absence of a sewering system. The Township has elected to await the conclusion of various studies before even considering

the implementation of a public sewering plan. These studies are years from completion, and any actual construction of sewers would have to further abide future studies and funding. In sum, there is no prospect of public sewers in Bedminster in the foreseeable future; if they ever come, they will be many years off.

Plainly, if multi-family housing is to come to Bedminster in the near future, it will only be through Allan-Deane, which has the ability and a project of sufficient scale to enable it to provide the needed sewering. Additionally, of course, Bedminster must be further required to confront and satisfy the admitted sewering needs of the balance of the corridor, as its historic blindness to this problem has effectively foreclosed any substantial development. On the other hand, somewhat easing the Court's evaluative burden in this connection is the fact that the municipality concedes, with the concurrence of the county planning board, that the only area suitable for multi-family development is the Pluckemin Corridor, wherein Allan Deane property is the only large undeveloped tract. Thus, unlike the _Madison_ situation, the focus for appropriate relief is sharply narrowed.

In sum, Allan-Deane is clearly the linchpin to the actual provision of multi-family housing in Bedminster in the near future. Only through it can private sewering be provided on an economically feasible basis. Only it has lot holdings of sufficient size to provide the necessary infrastructure, as well as a mix of housing types. The other multi-family areas are little more than lines on a map, incapable of making material inroads to the existing housing shortage. Moreover., only Allan-Deane is prepared to meet and capable of meeting all legitimate environmental and ecological concerns resulting from development in the Pluckemin Corridor. This is not to say that other portions of the Corridor would not also be appropriate for multi-family development. The fact remains/ though, that if the parties are to see the actual development of "variety and choice" housing within the next half-decade, it will only be by and through this plaintiff. Thus, practical exigencies, as well as legal principles, compel the award of specific corporate relief, if the Mount Laurel/Madison mandate is truly to be applied to this resistant community.

The record in the instant case is replete with

testimony establishing the environmental soundness, the least-cost nature, and the conformance with water, sewer and other regulations, of plaintiff's proposed project. There is thus no reason to prevent or otherwise hinder the commencement of construction.

A final factor found to be crucial by the Supreme Court in Madison, was the presence or absence of bad faith on the part of the municipality.

> "Finally, if there is evidence of bad faith, inadvertence of neglect on the part of the municipality, the court could assume direct control over certain aspects of the plan and impose stronger remedial measures than those provided for in the initial decree." 72 N.J. at 585.

Accord: Tp. of Williston v. Chesterdale Farms, Inc., 300 A.2d 107, 117 (Pa. Comm. Ct. 1973); Hartman, "Beyond Invalidation: The Judicial Power to Zone", 9 Urban Law Annual, 159, 167 (1975); Mytelka & Mytelka, "Exclusionary Zoning: A Consideration of Remedies", 7 Seton Hall Law Review, 1, 29 (1975).

Herein, Bedminster is apparently prepared to argue that its deficient ordinances resulted not from

contumacious and malicious intent, but rather from mere ineptitude occasioned, at least in part, by the unsettled state of the law. However, in Madison, the Supreme Court unequivocally concluded that the "basic law is now settled" and that municipality has had sufficient opportunity to bring itself into compliance. The Madison opinion was itself rendered in 1977 -- prior to the Bedminster rezoning. Accordingly, this Court can hardly countenance such a defense of haplessness at this late stage of the zoning game.

After the first trial of this matter, the court found the defendant's multi-family zones to be "phantom". In its opinion dated December 13, 1979, the court stated that:

> "By creating an R-20 zone on the one hand, and so restricting its development as to render it a nullity, on the other hand, the local officials, have engaged in governmental 'sleight of hand[1]. They have not complied with this court's order."

At best, the defendants have blatanly neglected their obligations under Mount Laurel; despite specific court orders to rezone, in accordance with fair

share principles, and many opportunities to do so, defendants have failed to take <u>any</u> meaningful action in this regard. This is clearly an appropriate case for specific corporate relief. Indeed, if such relief were not granted herein, in a factual context far more egregious than in <u>Madison</u>, the prospect of meaningful realization of the housing goals stressed by the high court will die a quiet, but regretful, death.

POINT II

THE NATURE AND FORMAT OF SPECIFIC CORPORATE RELIEF FOR ALLAN-DEANE

In order for the relief molded by this Court to be both meaningful and responsive to the issues raised, it is imperative that it be immediate in time, specifically addressed, at least in part, to the plaintiff's proposed project and provide clear safeguards against further barriers and roadblocks from the municipal officials. Otherwise, Bedminster will have suffered no sanction from its continuing and contumacious course of conduct, and the successful plaintiff shall find itself once again at the beginning of a long, long road.

It is for these selfsame reasons that the New Jersey Supreme Court, in the *Madison* case, short-circuited the traditional, and limited, relief awarded in zoning cases theretofore and decreed that where, as herein, the municipality has shown itself to be unable or unwilling to modify its zoning ordinances in accordance with the constitutional mandate, the trial court is empowered, in its due discretion, to order specific and directive relief, aimed at fulfilling the plaintiff-developer's proposed project.

In this connection, it is crucial to note that the Madison court did not merely order reconsideration of the project on the basis of generalized planning concerns and the like. Contrarily, that court ordered the issuance of building permits subject only to court-supervised "compliance with reasonable building code, site-plan, water sewerage and other considerations of health and safety" and to a determination that the lands "environmentally suited to the degree of density and type of development plaintiffs propose." 72 N.J. at 551.

> "Subject to these conditions it is our purpose to assure the issuance of a building permit to corporate plaintiffs within the very early future." 72 N.J. at 551.

Thus, in formulating the contours of specific corporate relief, the Madison court did not remand the issue of the ultimate zoning of the plaintiff's property to a de novo proceeding, but rather utilized the plaintiffs' proposed project as the starting point, subjecting that proposal to necessary and minimum concerns for health and safety.

It is precisely this manner of relief that

plaintiff Allan-Deane seeks herein, based on a far more extensive record than that available to the Madison court and justified on an even more egregious and extended history of municipal recalcitrance. Thus, plaintiff Allan-Deane requests that this Court, pursuant to the Madison mandate, order the granting of relief in accordance with plaintiff's proposed least cost housing plan (P-40*), as to the reasonableness of which there is ample testimony in the record. Such approval may be conditioned upon proofs that the plan conforms with minimum standards of health, safety and welfare, to be determined either by this Court by plenary hearing or by a Master specially appointed for this purpose.** If a Master is to be appointed, this Court should make such

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* As noted in the informal conference with the Court, plaintiff is prepared to rest on P-40, save with regard to a small, 10 acre section which is shown for commercial use. While continuing to assert the reasonableness of such use for the site, plaintiff, recognizing the uncertainty of nonresidential uses as appropriate relief under Madison, will modify P-40 to include additional housing of 150 units.

** A fuller exposition of the proposed mechanics of the supplemental proceeding follows hereinafter as Point III.

further findings of fact on the existing record as may eliminate the need for cumulative or duplicative testimony and must identify specifically and unit those areas of inquiry as would be appropriate for such supplemental consideration so as to avoid prolonged proceedings. Additionally, the Court should specify narrow and specific timetables for such proceedings and, of course, the parties must be limited to such witnesses and reports as have already been identified and exchanged. Finally, it is respectfully submitted, that, in light of all attendant circumstances and in order to expedite such proceedings, the defendant should be compelled to identify with particularity those health and safety issues to be addressed with aspect to P-40 and to bear the burden of going forward. In this way, this Court can appropriately supervise the proceedings by screening out extraneous "concerns" and enable the parties to focus on any legitimate issues and avoid trying non-issues.

It must be stressed that the foregoing outline is in sharp contrast to a total referral of the corridor zoning to a Master, to consider *ab initio*. Such alternate relief, as will undoubtedly be advocated by the

municipality as one more chance to defeat the plaintiffs, would obviously lead to continuing delays and obstacles, would require duplicative evidence and require a rehashing of presentations already available to this Court, would open the door to myriad digressions, would lack any useful focus as a starting point, and would, frankly, serve as little deterrent to this municipality, or others, from continuing to block reasonable development. In short, if these plaintiffs are required to return to "square one" in determining the "appropriate" zoning for the site, as if this long and tortuous history did not exist, it would amount to a backhanded victory for the defaulting community while constituting a clear setback for the vindicated plaintiffs who have repeatedly been proven just in their cause but been just as frequently frustrated in their efforts to bring least cost housing to Bedminster.

It has now been nearly ten years since the real prospect of multiple family housing loomed on the horizon of Bedminster Township. After a decade of requests for consideration, trials, appeals and favorable determinations, the plaintiffs are, in many ways,

no closer to a realization of the housing goals articulated repeatedly by the courts of this State. In just as many ways, the municipality, despite repeated judicial findings of its failure to serve the public interest, has accomplished its inhibitory goal and now seeks new ways to further push back the tide of progress. In order to avoid this untoward and inequitable result, the *Madison* court pointedly concluded:

> "Considerations bearing upon the public interest, justice to the plaintiffs and efficient judicial administration preclude another generalized remand for another unsupervised effort by the defendant to produce a satisfactory ordinance. The focus of the judicial effort after six years of litigation *must now be transferred from theorizing over zoning to assurance of the zoning opportunity for production of least cost housing*." 72 N.J. at 552-553 (emphasis added).

Plaintiff Allan-Deane, after *eight and one-half* years of litigation, asks for no more and no less.

POINT III

THE IMPLEMENTATION OF SPECIFIC CORPORATE RELIEF

On the assumption that this Court will conclude that Allan-Deane is entitled to specific corporate relief, in the form of permission to develop on its property a housing project similar to the one which they proposed prior to and during this action, we have taken the liberty of attaching a proposed form of Court Order which creates an adminstrat ive mechanism, under R. 4:59-2(a) for the implementation of specific corporate relief. The mechanism established under this Order meets the two-part test set forth in Oakwood at Madison, 72 N.J. at 551 in that it would both:

> 1) "assure the issuance of a building permit to corporate plaintiff within the very early future" (emphasis ours); and
>
> 2) Would "assure compliance with reasonable building code, site plan, water, sewerage and other requirements and considerations of health and safety".

What Allan-Deane proposes is that this Court itself establish the general parameters of the appropriate specific corporate relief by determining the

maximum number of housing units which Allan-Deane will be permitted to construct on its 451 acre property. The Court-appointed Administrator has the responsibility for reviewing a site plan prepared by Allan-Deane containing no more than the permitted number of units, and of modifying it if necessary in order to assure development with minimal adverse environmental impacts, minimum site development costs and to satisfy Allan-Deane's commitment for least cost housing. Under this proposal the Administrator is not required to make the basic judicial policy decisions which have already been litigated, such as the proper gross density at which the Allan-Deane property is to be developed. He is required only to assure the Court that the final plan minimizes environmental impacts and complies "with reasonable building code, site plan, water, sewerage and other requirements and considerations of public health and safety." (72 N.J. at 551)

Under this mechanism it is the Administrator, and not the Court, which holds hearings on whatever remaining technical issues Bedminster might choose to raise (such as the designs of detention and retention basins, the adequacy of road widths, the need for curbs at specific locations, etc.). It is the Court, however,

that sets the overall density.*

Funding of Administrative Mechanism

Although R. 4:59-2(a) contemplates that the defaulting party is responsible for the costs incurred by a Court-appointed Administrator, appointed as a result of his failure to obey a Court Order, Allan-Deane recognizes that it should be responsible for that portion of the expenses incurred during the Administrative process, which involve the review of its site

*Defendant may argue that the appropriate density suitable for the Allan-Deane property cannot be set until various technical matters which have yet to be considered are resolved. This is incorrect. Defendants, through counsel, have admitted to the Court that it is technically possible to solve the engineering and environmental problems associated with greater development (See T-XX-49-50) and there is no "environmental capacity" which Bedminster could quantify (See T-XX-46 et seq.). The question of what techniques are most appropriate from the standpoint of either cost or effectiveness should, we submit, be handled administratively through a mechanism under the supervision of the Court. Furthermore, it is a conceptually much more difficult task to determine both what should be built on the land and where it should go. There are simply too many variables. if the Court will take the responsibility of establishing the overall density permitted on the tract, the Administrator can function as a Planning Board reviewing a site plan after the use and intensity of that use have been set by the underlying zoning.

plan, its construction drawings and the inspection of its development during construction, Allan-Deane would have to pay for this review, were Bedminster Township not in default of this Court's previous Orders, through site plan review fees, sub division fees, inspection fees and building permit and occupancy permit fees and has no objection to making these funds available if it is not going to be assessed such fees, to fund an administrative process.

The Adminstrator's Role

Under the terms of the proposed Court Order, the Administrator has three general areas of responsibility in connection with the administration of specific corporate relief. These areas are:

1) To review and, if necessary, request such modification of the site plan as will ensure a plan which generally minimizes adverse environmental impacts, minimizes site development costs and satisfies Allan-Deane[1]s commitment to least cost housing.

2) After overall "preliminary" site plan approval is obtained, through the process described

above, to review construction drawings, engineering details, legal mechanisms setting up homeowners' associations to maintain the common open space areas, architectural drawings, etc. to assure compliance with minimal building code, site plan, water and sewerage requirements, etc. before recommending to the Court the phased issuance of building permits.

3) To oversee actual construction and, if construction is in accordance with approved plans and specifications, to recommend Court ordered certificates of occupancy be issued.

Of the three tasks, the review of the site plan, to be submitted by Allan-Deane within 30 days after the issuance of a Court Order specifying the number of units Allan-Deane is to be permitted, is the most critical. With the "zoning", or number of units to be built, established, the Administrator knows that the overall use or intensity of use is not in issue. His job is the technical one of insuring that, given the intensity of use permitted, the plan minimizes adverse environmental impacts. In order to conserve the Administrator's time and avoid requiring Allan-Deane to

introduce testimony on areas not in issue, the Order provides that after Allan-Deane has submitted a site plan to the Administrator, Bedminster will have the burden of going forward and challenging it and that the Administrator shall confine his deliberations to issues raised by Bedminster.

Subsequent Proceedings

We have outlined below, for the assistance of the Court and the other parties to this litigation, the sequence of proceedings or scenario which would follow a decision to grant Allan-Deane specific corporate relief.

1. January 29, 1980 -. Court hears oral legal argument on remedy.

2. February, 1980 - Court issues Opinion deciding Allan-Deane is entitled to specific corporate relief in the form of permission to develop on its property a housing project similar to the one proposed prior to and during pendancy of this action and setting forth the number of units to be permitted on Allan-Deane property and creating an administrative mechanism which

will both assure the issuance of building permits to Allan-Deane within the very early future and assure minimal adverse environmental impacts and compliance with reasonable building code, etc. requirements.

3. February - March, 1980 - Parties meet with Court to discuss details of Court Order. Supplemental Order agreed upon or settled by Court. Order appointing Administrator issued setting forth detailed description of his duties, the procedures he is to follow, and the extent of piarticipation allowed Bedminster and Allan-Deane, and the standards against which he is to review site pian.

4. March - April, 1980 - Allan-Deane presents site plan with attendant supporting documents to Administrator. After determination that site plan meets acceptable standards for safety and welfare, minimizes environmental impact and site development costs, and satisfies Allan-Deane's commitment for least cost housing plan, submitted to court with Administrator's approval.

5. April, 1980 - After Hearing, Court orders Bedminster to approve site plan.

6. July, 1980 - Allen-Deane submits final subdivision plat and building plans of initial phase for review and approval to Administrator. Administrator determines such plans comply with State Building Code and other requirements of health and safety.

7. August, 1980 - Final plat and building plans submitted to Court with Administrator's approval. After hearing, Court orders building official to issue building permits. Administrator empowered to hire inspectors to assure Allan-Deane completes building in accordance with approved plans.

8. September, 1980 - Court orders Administrator to replan balance of Corridor and revise Site Plan, Zoning and Subdivision Ordinances and to make sure Allan-Deane land is zoned to conform with what is being built.

9. September, 1980 - Construction commences on initial stage of project.

10. December, 1980 - Administrator reports to Court on new land use plan for rest of Corridor after holding hearings. Court accepts plan.

11. June, 1981 - Administrator submits revised Land Use Ordinances to Court and Court orders them adopted.

12. £HiyjL_i2.^.i ~ Bedminster adopts new ordinances.

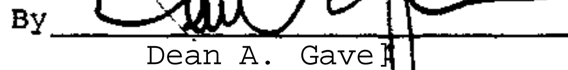
13. Thereafter, Court will order building officials to issue Certificates of Occupancy to Allan-Deane upon recommendation of Administrator.

CONCLUSION

For the reasons expressed herein and upon the extensive and extraordinary record developed below, and in accordance with established principles of law, it is respectfully submitted that this Court can and should direct the issuance of specific corporate relief as urged by the plaintiff, The Allan-Deane Corporation, in order to direct and permit the development of variety and choice of housing and of least cost housing in the defendant Township of Bedmins^r.

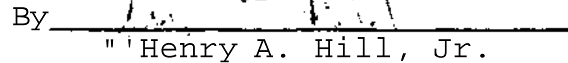
Respectfully submitted,

HANNOCH, WEISMAN, STERN, BESSER,
BERKOWITZ & KINNEY, P.A.



By ______________________
Dean A. Gaver

MASON, GRIFFIN & PIERSON



By ______________________
Henry A. Hill, Jr.

Attorneys for Plaintiff,
The Allan-Deane Corporation

DATED: January 25, 1980

Exhibit A

APPENDIX "A"

PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. September 28, 1977 - Order entered

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

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

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

21. March 23, 1978 - Order to Show Cause pursuant to Rule 1:10-5 issued.

22. May 22, 1978 - a pretrial order was issued.

23. June 12, 1978 - Amendments to Master Plan Adopted by Planning Board.

24. August 21, 1978 - Amendments to Zoning Ordinance.

25. September 18, 1979 - Further amendments to Zoning Ordinance.

26. September 8, 1978 - Hearings commenced on Order to Show Cause.

27. November 1978 - Bedminster adopts new site plan and subdivision ordinance.

28. April 2, 1979 - Hearings on Order to Show Cause end after forty full trial days.

would be posed by Plaintiff's PUD can be solved. The Court is not free to disregard environmental considerations. (See Madison, 72 N.J. at 545). As a result, even though the resolution of prior issues in Plaintiff's behalf favors the relief sought by Plaintiff, this Court would have no alternative but condition any relief granted to Plaintiff upon a showing* that its land is environmentally suited to the degree of density and type of development that Plaintiff proposes. It is possible that Plaintiff's land is in an environmentally sensitive area and that all development of same must be in conformity with the regulations of all local, state and federal environmental agencies having jurisdiction. Such a ruling would be in conformity with previous holdings of our courts. Madison, 72 N.J. at 551.

POINT X. REMEDY AND RELIEF FOR CORPORATE PLAINTIFF

In Madison, the Court made it clear that trial courts should not hesitate in issuing direct and meaningful judgments, to allow for least cost housing, unhampered by_dilatory and unnecessary cost generating tactics by defendant municipalities. (See 72 N.J. at 552 and 553.)

The Court finds that this ordinance is unconstitutionally exclusionary and at variance with the^principles enunciated by the New Jersey Supreme Court in its Mt. Laurel and Madison decisions. The

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* Such a showing would be to the Board of Health of the local municipality, the County Board of Health, the Department of Environmental Protection, and the various State Agencies having jurisdiction, as it is contemplated these "showings" would be necessary to obtaining approvals to construct or to continue to construct, as these safeguards have been designed to protect the public, but not to obstruct legitimately needed construction of "least cost housing" by a local municipality seeking to perpetuate its rural atmosphere by a parochial zoning ordinance with the devices previously described, and not in conformity with the legislative intent of the New Municipal Land Law (supra.), one of which goals was a regional approach to "fair share".

Court directs the defendants to immediately develop a new land use ordinance, which complies with the principles enunciated in this, opinion. The Court will appoint a planning expert within 30 days aftei the issuance.of this opinion, to oversee the development of the new ordinances corntemplated herein, in accordance with the cases cited.

To assist the defendants in that endeavor, and to insure prompt and complete compliance, the Court directs the defendants to submit sue a new proposed planning ordinance to the planning expert appointed hereby, within 90 days of the issuance of this opinion. That planning expert will thereafter have responsibility for approving the same, to assure that it complies with the directives contained in this opinion, for eventual confirmation by the Court 30 days thereafter. In the new ordinance to be drafted, the expert should recommend and the Township should accept standards for a PUD in the new ordinance as there are no standards for an ROM with a PUD option in the present ordinance. Upon confirmation of the new zoning ordinance by the Court, the defendants will thereafter be directed to adopt it as an official enactment of the municipality.

Each side shall submit the names, addresses and qualifications of such experts within ten days of the date of this opinion, and the Court will choose one of such persons on two days notice to all sides so that any party may have the opportunity to be heard on any objection to the expert's qualifications to so serve.

There is no question that courts of this State possess the inherent power to appoint experts to aid them in rendering judgments. See eg. State v. Lanza, 74 N.J. Super. 362, 374-375 (App. Div. 1962), aff'd 39 N.J. 595 (1963), appeal dismissal and cert, denied 375 U.S. 451, 84 S.Ct.525, 11 L. Ed. 2d 477 (1964); see also Polulich v. J.G. Schmidt Tool Die & Stamping Co., 46 N.J. Super. 135, 146-49 (Essex Cty. Ct. 195"

- See generally; II Wigrnore, i 563 at 648-49 (3rd Ed. 1940); McCormick's, Handbook of the Law of Evidence; i 17 at 38-39 (1972); Note, Judicial Authority to Call Expert Witnesses, 12 Rutgers Law Rev. 375 (1957). The discretionary power to appoint an independent expert is, however, not unlimited. Concepts of fairness dictate that at a minimum, the parties be appraised of the expert's identity and be given an opportunity to object to his qualifications. Furthermore, the parties must be afforded the full opportunity to cross-examine the expert after being advised of his findings, (74 N.J. Super, at 374-75. Cf. Fed. R. Evid. 706), which findings shall be in written report form within 60 days of the date of appointment, so as to assist the drafting of the new ordinances, and each side shall have the opportunity to cross-examine such expert, on motion to fix a date made within 20 days thereafter.

There is, however, a clear distinction between the appointment of an expert to aid the Court in rendering a judgment and the appointment of an expert or master to aid the Court in implementing its judgment. The former would lead to delay whereas the latter would expedite matters. The relevant decisions reviewed by the Court recognize this basic difference. See e.g., Mt. Laurel, 67 N.J. at 157-58, 215; Madison, 72 N.J. at 553-54; Pascack Ass'n, Ltd. v. Mayor & Coun. Washington Tp., 131JN.J. Super. 195, 201 (Law Div. 1974), aff^Td, 74 N^. 470 (1977); Oakwood at Madison, Inc. v. Tp. of Madison, 128 N.J. Super. 438, 447 (Law Div. 1974), aff'd, 72 N.J. 481 (1977). Furthermore, the conclusion that appointment of a post-judgment expert is appropriate and desirable in "exclusionary" cases appears to be unanimously accepted by the members of the Supreme Court. See Madison, 72 N.J. at 553-54 (majority opinion); 533, 585, 592, 594-95, 617 (Pashraan, J., concerning and

dissenting); cf. 621-23 (Schreiber, J., concurring in part and dissenting in part); 625-27, 630 (Mountain, J., concurring and dissenting) 631 (Clifford, J., concurring). Therefore, the Court is of the opinion that further expert testimony in this case would not have been of aid in 'atermining the legal issues before it. However, it is equally convinced ;hat a court-appointed expert will be of great aid in rapidly implementin '•-he judgment rendered herein.

3y -"^daring the ordinances herein exclusionary and therefore i'i • ••3". ' : utional for the reasons cited in all of the points previously discussed, it is meant that the ordinances are held to be so only as to the plaintiff's property (to whom specific relief is hereafter given) but that the ordinances shall remain in full force and effect as to subdivision, site plan and zoning in all other respects in the interim, except possibly for others similarly situate as Plaintiff has made itself out to be in a legal sense. In this way, there will be no disruption in the municipality, nor its agents in continuing to administei planning and zoning matters, about which this opinion is not concerned, as it is neither the province nor wish of the Court system to disrupt the legislative and administrative functions of a duly constituted political subdivision of the State of New Jersey.

RELIEF FOR CORPORATE PLAINTIFF

The second most important principle enunciated by the Court in Madison concerned the relief to be afforded to Plaintiffs in exclusionary zoning cases. The Court in Madison was requested by the corporate olaintiffs to specifically grant them a permit to build the kind of moderate-to-middle income housing they had in mind. 72 N.J. at 548, 549.

The Court analyzed their request and ruled as follows:

> "A consideration pertinent to the interests of justice in this situation, however, is the fact that corporate plaintiffs have borne the stress and expense of this public-interest litigation, albeit for private purposes, for six years and have prevailed in two trials and on this extended appeal, yet stand in danger of having won but a pyrrhic victory. A mere invalidation of the ordinance, if followed only by more zoning for multi-family or lower income housing elsewhere in the township, could well leave corporate plaintiffs unable to execute their project. There is a respectable point of view that in such circumstances a successful litigant like the corporate plaintiffs should be awarded specific relief. (Citations omitted.)
>
> There is also judicial precedent for such action. (Citations omitted.)
>
> Such judicial action, moreover, creates an incentive for the institution of socially beneficial but costly litigation such as this and Mt. Laurel, and serves the utilitarian purpose of getting on with the provision of needed housing for at least some portion of the moderate income elements of the population. We have hereinabove referred to the indirect housing benefits to low income families from the ample provision of new moderate and middle income housing. (Reference omitted.)
>
> The foregoing considerations have persuaded us of the appropriateness in this case of directing the issuance to the corporate plaintiffs, subject to the conditions stated infra, of a permit for the development on their property of the housing project they proposed to the township prior to or during the pendance of the action, pursuant to plans which, as they originally represented, will guarantee the allocation of at least 20 percent of the units to low or moderate income families (footnote omitted). This direction will be executed under the enforcement and supervision of the trial judge in such manner as to assure compliance with reasonable building code, site plan, water, sewerage and other requirements and considerations of health and safety. (Citations omitted.)" 72 N.J. at 549-551.

This action by the Court was necessary if the plaintiffs in Madiso were to be awarded any meaningful relief. A municipality may delay a developer interminably so as to preclude any ultimate development. See generally Mytelka & Mytelka, "Exclusionary Zoning: A Consideration of

The plaintiff has cited Madison as the precedent for this extraordinary relief. Although the plaintiff in Madison was granted specifi relief, the Court specifically indicated that the situation therein was ex• '-^ordinary and that such relief in this type of case would rarely be Testified.

> "This determination is not to be taken as a precedent for an automatic right to a permit on the part .of-any builder-plaintiff who is successful in having a zoning ordinance declared unconstitutional. Such relief will ordinarily be rare, and will generally rest in the discretion of the Court, to be exercised in the light of all attendant circumstances." 72 N.J. at 551, Footnote 50.

Since Madison, subsequent cases have uniformly heeded that directive. See Middle Union, supra, at 22.

It is clear that a plaintiff who prevails in such an action is not entitled to approval of his plan and issuance of building permits as a matter of right. Therefore, the Court does not direct the appropriate local government officials to issue all necessary approvals and permits, including building permits, so that the plaintiff can begin to develop the site, even on the condition that the plaintiff adhere to all of the covenants, conditions, and various specifications of its proposal and application, which have already been filed with the Court.

Rather, this Court finds that the rejection of Planner O'Grady's original recommendation that the-east side of Plaintiff's lands- should have been classified as ROM with a PUD option became arbitrary and capricious action the moment that recommendation based on the planner's studies was officially rejected and not put into the Land Use Ordinance; and thereafter the zoning plans. This is so, because the testimony has revealed it was rejected out of hand and without further study. This

is not in conflict with the original point of this opinion which held that the municipality in reacting to the concept and the changing law and times was not arbitrary, but it did so become arbitrary when it rejected the planner's professional opinion based upon his studies, and enacted into law by virtue of the ordinance making power, the severely constrictive use of the plaintiff's lands on the easterly side thereof. This action was done willfully and deliberately as the plaintiff's proposal was fully upon the municipal table of problems to be approached and solved. The action taken was done without further study, and the testimony when reviewed objectively cannot lead to any other conclusion, but that the municipal planner did what he was ordered to do, by the township authorities, who no doubt believed they were doing their best by their community.

Therefore, this Court finds that the specific relief to which the corporate plaintiff is entitled is that ROM-PUD option as originally recommended by Planner O'Grady should be the controlling land use for the plaintiff's sites, both the Beaverbrook side and the Goble side, but with the density that Mr. O'Grady recommended for the current allowable use on the Beaverbrook side, which was 3 units per acre. This figure was based on O'Grady's studies and was not contradicted by the plaintiffs, presumably due to the fact that the arguments of the defendants were directed to the east or Goble tract, not the west or Beaverbrook tract where a PURD was allowed under the Township's new ordinance.

Of course, if the expert appointed to oversee the new ordinances should believe and recommend that the density be higher or more intensive or if the municipality should allow for more, then the Court v/ould be controlled thereby, but the remedy awarded to Plaintiff in

this specific relief is due, and anything less would be a "pyrrhic victory"; however, with this relief the plaintiff can proceed to final studies, seek its necessary permits and the municipality and the State and its various agencies will be in control to see that:there is compliance.

This Court has undertaken an exhaustive study of the testimony and the exhibits as they were received and has reviewed the testimony from its notes and the transcripts provided, and has undertaken to note fully the points it and the parties felt were necessary to resolve the problem. Regardless of the outcome, it is apparent that a project of this dimension cannot be taken lightly; hence the 29 days of trial and the time since when the Court has been completing its opinion. However, that very expenditure of trial court time leads this Court to wonder whether or not legislative intervention is not necessary to have this type of case hereafter processed by an administrative agency, such as the County Planning Board, where much like the Public Utilities Authority (or any administrative agency for that matter) there could be immediate t^.pert input, and then the matter appealed directly to the Appellate Division of this Court system, were an appeal necessary. Then, of course, the test would be whether the fact findings are supported by "substantial evidence", that is, such evidence as a reasonable mind might accept as adequate to support the conclusions of the administrative agency. Benedetti v. Bd. of Com'rs of the City of Trenton, 35 N.J. Super. 30 (App. Div. 1955) and In Re Application of Hackensack Water Co., 41 N.J. Super. 408 (App. Div. 1956). That test differs from the test which this Court must apply in the traditional law fact finding process.

Specifically, this case relied much upon the Hunterdon County Planning Board reports, its master plan for the County (Exhibit P-64, P-65

but the Court was unable to use the testimony of the County Planners, because one of their employees sat upon the Municipal Planning Board, and objection was voiced that there might be a tainted view presented. As an aside to this result, it is highly recommended that County Planning Board employees not sit as members of local planning or zoning boards, and additionally that the County Planning Boards not prepare ordinances of either planning or subdivisions for municipalities, as has been the practice in Hunterdon County, so as to avoid future conflicts of the type reached in this case.

This Court should like it understood that it does not seek to shirk its duty, but it has taken considerable time to develop the record in this matter, so that a trial judge might appreciate the nuances of the factual and expert material' being presented, which would already be in hand, were an administrative agency with trained planners and perhaps a trained hearer prepared with that background to hear the matter. Thus, notwithstanding that this judge has been a municipal attorney, planning board attorney, etc. in the past, a case of this dimension humbles anyone approaching thedynamic results that can be appreciated as Hunterdon County changes from a rural to a regionalized corridor county which it has become.

The Court wishes to express its gratitude to counsel for the time and effort given to this matter, since it became an accelerated matter, for it is appreciated that counsel for both sides have devoted themselve almost exclusively to this matter for many months, as a real controversy of social dimension was so demanding that any part-time approach was impossible under the circumstances. Because it was such a controversy, there will be no allowance of counsel fees as requested by either side,

even if it is believed that the Rules of Court would so allow, (which I doubt (vide R. 4:42)), but an application for reasonable expert fees on behalf of the successful plaintiff will be entertained for the time and effort spent by Plaintiff's experts during the time depositions were taken of them by the defendants[1] attorneys. A Judgment should be submitted in accordance therewith!

MASON. GRIFFIN & P1ERSON
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PRINCETON. N. J O834O
i«O9i 921.6543
ATTORNEYS FOR Plaintiff, The Allan-Deane Corporation

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NOS. L-36396-70 P.W.
L-28061-71 P.W.

THE ALLAN-DEANE CORPORATION, etal.	)
Plaintiffs,	) Civil Action
vs.	)
THE TOWNSHIP OF BEDMINSTER, etal.	) ORDER FOR SPECIFIC CORPORATE RELIEF
Defendants.	)

This matter having come before the Court by way of application for Relief to Litigants, pursuant to R^ 1:10-5, and this Court having issued an Order To Show Cause on April 19, 1978 providing for hearings for the purpose of considering whether Defendants had complied with the previous Orders of this Court and, in the event of a finding of non-compliance, for a determination as to the aoproDriate remedy,

and this Court having determined in an Opinion handed down on December 13, 1979 that Defendants have, in fact, not complied with the previous Orders of this Court and this Court having further determined, for the reasons more fully set forth in this Court's Opinion of February , 1980, that Plaintiff, Allan-Deane, is entitled to specific corporate relief in the form of permission to develop on its property a housing project, at a density of between 5 and 15 units per acre, under an administrative mechanism which will assure both the issuance of building permits within the early future and compliance by Allan-Deane with reasonable building code, site plan, water, sewerage and other requirements and considerations of health and safety,

It is on this day of February, 1980,

ORDERED as follows:

1. All Land Use Ordinances regulating development on the Allan-Deane property in Bedminster Township are invalidated and Defendants are enjoined, until further Order of this Court, from in any way attempting to regulate land use on the lands of the Corporate Plaintiff in this action.

2. Pursuant to R. 4:59-2(a), JOHN DOE is hereby appointed Administrator, pendente lite, for the purpose of assisting the Court in the administration of specific corporate relief, and such other duties as may be set forth by further Order of this Court, including, without limitation, the rezoning

of the Pluckemin Corridor and the preparation of Land Use Ordinances regulating development in such corridor.

The Administrator appointed herein shall:

A. Review a plan for the residential development of the Allan-Deane property to be submitted to him, within 30 days from the date hereof, by Allan-Deane;

B. Approve, within 60 days thereafter, a plan with the supporting documentation detailed on Exhibit "A" hereto, for the construction of a 2,000 dwelling unit residential community to be built in appropriate stages with sewage treatment plant and other necessary infrastructure, on the 451 acre Allan-Deane property in Bedminster. Such plan shall be designed to minimize adverse environmental impacts, to minimize unnecessary site development costs and to guarantee plaintiff's commitment to least cost housing.

C. Review architectural and engineering drawings, to be prepared by Allan-Deane, following conceptual approval by the Administrator of the overall plan, to assure that the Allan-Deane project will comply with minimal building code, site plan, water, sewerage and other requirements and considerations of public health and safety.

D. Recommend to the Court within 60 days of the receipt of such drawings, that the proposed development meets considerations of public health and safety, the issuance of building permits.

• E. Supervise and inspect all construction undertaken pursuant to Court ordered building permits to insure compliance with applicable State building codes.

F. Recommend, upon the satisfactory completion of construction, that the Court order the issuance of occupancy permits.

3. Funding of Administrative Mechanism

The Township of Bedminster and the Allan-Deane Corporation are each hereby ordered to deposit with this Court within 30 days from the date hereof the sum of $10,000.00 to initially fund the administrative mechanism herein established. This administrative mechanism shall hereafter be funded as follows:

A. Bedminster Township shall be responsible for all costs incurred, for services rendered by the Administrator or experts hired by him in connection with the establishment of reasonable standards and procedures for the administration of specific corporate relief, any planning studies undertaken with respect to the appropriate zoning of the remainder

of the Pluckemin Corridor, and the preparations of reasonable Land Use Ordinances effecting development in such corridors.

B. Allan-Deane shall be responsible for the actual costs incurred for the review of its site plan, its engineering and architectural drawings and for all inspections undertaken by the Administrator of construction on their property. These costs shall be in lieu of site plan, subdivision, building permit, certificate of occupancy and inspection fees otherwise applicable under Bedminster's Land Use Ordinances.

C. The Administrator shall keep complete and accurate records of all expenditures and time spent in administering his duties pursuant to this Order so that his expenses and time can be prorated herein between the parties as hereinabove provided. He may make withdrawals, as needed, from the funds on deposit with the Court and shall recommend to the Court when additional assessments of the parties are needed and the amounts and prorated shares of such assessments.

D. Bedminster Township and Allan-Deane shall deposit additional sums with the Court, as required,

within 10 days of their receipt of an Order for further assessment.

4. Powers of Administrator

The Administrator appointed herein shall have the power to:

A. Hire such consultants, engineers, architects, attorneys or other experts he deems necessary to assist and advise him in his duties and to delegate such duties to such experts.

B. Adopt such administrative procedures as he shall deem necessary to review the Allan-Deane site plan, receive comments from the parties to this litigation, and, if practicable, give the public an opportunity to be heard with respect to the issue of whether the site plan and engineering details conform with minimal building code, site plan, water, sewerage and other requirements and considerations of public health and safety. The review of the Allan-Deane site plan provided for in Paragraph (2)(b) of this Order shall be confined to such environmental and site cost issues as Defendant Township shall raise and Defendant Township shall have the burden, in any formal hearing on such issues, of proof and of going forward.

, C. Incur such additional expenses as are reasonably necessary to carry out the duties required of him in this Order.

D. Require such modifications by Allan-Deane of their site plan as shall be reasonably necessary to minimize adverse environmental impacts or unnecessary site development costs.

E. Apply to the Court for such additional authority as shall, in his discretion, be required to fulfill the terms of this Order.

5. John Cilo, the Building Official of Bedminster and the person presently authorized by Ordinance to issue building permits, certificates of occupancy and inspect construction is hereby joined as a Defendant in this action, for the Court's convenience in issuing further Orders in connection with Specific Corporate Relief.

6. This Court intends, upon the completion of the Administrator's duties hereunder, to issue further Orders empowering him to replan the Pluckemin Corridor consistent with this Court's Opinions, to prepare reasonable and proper Land Use Ordinances for adoption by Bedminster which will make realistically possible the development of substantial portions of the corridor at densities of no less than five and no more than

fifteen units per acre and to rezone the Allan-Deane property so that the development herein authorized will become a conforming use. This Court, therefore, retains jurisdication with respect to all aspects of this application for Relief to Litigants.

B. Thomas Leahy, JSC, t/a