

RULS - AD - 1983 - 120

November 1983

Critique of Fair Share Determination of Bedminster

Trp. and Recommended Alternatives

Pgs - 23

A CRITIQUE OF THE FAIR SHARE DETERMINATION  
of BEDMINSTER TOWNSHIP, N. J. and  
RECOMMENDED ALTERNATIVES FOR HOUSING AND PLANNING

Report by E.  
Erber critiquing  
and finding error  
in  $\Delta$ 's method of  
calculating fair  
share

11/83

Prepared for:

Peter J. O'Connor  
Attorney-at-Law

Prepared by:

Ernest Erber, AICP  
Columbia, Md.

November, 1983

A Critique of the Fair Share Determination  
of Bedminster Township, N.J. and  
Recommended Alternatives for Housing and Planning

Contents

- I. Executive Summary
- II. Critique of Bedminster's Fair Share Determination
  - A. Definition of Bedminster's Regional Housing Market Is Not Valid
  - B. Bedminster's Formula for Fair Share Allocations is Faulty
- III. Bedminster's Fair Share as Properly Allocated
  - A. Defining the Region
  - B. Bedminster's Fair Share: Methodology and Numbers
    - 1. Determining the Amount of Vacant, Buildable Land
    - 2. Bedminster's Fair Share of Present Need
    - 3. Bedminster's Fair Share of Prospective Need
  - C. Summation of Bedminster's Fair Shares
- IV. Planning for Bedminster's Future Within Mount Laurel Concepts
  - A. Historical Roots of Today's Issues
  - B. What is Taking Place
  - C. What Should Take Place
  - D. Mount Laurel's Implications for Planning Generally

End Notes

Ernest Erber, AICP  
10757 Bridlerein Terrace  
Columbia, MD 21044

301-596-6653

## I. Executive Summary

### 1. Critique of Bedminster's Fair Share Determination.

Bedminster's methodology is found to be invalid on these points:

(a) Use of 30-minute travel time from Bedminster to establish its housing market region is rejected because more than half of its resident commuters travel over 30 minutes. Also, this definition of region would result in each municipality having a singular region, not in common with others, but uniquely different, defying the Mount Laurel Court's directive for standardized regions.

(b) Bedminster's methodology ignores vacant land as the basis for apportionment and uses instead, the entire area of each municipality.

(c) Bedminster uses only that portion of its area which is within the State's "Growth Area" to calculate its fair share obligation rather than vacant land throughout the Township.

(d) Bedminster uses employment twice as a factor to determine fair share, averaging 1980 employment (smaller) against 10-year increase (larger) thus reducing this determinant of fair share.

(e) Bedminster makes no allowance for the present need for lower income housing caused by imbalance of rapid job growth and retarded housing starts which results in excessive incommuting.

### 2. An Alternative Methodology and Fair Share Determination

(a) The Report defines Bedminster's Housing Market Region as the 8-County Northeastern New Jersey Region (Hudson, Essex, Union, Morris, Somerset, Middlesex, Passaic, Bergen) with Somerset County designated as Bedminster's "immediate", close-in housing market area.

(b) The Report finds Bedminster's Fair Share should obligate it to provide housing opportunities for low and moderate income households to meet the following quantified needs:

Present Need (1980)	
Replacement Housing, Reallocation of Excess	417 units
Indigenous Replacement	39 "
Expected to Reside by Reason of Employment	192 "
Prospective Need (1980-90)	1,360 "
Bedminster's Fair Share	<u>2,008</u> "

### 3. Planning Concepts for Bedminster and 206 Corridor

The Report finds that the Bedminster area, and more specifically, the Rte. 206 Corridor, is undergoing explosive growth of office and commercial space in the magnitude of 15 million sq. ft., generating 63,000 jobs. It holds that Bedminster is "denying tomorrow", rather than planning to guide growth. It sees the Mount Laurel II doctrine requiring sound, region-oriented planning, not just for housing, but also for employment and ratables and decries the recommendation that Bedminster rezone land from commercial to residential to lower its potential housing obligation. It cites warnings against segregation of fair share housing and quotes the Mount Laurel Court's requirement that opportunities for construction of fair share housing be "over-zoned" to assure realization.

#### Acknowledgements

The author acknowledges the cooperation of the firm of Wallace, Roberts & Todd in the preparation of this report and especially the assistance of Charlotte Strem of the firm's staff. The author also acknowledges courtesies in facilitating access to information on the part of the following:

Abeles Schwartz Associates, Inc.  
Clarke & Caton  
Bruce S. Gelber, General Counsel, National Committee Against Discrimination  
In Housing  
Boris Pushkharev, Vice President, Research and Planning, Regional Plan  
Association  
New Jersey Department of Transportation

## II. Critique of Bedminster's Fair Share Determination

Bedminster has adopted as part of its Master Plan Program (Part III, Housing Element, September 1983) an obligation to provide opportunities for housing of low and moderate income persons within its boundaries pursuant to the opinion of the New Jersey Supreme Court in the Mount Laurel II case. Bedminster has determined that its fair share of lower income housing is between a minimum of 770 housing units and a maximum of 853 housing units as calculated on the basis of its identification of the relevant housing market region and on its methodology for allocation of such units.

An examination of Bedminster's calculations shows that both its definition of the relevant housing market region and its allocation methodology are not in keeping with the Supreme Court's Mount Laurel II opinion and, therefore, are not valid. The number of housing units resulting from this invalid approach is substantially lower than Bedminster's fair share as properly calculated.

### A. Definition of Bedminster's Regional Housing Market is Not Valid:

Bedminster defines its housing region as including those municipalities that "can be reached by an automobile trip of thirty (30) minutes or less, "and having half or more of its municipal area within such a delineation." Its rationale for this definition is that since approximately 30 minutes represented mean travel time for Bedminster residents' journey-to-work (as deduced from the 1980 Census), only those homeseekers who limit their commuting time to 30 minutes or less will be willing to live in Bedminster.

This rationale is faulty on a number of counts :

1. Since some 44% of Bedminster's employed residents travel more than 30 minutes to work and show no signs of moving out of Bedminster, it must be assumed that also among prospective residents of Bedminster, a similar percentage will be willing to travel more than 30 minutes to work. (1) If we subtract those who work at home or walk to work from the 56.6% who travel under 30 minutes, the latter group is less than half of those actual commuters from Bedminster who go to work via vehicles (automobile, bus train, etc.). Bedminster's choice of 30 minutes travel time to define its housing region is arbitrary. Why not 44 minutes (which another 25% travel)? This would extend the housing market boundaries significantly, especially eastward into Essex and Hudson counties, (11.8% of Bedminster's commuters are willing to travel over one hour to their places of work and still prefer Bedminster as their place of residence !)

2. The considerable literature that exists on travel patterns of the work force and its relation to choice of where to live, indicates that there are a number of "trade offs" that determine choice of residence, of which travel time is only one. (2) Among them are cost of housing, cost of travel, convenience, family considerations (schools, etc.), amenities, locational prestige, etc.

3. Current and prospective travel improvements extend the boundaries of a travel-time based housing market region. Prospective completion of Route 78, (3) improvements in rail travel to New York City, etc. will affect travel time. It is not clear whether the 30-minute configuration anticipates these extensions of its boundaries or will include them subsequent to the prospective travel im-

provements, thereby increasing Bedminster's housing market region with each such improvement. This would result in a constantly changing fair share.

4. As everyone familiar with current and prospective development in Somerset County knows, an enormous deficit of affordable housing has been created during the past decade during which growth in employment outstripped growth in affordable housing as a result of rapid expansion of corporate office, commercial and retail development at a time when the zoning practices in almost all of Somerset County municipalities, including Bedminster, reduced housing starts. A significant number of those new jobs, as at A.T.&T. in Bedminster, are held by persons of lower income who are now commuting more than 30-minutes and who are among those to be given housing opportunities pursuant to the Mount Laurel II opinion.<sup>(4)</sup> They should be provided for in Bedminster's fair share.

5. Regional housing markets defined by a mean commuting time for each municipality (measured along hundreds of interstates, numbered highways and county roads!) is hardly what the court had in mind when in Mount Laurel II it voiced anticipation that "a regional pattern for the area...will emerge" (p.89) that would reflect the court's desire for "consistency and predictability." (p.91) Housing markets determined by commuting time would not only create as many housing markets as there are municipalities, but would raise problems of self-serving jerryandering of regional configurations. Who is to say along which road a commuter's journey is to be measured? Though the court's wish for standardized regions might not prove to be practical, the court is more likely to be satisfied with standardized building blocks for such regions, perhaps composed of counties. It should be noted that the Mount Laurel II opinion, stressed a regional approach to fair share allocations. This is obviously impossible without housing market regions that become standardized since each municipality's fair share allocation affects that of every other municipality in its part of the state.

6. The Bedminster Master Plan's Housing Element quotes Judge Furman's definition of region as "that general area which constitutes, more or less, the housing market area of which the subject municipality is a part, and from which the prospective population of the municipality would substantially be drawn, in the absence of exclusionary zoning." Given this useful definition to guide Bedminster's planners, do they really believe that the prospective population that would have been drawn to Bedminster during its many years of exclusionary zoning would have come entirely from their 30 minute regional housing market? Or even predominantly? When Judge Furman formulated this definition of housing market, he did it in the Madison (Monmouth County) case and included Manhattan and Brooklyn in the housing market from which Monmouth's population would have been drawn, absent exclusionary zoning. He included Manhattan and Brooklyn because common knowledge indicated that the opening of the Verrazano Bridge made Madison attractive to New Yorkers. Is it not common knowledge that the imminent completion of Route 78 will make Bedminster attractive to residents of Essex and Hudson Counties for housing at all price levels from the most expensive to that built for lower income persons?

7. The Mount Laurel II opinion makes favorable reference to Justice Pashman's guidelines for defining a regional housing market as set down in his Mount Laurel I concurring opinion (at 215, n. 16). The latter advises that

among other things, the defined housing market region be "the area in which the housing problem can be solved." Do Bedminster's planners contemplate the possibility of the housing problem of Essex and Hudson Counties being solved without the inclusion of Somerset and Morris Counties within a common regional market?

8. While the journey-to-work is an important indicator of housing market region, it is not separable from patterns of migration by households in search of better housing in preferred locations, as referred to by Judge Furman's reference to "that general area" from which the "prospective population" would have been drawn in the absence of exclusionary zoning. All such movers are not necessarily former commuters. After all, many of Bedminster's residents are out-commuters who moved to Bedminster though their jobs remain in Newark, Jersey City or Manhattan.

It was an awareness of the magnitude of harm that would result from an erroneous definition of region that caused the court in its Mount Laurel II opinion to call attention to its evaluation of this in its original Mount Laurel opinion. "We also noted that the determination of region was more important in achieving the goals of Mount Laurel than the Fair share allocation itself (harm to the objective of securing adequate opportunity for lower income housing is less likely from imperfect allocation models than from undue restriction of the pertinent region, id.)." (p.88.)

B. Bedminster's Formula for Fair Share Allocations is Faulty.

Having gone wrong in its definition of region, Bedminster's fair share allocation is not likely to meet the requirements of the Mount Laurel II decision. This shortcoming is compounded by its allocation methodology.

Though considerable variances in methodology are possible within the guidelines given in the Mount Laurel II opinion, the formula used to determine Bedminster's fair share is faulty and hardly within the court's intent.

1. The methodology's central allocation error is in substituting the total area of a municipality (more precisely: the portion demarcated within a "growth area" by the SDGP) for the amount of vacant, buildable land within the municipality (or, again, within the portion demarcated by the SDGP). This substitution works to the disadvantage of built-up municipalities with little or no vacant land and to the advantage of those municipalities, which, like Bedminster, have considerable vacant land, even if measured only within its SDGP growth area.

The zoning of vacant land that is suitable for building is at the heart of the entire Mount Laurel issue. That this litigation emerged in Mount Laurel Township, with 65% of its land area still vacant in 1972, rather than in the City of Camden with virtually no vacant land, is hardly an accident. The distinction made in Mount Laurel I between "developed", "developing" and "undeveloped" municipalities related to their amounts of vacant land and the rate of its usage for building.

The court in Mount Laurel II hardly found it necessary any longer to emphasize the critical importance of suitable, vacant land in determining fair share. It did so more often implicitly than explicitly, relying on the SDGP to delineate buildable vacant land areas for "growth" and "limited growth". But a reading of Mount Laurel I and II cannot but underscore the key role of vacant



land in determining fair share; "in accordance with suitability for such housing."

2. Bedminster errs in assuming that its fair share is not to reflect all the vacant, buildable land within its municipal boundaries, but only that portion lying within the delineated "Growth Area" shown on the State Development Guide Plan. The obligation to provide its fair share of housing opportunity for lower income persons is incumbent upon a municipality in proportion to its available vacant, buildable land. It might not need to zone for such low income housing beyond its "Growth Area" or "contiguous to it". But nothing in the Mount Laurel II opinion limits the calculable basis for its obligation to the land area within the SDGP's "Growth Area." The court warns, "We do not intend to allow the SDGP to be used as a wall behind which municipalities may create or expand exclusionary developments." pp. 69-70.

3. Bedminster defies logic in calculating its prospective fair share need (projected to 1990) on the amount of jobs in Bedminster in 1981, rather than using a projection of job growth to 1990 as the sole employment factor. By using the 1981 figure (which is relatively low) together with the projection figure (which is relatively high) and averaging them, Bedminster reduces its fair share. By eliminating the unwarranted use of the 1981 figure, Bedminster's fair share is increased to 1,180 units, a gain of 327 over its maximum number, even within its 30-minute region and on the basis of the rest of its methodology.

4. Bedminster's methodology fails to make provision for that portion of its present need for lower income housing generated by the excessively high incommuting to jobs in Somerset County,<sup>(5)</sup> including to Bedminster itself. The rapid increase of employment in past years, while exclusionary zoning held down housing construction, has resulted in a large present need for housing within Somerset County. This housing deficit should be reflected in Bedminster's fair share obligation as a present need. Failure to provide for those expected to reside in Bedminster by reason of their local employment perpetuates one of the most critical needs addressed in the Mount Laurel opinion.

### III. Bedminster's Fair Share As Properly Allocated.

The Mount Laurel II opinion gives only broad guidelines for defining a regional housing market and designing an allocation methodology, with some decided preferences as to what it considers important criteria, such as the matter of employment opportunities. It also states what kind of criteria it would find unacceptable, such as municipal population projections. The court's language is a most useful guide in designing a methodology, but was not intended to be taken literally as the sole input in allocation methodology.

The Mount Laurel court saw three steps in the process: (a) identifying the relevant region, (b) determining its present and prospective housing needs, and (c) allocating those needs to the municipality or municipalities involved. It noted that "the determination of the region was more important in achieving the goals of Mount Laurel than the fair share allocation itself." It warned against "undue restriction of the pertinent region." (p.88)

#### A. Defining the Region

Bedminster's location and interdependencies with the urban and urban-

izing areas around it suggest several possible definitions of region, all with certain rationalities and irrationalities. Following Judge Furman's definition of housing market region as quoted by the Mount Laurel Court, it is necessary to include in the region those urban areas from which the prospective population of a municipality would be drawn in the absence of exclusionary zoning. For Northeastern New Jersey this would require pie-shaped "wedges" with their point in the old, high density positions (Hudson and Essex Counties) and including intermediate and outer areas. The Newark SMSA, which encompasses Essex, Union, Somerset and Morris Counties, would appear to meet such criteria. On closer investigation, however, Somerset also has interdependencies with Middlesex County which are as, if not more, intense than with the rest of the SMSA. Middlesex, in turn, also has close ties with Monmouth County and Mercer County. Excluding Middlesex would have no valid basis and be entirely arbitrary.

Though the eight-county (Bergen, Hudson, Passaic, Essex, Morris, Union, Middlesex and Somerset) Northeastern Region, initially designated by the State's planners in their housing allocation model, fully answers the court's criteria, its size is such as to leave some marginal counties only slightly related to others similarly situated on the other side of the Region. This weakness, however, still leaves the 8-county region closer to a workable model within the court's criteria, than any lesser alternatives. It would also appear that there is a growing consensus of students of the problem that the 8-county Northeastern New Jersey Region is the most feasible for fair share allocation purposes.

Based on the foregoing considerations and the desire of the court in the Mount Laurel II decision that subsequent cases would permit the three "Mount Laurel" courts to define standard regions throughout the state for "a fairly consistent determination of regional needs", the 8-county Northeastern Region should be considered the housing market to which Bedminster relates.

It should be noted, however, that every municipality's interdependence with its housing market region falls off in intensity over distance, though not evenly in all directions. The latter reflects transportation access and magnates such as employment, shopping, etc. It is proper, therefore, to identify an "immediate" or close-in sub-market for which the county can serve as a surrogate statistically.

#### B. Bedminster's Fair Share: Methodology and Numbers

With the exception of the faults of the Bedminster methodology as critiqued above, that used by Coppola Associates is generally sound and in conformance with the methodological approach emerging as standard for the determination of fair share as used by such other specialists as Allan Mallach, Abeles-Schwartz and Clarke and Caton. It can, therefore, serve to make a proper fair share allocation to Bedminster.

Following the allocations guidance of the Mount Laurel II opinion, it is necessary to make separate allocations of lower income housing opportunities to meet both present and prospective needs. The factors which combine to determine fair share for each type of need differ, but have as a common ingredient the factor of vacant, buildable land; specifically the amount of vacant, buildable land within the municipal boundaries calculated as a percentage of all the vacant, buildable land within the housing market region of which it is a part. Determining the amount of vacant, buildable land in Bedminster is, therefore, the first step in the allocation methodology.

1. Determining the Amount of Vacant Buildable Land:

The Mount Laurel II court recognized "that the tools for calculating present and prospective need and its allocation are imprecise..."(p. 94). No - where more so than with reference to measurement of vacant, buildable land. The data assembled by the N.J. Dept. of Community Affairs in the early 1970's and revised in 1978 (6) remain the only reliable benchmark on vacant buildable land within the 8-county region, within each county and within each municipality.

According to the DCA data, there were 271,884 acres of vacant, buildable land in the 8-county region. Those municipalities outside of the SDGP's "Growth Area" have 34,621 acres of vacant land. Subtracting this from the gross amount, leaves a net of 237,263 acres as the vacant, buildable total in the 8-county region. <sup>a</sup>

According to DCA's data, Somerset County included 45,562 acres of vacant land, of which 5,294 are in municipalities outside of the Growth Area. This gives Somerset County a net of 40,268 acres of vacant buildable land.

Somerset's share of the Region's vacant buildable land is 17%.

DCA data gave Bedminster Township 5,675 acres of vacant, buildable land.

Bedminster's share of the Region's vacant buildable land is 2.4%.

2. Bedminster's Fair Share of Present Need.

Every municipality, according to Mount Laurel opinion, is to provide housing opportunities for its indigenous lower income households to the extent that available vacant land makes this possible. Where the present need exceeds available vacant land, as in old built-up cities, the pool of their locally unmet excess needs is to be allocated to those municipalities having an excess of vacant buildable land.

For those counties having a housing need of those employed in the county and unable to live there because exclusionary practices have caused a housing deficit, there should be an obligation to provide housing opportunities, at least to the extent that such counties exceed the average of counties in the Region in percentage of labor force composed of commuters.

(a) Replacement Housing for Dilapidated and/or Overcrowded Units

There were in the 8-county region, according to a report for the N.J. Public Defenders Office by Abeles Schwartz Associates (7), 127,271 housing units that were physically deficient and/or overcrowded. Of these 70,645 were deficient and 56,626 were overcrowded. Based on a Tri-State Regional Planning Commission study in 1978, (8) 82% of the households occupying such housing were lower income, for 104,364 units needing replacement. This number represents 6.8% of the Region's total housing stock.

Using the county as the "immediate", close-in housing market area, within which such replacement housing should be located, we find that there are three counties -- Essex, Hudson and Passaic -- that have a need for replacement housing for lower income households that exceeds 6.8% of their total existing housing stock. The units that exceed this proportion number 23,316. This pool

of excess present housing need should be allocated to the remaining five counties of the Region in proportion, in part, to their vacant, buildable land. These five counties have 223,145 acres of vacant, buildable land, 18% of which is in Somerset County.

In addition to having vacant land to locate such housing units, it is necessary to relate such sites to employment opportunities. Of the 1,743,461 covered jobs<sup>(9)</sup> in the 8-county Region in 1980, 1,035,695 were in the five counties slated to provide for the replacement housing excess. Of these, 79,324 jobs, or 7.65% of the total were in Somerset County.<sup>(10)</sup>

Since Somerset County has 18% of the vacant land in the five-county grouping and 7.65% of its employment these two factors combined and averaged, give 12.8% as Somerset's factor for determining a fair share of replacement housing. This results in 2,984 housing units for Somerset County, serving as the "immediate", close-in housing market area of which Bedminster is a part. Based on Bedminster's percentage of 14% of the vacant buildable land in Somerset County. Bedminster's fair share of the excess replacement housing pool is 417 units.

According to Coppola's report <sup>(11)</sup> on fair share to Bedminster Township, the latter is obligated to provide for 39 housing units as its indigenous need for replacement housing of substandard units within its borders.

(b) Present Need for Housing to Redress Jobs/Housing Ratio

Prominent in the Mount Laurel litigation has been the court's concern with the deprivation of lower income persons of opportunities to live within or near to the municipalities within which they work. The volume of such deprivation grew startlingly in Somerset County and Bedminster during the past decade. The low volume of housing construction, especially for low and moderate income households, during a period when the number of employees in local establishments increased sharply, resulted in giving Somerset County the highest percentage of incommuters within the eight-county Region. This is in keeping with the previously cited finding of Regional Plan Association's survey that the lower-paid employees in outlying places of work travel longer distances to their jobs than do the higher-paid employees.<sup>(12)</sup> There is a present need for housing for low and moderate income households to redress the unbalanced jobs/housing ratio as demonstrated below.

Somerset County: Housing Starts Compared to New Jobs

	1970	1980	Increase	%
Covered Employment <sup>(13)</sup>	46,498	79,324	32,826	71
Housing Units <sup>(14)</sup>	58,310	69,774	11,464	19

Ratio: 1 housing unit added for 2.8 new jobs

Somerset County 1980: Incommuting Compared to Other Counties

Employees Who Work In Somerset Co. but Reside Outside	38,611
Incommuters as percentage of all Somerset employees	46%
Incommuters as percentage average of Region's other counties	37%

In order to reduce incommuting to the average of the other counties in the Region, Somerset County municipalities should provide housing opportunities for 3,473 units. Assuming that commuters break down by income brackets as does the state's total of households, 40% of the commuters housing opportunities should be a fair share obligation of municipalities in the Growth Area of Somerset County, or 1,376 units.

Since Bedminster's share of the vacant, buildable land in Somerset County is 14%, Bedminster's fair share obligation to satisfy the present need of housing for lower income households expected to reside there by reason of employment is 192 units.

(c) Allocation Rationale for Region, County and Municipality

In the above allocations to meet present need for housing of lower income families, the county is used as the statistical surrogate for an "immediate", close-in housing market area. The rationale for this is that within such an "immediate" market area, residents find it not only possible, but relatively convenient, to move from one house to another one within the same county without being placed under a strain to change jobs because of unduly lengthened travel to work. Likewise, employees find it not only possible, but relatively convenient to change jobs within the same county, without being placed under a strain to change place of residence because of an unduly lengthened travel to work.

Because of the above home/job relationship, the allocation of units for replacement housing was made upon the basis of a county's ability (or inability) to provide the necessary vacant land to replace substandard and/or overcrowded units located within its borders. Only when the number of such replacement units exceeded the percentage of deficient units in the total housing stock of the Region was the excess reallocated to other counties. This reallocation, in turn, was made on the combined and weighted factors of both available vacant land and extent of present employment. If the opportunity for such housing is to be meaningful for lower income households, it must, in addition to amplitude of building sites, offer a significant labor market. Since all of the labor market of such a county will be conveniently available to housing located there, the allocation of such excess replacement units is made first to the counties in proportion to their vacant land and present employment.

The allocation of the county's share of such replacement housing to its municipalities, however, need not involve the employment factor because, as the Mount Laurel II opinion noted, each municipality need not be forced to be a microcosm of the Region in proportion of jobs to housing. It is adequate that this be the goal for "immediate", close-in market areas, viz. counties, within which changes of jobs and place of residence are not necessarily dependent upon each other. We have, therefore, made the allocation of replacement housing to Bedminster solely in proportion to its vacant, buildable land as a percentage of that of Somerset County.

The same rationale governed allocation of units to redress the imbalance between jobs and housing that has caused excessive incommuting to Somerset County. As the "immediate", close-in market, Somerset County was allocated units sufficient to reduce incommuting to the percentage that exists in the average of the other counties in the Region. Bedminster's share of the Somerset alloca-

tion however, was determined solely on the basis of Bedminster's share of vacant, buildable land within the county.

3. Bedminster's Fair Share of Prospective Need

The Mount Laurel II opinion repeatedly stresses that housing needs are to be satisfied, not only as presently existing, but prospectively as they will emerge from demographic, economic and developmental changes. The court correctly emphasized growth of employment as the critical factor in determining the future need of housing for lower income families and each Growth Area municipality's obligation to facilitate its construction.

The calculation of prospective need involves use of reliable population projections for large areas (New Jersey and its Counties), estimation of future average persons per household to translate population into households (equivalent to housing units), proportion in low and moderate income brackets, and such factors as a needed vacancy ratio to assure mobility and choice. These calculations as contained in the Abeles report (15) yield a projected need for 1990 of 58,036 units for low-and-moderate income households within the 8-county Northeastern New Jersey Housing Market Region.

Bedminster's fair share of the Region's need for lower income housing as projected to 1990 is determined by (a) projected growth of employment within its "immediate," close-in housing market area, i.e. Somerset County, (b) Somerset County's percentage of the Region's vacant land and (c) Bedminster's share of the allocation of units to Somerset County made on the basis of Bedminster's share of vacant, buildable land within Somerset County's Growth Area municipalities.

(a) Determining the Somerset County Allocation of Projected Need

As determined previously, Somerset County's Growth Area municipalities contain 17% of the vacant, buildable land in the 8-county Northeastern Housing Market Region. Somerset's share of the projected employment growth to 1990 is determined as a projection of its growth between 1970 and 1980:

Employment in the Region in 1980	1,682,236 jobs
Employment in the Region in 1970	1,483,607 "
Increase, 1970-1980	<u>198,629</u>
Employment in Somerset County in 1980	79,324
Employment in Somerset County in 1970	46,498
Increase, 1970 - 1980	<u>32,820</u>
Somerset County's Share of Regional Employment Increase	16.5%
Somerset County's Share of Region's Vacant Land	17.00%
Combined Percentages	<u>33.50%</u>
Weighted Evenly	16.75%

The weighted average of factor percentage (16.75%) as Somerset's portion of the projected housing need of 58,036 units is 9,721 units. This is the fair share for Bedminster's "immediate", close-in housing market.

(b) Determining Bedminster's Fair Share of Prospective Need

Bedminster's fair share of prospective need should not depend on a projection of employment based on 1970-80 performance. Projection of employment for one small municipality based on the previous 10 year's performance is most uncertain and subject to major distortion by chance occurrences within a small area. Had the A.T.&T. issue been resolved differently and had A.T.&T. been prevented from locating in Bedminster but had located across a municipal boundary in an adjoining municipality, the full force of the Mount Laurel II opinion tells us that it should not have made any difference as far as Bedminster's fair share obligation is concerned. Because a municipality succeeds in keeping out employment producing land uses is not a reason, under Mount Laurel II logic, to reward it by lowering its fair share obligation. If employment grows in its "immediate", close-in housing market area, it is obligated to provide housing opportunities in proportion to such area employment growth and in proportion to its share of vacant buildable land within that sub-Regional market, i.e. the County's Growth Area.

Bedminster's fair share of prospective need is, therefore, its share of the Somerset County allocation of 9,721. Since Bedminster contains 14% of the buildable, vacant land within the Growth Area municipalities of Somerset County, its fair share of prospective need is 1,360 units.

C. Summation of Bedminster's Fair Shares

As previously established, Bedminster's separate categories of needs for low and moderate income housing as required under Mount Laurel II provisions are as follows:

Present Need (1980)	
Replacement Housing, Reallocation of Excess	417 units
Indigenous Replacement	39 "
Expected to Reside by Reason of Employment	192 "
Prospective Need (1980-90)	1,360 "
Bedminster's Fair Share	<u>2,008</u> "

#### IV. Planning for Bedminster's Future Within the Concepts of Mount Laurel II

Fair share calculations -- essential as they are to righting old wrongs and preventing new ones -- can divert the planner from his primary function -- shaping the real world of demographic, economic and developmental change. The woods easily get lost from view as the planner begins counting trees. As fascination grows with the Fair Share Numbers Game, attention is diverted from the real life forces that are changing the table on which it is played. If planners would but step back and view the more distant horizons, they would realize that Bedminster, more specifically the transportation corridors that bisect it, is about to be in the eye of a storm that will re-make familiar landscapes. This is the big picture. This is where it is at.

If planners would but look up they would see 15,748,276 . square feet of office and commercial floor area under construction or on the drawing board and publicly announced; a potential for 63,000 new jobs within a few years. Bernardsville, 2 million; Warren, 3 million; Bridgewater 2 million; Franklin, 3 million; etc. (16)

##### A. Historical Roots of Today's Issues

The big picture begins with Bedminster before the New Jersey Supreme Court in 1952, defending its right to five-acre zoning for single-family houses. The court upheld its right. But it used the occasion to render a monumental opinion on urban regionalism. The court painstakingly traced Bedminster's 200-year old history to underscore its rural character; its remoteness, sheltered by the Watchungs that diverted growth to the north and south of it. The court did all of this in order to say that 5-acre zoning is uniquely possible in Bedminster because of its location beyond the reach of urbanization, but that 5-acre zoning is not likely to be sanctioned in the developing communities then rolling out from Hudson and Essex Counties and thrusting north, west and south. That was 31 years ago. The rolling front of urban development is now on Bedminster's doorstep. Its time has come. But Bedminster's mindset has hardly changed.

The Watchungs have been penetrated and are a barrier no longer. Routes 78, 287, 202/206 cross and recross each other over land Bedminster once zoned for five acre -- and then ten acre -- lots. Havens of bucolic tranquility, now served by awesome, widening concrete ribbons which, the highway planners fear, will soon be choked by peak hour traffic unless all concerned stop counting trees and start tending the forest.

As the developmental tide rolled up against Bedminster, it raised its dikes and manned them against breaches. It lost its fight against penetration by the Interstates. It then lost its fight to eliminate exit ramps. Soon it had to surrender to A.T. & T. Finally, the Mount Laurel doctrine forced it to accept housing for low and moderate income groups in the form of the Judge Leahy's ruling that Bedminster's exclusionary zoning dikes were unconstitutional and his order that it rezone.

At this point, Bedminster surveyed its losses and exercised what in naval parlance is called "damage control". Bedminster retreated across the 202/206 corridor and drew a new line -- a new dike against the forces of the market. Sanctioned by the court, Judge Leahy's name is now attached to it in popular usage -- the Leahy Line; a new concept of cordon sanitaire. Whatever its legal merits, this form of land use regulation is certainly unrelated to planning, let alone the "sound planning" extolled by the Mount Laurel II court.



It is a classic example of the use of planning powers to achieve ends that are extraneous to the purposes of planning, which are to embrace the future and to shape it.

In his concurring opinion in Mount Laurel I, Justice Pashman instructs that "zoning is a means by which a governmental body may plan for the future -- it may not be used as a means to deny the future." (p.32) Essentially, an effort to deny the future is what is at issue in Bedminster.

#### B. What Is Taking Place

The explosive effect of over 15 million square feet of office and commercial floor area, generating some 63,000 jobs, all within a few years, will leave little unchanged in the Bedminster area and will scatter fall out over surrounding areas.\* In the light of this impending impact, fair share formulas that necessarily reflect performance of the last decade will all prove to be too conservative. Even the higher fair share obligations, such as that contained in this report, are likely to fall far behind actual demand by 1990.

To grasp what is taking place, it is necessary to view the Bedminster area within the new format of urban development, referred to by Professor George Sternlieb of Rutgers as "ring city" which is creating a "Sun Belt" economic climate in central New Jersey. It takes little imagination, but a strong sense of reality, to conceive of the junction of Interstates 78 and 287 as the crossroads at which "Downtown New Jersey, 2000 A.D." will emerge. Or to see the 206 Corridor, north from that crossroads, as New Jersey's "Main Street" of the expressway era.

The 206 Corridor as "Main Street" will, of course be unlike any Main Street of past or present. It is taking shape before our eyes as the row of campus-type office and commercial enterprises, each set back from the highway with its own controlled traffic access, acres of parking and environmental amenities. Such a "Main Street" will be flanked by corporate office buildings, shopping malls, housing of middle and high density and structures for health facilities, education, entertainment, culture, religion and public assembly.

Though Bedminster's planning shows no awareness of what is taking place, the New Jersey Department of Transportation is aware -- and alarmed. But their study is already left behind by announcements of new developments. Dated June 1982, the N.J. DOT study, Route 206 Corridor Study: Bridgewater to Roxbury, was published before most of development included in the Wallace, Roberts and Todd study became public. But even the more limited input in the DOT study tells us what is happening:

"It is assumed that this growth represents the minimum amount of additional development that will take place through 1990... there will be a large increase in the amount of industrial and office space in the interim year over existing conditions. The amount of office space in the corridor will increase by 175%, while the amount of shopping space and industrial space will increase by over 100%. These figures indicate there will be very rapid growth in employment in the Rt. 206 corridor area, (i.e. a doubling of existing employment in 10 years). New office development alone accounts for 75% of this additional employment. This office development is largely concentrated in the southern portion of the corridor. Bridgewater and Bedminster have a total of 1.3 million sq. ft. of

\*See addendum

office, most of which is adjacent to Rt. 206. Along with the Mt. Dry Road and Martinsville Road office complexes in Bernards and Warren Twp., City Federal Savings and Alan Deane office development in Bedminster, over five million sq. ft. of office space is proposed for the southern area of the corridor. This represents 75% of the office development in the entire corridor under the interim scenario. Industrial development, which includes warehousing, is all a result of the Mt. Olive Free Trade Zone. Here 3.7 million sq. ft. will be built assuming all phases are completed. No other proposals for industrial development have been made, as the Sears warehouse project has now been withdrawn.

"Most of the new local and regional shopping is a result of the Bridgewater Commons proposal. This development also includes a hotel and office building. The Dobbs Mall proposal was not included in the analysis because of the legal questions surrounding the project, making the prospect of this development uncertain...

"Although there is a large increase in multi-family housing units, the total number of housing units currently planned represents only a 36% increase over existing conditions. Because the growth in new housing units in the corridor does not approach the growth in new jobs, there will be a large imbalance between housing for workers and jobs.

"Assuming average employment standards (1) it is estimated that there will be about 35,700 new jobs in the corridor under the interim scenario. This represents a 110% increase in corridor employment over 1980. However only about 11,700 new dwelling units housing 16,400 workers will be constructed, a 37% increase in corridor housing units.

"As the following table (Table 5) shows, most of the large imbalance between new jobs and new housing for workers is in the section of the corridor from Peapack south. This section will have 26,000 new jobs but will have new housing for only 7,300 workers." (pp. 18 and 19.

DOT's alarm stems from its fear that local land use planning will not anticipate this growth and provide for it, resulting in overburdened peak hour use of its highway and expressway facilities. DOT contemplates seeing poor land use planning turning high speed arteries, costing hundreds of millions of dollars to build, into creeping and crawling lanes at morning and evening peaks. It sees the solution in a better mix of housing and jobs along the Rte. 206 corridor.

"As a result of this projected imbalance between housing and employment, 28,000 additional housing units would be needed to accommodate the estimated number of workers employed in the corridor under this scenario. These additional housing units would improve the ratio of jobs to housing units in the corridor to 1.2.

"The housing/employment imbalance would result in a large amount of commuting to the corridor from other areas, especially the heavily populated area east of Rt. 206 in Essex, Hudson, Middlesex, Eastern Morris and Union counties. Also a significant percentage of Rt. 206 residents will continue to be employed in the employment centers to the east. The resulting commuting pattern will mean heavy use of Rt. 206 by both workers residing outside the corridor and residents

of the area, with the housing shortfall contributing to the significant amount of travel on the highway network by workers living in other areas. A more adequate amount of housing close to employment centers would reduce the large amount of travel by noncorridor residents, and thus decrease trip lengths and ease traffic congestion on Rt. 206." (my emphasis - E.E.) p. 23

The proposal for the Dobbs' property, (17) referred to above as the "Dobbs Mall proposal", as modified to include housing, both market and for low-and-moderate incomes, would constitute the type of mixed use so strongly urged by DOT. It would provide housing and job opportunities on one site, minimizing use of highways for the journey-to-work. A shopping mall would not concentrate traffic volumes at morning and evening peaks, as do office and similar employment centers. Sound land use planning for the 206 corridor requires more such mixed use developments. They can begin to relieve DOT's concerns with overuse of highway capacity by long distance commuters. Regional Plan's study of automobile use (18) notes that such corridor employment establishments cause longer trips to work for the lower paid occupations than occurs in central cities. This underscores the need for housing for lower income households.

#### C. What Should Take Place

The 206 Corridor cries out for timely comprehensive planning. It is almost unbelievable that at this late date in the life of planning institutions and powers in New Jersey -- state, county and local -- there is so little evidence of sound planning in the face of a tidal wave of development. The Mount Laurel II opinion reminded us of the high costs of non-planning. "The lessons of history are clear, even if rarely learned. One of those lessons is that unplanned growth has a price: natural resources are destroyed, open spaces are despoiled, agricultural land is rendered forever unproductive, and people settle without regard to the enormous cost of the public facilities needed to support them...These costs in New Jersey, the most highly urbanized state in the nation, are staggering.... Statewide comprehensive planning is no longer simply desirable, it is a necessity recognized by both the federal and state governments." (p.60)

In the absence of effective instruments for planning at state and county levels, the courts will have to intervene to protect the rights of citizens and property owners threatened by the chaotic forces of unguided development, on the one hand, and the exclusionary, defensive moves of local government on the other. Court intervention will not result in comprehensive planning, but it will mitigate some of the worst effects of guerrilla warfare between towns and developers, including injustices to individual land owners, such as the Dobbs property, located in the State's Growth Area but sealed off by the Leahy Line.

Comprehensive planning would recognize that the 206 Corridor development is urbanization in the garb it will wear into the 21st Century and would plan it accordingly. The corridors will not only concentrate the highest transportation volumes, but also the most intensive land use activity. From this high traffic/high intensity corridor, land use planning should provide for a gradient of reduced intensity and reduced traffic "sloping" away from the corridors to interstitial areas of low intensity and low traffic, including farming and public open space. This is to plan for the urbanism of the 2000's, as unlike central city as is an automobile from a trolley car.

What does Bedminster's Master Plan offer in this regard? What is its basic design concept? What kind of urban formations does it foresee and seek to shape? Instead of meeting the future, taking it by the hand and leading it, Bedminster uses planning to blunt the thrust of market forces, to seek to halt and divert them. Here we again meet, in the words of Justice Pashman's concurring opinion in Mount Laurel "the dark side of municipal land use regulation -- the use of the zoning power to advance the parochial interests of the municipality at the expense of the surrounding region and to establish and perpetuate social and economic segregation." (p.2)

In the last analysis, the Township of Bedminster will also be a victim of such on-planning. The forces of the market will not be denied. Failure to accept and shape them will result in Bedminster succumbing in the end to un-planned development.

#### D. Mount Laurel's Implications for Planning Generally

The thrust of Mount Laurel is, of course, to break down exclusionary devices designed to frustrate housing opportunities for low and moderate income households. But the whole context of Mount Laurel, including its underpinning and overt pleadings, consists of a concept of orderly land development to serve broad public interests while safeguarding the rights of individuals, including property owners. But above all, its message is to open the gates to tomorrow, to welcome growth (the strangers who come with it) and use planning to guide growth for prosperity and the public interest.

The Court understood that exclusionary zoning was an effort "to stop tomorrow", but that exclusion of lower incomes was not the sole manifestation of this effort; that the spirit of "stop tomorrow" is aimed across the board against all urban development likely to affect parochial local interests. In turn, the Court's remedies, especially its emphasis upon affirmative measures, are, by implication, intended more broadly for sound planning of all forms of urban development.

The recommendation of Bedminster's planning consultants (19) that the Township consider rezoning employment generating uses in the Corridor to reduce future obligations for more housing to balance jobs is a dagger aimed at the heart of the Mount Laurel concept. It is precisely this mode of thinking ... this way of approaching the municipality's obligation -- that the Mount Laurel opinion seeks to remove from the decision-making process at the local level. At a time when the nation and the State of New Jersey's Governor seek ways to create jobs including increased foreign trade, Bedminster is advised to re-zone land to curtail job growth because it might add to the municipality's housing obligation!

This in a municipality which authorized residential starts as follows: 1970, 17; 1971, 7; 1972, 13; 1973, 7; 1974, 0; 1975, 0; 1976, 5; 1977, 11; 1978, 8; 1979, 7; 1980, 4; a total of 79 units minus 10 demolitions.

The implication of Mount Laurel is that affirmative measures are called for across the board to make urban development serve broad public interests because, unless this happens, affirmative measures for housing lower income households will prove either unworkable or unnecessary. If sound planning

does not match employment opportunities with housing opportunities or produce ratables for schools and other public services, occupants of lower income housing will hardly have benefitted.

If municipalities are to enforce housing "set asides", they should also require that local planning balance housing with employment and ratable "set asides." Specifically, municipalities might require developers of industrial and commercial properties to include a mix of housing, including fair share housing for lower income groups. Had A.T.&T. been required to provide several thousand housing units across the price range and subsidize rents for the lower income occupants, it would have made a magnificent contribution to sound planning of the Corridor. The Dobbs proposal would do just that: provide on-site housing and use earnings of the commercial property to subsidize housing for lower income households. It would seem to be a more certain and equitable means of subsidizing lower income housing than relying on 80% of the renters in a residential project to pay the subsidy required by the 20% set aside apartments.

The sterilization of the Dobbs property by the Leahy Line results in planning that designates over 200 acres of buildable land in a single-family, 3-acre zone across a highway from A.T.&T.'s corporate offices with thousands of employees. This type of land use juxtapositioning across a major transportation corridor would seem to violate every concept associated with planning as a discipline and a professional practice. It is definitely planning's "dark side".

The concentration of all of Bedminster's fair share housing to the east of Rte. 206, mainly on a few tracts in one small portion of the Township, inaugurates income segregation and, in all likelihood, racial segregation. Yesterday's "on the wrong side of the tracks" is to become today's "on the wrong side of the Corridor." The Federal courts have intervened in less flagrant cases of segregation.

In his Mount Laurel concurring opinion, Justice Pashman showed a keen awareness of such segregation. He holds that "the one exception" to the court's safeguarding the integrity of zoning allocations for fair share would be where "the developer can show that, as a matter of practical fact, sufficient land is not available for development in the areas zoned for low or moderate income housing," or where "construction of multi-family housing in area zoned for it would perpetuate a segregated housing pattern..." (p.33)

The Mount Laurel II Court properly recommends "overzoning" for low and moderate income housing opportunities, permitting competition in the market to determine which developer is able to utilize such zoning for lower income "set asides". "In some cases, a realistic opportunity to provide the municipality's fair share may require over-zoning, i.e. zoning to allow for more than the fair share if it is likely, as it usually is, that not all of the property made available for lower income housing will actually result in such housing." (p. 115)

Bedminster could do much to assure use of its fair share housing by over-zoning by at least two-to-one; i.e. two housing sites for each fair share unit, and to locate such housing opportunities west, as well as east, of the 206 Corridor. This would also reduce tendencies toward monopolistic land prices and facilitate construction at less cost.

E. S.

Ernest Erber, AICP  
Columbia, MD

End Notes

- (1) Report by Bedminster Township's planning consultants, Richard Thomas Coppola and Associates, entitled Master Plan Program, Part III, Housing Element, August 1983, Princeton Junction, N.J. p.5 and Appendices A&B.
- (2) Residential Mobility and Home Purchase, Daniel R. Friedland. Lexington Books, Lexington, Mass., 1974.  
Residential Mobility, Migration and Metropolitan Change, Alden Speare, Jr., Sidney Goldstein and William H. Frey. Ballinger, Cambridge, Mass. 1974.  
The Location of Residences and Work Places in Urban Areas, Louis K. Lowenstein. The Scarecrow Press, New York, 1965.  
Income, Employment, and Urban Residential Location, Larry L. Orr. Academic Press, New York, 1975.
- (3) "I-78 Nears End, but Issues Remain," N. Y. Times, 10/16/83.
- (4) Regional Plan News, August, 1981, Number 108, gives findings of Regional Plan Association's mail survey of "The Use of Automobiles". It reports that "on the other hand, low-income auto owners take unusually long trips to out-commute." (p.5). See also The Effect of Headquarters Office Location on Travel, Regional Plan Association, May 1982.
- (5) Somerset County has a higher percentage of its jobs held by employees living outside of the county than any other of the eight counties in Northeastern New Jersey.
- (6) A Revised Statewide Housing Allocation Report for New Jersey, N.J. Div. of State and Regional Planning. Trenton, May 1978.
- (7) A Fair Share Housing Allocation for Washington Township in Morris County. Prepared by Abeles Schwartz Associates, Inc., New York, N.Y. November, 1983. Extracted from 1980 U.S. Census of Population and Housing, Summary Tape File 3.
- (8) Covered Employment in New Jersey, 1981 Edition, N.J. Dept. of Labor and Industry. As cited in Abeles, ibid.
- (9) People, Dwellings and Neighborhoods, Tri-State Regional Planning Commission, March 1978. p. 15, Cited in Abeles, op. cit.
- (10) ibid.
- (11) op.cit. p. 3
- (12) op. cit. Regional Plan News
- (13) op. cit. Covered Employment in New Jersey
- (14) Somerset County Planning Board.
- (15) op. cit, A Fair Share Housing Allocation for Washington Township in Morris County.
- (16) Survey by Wallace, Roberts and Todd, Philadelphia, conducted by Charlotte Strem of their staff in November, 1983. Their survey shows an additional 5,440,000 sq. ft.

End Notes - cont'd.

and an estimated 21,760 jobs across the Morris County line to the north of Bedminster. It also reveals that escalating land prices in the Bedminster area are causing development to sprawl westward along Rte.78 into Hunterdon County.

(17) This report is being prepared for Peter O'Connor, Esq. who represents Leonard Dobbs, owner of the property referred to as the "Dobbs Mall proposal," and was prepared with the knowledge that it was available to be used on behalf of Mr. O'Connor's client, if it was of use to him. E.E.

(18) op. cit.

(19) op. cit. Coppola report, p. 19.

Addendum:

A total of 24,000,000 square feet of office, commercial and industrial space has been proposed or is under construction in Somerset and Morris County. 15,000,000 square feet of this total is in developments of 100,000 square feet or above. The total number of potential jobs (at 250 square feet/employee) is 96,000 jobs. This information is from the Office of Economic Development of Somerset and Morris County.