

RULES - AD - 1984 - 3/0
7/11/84

- Cut. of Harry ~~Denham~~ Denham
- v. . amended complaint
- order
- w/ Final judgment
- w/orixr for supplemental judgment
- w/ letter to planning board

Pgs. 60

SUPERIOR COURT OF N.J.
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COUNTY OF OCEAN

SUPERIOR COURT OF N.J.
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FARRELL, CURTIS, CARLIN & DAVIDSON
43 Maple Avenue
Post Office Box 145
Morristown, New Jersey 07850
(201) 267-8130

Attorneys for Defendants, The Township of Bernards, the Township of
Committee of the Township of Bernards, and the Township of
Bernards Sewerage Authority

THE HILLS DEVELOPMENT
COMPANY,

Plaintiff,

-vs-

THE TOWNSHIP OF BERNARDS in
the COUNTY OF SOMERSET, a
municipal corporation of the
State of New Jersey, THE
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF BERNARDS, THE
PLANNING BOARD OF THE TOWN-
SHIP OF BERNARDS and the
SEWERAGE AUTHORITY OF THE
TOWNSHIP OF BERNARDS,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET/OCEAN COUNTIES
(Mt. Laurel II)

Docket No. L-030039-84 P.W.

Civil Action

Of

CERTIFICATION OF
HARRY M. DUNHAM

I, Harry M. Dunham, certify as follows:

1. I am a resident of Bernards Township and have been a
member of the Bernards Township Planning Board since 1970 and
Chairman of the Planning Board since 1980.

2. As Chairman of the Planning Board, I have access to the
files of the Planning Board and the Township and the documents

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which are attached hereto.

3. Attached hereto as Exhibits "A-1", "A-2" and "A-3"¹¹, respectively, are Second Amended Complaint in Lieu of Prerogative Writ in the matter of The Allan-Deane Corporation v. The Township of Bernards/ et al., Docket No. L-25645-75 P.W.; Pretrial Order in the same matter; and Final Judgment in the same matter dated March 19, 1980.

4. Attached hereto as Exhibit "B" is an Order for Supplemental Judgment in the matter of Theodore Z. Lorenc, et al. v. The Township of Bernards and the Planning Board of the Township of Bernards, Docket No. L-6237-74 P.W.

5. Attached hereto as Exhibit "C" is a letter from the law firm of Brener, Wallack & Hill to the Bernards Township Planning Board dated April 10, 1984.

6. Attached hereto as Exhibits "D-1" and "D-2", respectively, are minutes of the meetings of the Planning Board, Technical Coordinating Committee, dated January 24, 1984 and February 14, 1984.

7. The Planning Board records indicate that as part of the approval process for the project of the Hills Development Company (Allan-Deane), a project report dated July 1, 1981 was submitted by the applicant. As part of that report a project description and statistic report was submitted. This report included a description of the type, number and value of

units together with a table attached thereto. Such pages appeared as pages 1-5, 1-6 and Table 1 of such project report and the same are attached hereto as Exhibit "E".

8. The only application by plaintiff which is currently before the Planning Board is for 64 units of low density single family dwellings. Plaintiff has submitted a conceptual map and project showing that it intends to construct a total of 1275 units on the entire tract.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.



HARRY M. DUNHAM

Dated: July 4, 1984

MASON. GRIFFIN & PIERSON
201 NASSAU STREET
PRINCETON. N. J. 08340
609> 921-6943
ATTORNEYS FOR **Plaintiff**

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

THE ALLAN-DEANE CORPORATION,)
a Delaware corporation, qualified)
to do business in the State of)
New Jersey,)

Plaintiff,)

vs.)

THE TOWNSHIP OF BERNARDS, IN THE)
COUNTY OF SOMERSET, a municipal)
corporation of the State of New)
Jersey, THE TOWNSHIP COMMITTEE)
OF THE TOWNSHIP OF BERNARDS, and)
THE PLANNING BOARD OF THE TOWN-)
SHIP OF BERNARDS, and THE SOMER-)
SET COUNTY PLANNING BOARD,)

Defendants.)

Civil Action

SECOND AMENDED COMPLAINT

IN LIEU OF PREROGATIVE
'WRIT

Plaintiff, THE ALLAN-DEANE CORPORATION, a Delaware corporation, qualified to do business in the State of New Jersey, and having an office and place of business in the State of New Jersey located at Far Hills Country Mall, Borough of Far Hills, New Jersey, by way of Complaint against the Defendants, says:

FIRST COUNT

BERNARDS TOWNSHIP

1. Defendant, THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET (hereinafter referred to as "BERNARDS TOWNSHIP") is a sprawling rural-suburban community in the north-central portion of Somerset County, with a land area of 24.95 square miles, an amount equal to 8.2 per cent of Somerset County's land area of 305.6 square miles. At the time of the 1970 Census, BERNARDS TOWNSHIP contained a household population of 11,531 persons, or approximately 5.9 per cent of Somerset County's household population. Residential density in BERNARDS TOWNSHIP amounted to 462 persons per square mile as of the 1970 Census, a density substantially below the comparable figures of 635 persons per square mile in Somerset County and 938 persons per square mile in New Jersey.

2. Somerset County, in which BERNARDS TOWNSHIP is located, is the second wealthiest county in New Jersey, with a 1970 Census median family income of \$13,433, a level exceeded only by Bergen County with a median family income of \$13,597. Morris County, on the northern boundary of Somerset County, ranks third in wealth in New Jersey with a median family income of \$13,421, and was the only other county with a 1970 Census median family income over \$13,000.

3. BERNARDS TOWNSHIP stands out, even within

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tnis structure of affluence, as one of the wealthiest municipalities in riew Jersey. As of the 1970 Census (1969 income), BERNARDS TOWNSHIP was reported to have a median family income of \$17,852, and an average (mean) family income of \$19,243--income levels of 33 per cent above the County and 57 per cent above the New Jersey median. Of New Jersey's 567 municipalities, BERNARDS TOWNSHIP ranks 35th in family income, a ranking that places it in the 94th percentile in the State. The 531 municipalities in New Jersey with income levels below that of BERNARDS TOWNSHIP contained 95.69 per cent of New Jersey's population.

A

4. BERNARDS TOWNSHIP is a municipality of sizeable land area outside the central cities and older, built-up suburbs of our North and South Jersey metropolitan areas. It is in the process, due to its own land use decisions and its location with respect to major new interstate highways, of shedding its rural characteristics and would, but for its exclusionary land use practices, experience a great population increase.

5. BERNARDS TOWNSHIP is a "developing municipality" as defined by the New Jersey Supreme Court in Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975) .

6. Only 10 developing municipalities in New Jersey had 1970 Census median family income levels above

that of BERNARDS TOWNSHIP.

7. The social characteristics of BERNARDS TOWNSHIP furnish further indication of its exclusionary status. Racially, BERNARDS TOWNSHIP is, according to the 1970 Census, 98.14 per cent white, a percentage well above the parallel statistics of 95.85 per cent white in Somerset County and 88-76 per cent white in New Jersey as a whole. Educationally, the median years of school completed by BERNARDS TOWNSHIP residents (excluding inmate population at Lyons Hospital) of 13.5 years is significantly above Somerset County's median of 12.4 years and New Jersey's median of 12.1 years. The median age of the TOWNSHIP'S residents is 34.0 years compared with 29.4 years in Somerset County and 30.1 years in New Jersey, reflecting the necessity of an established income to be able to afford the purchase of housing in BERNARDS TOWNSHIP.

8. Residential housing statistics from the 1970 census also reflect the municipality's affluence. According to the U. S. Census of Housing, 97.2 per cent of the BERNARDS TOWNSHIP'S housing units were one-family structures as compared with a State percentage of 57.9 per cent and a Somerset County percentage of 73.6 per cent. Of the occupied housing units in BERNARDS TOWNSHIP, 90.1 per cent were owner-occupied units as compared with a State percentage of 60.9 per cent and a Somerset County percentage of 73.1 per cent. The median number of rooms per housing unit was 7.2

rooms in BERNARDS TOWNSHIP while the New Jersey median was 5.2 rooms and the Somerset County median v/as 5.9 rooms.

9. The 1970 Census of Housing reported that the median value of owner-occupied housing units in New Jersey was \$23,400, The comparable figure for Somerset County was \$29,700, a value 26.9 per cent above the New Jersey median. The median housing value reported for BERNARDS TOWNSHIP in 1970 was \$40,000, a level 70.9 per cent above the New Jersey median and 34.6 per cent above the Somerset County value. The median housing values for units for sale in BERNARDS TOWNSHIP as of the 1970 Census were beyond the Census takers scale and were simply reported to be \$50,000-plus. Since the 1970 Census, housing values have increased markedly throughout New Jersey, and one survey reported a 1971 sample median value of existing and new homes of \$62,500 for Somerset County. Were this value relationship applied to BERNARDS TOWNSHIP, a 1971 median value of \$84,125 would be derived (Bernards = 1.346 x Somerset County). Even by conservative standards (assessed valuation) the average housing value in BERNARDS TOWNSHIP had increased to \$60,355 by 1974, a figure similar to the average value of \$60,854 reported by the Township Committee for all housing units as of August, 1975. New construction in the TOWNSHIP is considerably more expensive, ranging from \$80,000 upwards.

10. Although BERNARDS TOWNSHIP'S residents rank

among the most affluent in New Jersey, their property tax-burden ranked the TOWNSHIP 226th (60 percentile) in the State in 1973. By 1975, BERNARD TOWNSHIP'S rank relative to property tax rate was 354th from the highest (below the 40th percentile). Similarly, the per capita real estate tax in BERNARDS was \$118 in 1960 and \$324 in 1970—amounts equal to 96.7 per cent and 126.1 per cent of the respective New Jersey averages. Thus, while income in BERNARDS TOWNSHIP was 57 per cent above the New Jersey median in 1970, the real estate burden was only 26.1 per cent above the State's average cost. Relative to income, BERNARDS TOWNSHIP residents have been paying a substantially lower per cent in property taxes than their New Jersey counterparts.

11. Since 1970, BERNARDS TOWNSHIP residents have enjoyed a particularly favorable tax climate, with the equalized tax rate decreasing—from \$3.93 per \$100 in 1971 to \$3.72 per \$100 in 1972 to \$3.53 per \$100 in 1973 to \$3.27 per \$100 in 1974 and \$2.86 per \$100 in 1975. Thus, while local equalized tax rates in New Jersey have generally increased, BERNARDS TOWNSHIP'S equalized tax rates have decreased.

12. The principal reason for the recent decrease of the tax rate in BERNARDS TOWNSHIP is the presence of the American Telephone and Telegraph Company (hereinafter referred to as "A.T.&T.") Worldwide Headquarters in the Basking Ridge section of the TOWNSHIP. This A.T.&T. facil-

ity will be valued at \$100 to \$110 million (1975 dollars) when completed. At current assessment rates, this A.T.&T. ratable could yield revenues of \$3.5 million when completed, an amount equal to 47.3 per cent of the TOWNSHIP'S total tax levy of \$7.4 million during 1975.

13. The new A.T.&T. facility, although only partially completed, was assessed at \$34.5 million during 1975 and yielded revenues of \$1.3 million last year. Approximately \$1.8 million in revenues from A.T. & T. are anticipated by the TOWNSHIP during 1976, and revenues of \$3.5 million between 1978 and 1980 from A-T. &T. would not appear unreasonable.

14. During 1975 and 1976, the revenues derived from A.T.&T. have enabled BERNARDS TOWNSHIP to lower its equalized tax rate significantly while other municipalities throughout New Jersey are raising general levies by 10 to 20 per cent in order to obtain minimum funds to finance local education. BERNARDS TOWNSHIP will be able, when the A.T.&T. facility is completed, if it continues to succeed in its efforts to exclude lower and middle income housing, to lower its present equalized tax rate at least \$1.00 to \$1.86 per \$100.00 in assessed population.

15. BERNARDS TOWNSHIP is intersected by two major Federal Interstate Highways which, when they are completed, will place it within 35 minutes of Newark, New Jersey's largest city, and 45 minutes of New York City.

16. BERNARDS TOWNSHIP would experience a great population increase because of its own primary employment, its geographic location with respect to other employment centers and its highway system but for its unique and hereinafter described system of exclusionary land use regulations.

THE ALLAN-DEANE APPLICATION

17. Plaintiff, THE ALLAN-DEAN CORPORATION (hereinafter referred to as "ALLAN-DEANE"), is the owner of 1,071 acres of land located in BERNARDS TOWNSHIP and more particularly known as Lots 1, 4, 6, 6-2, 6-3, 6-4, 21-2, 22-2, 23&35, 24, 28-1, and 32-1 in Block 171, and Lot 1 in Block 158, on the tax map of BERNARDS TOWNSHIP.

18. The ALLAN-DEANE property located in BERNARDS TOWNSHIP is contiguous on the west to an additional 461 acres of undeveloped land owned by Plaintiff in the adjoining Township of Bedminster.

19. Plaintiff's property is all undeveloped and is located northeast of the intersection of Federal Interstate Highway 78 and Federal Interstate Highway 287.

20. ALLAN-DEANE'S land is all located, pursuant to Chapter XII of the Revised General Ordinance of the Township of Bernards (hereinafter referred to as the "BERNARDS TOWNSHIP ZONING ORDINANCE") adopted by Defendant, THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS (hereinafter

NAME

after referred to as the "COMMITTEE"), in Residential 3A district. Under the use regulations applicable to such district, the only uses therein permitted are single-family detached dwellings on three (3) acre lots.

21. On November 1, 1971, ALLAN-DEANE formally applied to Defendant, THE PLANNING BOARD OF THE TOWNSHIP OF BERNARDS (hereinafter referred to as the "BOARD"), for a zoning change after several informal meetings with the BOARD, at which Plaintiff pointed out that the property could be developed at reasonable densities in a responsible manner.

NAME

22. By letter dated November 11, 1971, the BOARD acknowledged receipt of this application together with a proposed amendment to the BERNARDS TOWNSHIP ZONING ORDINANCE, and informed ALLAN-DEANE that it agreed that some corrections of the existing zoning were necessary and it was considering the rezoning, not only at the Plaintiff's property, but the entire TOWNSHIP. The BOARD requested ALLAN-DEANE to be patient in view of the magnitude of their concept to allow the BOARD to educate the public concerning this concept and to test their reaction to it.

NAME

23. ALLAN-DEANE gave the BOARD the time it had requested to study this application in the context of overall master plan revisions.

24. On December 18, 1975, the BOARD formally

adopted a new master plan in which the -ALLAN-DEANE property was designated for sparse residential development.

25. On February 10, 1976, ALLAN-DEANE submitted a revised plan for the development of the property to the BOARD and again requested the BOARD to recommend the rezoning of this property to the COMMITTEE.

26. During ALLAN-DEANE'S presentation of its plan to the BOARD, Plaintiff demonstrated the following:

(a) the designation of the ALLAN-DEANE property for three-acre, single-family residential development was arbitrary;

(b) the ALLAN-DEANE property could be developed at reasonable densities without adverse environmental impact and is suitable for multi-family development?

(c) the master plan and natural resource inventory, insofar as it purports to support the existing zoning, is contradictory and indefensible;

(d) the existing PRN (Planned Residential Neighborhood) zones, to the extent they purport to be areas in which reasonably priced housing might be constructed, are unrealistic. The environmental and zoning constraints in that area work together to make it doubtful that any housing below the \$90,000 price range could be constructed; and

(e) BERNARDS TOWNSHIP has excluded, through its zoning, not only its fair share of the regional need

for low and moderate income housing, but also its fair share of the regional need at all income levels below \$40,000 per year.

27. The development of the ALLAN-DEANE property in accordance with the submitted plan would substantially relieve the existing housing shortage in the BERNARDS TOWNSHIP housing region and would enable persons who can not presently afford to buy or rent housing in BERNARDS TOWNSHIP to live there.

28. Because of the size of the ALLAN-DEANE land holdings and the economies of scale, housing could be constructed on the ALLAN-DEANE property in an environmentally responsible manner and at a price range affordable to all categories of people who might desire to live there, including those of low and moderate income, if BERNARDS TOWNSHIP, by its land use regulations, made such development reasonably possible,

29. ALLAN-DEANE is prepared and has offered to work with the TOWNSHIP OF BERNARDS or some other sponsoring agency to assure that a substantial portion of the multi-family homes constructed on the property would be eligible for rent subsidies in order to help BERNARDS TOWNSHIP to provide fully for its fair share of the regional housing need at all income levels.

THE BERNARDS TOWNSHIP EXCLUSIONARY ZONING SCHEME.

30. The BERNARDS TOWNSHIP ZONING ORDINANCE, by its

very terms and provisions, restricts housing uses in BERNARDS TOWNSHIP to persons who can afford to live in single-family dwellings located on valuable lots of considerable size. The effect of the design and structure of the zoning ordinance is to unnecessarily increase housing costs. This ordinance, by way of example, contains the following unique exclusionary provisions, all of which have the effect of driving upward the costs of housing:

(a) efficiency units are not permitted anywhere in BERNARDS TOWNSHIP and the smallest permitted unit is a one bedroom unit with a minimum of 660 square feet;

(b) apartment units are prohibited. (Although the PRN purposes indicate apartments are permitted, no unit may be placed above another unit);

(c) the minimum floor area requirements for one and two bedroom units in the PRN zone are excessive and bear no relationship to health, safety or welfare;

(d) the maximum gross density permitted is extremely low, requiring high-cost private units and precluding subsidized units;

(e) the filing fee required to be paid upon the submission of an environment impact report is excessive and bears no rational relationship to municipal costs in reviewing such reports, and is a patently unlawful revenue measure. The fee which ALLAN-DEANE would be required to pay in order to have its site plan merely re-

viewed would be in excess of \$165,000 under the BERNARDS TOWNSHIP fee schedule; and

(f) the only areas zoned for multi-family housing, the PRN zones, are the most environmentally sensitive and inappropriate areas in the entire TOWNSHIP. Both PRN zones have substantial areas in the flood plain. The entire PRN-8 zone and two-thirds of the PRN-6 zone are proposed, because of their unsuitability for development, as open-space in the County Master Plan; the United States Corps of Engineers has proposed that much of this area be a flood control reservoir; and the Upper Passaic River Environmental Council has recommended that 110 acres in these zones be preserved in open space. Much of the remaining land in the PRN zone is in institutional use and is not reasonably available for development. Because of the physical constraints, the low net density requirement and other exclusionary land use requirements, the actual housing unit yield from these areas should be considerably less than one unit per acre. The average housing unit cost of construction in this area should exceed \$90,000 per unit in 1976 dollars; and

(g) the BERNARDS TOWNSHIP ZONING ORDINANCE prohibits mobile homes in the entire TOWNSHIP.

31. The BOARD drafted and the COMMITTEE enacted on May 17, 1977, an Ordinance (Ordinance #425 of the BERNARDS

TOWNSHIP ORDINANCES) to replace Ordinance 385 which had provided on its face for 354 units of low and moderate income housing, but contained provisions which insured that no such housing could be constructed. The new Ordinance #425 purports to comply with the decision of the Supreme Court of New Jersey in Oakwood at Madison, Inc. et al, vs. Township of Madison, et al, in that it allegedly permits the construction of 385 units of "least cost" housing in Bernards Township. The Ordinance, as amended, remains exclusionary for, inter alia, the following reasons:

(a) the Ordinance provides no controls to insure that the housing constructed thereunder will indeed be "least cost"; nothing in the Ordinance would prevent a developer from constructing and marketing dwelling units approved pursuant to this Ordinance at costs which would render them unaffordable to most of the population within the BERNARDS TOWNSHIP housing region.

(b) there is no requirement in this Ordinance which ensures that any units will be made available to persons of even moderate income;

(c) the requirement in paragraph 1 (c) of the Ordinance, which provides that the distribution of subsidized units in any complex as a whole shall likewise apply within each category of dwelling unit size set forth in paragraph 2 (k), which in turn prescribes a rigid mix of 1, 2, 3 and 4 bedroom units, imposes constraints so inflexible as to virtually

preclude a feasible Section 8 development or other subsidy programs;

(d) the Ordinance in 2 (g) requires a maximum density of 6 dwelling units per acre, a density substantially below customary densities of multi-family development, which combined with the maximum height requirement, found in 2 (1), of 2h stories results in higher than necessary costs per unit for land and for site improvements;

(e) the Ordinance in paragraph 5 (j) requires one parking lot for each bedroom, a cost generating requirement which is vastly in excess of the standards of any federal or State agency;

(f) the Ordinance contains no safeguards, such as ceiling standards for lot size, floor area, and the like, to prevent development of housing that is clearly not "least cost";

(g) the Ordinance does not provide, as is called for in the Madison decision, a reasonable cushion over the number of contemplated least cost units deemed necessary under even BERNARDS TOWNSHIP'S own ingeniously, understated "fair share" formula;

(h) the 354 units of very low and low income housing provided for in the Ordinance represent only a small fraction of BERNARDS TOWNSHIP'S "fair share" of the regional housing need;

(i) the Ordinance contains the same exclusionary provisions (such as the prohibition of efficiency units, the prohibition of apartments, and an exceedingly low permitted density), found elsewhere in the BERNARDS TOWNSHIP Zoning Ordinance, all of which have the effect of driving upward the cost of housing.

32. The BERNARDS TOWNSHIP LAND SUBDIVISION ORDINANCE, by its very terms and provisions, unnecessarily increases housing and development costs.

33. The effect of these requirements, together with the density and floor area ratio requirements, the open space requirements and the complex and expensive environmental impact statement required, assures that any housing built in BERNARDS TOWNSHIP will be more expensive than housing similarly constructed elsewhere. The governing body of BERNARDS TOWNSHIP has failed to adjust its zoning regulations so as to render possible and feasible the "least cost" housing, consistent with minimum standards of health and safety, which private industry will undertake, in an amount sufficient to satisfy the deficit in the municipality's fair share. This failure is both quantitative and qualitative. Insufficient areas are zoned to permit least cost housing, and the zoning restrictions are such as to prevent production of units at least cost consistent with health and safety requirements.

SOCIAL CC:-;SEQUENCES OF BERNARD TOWNSHIP'S
EXCLUSIONARY PRACTICES.

34. The COMMITTEE and the BOARD have deliberately sought to preserve BERNARDS TOWNSHIP as an enclave of affluence and social homogeneity by influencing County and State agencies and agencies of the Federal government to adopt policies which make it difficult and expensive for developers to construct housing at reasonable price ranges. In particular, the BOARD and the COMMITTEE have:

(a) influenced the Somerset County Planning Board to designate the ALLAN-DEANE property and other areas suitable for multi-family housing as areas not intended to be sewerred; and

(b) influenced the Somerset County Planning Board to include areas suitable for multi-family dwellings, including the ALLAN-DEANE property, in its master plan as an area to be developed in a sparse residential mode,

35. Although BERNARDS TOWNSHIP presently has over 7,000 acres of vacant, residentially zoned land, that land is physically and economically available, because of BERNARD TOWNSHIP'S system of land use regulations, to only the upper 5%, by income, of New Jersey's population.

36. There is a critical housing shortage in New Jersey generally and in the BERNARDS TOWNSHIP housing re-

Name
gion specifically, and that housing need has been added to and increased by the actions of the COMMITTEE which rezoned an area at the request of the American Telephone and Telegraph Company in order to permit it to build a world headquarters in BERNARDS TOWNSHIP.

Name
37. The A.T.&T. complex in BERNARDS TOWNSHIP will employ, when it is completed, an estimated 3,500 people at a broad range of income levels who will require an estimated 2,850 homes.

Name
38. The A.T.&T. office complex in BERNARDS TOWNSHIP will, when it is completed in 1978, pay annual property taxes to BERNARDS TOWNSHIP of approximately three and one-half million dollars. These property taxes will constitute almost one-half of BERNARD TOWNSHIP'S total tax receipts.

Name
39. BERNARDS TOWNSHIP, which already enjoys, in proportion to their taxpayers incomes, one of the lowest tax rates in New Jersey, will be able, due to the taxes it will receive from A.T.&T., to reduce its tax rates even further.

Name
40. The great majority of the employees of A.T.&T. in BERNARDS TOWNSHIP will be unable to afford housing for their families within BERNARDS TOWNSHIP because of the TOWNSHIP'S land use regulations. Many of these workers will be locked out, because of their financial resources, of the other suburban residential areas

surrounding BERNARDS TOWNSHIP and will have to commute excessive distances to their jobs.

41. A.T.&T.'s Long Lines Division is in the process of constructing their headquarters just north of the ALLAN-DEANE property in neighboring Bedminster Township. That facility will employ an estimated additional 3,500 people who will require an additional 2,850 homes. The majority of these workers will be excluded, because of their financial resources, from BERNARDS TOWNSHIP and the suburban municipalities which surround it, and will have to commute excessive distances by automobile to their jobs.

42. The ALLAN-DEANE property, because of its unique locational relationship to both the Long Lines and the A.T.&T. Headquarters buildings, is in a position to provide a good portion of the housing needs of their proposed 7,000 employees.

43. The COMMITTEE and the BOARD failed to act reasonably and in furtherance of a legitimate comprehensive plan for the zoning of the entire municipality when they rezoned for A.T.&T., but chose to ignore the housing needs of A.T.&T.'s employees as well as the regional housing needs.

44. The BERNARDS TOWNSHIP ZONING ORDINANCE and its entire system of land use regulations is invalid because it has a substantial external impact contrary to the general welfare. BERNARDS TOWNSHIP'S accommodation of large employment generators, coupled with BERNARDS TOWNSHIP'S exclusi

Izna, use policies have:

(a) imposed an unfair burden on other municipalities within the BERNARDS TOWNSHIP housing region to provide housing for persons in the lower and middle income spectrums employed in BERNARDS TOWNSHIP;

(b) deprived other communities, cities and urban areas already providing more than their fair share of housing for all categories of persons of the ratables they need to create a better balance for their community to pay the educational and governmental costs associated with residential development;

(c) contributed adversely to a national and local energy crisis by creating a physical and economic need for long distance commuting for persons employed within BERNARDS TOWNSHIP;

(d) imposed an unfair burden on workers employed in the BERNARDS TOWNSHIP housing region, most of whom have no access to public mass transit and for whom transportation is both time consuming and prohibitively expensive; and

(e.) contributed to the process of urban decay presently afflicting our cities by depriving these cities of tax ratables while requiring them, at the same time, to continue to bear the educational and governmental costs associated v/ith housing.

VNHEREFORE, Plaintiff demands judgment as follows:

A. that the BERNARDS TOWNSHIP ZONING ORDINANCE be declared invalid in its entirety;

B. that those portions of the BERNARDS TOWNSHIP LAND SUBDIVISION ORDINANCE, together with any other land use regulations which the Court finds unreasonably increases housing costs, be declared invalid;

C. that the COMMITTEE be ordered to rezone the ALLAN-DEANE property so as to permit the development of housing thereon at reasonable densities and at reasonable costs;

D. that the COMMITTEE and the BOARD be ordered to affirmatively provide for their fair share of the regional housing need at all family income levels, including low and moderate and specifically to:

(1) establish a Housing Authority to sponsor and develop low and moderate income housing in BERNARDS TOWNSHIP;

(2) fund that Housing Authority not only with federal and state housing grants but also with a substantial portion of the taxes paid to BERNARDS TOWNSHIP each year by A.T.&T.;

(3) plan and provide for, out of municipal tax revenues, the extension of sewers, water, roads and other utilities to areas zoned for multi-family development;

(4) cooperate with ALLAN-DEANE to keep housing and development costs down in order to assure the

development on the ALLAIN-DLANE tract of an appropriate variety of housing types, including housing units eligible to be taken over by the BERNARDS TOWNSHIP Housing Authority under a federal rent subsidy program;

E. that Defendants pay to Plaintiff the costs of suit;

F. that BERNARDS TOWNSHIP be restrained from permitting further occupancy of the A.T.&T. facility in Basking Ridge until such time as it can provide housing for those employees;

G. that BERNARDS TOWNSHIP be restrained from permitting any further nonresidential development of the TOWNSHIP until it can meet its fair share of the regional housing need;

H. that BERNARDS TOWNSHIP be required to distribute to other municipalities within its housing region an apportioned fair share of its tax revenues; and

I. such other relief which this Court may deem appropriate.

SECOND COUNT

1. Plaintiff repeats the allegations contained in the First Count of the Complaint as if set forth herein at length.

2. BERNARDS TOWNSHIP has been able, because of this low tax rate and because of its unique location with

respect to two major federal interstate highways (paid for by the United States of America), to unfairly compete with and attract valuable tax rates away from our cities and urban areas to further reduce its tax rate.

3. BERNARDS TOWNSHIP has refused or neglected to provide for any substantial portion of the housing needs of the employees of the company which it has induced to leave an urban area and has left to other municipalities, our cities and urban areas, the responsibility of providing adequate housing at reasonable costs for said employees.

4. The members of the COMMITTEE and the BOARD have conclusively demonstrated through their words and actions that, although they are aware of their legal obligation to affirmatively provide for BERNARD TOWNSHIPS fair share of the regional housing need, they are prepared, at any cost, to maintain BERNARDS TOWNSHIP as an enclave of affluence and social homogeneity and to use every delaying tactic towards that end.

5. The general welfare of all citizens of New Jersey will be irreparably damaged by any delay in the resolution of this case. While this matter remains in litigation, the employees of A.T.&T. and other employees in the BERNARDS TOWNSHIP housing region will be seeking homes in areas far from their place of employment, other municipalities and cities will be paying educational and governmental ex-

penses associated with housing and irreversible long range patterns of commutation from home to work will be established.

WHEREFORE, Plaintiff demands judgment as follows:

A. that this Court suspend the COMMITTEE'S and the BOARD'S power to plan and zone BERNARDS TOWNSHIP;

B. that this Court appoint a receiver or trustee for BERNARDS TOWNSHIP with the power to appoint planners, housing consultants and consultants in the field of local finance;

C. that this Court order the COMMITTEE to pay over to the receiver or trustee all tax revenues received from non-residential uses in BERNARDS TOWNSHIP;

D. that the COMMITTEE be required, during the period of receivership, to support its schools and governmental services out of remaining funds;

E. that the receiver or trustee be authorized and directed to undertake comprehensive planning and to rezone BERNARDS TOWNSHIP into a reasonably-balanced community, providing for its fair share of the regional housing need at every income level;

F. that the receiver or trustee be authorized to create and fund a HOUSING AUTHORITY and to otherwise spend the funds entrusted to him to affirmatively provide for the regional housing need; and

G. that this Court issue such other orders or relief as may be deemed appropriate.

THIRD COUNT

1. Plaintiff repeats all of the allegations contained in the First and Second Counts of the Complaint as if set forth herein at length.

2. The BERNARDS TOWNSHIP ZONING ORDINANCE, as applied to the Plaintiff's property, is unreasonable, arbitrary and capricious.

3. The BERNARDS TOWNSHIP ZONING ORDINANCE, as applied to Plaintiff's property, is discriminatory and exclusionary,

(i WHEREFORE, Plaintiff demands the following:

A. that Defendants be directed to permit the Plaintiff to develop its property at a reasonable density for multi-family housing; and

B. that those portions of the ZONING ORDINANCE, LAND SUBDIVISION ORDINANCE, and other building and land use regulations, which the Court finds unnecessarily increase housing costs, be declared invalid as applied to Plaintiff.

FOURTH COUNT

1. Plaintiff repeats the allegations contained in the First, Second and Third Counts of the Complaint, as if set forth herein at length.

2. Plaintiff alleges that the BERNARDS TOWNSHIP

ZONING ORDINANCE requiring a minimum acreage of three acres for residential dwellings is, as applied to Plaintiff's property, in violation of the State and Federal constitution in that it deprives Plaintiff of its property without due process of law and has denied to Plaintiff the equal protection of the laws.

WHEREFORE, Plaintiff demands that Defendants pay Plaintiff just compensation for depriving Plaintiff of its property without due process of law.

FIFTH COUNT

1. Plaintiff repeats the allegations contained in the First, Second, Third and Fourth Counts of the Complaint, as if set forth herein at length.

2. All three branches of State Government, the Legislature, the Judiciary and the Executive, have recognized that there exists a serious shortage of decent living accommodations in New Jersey at rents and prices affordable to a broad spectrum of this State's citizens and, have determined that the general welfare requires that such housing be provided.

3. THE SOMERSET COUNTY PLANNING BOARD (hereinafter referred to as the "COUNTY BOARD") has the duty and is required by basic planning principles, by N.J.S.A. 40:27-2, and by the United States and the New Jersey Constitutions to

promote the general welfare and to encourage all municipalities within the County to affirmatively provide for the regional housing need.

4. The COUNTY BOARD has conspired with BERNARDS TOWNSHIP and other municipalities in the Somerset Hills area to preserve the exclusionary zoning in that area of Somerset County.

5. The COUNTY BOARD has encouraged BERNARDS TOWNSHIP and the BOARD and other municipalities within the Somerset Hills area to adopt land use policies which have a substantial external impact contrary to the general welfare and which:

(a) impose an unfair housing burden on other municipalities, including municipalities in Somerset County, within the BERNARDS TOWNSHIP housing region;

(b) deprive other communities, cities and urban areas, already providing more than their fair share of housing for all categories of persons, of the ratables they need to create a better balance for their communities to pay educational and governmental costs engendered by residential development;

(c) contributed adversely to a national and local energy crisis by creating a physical and economic need for long distance commuting for persons employed within BERNARDS TOWNSHIP, Bedminster Township and Far Hills Borough;

(d) imposed an unfair burden on workers employed in the Somerset Hills area, most of whom have no access to public mass transit and for whom transportation is both time consuming and prohibitively expensive; and

(e) are in clear violation of the existing statutory and case law requirements that each municipality plan comprehensively for a reasonably balanced community and to affirmatively meet its fair share of the regional housing needs of persons employed within the housing region.

6. The COUNTY BOARD has adopted a County Master Plan which mirrors the existing desire of BERNARDS TOWNSHIP and of other communities in the Somerset Hills.

7. The County Master Plan, insofar as it includes the ALLAN-DEANE property, is arbitrary and capricious.

8. The COUNTY BOARD has conspired with BERNARDS TOWNSHIP and other municipalities within the Somerset Hills area to hold secret meetings in plain violation of the Open Public Meetings Act for the expressed purpose of preserving BERNARDS TOWNSHIP and other municipalities from residential developments of a density and on a scale which would economically permit housing to be provided to persons of low or moderate incomes.

9. The COUNTY BOARD, in reckless disregard of the public welfare, has:

(a) designated the ALLAN-DEANE property and

other areas suitable for multi-family housing as areas not intended to be sewerred;

(b) influenced the New Jersey Department of Transportation to request the redesign of the proposed U.S. 287 interchange constructed for A.T.&T. so that it would be more difficult for that interchange to serve undeveloped areas of BERNARDS TOWNSHIP and Bedminster Township, including the ALLAN-DEANE property, which had applied for rezoning for a multi-family use;

(c) attempted to influence the State Department of Environmental Protection and the Federal Environmental Protection Agency to adopt sewer funding policies inimical to the development of housing in the Somerset Hills area;

(d) totally ignored the housing needs of persons employed in the BERNARDS TOWNSHIP housing region;

(e) encouraged and allowed its employee, the Director of the COUNTY BOARD staff, to publicly attack State housing policy and to discourage municipalities in Somerset County from providing for their fair share of the regional housing need,

WHEREFORE, Plaintiff demands the following:

A. that the COUNTY BOARD be directed to reorder its priorities and affirmatively encourage municipalities in Somerset County to meet the housing needs of persons employed within the Somerset County housing region generally and,

specifically, the need of persons employed in the two
H.T.&T. facilities in the Somerset Hills area;

B. that the COUNTY BOARD be directed to adopt a
new master plan consistent with the obligation of all muni-
cipalities within Somerset County to provide for their fair
share of the regional housing need;

Amend

C. that the COUNTY BOARD be directed to cooper-
ate affirmatively with ALLAN-DEANE and other prospective
developers of new housing at price ranges below what is now
available in the Somerset Hills area to solve the environ-
mental problems associated with larger scale developments
and to service such properties with utilities and adequate
transportation facilities;

D. that the existing County Master Plan be declared
invalid; and

E. such other relief which this Court may deem
appropriate.

MASON, GRIFFITH & PIERSON
Attorneys for Plaintiff

By: _____
Henry A. Hill, Jr.

Dated:

COURT, SOMERSET COUNTY, LAW DIVISION

PRETRIAL ORDER

Presented by Judge

on

Superior No. L—

County No. C—

The parties to this action, by their attorneys, having appeared before the Court at a pretrial conference on the above data, the following action was taken:

1. **HABEAS CORPUS:** An action in lieu of prerogative writ by Allan-Pearce against Somerset County Planning Board. Plaintiff challenges the validity of the zoning ordinance and the validity of the County Master Plan and further alleges conspiracy between and among the defendants.

2. **ADMISSIONS:** None other than those previously set forth in pleadings or in response to requests for admissions.

* and **FACTUAL ALLEGATIONS:**

As to Plaintiff Allan-Pearce, the factual allegations set forth in the pleadings are as follows:

In re: (captioned Town of Somers, the

facts set forth in the pleadings are as follows: as set forth in the

twelve, attached hereto, and in the pleading*.

As to the defendant Sorcrept, as spelled out in the a^iier.dur.v. attached hereto, as further spelled out in the ple&rfinrr.

I. NAMAGJR A\7 IKJITY CLAIM: Flairtiffe' clair for damar.es it set forth in the count four of the complaint. Nofi* of the defendants cakes ar.v clair for far.<<.rcc*

t. AM/::KDM1'\\"Tr! The nsik^Kint antver of the Township is amended as follow-*: *ar<5 2, 3!t>i fcpa^te Tcfenpe' 'lernardc Towrithip has complied with the racuirarnts of Southern Lurlinton County K.A.A.CP* v, Township of Nount Laurel, f7 P* *T. 1\$1 (1?7S) and Oakwood at Madison, Inc. v, ^ovmshiy of fiaciior , 7; K.J. Ml (1577) Jy the enactrent of Ordinance i>'c.

if

fc?l on May ?E, 1S77, v!kloh T>rov^r_t\$ xoninr for least co>>t housing.

The anwer of the defendant⁴Somerset County it amended

to incorporate fcv reference the. 30th separate defense of th<>> Town

Eiir of Hern<rGE> referred to above.

7. UKGAL ISF-JEC At'D !VIDdiCL TRCBLniS:

1, lor Plaintiff sec exhibit h attache r>><<retc, number , A thrcurh !<<.

<>> For t)ic aefertfant Bernards Township fire nurlr? 7 of itf pr*tri i metriorfluc¹ir , ran 1wr, nux^bcr 7,^ thtooujih r. ,-<<s cttrrie

3, Tor t)ir defendant Sor^trret County ser its ^r'triflj cr'cr r,r-rtcri>n.Juri. p-tr^r tve. nurihcr 7, / t.irourh !* , at At tache.

page 3

* LOCAL ISCURS AaA'.T^Hri:: none

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 rsvfrff*> povernir.r lanri unr in *«rrr.«rfls Town•Mr* an*' Somerset County•

10 E:?'TP.T VIIT'. 'ESSr:?: Jic 3in:it. Nai^ec and qualifications of expert
 witnesses not previously curried arc to be exchanged by March 30, 1978.
 Additional T9^ortB₃ if any, ara to be furuifih«d by March 30, 1978.

11 EMITS: l«ri«fe vill be euh^itta⁴ hy all parties. Plaintiffs¹
 fcrirfa are to be cubnlitteri by April 20, 11>79, Briefs of both defendants
 are duo by HAV 90. 1979. All issues not briefed will be deemed abandone.'.

i: op.no. or OPLIIN; AM:^ ciozvr>. Usual.

13 ANY BKIE CIIET H^TIKRS APJ!!TP VPCK: None.

1>* T?,IAL COIWErLi For the plaintiff, Henry A. Kill, Jr», and
 Hannoeh, Sterr , Weisir^r. f Besser» CBK co-counsel for plaintiff.

for Pefer:dantBernards Tovnehit?* Alfred L. Ferrute

Janen r^vidtor., co-eoui.Bel.

For fffr*.dar«t fionfruct County, John Riohar«isor. •.


i\ mir/.T?! Lrur^ or T^IM: All counsel estimate th*t th* trisl vil.
 last at least 12 weeks.

1. **EMERGENCY CALL:** Trial is to be delayed* until the completion of the Allan-Tar* -v- Northampton; currently bring trial before Justice Leach.

1. **ARRANGING TRIAL CONFERENCE:**

I, All actions reasonably related to its jurisdiction, etc. decisions, laws of the Cape are to be brought with it in view to discontinue prior to March 30, 1979.

It was discussed by the Court that the trial be held or a continuance; Justice and Justice concurred in that suggestion.


HONORABLE DAVID G. LUCAS, JSC

WILLIAM A. JILLIS, ESQ.

ALFRED L. FERTUSOJI, ESQ.

JAMES DAVIDSON, ESQ.

JAMES P. HICKEY, ESQ.

RECEIVED

M. G. & P.
H.A.H.

ORIGINAL FILED
3-19-50
W. LEWIS BAMBRICK
Clerk

MASON. GRIFFIN & PIERSON
201 NASSAU STREET
PRINCETON, N J 08540
v609i 921-6543

ATTORNEYS FOR Plaintiff, The Allan-Deane Corporation

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

L-25645-75

THE ALLAN-DEANE CORPORATION,
a Delaware Corporation
qualified to do business in
the State of New Jersey,

Plaintiff,

vs.

THE TOWNSHIP OF BERNARDS,
IN THE COUNTY OF SOMERSET,
a municipal corporation of the
State of New Jersey, et al.,

Defendant.

Civil Action

FINAL JUDGMENT

This matter having come before the Court by way of an
action in lieu of prerogative writ, instituted by Plaintiff-
Landowner in 1976 to attack the Land Use Ordinances of Defendant-
Municipality on the grounds that they were exclusionary and that
the three-acre zoning of Plaintiff's property was arbitrary and

capricious, and the Court having heard the testimony of the Plaintiff's and Defendant's consultants with regard to the substantial revisions of the Land Use Ordinances in Bernards enacted since the institution of this litigation and proposed to be enacted, and having concluded as follows:

1. Since the institution of this litigation, Bernards Township has substantially revised those sections of its Zoning Ordinance regulating residential densities so as to make affirmatively possible a substantial quantity of multi-family housing.

2. Bernards Township is now affirmatively providing for its fair share of the regional housing needs for least cost housing.

3. Defendant-Municipality and Planning Board have authorized their attorneys to represent to the Court that the Township is now in the process of revising its Master Plan and is now prepared to rezone those portions of the Township, including the Allan-Deane property, which are located within a zoning district where the only uses now permitted are single-family detached dwellings on three-acre lots of a regulated configuration, so as to permit planned unit developments with flexible standards, at a gross density of up to .5 dwelling units per acre in the Passaic Watershed and gross density of 2 dwelling units per acre in the Raritan

Watershed. These proposed revisions are consistent with the regional planning for the area, reasonably balance the land use goal of maintaining low gross residential densities in the area with the municipal obligation to allow landowners an economically feasible use, and will provide for a greater variety and choice of housing for all income groups.

4. The flexibility of the Township's proposed revisions, moreover, is reasonable because:

a. Low density use of land is achieved without imposition of arbitrary lot size requirements.

b. Clustering makes possible low density housing at minimum public improvement costs and thus removes the cost generating features normally associated with low density.

c. By being able to cluster on their best land, developers have an economic incentive not to attempt development on land least suitable for development.

d. The opportunities for extensive amounts of open spaces are provided, thus preserving most of the natural landscape.

5. Plaintiff, Allan-Deane Corporation, owns approximately 1,046 acres in Bernards Township, of which approximately 500 acres are located in the Raritan

Watershed on the border of Bedminster Township and 545 acres are located in the Passaic Watershed.

It is on this 72nd day of September, 1980,

ORDERED as follows:

1.(a) The Township of Bernards shall revise its Land Use Ordinances within ninety (90) days of the date hereof so as to permit 1,275 units of mixed housing types and 50,000 square feet of commercial uses on the Allan-Deane property in Bernards Township which shall be allocated as follows and as set forth in the letter agreement dated February 1, 1980 attached hereto;

1. In the Raritan Watershed (501 acres x 2 dwelling units per acre) - 1002 units of housing.

2. In the Passaic Watershed (545 acres x .5 dwelling units per acre) - 273 units of housing.

3. The number of units permitted to be constructed in each watershed and the total number of units to be constructed on land presently owned by the Allan-Deane Corporation shall not be increased or decreased due to any later engineering determination which may change the total acreage or the acreage within either watershed.

(b) The Township of Bernards shall update or revise its Master Plan to reflect the changes in its development regulations resulting from the implementation of this Order and the letter agreement dated February 1, 1980 within twelve (12) months of the date hereof.

2. The Land Use Ordinances regulating development on the Allan-Deane property shall:

a. Allow the 1002 housing units to be constructed on the Raritan Basin to be sewerred through a sewer plant to be located in Bedminster.

b. Permit the clustering of a variety of types of housing units under flexible performance standards.

c. Contain no floor area ratios (F.A.R.) limitations or coverage requirements nor attempt to regulate maximum net densities, lot areas or bedroom mixes in the residential areas.

d. Be designed to insure road and public facilities of durable quality at minimum cost.

e. Allow public roads at a grade of up to 8% and shall require pavement widths of no more than 30 feet for collector roads and 24 feet for other public roads.

f. Allow private roads.

g. Permit alternate methods of drainage such as swales and natural drainage courses which meet the Township's performance criteria.

h. Comply with the Municipal Land Use Law.

i. Not be unduly cost generating or be inconsistent with any provision of this Order.

3. Notwithstanding any other provision in this Order, the Township may require that up to 35% of the total units constructed by Allan-Deane shall be single-family and/or two-family attached units.

4. The Health Ordinances for Bernards Township shall be amended by the Board of Health in order to permit the construction within the Township of all systems approved by the State and the Township shall support alternative onsite sewage disposal technology.

5. The Allan-Deane Corporation shall be required, as a condition of final site plan approval, to deed to Bernards Township a park site of approximately 100 acres, within the Passaic Basin, the boundaries of which shall be determined during the site plan application process. Allan-Deane shall also be required, as a condition **for** site plan approval, to provide the Township with **a** school site of approximately 20 acres. None of the above acreage **to be deeded to** the Township **shall be** at the expense of the Township nor shall they **reduce the number of** units **of** development permitted under the terms of this Order. Such donated acreage may be included by Allan-Deane in the computation of open space.

6. This action is dismissed, upon the stipulation of the parties, without prejudice **to Allan-Deane's** right to later challenge any existing or later adopted **Land** Use Ordinance which

is inconsistent with the terms of this Order or the letter agreement of February 1, 1980 attached hereto and Plaintiff and Defendant, The Township of Bernards, are directed to comply with the terms of this Order and the letter agreement of February 1, 1980.



Thomas Leahy, J.S.C.

We hereby consent to the form and entry of the
within Order.

For The Allan-Deane Corporation
MASON, GRIFFIN & PIERSON

By: Henry A. Hill, Jr.
Henry A. Hill, Jr.

HANNOCH, VJEISMAN, STERN &
BESSER

By: V, "
Dean A. Gaver

For The Township of Bernards,
The Township Committee of The
Township of Bernards, The
Planning Board of the Township
of Bernards

McCARTER & ENGLISH

By: Alfred L. Ferguson
Alfred L. Ferguson

FARRELL, CURTIS, CARLIN &
DAVIDSOK

By: James E. Davidson
James E. Davidson

I hereby consent to the form of the within Order.

For the Somerset County Planning
Board

John F. Richardson
John F. Richardson

5/10/79

B. THOMAS LEAHY, J.S.C.



LAW OFFICES OF
LANIGAN, O'CONNELL AND HIRSH
A PROFESSIONAL CORPORATION
150 NORTH FINLEY AVENUE
BASKING RIDGE, NEW JERSEY 07920
(201) 766-5270
ATTORNEYS FOR Plaintiffs

THEODORE Z- LORENC, etals.,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION : SOMERSET COUNTY
	:	DOCKET NO. L-6237-74 P.W.
Plaintiffs,	:	
	:	
- v -	:	CIVIL ACTION
	:	
THE TOWNSHIP OF BERNARDS, etal.,	:	ORDER FOR SUPPLEMENTAL JUDGMENT
	:	
Defendants.	:	

The matter having come before the Court on remand from the Superior Court Appellate Division and the Court having heard and considered the argument of the attorneys for the respective parties; and the parties hereto having consented

It is, therefore, on this ⁴/₁₀ day of May, 1979,

ORDERED that a supplemental judgment be entered to the extent and in the particulars as set forth below:

3. THOMAS LEAHY, J.S.C.

The Court having considered the agreement of the parties and for the purposes of bringing this litigation to a conclusion, the following Judgment will be entered by the Court, which judgment will be effective immediately.

For the purposes of this judgment, the Court has found and the parties have agreed as follows:

1. By the decision of this Court dated March 13, 1979, a judgment was entered which indicated that this Court would appoint an impartial zoning and planning expert who would be directed to file a report and testify as to a recommendation for the achievement by defendant, Bernards Township, of compliance with the Court's direction to appropriately increase the number of dwelling units per site acre.

2. Since the date of such decision, the Township of Bernards has considered various alternatives to comply with the Court's previous decision and has arrived at an alternative method of complying with the dictates of the earlier decisions of this Court and the Appellate Division, which opinions indicated that the Township should appropriately increase the dwelling units per site acre in the PRN zones in order to comply with the decisions of Mount Laurel and Madison Township cases.

3. The Township intends to adopt an amendment to its zoning ordinance which shall incorporate the specifications and criteria hereinafter set forth in order to meet the earlier decision. Plaintiffs, Willis F. Sage, Merwin Sage and William W. Lanigan have reviewed the proposed zoning amendment and find it satisfactory to them as hereinafter set forth.

4. The Court has reviewed the specifications and criteria proposed to be included in such zoning amendment, which amendment permits a substantial number of multi-family dwellings and single-family dwellings on small lots and which amendment meets the requirements of the earlier decisions of the Appellate Division and this Court in providing for an appropriate increase in the dwelling units per site acre consistent with the decisions of Mount Laurel and Madison Township cases.

5. The proposed zoning amendment shall include the following provisions and considerations which shall affect the land included in Ordinance #505 and in addition thereto, the property owned by Bonnie Brae Farm (being Lots 3, 4, 5, 17, 1 and 19 in Block 175) but excluding therefrom approximately 100 acres located as part of Lot 17 which is currently part of and surrounding the school.

(a) With respect to the property located within the new zone, all properties located below elevation 219 (for properties west of Acken Road), elevation 218 (for properties between Acken Road and King George Road) and elevation 216 (for properties east of King George Road) shall be considered wet-land and all properties located at or above such elevations respectively shall be considered dry land.

(b) All construction on dry land shall be permitted at a density of 5.5 units per acre.

(c) All wet-land will have a transferable development right for construction purposes of one unit per acre.

(d) A maximum of 65% of all dry lands may be developed as multi-family units.

(e) The balance of the lands developed will be in single-family units.

(f) Multi-family dwellings shall mean studio apartments, one-or-more bedroom garden apartments and townhouses as well as duplex units and twinhouses.

(g) The proposed ordinance shall contain development regulations relating to transition zones, open space, parking and other normal development regulations, none of which shall be unduly cost generating nor result in the reduction of the number or type of units otherwise permitted

(h) Such proposed ordinance shall be presented to this Court within 60 days from the date hereof for its

review prior to adoption to ascertain that said ordinance complies with the Court's earlier decision and this judgment

.6. As to the lands of plaintiff Sages, the parties have agreed and stipulated and the Court so finds the following:

(a) With respect to the Sage property, it is agreed that they are the owners of 326 acres, 127 of which are referred to as wet-land and 199 of which are referred to as dry land.

(b) All construction will take place on lands located above elevation 218.

(c) • Within ¹⁵ days of the entry of this judgment, the Township Planning Consultant or Consultants, Marshall Frost and Peter Abeles will prepare a development plan for the Sage property incorporating the following factors:

(1) The Plan will consist of 1,222 units, 1,016 of which will be multi-family, 206 of which will be single-family residences.

(2) The development plan will provide access from the site to both Acken Road and King George Road and will include but not be limited to road and parking layout; drainage pattern and -detention requirements; utility plan;

provision for recreation; multi-family dwelling unit - types and location; single-family lot lines; transition zones; general grading and landscaping.

(3) The plaintiff shall have the right to have a planner of their choice consult with the Township Consultant in the preparation of this development plan. Upon completion of the development plan, plaintiffs (as to the Sage property) shall have the right to construct the number of units as set forth herein and as shown on such plan. Prior to construction, plaintiff shall submit to the Planning Board all necessary documents, for site plan review, the submission and review of such documents shall be accomplished without undue delay, shall not be inconsistent with the said development plan and shall not result in the reduction of the number of units to be permitted as shown on said approved development plan.

(d) The Township will approve the construction of a package treatment plan for the development plan which shall be consistent with Ordinance # ^f\$ relating to individual sewage systems.

(e) This judgment as it affects the development of the Sage properties will run with the land and may not be changed or modified by any future ordinance of the Township until completion of development.

We hereby consent to the making and entry of the within Judgment.


LANIGAN, O'CONNELL, HIRSH & JACOBS
Attorneys for Plaintiffs Alice J.
Hansen, trustee, Willis F. Sage,
William W. Lanigan and Herwin Sage.

By: 
Daniel F. O'Connell

Theodore Z. Lorenc, Plaintiff

By: 
Theodore Z. Lorenc, pro se

~~Louis J. Herr, Sam Wishnie, Marion
Wishnie, executrix of the Estate of
Harry Wisfin*te>*«deceased, Plaintiffs~~

By: 
I. B. Jaffee

FARRELL, CURTIS, CARLIN, DAVIDSON & MAHR
Attorneys for Defendant Township of
Bernards

By: 
James E. Davidson

KERBY, COOPER, SCHAUL & GARVIN
Attorneys for Defendant The Planning
Board of the Township of Bernards

By: 
Arthur H. Garvin III

BRENER, WALLACK & HILL
ATTORNEYS AT LAW

2 4 CHAMBERS STREET
PRINCETON, NEW JERSEY 06840

(609) B24-0806

CABLE: "PR IN LAW" PRINCETON

TELECOPIER (609) 924-6239

TELEX 837652

POST OFFICE BOX 506
PLUCKEMIN, NEW JERSEY 07771
12011 65B - 413C.

HARRY BRENER
HENRY A. HILL
MICHAEL D. MASANOFF**
ALAN M. WALLACK*

GULIET D. MIRSCM
GERARD H. HANSON
J. CHARLES SMEAR**
EDWARD O. PENN+
KENNETH I. HYMAN
NATHAN M. EDELSTEIN+
THOMAS L. HOFSTETTER**
ROBERT W. B*CSO, JR.*
EDWARD M. BERNSTEIN'
MARILYN S. SILVIA
THOMAS J. HALL
SUZANNE M. LAROBARDIER

*MEMBER OF N. J. & C. BAR
**MEMBER OF N. J. & N. Y. BAR
+MEMBER OF N. J. & N. Y. BAR
*MEMBER OF N. J. & P. A. BAR

April 10, 1984

Bernards Township Planning Board
Collyer Lane, Box 437
Basking Ridge, NJ

Att: Nancy Ferguson, Planning Board Secretary

RE: Allan-Deane v. Bernards Township

Dear Planning Board Members:

As you know, we represent The Hills Development Company, the owner of approximately 1,100 acres located in the southwest quadrant of the Township, which property is adjacent to an additional 500 acres owned by the Company and located in Bedminster Township. The purpose of this letter is to formally advise the Planning Board, on behalf of The Hills Development Company, that as a result of a series of events hereafter described in this letter, that the Company has decided to substantially change their land use plan. We therefore request a rezoning of the Hill's property in order to permit the development thereon of approximately 5,800 units of housing, including a 20% component of low and moderate income housing, 1) in the Raritan Basin, and 2) in the western portion of the Passaic Basin. In the event the enclosed master plan amendments are not adopted by the Planning Board and zoning ordinance amendments supplied to the Township Committee are not introduced prior to May 7, 1984, The Hills Development Company intends to institute, without further notice, Mount Laurel litigation against Bernards Township.

HISTORY OF VIOLATIONS OF MARCH 19, 1980 FINAL JUDGMENT IN ALLAN-DEANE v, BERNARDS:

The Hills Development Company's decision to demand a rezoning from Bernards Township and to use all the Company's resources in litigation with the Township in the event the requested rezoning is not forthcoming, was approved by The Hills Development Company's Management Committee after due deliberation and consideration of the following factors:

1. The Allan-Deane Corp., The Hills Development Company's

EXHIBIT C

predecessor in title, repeatedly objected to many provisions of the Bernards ordinance during the period in which the ordinance was being prepared as well as after it was introduced and adopted. Our files, for instance, indicate that prior to the time the ordinance was adopted, we submitted to your consultant, Marshall Frost, and to your attorneys, McCarter and English, numerous memos, including a 27 page memo from Harvey S. Moskowitz that pointed out numerous patent violations of the Court Order. After the ordinance was adopted, Bernards Township agreed to certain amendments. On November 13, 1980 we wrote to you and advised you that the amendments were not adequate and unless the ordinance was further amended we reserved the right to challenge it at any time in order to bring it into conformance with the Court Order and any developing law. The Township refused to make further amendments;

2. When we came before the Planning Board in order to apply for a preliminary and final approval for certain lots in the Passaic Basin, the Planning Board insisted on patently violating the existing order by requiring road widths greater than the maximum permitted under the Court Order. Allan-Deane objected to no avail;
3. The Township has since, on numerous occasions, introduced and adopted ordinance revisions over our objection. These revisions further violated the Court Order of March 19, 1980, including an off-site improvement ordinance which we litigated and settled, subject to reopening in view of recent events; and
4. Finally, the Township Planning Board advised me, while representing another developer, that it intended to require The Hills Development Company to provide some percentage of low and moderate without a density benefit of any kind whatsoever. The Technical Coordinating Committee had a meeting on February 14, 1984 and so advised another attorney from this office as well as The Hills Development Company's planners.

As a result of these repeated violations, the management committee of The Hills Development Company asked this law firm to put together a team to analyze Bernards Township's history of violating the March 19, 1980 Court Order, to analyze Bernards Township's Master plan, its existing land use pattern and its zoning in order to ascertain whether or not the Township's existing zoning was exclusionary under Mount Laurel II. This analysis is now complete, and we formally advised The Hills Development Company that Bernards Township's present land use ordinance is exclusionary and will not withstand litigation. This advise is based, in part, on the following relevant facts:

1. The majority of Bernards Township is within the growth area as defined by the State Development Guide Plan and this municipality is therefore required by the Mount Laurel II decision to provide for both its indigenous need and its fair share of the

prospective need for lower income housing;

2. Undeveloped land in the Township is zoned as-of-right for single family homes at low gross densities of between .5 dwelling units per acre to 2 dwelling units per acre and for employment generating uses;
3. The residential cluster option will not assure the production of any lower income housing since the cluster option permits the development of single family homes at the same gross densities as the as-of-right zoning and at gross densities no greater than 1.2 dwelling units per acre on The Hills property in Bernards;
4. The PRD development option will not assure the production of any lower income housing and merely creates the illusion of a higher density multifamily alternative. This option is illusory because:
 - a. The PRD-1 option which is permitted in the R-2 and R-4 zones has a 600 dwelling unit limit in the entire Township which has already been reached, and there is therefore no further authorization for this development option;
 - b. The PRD-2, PRD-3 and PRD-4 options which are permitted in the R-5 zone, R-3 zone and R-8 zone, respectively, permit the development of some multifamily housing within developments at very low gross densities and subject to high open space requirements. For example, the PRD-3 option would permit a total of 50 multifamily units at a net density of 9 units per acre on a hypothetical 100 acre site. Under this maximum development scheme, 5.5 acres would be occupied by the multifamily units, with the remainder of 94.5 acres required to be left as open space. Additionally, this development would have to be served by an on-site sewage system.
5. The Bernards Township Land Development Ordinance contains no affirmative measures to encourage lower income housing such as mandatory set asides or effective density bonuses;
6. The Land Development Ordinance is replete with cost generating provisions which are not related to public health and safety standards, and which have the effect of increasing development costs so as to make it virtually impossible for developers to build low and moderate income housing in Bernards Township;
7. As a result of the above, Bernards Township is not providing a realistic opportunity for the construction of any lower income

4. We will propose to the Court that a substantial amount of the 5,800 units we propose to build on the property be housing affordable to families in the lower income range.

We sincerely hope that the Planning Board will not choose to test our client's resolve and will amend the master plan as we have requested. This action would be only a modest step towards a balanced community and towards compliance with a constitutional principle first enunciated over eight years ago by the New Jersey Supreme Court. We will be glad to meet with the Township's attorneys and planners until May 7, 1984 (when all discussions will be suspended and litigation will commence) to go over our legal and planning analysis. The Planning Board must realize, however, that this master plan amendment must be adopted before May 7, 1984 and that the Company will not consider any discussions which go beyond that date.

Finally, we hope that the tone of this statement will not obscure the fact that The Hills Development Company is offering two real benefits to the Township:


First, a proposal to provide a specific planned unit development, which, in our opinion, will go a long way towards assisting Bernards Township in its obligation to provide housing for low and moderate income citizens; and

Secondly, a willingness to work with the Planning Board and the Township Committee to assist them in complying with the mandate of the New Jersey Supreme Court.

We hope we will have an opportunity to work with you on the revisions of this Land Use Ordinance and Master Plan which will be needed to implement this proposal and that you will not choose to spend public monies on litigation which you cannot win and which will most probably result in zoning changes much more drastic than those proposed herein.

Very truly yours,

BRENER, WALLACK & HILL



Henry A. Hill

HAH:klp

enclosure

- 1 Amended Land Development Ordinance
- 1 Amended Master Plan
- 1 Concept map for new development of 5800 units

TECHNICAL COORDINATING COVAUTTr.F

Minutes of the Bernards Township TCC meeting held on February 14, 1984.

Attorney Arthur Garvin, Frank Wiley and Engineer Peter Messina were present.

Hills Development

Present were Ken Mizerney and attorney Guilet Hirsch.

Mr. Mizerney briefly reviewed the application which is what was filed in 1981 but had been put on hold. There is still a DEP approval pending on the sewers.

There was question of who would build the homes and Mr. Mizerney said it is expected most of the lots would be sold to custom builders and Hills would also build some of the homes.

After these applications are approved, the applicant will be in for conceptual approval for other sections.

Attorney Garvin said that Mt. Laurel Units will probably have to be included in further applications and Attorney Hirsch said the applicant would appeal this condition in order to protect themselves.

Attorney Garvin pointed out that the Township is having Marshall Frost develop a scheme on how to deal with Mt. Laurel. The Township Committee has hired Harvey Moskowitz to do a separate study.

Respectfully submitted,


Nancy C. Ferguson
Planning Board Secretary

As can be seen from the foregoing tabulation, the planned density in the PRD-3 zone of 0.48 dwelling units per acre is less than the maximum allowable density of 0.50 dwelling units per acre. Similarly, the planned density for the PRD-4 portion of the property of 1.97 dwelling units per acre is also within and below the maximum allowable density of 2.0 dwelling units per acre permitted in this (R-8/PRD-4) zone.

Under the PRD-3 and PRD-4 development options, there are no specifically applicable coverage requirements and/or limitations imposed upon the development. The maximum development permitted under the Planned Rural Development (PRD-3) and Planned Village Development (PRD-4) options is, instead, controlled by the minimum lot areas, sizes and frontage requirements, and in no case shall exceed the maximum allowable density of dwelling units per acre as indicated above and set forth in Table 401.

All of the parking within the planned development will be on-site (off street); and the minimum parking requirements set forth in Article 512 A.I of 2.5 spaces per unit on lots of less than 30,000 square feet and 3 spaces per dwelling unit on lots of 30,000 square feet or more shall be met or exceeded. The 10.0 acre commercial site in the PRD-4 zone has more than adequate space to exceed any parking standard required by any type of prospective use within the 50,000 square foot commercial facility.

Type, Number and Value of Units

The 1,275 total housing units planned within The Hills at Bernards include a mixture of townhouses, cluster units and single-family dwelling units. Townhouse, cluster, high and medium density single-family dwelling units are located in the PRD-4 zone, while the PRD-3 zone consists solely of single-family, low density detached units. The type and number of the planned housing units are tabulated by zone on the following page:

The Hills at Bernards
Number and Types of Dwelling Units

<u>Zone/Unit Type</u>	<u>Number of Dwelling Units</u>
PRD-4	
View Townhouses	96
Single-Family Cluster	200
Single-Family High Density	250
Single-Family Med. Density	456
PRD-3	
Single-Family Low Density	<u>273</u>
TOTAL	1,275

In addition to the five different types of housing units planned, additional distinctions also exist in the bedroom configurations for the cluster and single-family medium density units. The cluster units will be available in either 2 or 3 bedroom floor plans while the single-family medium-density units will be offered in 3 and 4 bedroom configurations. This information is further detailed in Table 1.

The value, or sales price of the homes to be constructed in The Hills at Bernards varies by unit type and floor area; from \$155,000* per unit for a 1,900 square foot, 2 bedroom townhouse to \$255,000* for a 2,800 square foot single-family home in the low density section. The average dwelling unit contains a floor area of 2,440 square feet and has a 1980 value of \$203,200. The aggregate value of the 1,275 dwelling units (land and improvements) to be developed in The Hills at Bernards totals \$259,070,000 in 1980 dollars. This information is further detailed by unit type and bedroom configuration in Table 1.

Open Space

The planned development will provide a combination of passive and active open space and recreational areas in excess of the 25 percent requirement

*1980 dollars

TABLE 1

PROJECT SPECIFICATIONS
 THE HILLS PLANNED RURAL AND VILLAGE DEVELOPMENT
 BERNARDS TOWNSHIP

<u>Housing Type</u>	<u>Bedroom Size</u>	<u>Density</u>	<u>Square Feet</u>	<u>Unit Price*</u>	<u>No of Units</u>	<u>Total Value*</u>
Viewtown Townhouses	2 Bedroom	7.5 DU/AC	1,900	\$155,000	96	\$ 11,880,000
Single-Family Cluster	2 Bedroom	6.0 DU/AC	2,200	\$165,000	100	\$ 16,500,000
Single-Family Cluster	3 Bedroom	6.0 DU/AC	2,350	\$175,000	100	\$ 17,500,000*
Single-Family High Density	3 Bedroom	3.0 DU/AC	2,400	\$190,000	250	\$ 47,500,000
Single-Family Medium Density	3 Bedroom	2.0 DU/AC	2,400	\$200,000	331	\$ 66,200,000
Single-Family Medium Density	4 Bedroom	2.0 DU/AC	2,500	\$215,000	125	\$ 26,875,000
Single-Family Low Density	4 Bedroom	0.5 DU/AC	2,800	\$255,000	273	\$ 69,615,000
TOTALS/AVERAGES	3.16 Bedroom	1.19 DU/AC	2,440	\$203,200	1,275	\$259,070,000
Commercial Space			50,000			\$ 3,000,000
Total Value*						\$262,070,000

*1980 Dollars