

RULS-AD - 1984-10

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- Dobbs response to 12/23/83 Draft of
Bedminster Fair share

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WINNE, BANTA & RIZZI
COUNSELLORS AT LAW
25 EAST SALEM STREET
P. O. Box 647
HACKENSACK, NEW JERSEY 07602

PD-11 end
EWS- 11/7/84

RULS - AD - 1984 - 10

BRUCE F. BANTA (1932-1983)
JOSEPH A. RIZZI**
PETER G. BANTA*
ROBERT A. HETHERINGTON, III
JOSEPH L. BASRALIAN
EDWARD H. MILLER, JR.
JOHN P. PAXTON
DONALD A. KLEIN
ROBERT M. JACOBS
T. THOMAS VAN DAM
ANDREW P. NAPOLITANO
RAYMOND R. WISS*

TELECOPIER (201) 487-8529
(201) 487-3800

HORACE F.
OF COUR
WALTER G.
(1889-1
NEWFOUNDLAND
(201) 697
NEW YORK
2 VETERANS
PEARL RIVER, NEY
(914) 731

V. ANNE GLYNN MACKOUL*
THOMAS B. HANRAHAN
KEVIN P. COOKE
RANDAL W. HABEED
CYNTHIA D. SANTOMAURO
ADOLPH A. ROMEI

* MANAGING
* MEMBER NE

TO: George M. Raymond and All Parties - Bedminster ads.
Allan-Deane

FROM: Joseph L. Basralian, Esq. and Peter J. O'Connor, Esq.,
representing Leonard Dobbs

SUBJECT: Leonard Dobbs' Response to December 23, 1983 Draft
The Bedminster Housing Region and Fair Shares by George
M. Raymond

DATE: January 3, 1984

Enclosed find Dobbs' response to the above-mentioned draft for your information. The response is intended to advise you of our rejection of your analysis and conclusions.

The draft report was received late Tuesday, December 27, 1983. This response is submitted to comply with the deadline you have established. However, we have not had time to completely respond and we have not yet been sent all the base data provided by the Township to you (which were not submitted to Dobbs). We request the opportunity to supplement this response after we have received these data.

cc: Alfred L. Ferguson, Esq.
Henry A. Hill, Esq.
Kenneth E. Meiser, Esq.
Herbert A. Vogel, Esq.
Roger W. Thomas, Esq.
Richard T. Coppola, P.P.

Response to Draft
of
The Bedminster Housing Region and Fair Shares
dated December 23, 1983
by George M. Raymond

Response prepared by Wallace Roberts & Todd

A. Summary Response to Region, Fair Share and Allocation to Bedminster Township

Dobbs' response to the first section of the Draft Report is summarized in the following six points:

(1) Overall

Raymond's Report lacks internal consistency and equivocates on the major issues, resulting in a reduced fair share responsibility for Bedminster Township.

(2) On Regional Definition

a. Dobbs, a Trial Court regarding a Mount Laurel II case, the New Jersey Public Advocate Department (in reference to Bedminster), and a consultant's report regarding Mahwah's Fair Share all concur on the 8-county region with which the Raymond Report ultimately concurs. However, the Raymond Report then improperly relies on the CUPR region and methodology at key points to compromise its findings, thereby substantially reducing Bedminster's Fair Share.

b. The census and other data the Raymond Report relies on are essentially all at least over four years

old and do not reflect the post-1980 office and commercial employment development in the Bedminster Township region, particularly along I-287, R-202, R-206 and I-78 (and projected development which will be stimulated by the completion of the missing link in I-78).

(3) On Prospective Regional Need

Although the Raymond Report accepts the 8-county region above, it then proceeds to average the CUPR regional pattern and demographic data combined with the Public Advocate's figures to develop a set of compromised figures on prospective regional need. Therefore the findings are rejected.

(4) On Allocation of the Prospective Need

Because of the above, in effect, the Report thus uses two figures for regional need. This method is flawed with the resulting 908-unit prospective need allocation to Bedminster completely without a defensible methodological basis. The so-called method seeks to reject out-moded data where they serve to reduce Bedminster's share (p. 17), but accepts them (p. 12) where they support the Report's arguments.

The Report ignores the Dobbs/Erber argument for a 2-tier housing and employment market: (a) overall, (b) close-in. Contrary to Raymond's assertion that this approach is "without warrant in Mount Laurel," it flows from the logic and

directives of that case.

Further, the Report's dismissal of the Township's available and developable vacant land as an allocation criterion, except within the universe of State Development Guide Plan growth boundaries (defined as obsolete, p. 12), flies in the face of the Court's entire concept of how allocation is to be made.

Raymond's use of employment and home-to-work trips badly distorts the conclusions. On the one hand, data are erroneously used (e.g., stating that Somerset County's "employed residents" working in Essex vs. Morris County are almost identical, p.5), and on the other, the Report ignores the fact that Bedminster's employment growth (1975-80) of 3,558 jobs (p. 18) represented 10.8% of Somerset County's job growth of 32,820 between 1970 and 1980 (Dobbs/Erber, p. 11) and is silent on post-1980 developments such as the Beneficial Life Center across the Township boundary to the north, to mention only one of many.

(5) On Determination of Present Need

On stressing commutation as a key factor of region (albeit watering it down later), Raymond offers the specious argument that Somerset County out-commuters to Newark and Manhattan cancel out the in-commuters, implying that they somehow should be expected to move to the cities where they work.

On stressing housing as a criterion, the Raymond Report relies on the CUPR argument that present need is predominantly a function of the number of low and moderate income families poorly housed, unrelated to other variables such as lack of access to jobs opening in the intermediate ring of counties as an exclusionary factor along with the high cost of housing.

There would appear to be no methodological or other reason in the Raymond Report or that of the Public Advocate to invalidate the Dobbs/Erber (p. 12) present need allocation of 648 units.

The allegation by Raymond (p. 30), that allocating the region's Fair Share first to each county and thence to each municipality in effect changes the regional definition, is clearly invalid.

(6) On Bedminster's Total Fair Share

Dobbs rejects the Raymond Report's Recommended Fair Share of 944 units.

B. Bedminster's Response to the Mount Laurel II Mandate

In summary, Bedminster Township's two forms of response to its impending obligation under Mount Laurel II -- rezoning certain portions of the "growth" corridor, and modifying its land development regulations -- are necessary steps but completely inadequate in and of themselves to provide constructive and affirmative performance.

The key (although not the only element) to Mount Laurel II implementation lies in the Township's providing access to off-site sewage treatment. This is true for every site rezoned.

(1) On Rezoning

Raymond's Report examines 12 sites rezoned by Bedminster and lists Dobbs', Bedminster's and his own calculations of capacity in dwelling units for each site.

Bedminster's estimate of capacity is new, varies from that shown by Coppola in the Master Plan Program¹ and referenced in Dobbs/Erber Table 2, and was not submitted to Dobbs as per Court instructions.²

These new Bedminster capacity figures are based on the September 30, 1982 Flood Insurance Rate Maps that, contrary to the Raymond Report, were available to Dobbs, and cannot be classed as new data. Further, the Dobbs site analysis did not rely^{solely} on the August 1982 Master Plan Housing Element as alleged. Rather Dobbs' examination of each site included detailed field surveys as well as analysis of the mapped secondary source (soils, etc.) site phenomena indicated in Dobbs (pp. 31-89).

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- 1 Coppola, Richard Thomas and Associates, Township of Bedminster, Somerset County, New Jersey, Master Plan Program, Part 1 - Background Studies, August 1982, REG-16-16c.
 - 2 This information, not provided to Dobbs until noon on December 30, 1983, and then only at the specific request of Dobbs, is not responded to herein but will be responded to in short order.

Bedminster Township made its information available to Raymond but not to Dobbs and therefore the following site-by-site comments cannot directly address the difference in estimated capacity until the Township information, belatedly provided to Dobbs, is analyzed. Comments will, therefore, be directed solely at the analysis reported by Raymond.

Site A (No. 1)

This site must be connected to off-site sewage treatment for either Dobbs (134) or Bedminster/Raymond (66) figures to be relevant.

Response - Use 66 units.

Site B (No. 2)

While there appears little disagreement on capacity, this site cannot be developed as zoned unless it is sewered.

Response - Use 79 units.

Site C (No. 3)

Bedminster shows 290 units, Dobbs, 67 units, and Raymond, 165 units, albeit after 1990 because the entire area is already developed with homes on large lots except for one vacant parcel.

The availability of this site is a guessing game and Raymond's figures are rejected. None can be developed until sewered.

Response - Use 67 units.

Site D (No. 4)

This site must be sewered to be developed. In the absence of Bedminster's data, Dobbs will use Raymond's figure.

Response - Use 36 units.

Site E (No. 5)

This site is adjacent to the Bedminster sewage treatment plant. The Utility Plate, 1, Bedminster Master Plan I - Background, does not show the site within the area served by the Bedminster municipal plant although a 14" sewer line bisects it.

Response - Use 146 units.

Site F (No. 6)

The inclusion of this site as available should be rejected out of hand as even the Raymond Report states it would depend on "site assembly, redevelopment, or willingness of individual owners to proceed with relatively small developments of their own" (p. 45).

Unlikely, perhaps not beyond the realm of possibility, however, the Raymond reasoning would not appear to warrant acceptance as constructive action.

Response - Use 0 units.

Site G (No. 7)

This site is not included in Raymond's analysis and he

substantially agrees with Dobbs. Reportedly a developer proposed its development to the Township and was turned down for lack of sewerage capacity even though he was said to have been willing to pay for the improvements. Upon information and belief, this matter is now in litigation. Raymond included Site G in his affordable unit capacity to be constructed after 1990 (p. 45), which appears to be an inconsistency.

Response - Use 514 units.

Site H (No. 8)

The Raymond Report concurs with Dobbs. Of course, it must be sewerred to be developable at all.

Response - Use 414 units.

Site I (No. 9)

The existing four houses on this already-developed tract are very expensive, and their parcels elaborately landscaped. The same reasoning regarding Site F (No. 6) obtains.

Response - Use 0 units.

Site J (No. 10)

Since this site has but one owner-resident, and he or his heirs could decide to develop, its development is contingent on access to sewerage.

Response - Use 599 units.

Site K (No. 11)

This is the Hills Development.

Response - Use 1287 units.

Site L (No. 12)

Raymond concurs with Dobbs on this site and it is developable subject to sewer capacity.

Response - Use 177 units.

Site X (No. 13)

This site, south of I-78, east of I-287, next to Chambers Brook, was listed by Bedminster (Master Plan, Part III Housing Element, August 1983, p. HOUS-20) as an additional "back-up" site but was not reviewed by Raymond for some reason. It is adjacent to the Township boundary and next to a major office development now underway in Bridgewater Township. Since this site was not considered by Raymond, it is not commented on.

In summary, Dobbs recognizes 3385 units as the capacity of the above sites, all subject to off-site sewerage availability. This compares with 4260 (Bedminster) and 3794 (Raymond). At 20 percent for low and moderate income housing on each site, 3385 overall units would provide for 677 low and moderate income housing units, half the fair share required by the Public Advocate's Report, less than one-third allocated by Dobbs/Erber, and even considerably less than

the fair share recommended by Raymond. This is a completely inadequate response to the Mt. Laurel II requirement of "overzoning" to allow for realistic opportunity for Mt. Laurel II development.

(2) On the Issue of Whether Reasonable Opportunity for Moderate and Low Income Housing Is Provided by Bedminster

If nothing is done regarding the availability of sewage treatment for all the above except Hill (Site K, No. 11), the answer to the title question is NO. The Dobbs response to the question is to outline conditions that would have to obtain in order for construction and affirmative performance.

(1) The Township must make sewerage available as per letter from Peter J. O'Connor to George M. Raymond, December 29, 1983.

(2) The Township must provide additional assistance in the form of tax abatement, CDBG funds for capital and other eligible subsidies and State aids if the low and moderate income housing is to reach below the upper limits of low and moderate income persons. Hills' "low and moderate income" housing, objected to by Dobbs, does not have the aforesaid assistance and does not reach the low and moderate income levels, as required by Mount Laurel II.

In conclusion, the "controlled growth" arguments put forward by Raymond (pp. 45-48) seem strikingly similar

to those raised for exclusionary zoning. The rate of change has already been dramatic (albeit selectively approved developments which do not include low and moderate income housing with the possible "exception" of the court-ordered Hills project) and will continue, and efforts to slow growth down and thereby low and moderate income housing performance are in essential conflict with Mount Laurel II.

(3) On the Raymond Report Recommendation

Raymond's recommendation that the Township's current rezoning with a mandatory set-aside of not less than 20 percent of affordable units be found by the Court to comply with the Mt. Laurel II requirement is not warranted by the Report's own findings, much less by any others. Dobbs recommends that the Township "overzone" sufficient land to permit a realistic opportunity for compliance with Mt. Laurel II goals, make sewage treatment available to all units so zoned, and offer tax abatement, other incentives, and cooperative measures to developers as above.

Dobbs hereby renews his request to respond to the Raymond Report once the Township and/or Raymond state their position and provide their base data on the sewer issues raised in Peter J. O'Connor's letter to Master Raymond, dated December 29, 1983.