

RULS - AD - 1984 - 30

1/10/1984

• CL to Page

- Master's Report on Fair Share Compliance
for Bedminster

PSS. - 73

J-2 11/5/84
mid
EB

GEORGE M. RAYMOND, A.I.C.P., A.I.A.
NATHANIEL J. PARISH, P.E., A.I.C.P.
SAMUEL W. PINE, A.I.C.P.
MICHAEL WEINER, A.I.C.P.

BERNARD J. BULLER, P.E., A.I.C.P.
EDWARD J. RYBCZYK

ROBERT GENESLAW, A.I.C.P.
RICHARD HARRALL
GERALD C. LENAZ, A.I.C.P., A.I.A.
EDITH LANDAU LITT, A.I.C.P.
PHILIP W. MICHALOWSKI, A.I.C.P.
JOHN JOSEPH SACCARDI
STUART I. TURNER, A.I.C.P.

DAVID B. SCHIFF, A.I.C.P.
NOEL SHAW, JR.
CSABA TEGLAS, A.I.C.P., C.I.P.

January 10, 1984

RULS - AD - 1984 - 30

The Honorable Eugene J. Serpentelli, J.S.C.
Superior Court of New Jersey
Ocean County Court House
Toms River, New Jersey 08753

My dear Judge Serpentelli:

Attached hereto please find my report regarding Bedminster's Housing Region, Allocation of Fair Shares and Compliance with the Mount Laurel II mandate. My evaluation of Bedminster's compliance in this report is based on the assumption that the inclusionary provisions of the Township's Land Development Regulations will be adjusted as recommended herein, or in some other way to the degree necessary to gain Court approval.

All portions of this report except for Section 5.b. were submitted in draft form to all parties in Allan-Deane v. Township of Bedminster who are copied on this letter and thus have had the benefit of everyone's reaction.

I feel that the following brief explanation of the perhaps less self-evident reasoning underlying my approach to the task assigned to me by you may be helpful to your evaluation of the results:

1. Determination of Bedminster's Housing Region

The 8-County Northeastern Region has been conventionally accepted as an "established" region for some time. Given its size and variety of component municipalities, it can be safely assumed that this region is one, but not necessarily the only one, that makes possible the sharing of both the region's housing needs and vacant land resources which must be present if those needs are to be satisfied.

I have been unable to find persuasive evidence of the necessity to incorporate counties that are as far apart as Somerset and Bergen into the same "region." The recently released Rutgers study advances a seemingly convincing case

for the inclusion of Somerset County, along with Middlesex, Hunterdon and Warren Counties, into a 4-county region. The considerable review and analysis required for a definitive determination of the validity of all the facts and assumptions which underlie this proposal and of the consequences, as viewed through the prism of Mount Laurel II, of its acceptance is beyond my ability to perform within the prevailing time constraints. Fortunately, however, it happens that the practical effect of using one or the other "region" in this case is not very significant, as shown in the following table:

Prospective Need: 1980-1990

<u>Allocation Criteria</u>	<u>8-County Region</u>	<u>4-County Region</u>
Job Growth, only	1,045	994
Vacant Developable Land ¹ & Job Growth	1,179	740

This is particularly so, in my opinion, since the ultimate determinant of Bedminster's compliance with the Mount Laurel mandate for the next six years is not the size of its obligation but its capacity to absorb new development.

My recommendation recognizes the impossibility at this early stage of evolution of the Mount Laurel II implementation program of arriving at definitive, rather than merely plausible regional boundary determinations.² I do not believe that the precise number which results from one or another method is as important at this point as the logic which led to its derivation, particularly if the number recommended falls somewhere in the mid-range of the various numbers that result from use of other, perhaps equally convincing approaches.

¹ As determined in the Revised Statewide Housing Allocation Report.

² The concept of using two regions, a larger one for the purpose of allocating present need, and a commuter-shed region, based on 45-minute commuting time, surrounding the subject municipality for the purpose of allocating prospective need, emerged just as this report was being prepared for submission. The figures resulting from this approach will be available at the January 19th Case Management Conference.

2. Allocation of Prospective Need

Mount Laurel II clearly favors allocation based on job growth, since any other approach would permit the continuation of past practices of acceptance of rateables and rejection of the workers which make them possible. With respect to other criteria, the decision is less definitive. The vacant developable land criterion is used only as a convenient way of distributing the burden among those municipalities where construction of the needed housing is possible.

I find that, loosely used, "vacant developable land" as a criterion may slant development patterns in counterproductive ways. While total lack of vacant land in a given municipality inevitably forces the allocation of its obligation to others, a comparative shortage of vacant land should not be assumed to correspondingly lower that municipality's obligation. As one example, in a growing industrial community, with most of its land devoted to job-generating uses, it may be appropriate to develop housing at higher densities than, for instance, in Bedminster which is at the outer edge of the urbanizing portion of the State. Thus 100 acres of vacant land in Community X, where development at 30 dwellings per acre may be appropriate, would be equivalent to 300-400 acres in Bedminster.

In addition, however, as explained at length in the report, I found the "vacant developable land" quantities assigned to individual municipalities in the Revised Statewide Housing Allocation Report (1978) to be too unreliable to permit them to be used for allocation purposes. It seems to me that, at this stage of the implementation program, the acid test is whether a municipality has adequate vacant developable land on which to place its prospective need allocation determined on the basis of job growth. If it does not, that portion of the need which remains unsatisfied as a result would become part of the overall "prospective need" which would have to³ be allocated among all the other communities in the region.³ Significantly, the large, built-up, deteriorating cities which the Supreme Court clearly prefers not be saddled with the obligation to accept additional lower income households would remain unaffected if this course of action were to be

³This suggests that, before the fair share allocation to any municipality is firmed up, the Court may have to be aware of the fair share allocated to every community in that region.

adopted. Almost without exception, they have not experienced job growth and are therefore free of any "prospective need" allocations.

In the case of Bedminster, disqualifying the "vacant developable land" criterion tends to produce figures for the 8-County and the 4-County regions that are not too far apart (see table, above). This seems to me to confirm the reasonableness of my recommendation.

Unless proven otherwise, I believe that the validity of the Rutgers methodology for determining the regional need is independent of the validity of its recommended regional boundaries. In my calculations I have therefore used an average allocation to Bedminster of Rutgers' "prospective need" as determined for the 4-County and the 8-County region.

3. Bedminster's Compliance

The Mount Laurel II mandate is that the Township satisfy that portion of its obligation which can be reasonably expected of it within six years. Housing on any site can be produced within 18 months or less following final approval of plans. I found it therefore proper to credit Bedminster with the development potential of certain sites which, while now they cannot be reasonably expected to be useable within that period by reason of certain impediments to development, may become so if the Township succeeds in its efforts to eliminate them. Under the circumstances it would seem to me appropriate to require that the Township report to the Court within, say, two years the results of its efforts and to be prepared to offer readily developable alternative sites if it should prove unable to resolve all difficulties in the way of development of those sites the use of which is required for its compliance with Mount Laurel II.

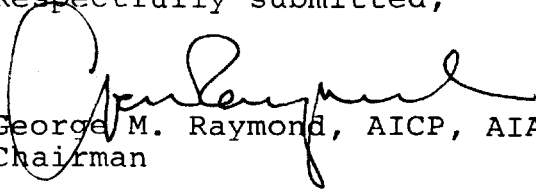
Should you find that my recommendations fall short of the amount of low- and moderate-income housing which Bedminster should provide in the next six years, I will be glad to

* For the 8-County region I had to use a conservative approximation by ignoring the prospective need generated by Hunterdon, Warren, and Sussex Counties for which data is not available.

The Honorable Eugene J. Serpentelli, J.S.C.
January 10, 1984
Page 5

continue to work with all parties to enable the Township to
comply with your determination.

Respectfully submitted,


George M. Raymond, AICP, AIA, P.P.
Chairman

GMR:kfv

cc: Alfred L. Ferguson, Esq.
Henry A. Hill, Esq.
Kenneth E. Meiser, Esq.
Joseph L. Basralian, Esq.
Herbert A. Vogel, Esq.
Roger W. Thomas, Esq.
Peter J. O'Connor, Esq.
Mr. Richard T. Coppola, P.P.

Report on
Housing Allocation
Fair Share and Compliance with Mount Laurel II
for
Bedminster Township, New Jersey

Prepared for
Honorable Eugene J. Serpentelli, J.S.C.
Superior Court of New Jersey
Ocean County Court House
Toms River, New Jersey 08753

January 1984

by
George M. Raymond, AICP, AIA, P.P.
Chairman
Raymond, Parish, Pine & Weiner, Inc.

Table of Contents

	<u>Page No.</u>
1. <u>Determination of Bedminster's Housing Region</u>	1
a. Analysis	1
b. Recommendation	8
2. <u>Determination and Allocation of the Prospective Need</u>	9
a. Determination of Prospective Regional Need	9
b. Allocation of Prospective Need	11
c. Recommended Allocation of Prospective Need to Bedminster	25
3. <u>Determination and Allocation of Present Need</u>	27
a. Indigenous Need	30
b. Determination and Re-allocation of Surplus "Present Need"	32
4. <u>Summation of Bedminster's Recommended Fair Shares</u>	36
5. <u>Bedminster's Response to the Mount Laurel II Mandate</u>	37
a. Bedminster's Zoning Map	37
b. Bedminster's Land Development Regulations	44
c. Do the Bedminster Land Development Regulations Provide a Reasonable Opportunity for the Provision of Low- and Moderate-Income Housing?	49
d. Recommendation	58

Appendix A

Letter from Richard T. Coppola, dated 1/8/83
Letter from Kenneth E. Meiser, dated 12/19/83

Appendix B

Letter from Richard T. Coppola, dated 1/8/83

1. Determination of Bedminster's Housing Region

a. Analysis

The August, 1983 Housing Element of the Master Plan prepared by Richard Coppola and adopted by the Township of Bedminster defines the housing region of which Bedminster is a part as that area which can be reached within 30 minutes' commuting time. The warrant claimed for using this criterion is the 1980 U.S. Census finding that the mean travel time to work of all employed residents of the Township was 27.5 minutes, with 57.3 percent of such residents reporting commuting trips of less than 30 minutes.

This methodology has found considerable currency among experts who have been called upon to define housing regions within the meaning of Mount Laurel II.

From the court's point of view, however, the traditional definition of regions using each community as the focal point followed by the allocation of a fair share of the aggregate regional housing need to all communities in the region presents a serious problem in that it would result in the same community being assigned a number of different court-approved fair share allocations. Each regional fair share study allocates the total prospective and surplus present need calculated for its specific region among the communities in that region. It is thus inevitable that the

allocation to the same community will change depending upon the region in which it is included for calculation purposes.

The use of overlapping regions also causes an artificial inflation of prospective need. Figure 1 shows how this happens. Thus, the N.J. Supreme Court's hope that, as soon as possible, a consistent regional pattern will be adopted for Mount Laurel II purposes is not just the expression of a desire for theoretical neatness but a practical necessity.

The Bedminster definition is challenged by Dobbs¹ on the substantively justifiable grounds that if 57.3 percent of all employed residents travel less than 30 minutes, 42.7 percent travel more. If the outer limits of the region are drawn at the end of a 30-minute trip, the mean commuting time of those living and working within it would be closer to 15 minutes than to the 27.5-minute mean travel time of Bedminster residents reported by the 1980 U.S. Census. Therefore, based on the Township's own reasoning, the outer limits of the Bedminster region must be extended to encompass those areas which can be reached in 45 minutes or more.

¹Submission to George Raymond re Allan-Deane v. Bedminster Township by Leonard Dobbs, prepared by Wallace Roberts & Todd and Ernest Erber (hereinafter referred to as Dobbs).

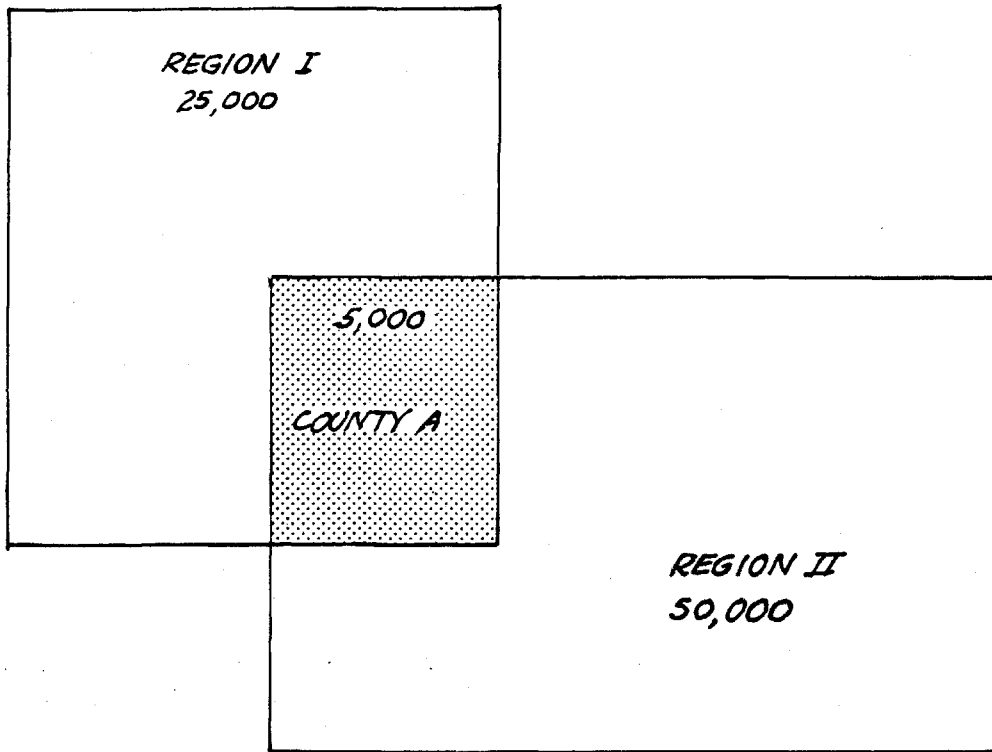


Figure 1

Prospective Need of 25,000 units for Region I includes that generated by County A.

Prospective Need of 50,000 units for Region II also includes that attributable to County A.

The aggregate "prospective need" of 75,000 units which is thus being allocated exceeds the actual, which amounts to 70,000, by reason of double-counting.

Dobbs suggests that the 8-County Northeastern Region (including Bergen, Hudson, Passaic, Essex, Morris, Union, Middlesex and Somerset Counties) is "closer to a workable model within the [Mount Laurel II] court's criteria than any lesser alternative." This "region" was also accepted by the Trial Court in the Urban League of Essex County, et al. v. Township of Mahwah.

The definition of Bedminster's housing region as encompassing the 8-county area is concurred in also by the Public Advocate² as satisfying the five criteria set forth by the Supreme Court:

- Housing market/commuting considerations.
- The goal of consistent regional definitions throughout the State.
- Sharing of housing needs and land resources.
- Data availability and reliability.
- Relationship to existing planning regions.

² Memorandum addressed to Kenneth Meiser by Geoffrey Weiner of Abeles Schwartz Associates, Inc., November 21, 1983 (hereinafter referred to as the Public Advocate). The methodology used in this Memorandum is detailed in A Fair Share Housing Allocation for Ten Municipalities in Morris County prepared for the New Jersey Department of the Public Advocate by Abeles Schwartz Associates, Inc., October, 1983.

The sweeping assertion that the above criteria justify the inclusion of Somerset County into the Northeastern Region is not entirely supported by the detailed findings in the 1980 Census and elsewhere. For instance

-- Of 91,701 employed Somerset County residents responding to the question as to their place of employment,³ only 459, (or 0.5%) worked in Bergen County, 412 (or 0.4%) worked in Hudson County, and 407 (or 0.4%) worked in Passaic County.

-- Similarly, only 469 (or 0.2%) of Hudson County's 210,480 "employed residents," 304 (or 0.8%) of Bergen County's 384,469, and 354 (or 0.2%) of Passaic County's 162,714⁴ worked in Somerset County.

Clarke & Caton's argument in the Mahwah fair share study⁵ that most employed residents both live and work in the 8-County Region is not convincing per se since it is almost axiomatic that the larger the region, the greater the chance

³ Hereinafter referred to as "employed residents."

⁴ Clarke & Caton, Mahwah Township Fair Housing Report, July 1983, prepared for the Hon. Harvey Smith, J.S.C., Bergen County - Table E-7, p.38.

⁵ Clarke & Caton, op. cit.

that this will be the case. If all of New Jersey were defined as "the region," the percentage of the labor force both living and working in the state probably would be in the very high 90s.

As for being a part of "established planning regions," the 8-County Northeastern Region is not recognized as such by any official agency. Under the circumstances, why should not the 8-county "region" be broadened as recommended by the Tri-State Regional Planning Commission to include Monmouth County? If Monmouth County can be eliminated logically from the Tri-State "region," why not Somerset County, portions of which are equidistant from Newark or Perth Amboy with portions of Monmouth County? But then, how "established" is the Tri-State-defined region itself, given that its delineator, the Tri-State Regional Planning Commission, is now a defunct agency which is thus no longer able to perform those functions of updating and analysis of information and coordination of activities which invest a non-self-governing agglomeration of municipal jurisdictions with "regional" meaning?

As for the "region" defined by the Regional Plan Association (RPA), it is even larger than the 9-County Tri-State region

due to the addition of Mercer County.⁶ Despite RPA's well-deserved reputation in the planning field, being a private organization with limited resources, it too, is not in a position to perform those functions which invest the term "region" with substantive meaning.

One answer to these perplexities may be furnished by the just-released Rutgers University study of housing regions throughout the State.⁷ After adding three counties to the 8 northeastern counties, this study recommends that the resulting eleven-county area be divided into three housing regions, as follows:

1. Bergen, Hudson, and Passaic (Northeast Region)
2. Essex, Union, Morris and Sussex (Northwest Region)
3. Middlesex, Somerset, Hunterdon and Warren (West Central Region)

The study claims that each of these three regions satisfies the Mount Laurel II criteria--including that of the need for the sharing of housing needs and land resources--better than

⁶The Tri-State and Regional Plan "regions" are cited in the Public Advocate's report in support of the contention that the 8-county region is "related to existing planning regions."

⁷Mount Laurel II; Challenge and Delivery of Low-Cost Housing, Center for Urban Policy Research, Rutgers University, 1983 (hereinafter referred to as the CUPR Study), released on December 7, 1983.

any other configuration. According to the study, the six regions which "emerged...using regions of commuting complementarity as well as other criteria (income, housing costs, vacant land, etc.)...additionally reflect...intra-regional differences and inter-regional similarities. [The proposed] regions contain a mix of rural and urban areas, housing types, and socioeconomic characteristics, yet they are also balanced such that within the statewide parameters one region is not significantly poorer or more urban than another nor are there noticeable differences in either housing types or housing quality."⁸

The CUPR "regions" also have the advantage of a basic agreement with the newly (June 30, 1983) delineated U.S. Census designations of Metropolitan Statistical Areas, which meets the important Mount Laurel II criterion of ready availability of data.

If the CUPR claims regarding regional balance stand up to the scrutiny to which they will be inevitably subjected, and if its definition of regions is accepted by the Court as the answer to the Supreme Court's call for the establishment of consistent regions, then the 4-county Middlesex-Somerset-

⁸ Ibid, pp. 23-24.

Hunterdon-Sussex region might be a preferred substitute to the 8-County Northeastern Region as Bedminster's housing region.

b. Recommendation

Based on the information available at this time I recommend that Bedminster's housing region be deemed to consist of the 8 Northeastern Counties. Since we are not dealing with a precise science, however, in determining present and prospective housing needs and in allocating Mount Laurel II responsibilities, I have also taken into consideration the factual base and methodology underlying the CUPR Study conclusions.

2. Determination and Allocation of the Prospective Need

a. Determination of Prospective Regional Need

It is generally agreed that the fair share of the "prospective need" for which Mount Laurel II requires municipalities to provide "for a reasonable period of time in the future" is the number of units needed to accommodate the municipality's share of the anticipated population growth in its region.

The Public Advocate projected the growth for the 1980-1990 decade as a basis for determining the probable number of households which will have to be housed in the region by 1990. The projection is based on New Jersey Department of Labor county population projections using the ODEA Economic/Demographic Model which projects population migrations on the basis of anticipated labor market conditions rather than past migration trends. The resulting 1980-1990 increase in the region's population is expected to be 206,000 persons, with 198,000 expected to be added to the "Intermediate Ring" counties of Middlesex, Morris, and Somerset. Essex and Hudson Counties are expected to lose 88,000 persons.

Calculating that, by 1990, the household size will decline from 2.83 person per household to 2.71, the Public Advocate estimates that some 140,919 additional households will have

to be housed during that period. Adding 4 percent to achieve the minimum desirable vacancy rate of 1.5 percent in sales housing and 5 percent in rental housing brings the total to 146,556. Of these, 39.6 percent, or 58,036 households, will need lower income housing units. Based on the 1979 median income in Somerset County, 60.7 percent of these, or 35,228 units, should be affordable to low income households (with incomes of 0 to 50 percent of the region's median income) and 39.3 percent, or 22,808 units, should be priced for moderate income families (with incomes of 50 and 80 percent of the median).

Dobbs accepts the above methodology and its resulting estimates of prospective low and moderate income housing needs for the region. He bolsters his argument by citing recent major employment centers that have located in the I-287 and I-78 Corridors. I have assumed that all of the jobs that are now materializing are accounted for in the N.J. Department of Labor projections on which the Public Advocate based his determination of prospective need.

The CUPR Study uses the New Jersey Department of Labor ODEA Demographic Cohort Model⁹ which, it claims, better reflects

⁹CUPR, op. cit. p. 119.

the reality of the slow, recession-impacted 1980-1983 population growth than the model used by the Public Advocate. The resulting 1980-1990 projection of the total prospective low- and moderate-income housing need for the 4-county West Central Region (which that study recommends as Bedminster's "region") is 22,002 units.¹⁰ CUPR then adjusts this figure downward to 20,283 to account for those relatively few households which can be expected to be housed by the conventional housing market.¹¹

The unacceptability of the region proposed by Bedminster invalidates its calculation of prospective regional need as well.

b. Allocation of Prospective Need

The Public Advocate allocated the total prospective regional housing need directly to all municipalities in the region on the basis of the average of their respective shares of (1) the region's vacant developable land, as calculated in the May 1978 New Jersey Department of Community Affairs Revised Statewide Housing Allocation Report for New Jersey (hereinafter referred to as the Allocation Report), and (2) the

¹⁰ Ibid., Exhibit 2-23, p. 128.

¹¹ Ibid., Exhibit 5-19, p.285.

"recent" growth in non-government covered jobs between 1975 and 1981.

For Bedminster, with 2.2 percent of the region's vacant developable land and 1.8 percent of the recent employment growth, the composite allocation factor of 2.032 percent was applied to the prospective regional need figure of 58,036. The resulting prospective need allocated to the Township is 1,179 units.¹²

In my opinion, the Public Advocate's allocation formula is severely flawed because of the unreliability of the data regarding vacant developable land in the region as a whole and in its municipalities. The vacant developable land figures in the Allocation Report were based on information that was three or four years old when first used. Enormous changes have occurred along the whole length of Route I-287 between the New Jersey Turnpike and Route I-80, rendering these data obsolete.

¹²The 1975 date used here to separate "recent" growth from, presumably, "older" growth is quite arbitrary. If the figures used were to include a longer period (say 1972 to 1982), by including a much larger number of jobs in the region and about the same figure for Bedminster, the percentage growth in the Township as a proportion of the total regional growth would be considerably smaller. My acceptance of the Public Advocate's figure as a starting point thus invests all of my determinations with a conservative tinge.

Of even greater concern, however, is the definition of "vacant developable land" used in the Allocation Report as it relates to the State development policy expressed in the State Development Guide Plan (hereinafter referred to as the SDGP). The Allocation Report defines as "vacant and developable" all the vacant land in the community "less land with greater than 12 percent slope, wetlands, qualified farmlands and public lands," irrespective of whether such theoretically developable vacant land lies in an area designated as suitable for "growth" or "limited growth" in the SDGP. Communities located in their entirety in "limited-growth" or non-growth areas were exempt from consideration, but for communities where even a fraction of their vacant developable land was located in a "growth" area, all of their vacant land was counted for allocation purposes.

If the State Development Guide Plan determination of "non-growth" areas is to have any meaning, those lands which are so classified in the plan should not be counted as available for development irrespective of whether the community in which they are located also contains lands classified as suitable for growth.

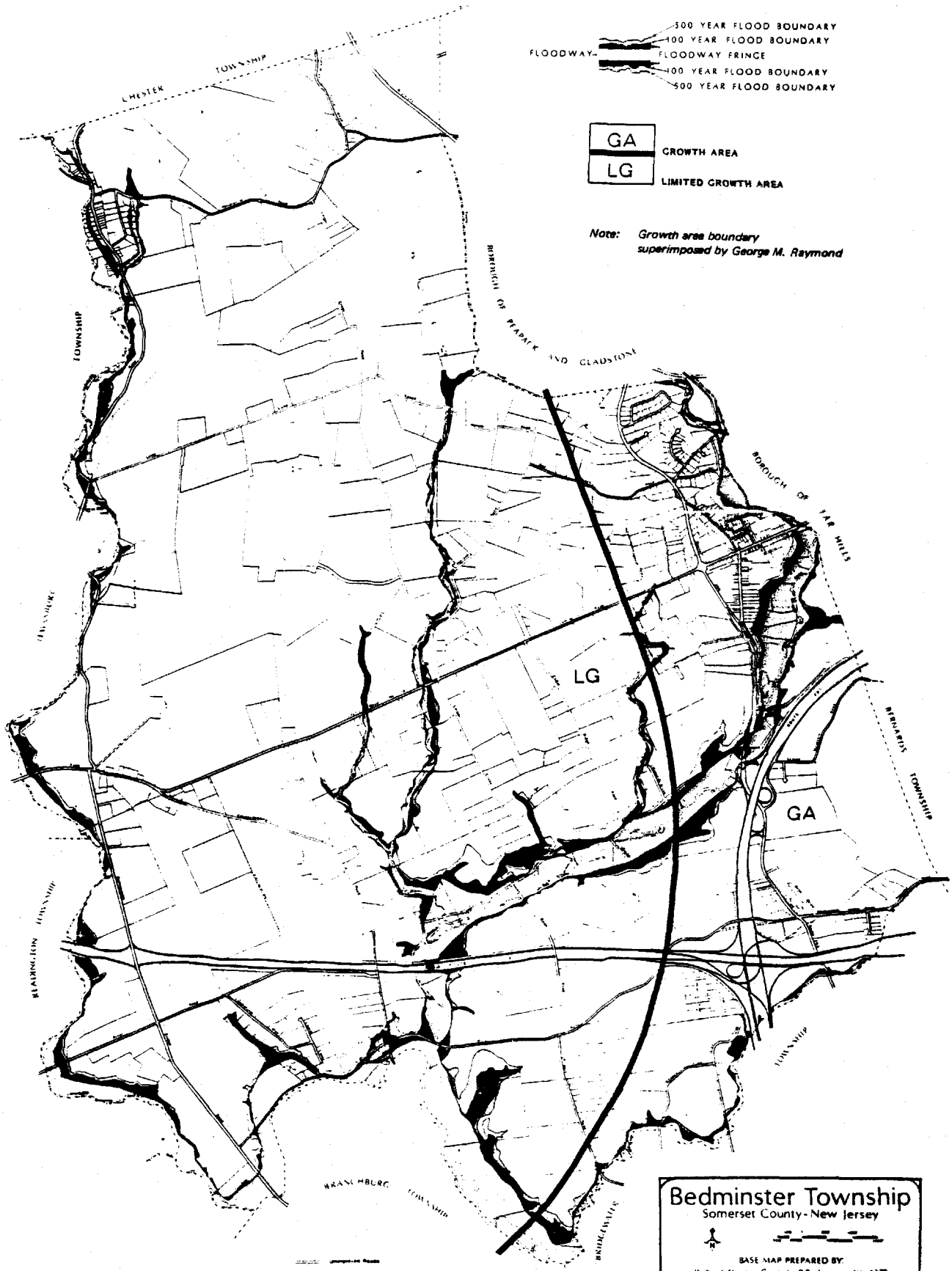
Bedminster's case illustrates with particular clarity the problem raised by the use of all of the municipality's vacant developable land as a basis for determining its

proper share of the region's future higher density housing development (since, under present conditions, low- and moderate-income housing can only be produced at densities of at least 6-8 units per acre). In Bedminster, the State Development Guide Plan delineates a "growth area" straddling Routes 202-206 and extending to the Township's eastern boundary (see map entitled Critical Areas: Flood Plains). Excluding land with greater than, not merely 12, but 15 percent slope, wetlands and flood plains, and publicly owned lands--and ignoring the fact that some 360 acres of land in the "growth area" are in agricultural use--, the vacant developable land within this corridor amounts to only 1,529 acres. (This acreage includes all the land with less than 15 percent slope that was formerly owned by Allan-Deane). The 1,529 acres represent only 26.9 percent of the 5,675 acres credited to Bedminster in the Allocation Report.

Bedminster's "limited growth" area is part of a continuum which extends westward across the top of Hunterdon County and north into Morris County (where it includes the Township of Chester, whose similar designation in the SDGP caused the Supreme Court to keep it free of any Mount Laurel prospective or redistributive present need obligation). The Supreme Court explicitly states that it is "able to fashion judicial relief through...a remedial solution that imposes the Mount Laurel obligation only in those areas designated

Critical Areas: Flood Plains

NOVEMBER 1983



500 YEAR FLOOD BOUNDARY
 100 YEAR FLOOD BOUNDARY
 FLOODWAY FRINGE
 100 YEAR FLOOD BOUNDARY
 500 YEAR FLOOD BOUNDARY

GA
 LG
 GROWTH AREA
 LIMITED GROWTH AREA

Note: Growth area boundary
 superimposed by George M. Raymond

Bedminster Township
 Somerset County - New Jersey

BASE MAP PREPARED BY:
 Richard Thomas Coppola, P.P. - License No. 1378

as 'growth areas' by the SDGP." ¹³ The Court adds: "There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently."¹⁴

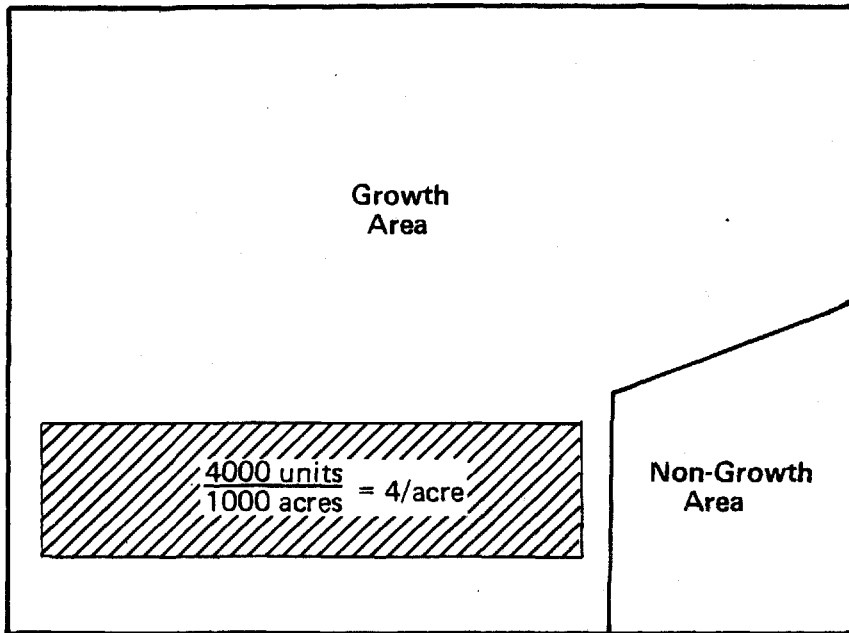
Significantly, the Court also points out that if, subsequent to the Mount Laurel II decision, a municipality were to encourage or allow development in contravention of the SDGP, a trial court "should more readily conclude that the challenged SDGP 'non-growth' characterization has become inappropriate."¹⁵ It would be ironic, indeed, if a court-mandated breach of the SDGP pattern for rational distribution of development in Bedminster were to be found in the future as offering grounds for the invalidation of the Township's SDGP-based Master Plan.

Figures 2 and 3 illustrate diagrammatically the distortion of development patterns which could, and probably would, result from the allocation of housing responsibilities on the basis of the Allocation Report. To prevent such

¹³ 92 N.J. 158, p. 236.

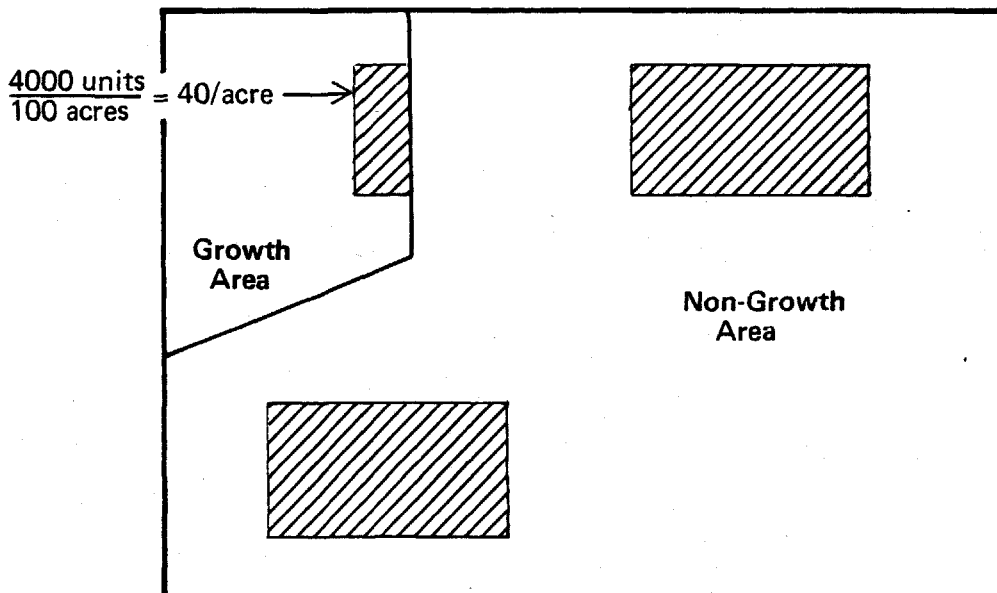
¹⁴ Ibid, p. 238.

¹⁵ Ibid, p. 242.



Community A- 1000 vacant developable acres, all of which lie in the "growth area"

Figure 2



Community B- 1000 vacant developable acres of which only 100 lie in the "growth area"

Figure 3

Housing Allocation to each = 800 units of lower income housing requiring a land capacity of 4000 units with a 20% mandatory set-aside.

Vacant Developable Land

distortions, a given municipality's share of the region's total vacant developable land should be calculated by comparing the developable acreage in its "growth" area only, with a similarly developed quantity for the region as a whole.

It is also important to note that the mere presence of developable land as a proportion of that of the region is an insufficient indicator of a municipality's relative ability to satisfy the obligation to provide a realistic opportunity for the construction of housing. Thus, for instance, 100 vacant acres in a developed community, served by sewers and water, may be suitable for the immediate development of housing at a density of 30 units per acre, for a total of 3,000 units. In contrast, the development of 100 acres in a developing community may have to be delayed to allow for the provision of utilities and may be appropriately developed at a density of only 8 or 10 units per acre, for a total of only 800-1,000 units.

As the Court noted in Mount Laurel II, "...to make one municipality a demographic mirror image of another...is not the purpose of Mount Laurel. Nor is there any justification for allocating a particular regional need equally among municipalities simply because they have enough land to accommodate such equal division. There may be factors that

render such a determination defensible, but they would have to be strong factors, and certainly not the simple fact that there is enough land there. The issue in these cases is the overall group of factors that must be considered, all subsumed in the word "suitability."¹⁶ The effect of using inflated land availability figures as a fair share allocation criterion would tend to disproportionately increase the responsibility of the least developed communities lacking public transportation which therefore may be the least suitable for lower income housing as well as least endowed with the social infrastructure needed to properly integrate housing and its residents into the community.

Equally, the distorting effect of the use of vacant land figures that include as "developable" land located in "non-growth" areas also tends to increase density on the remaining vacant land to the point of forcing unsuitable urban densities in fringe suburban municipalities.

While it is true that vacant developable land is a key allocation criterion "by which new housing can be directed to where it is both suitable and feasible,"¹⁷ the area

¹⁶ 92 N.J. 350.

¹⁷ A Fair Share Housing Allocation for Ten Municipalities in Morris County, prepared for New
(Footnote Continued)

within Bedminster to which this criterion can be applied without violating the SDGP only encompasses the 1,529 vacant acres that are truly "developable" and which lie within the "growth" corridor (see map entitled Critical Areas: Flood Plains). If similar determinations of the amount of vacant developable land in "growth" areas, exclusively, were available for all communities in the 8-County Region, it would be possible to establish Bedminster's correct proportion of the total and thus to validate use of this criterion. Although the Allocation Report may well contain "the only statewide calculations of developable land available on a municipal level,"¹⁸ the vacant developable land figures it offers are outdated and methodologically flawed. They lack the credibility needed to permit them to be used as a fair share allocation criterion as recommended by the Public Advocate.

* * *

This leaves the factor of recent employment growth as the sole valid fair share allocation criterion. Its use is

(Footnote Continued)

Jersey Department of the Public Advocate by Abeles Schwartz Associates, Inc., October, 1983, p. 34.

¹⁸ Ibid., p. 35.

sanctioned by Mount Laurel II which favors "[f]ormulas that accord substantial weight to employment opportunities in the municipality, especially new employment accompanied by substantial ratables..." Applying Bedminster's 1.8 percent share of the region's recent growth in employment to the prospective regional need of 58,036 units reduces the Township's fair share from 1,179 to 1,045 units.¹⁹

Prospective need, by definition, deals not with the housing need generated in the past, but with that which can be expected in the future. The total capacity of the non-residentially zoned land in Bedminster provides for "approximately 1,000,000 square feet of retail/office commercial space; and approximately 55,500 square feet of office/research space."²⁰ Unlike the 1,000,000 square foot AT&T Long Lines Headquarters development, which occurred as a single action that brought 3,500 employees to Bedminster, future non-residential growth will be considerably more

¹⁹ Since availability of vacant developable land is both a key ingredient of a municipality's ability to provide the "realistic opportunity" for the construction of low- and moderate-income housing mandated by the Supreme Court and a legitimate criterion in the formulation of responsibilities, it is important to consider the effect of disqualifying its use. In this particular instance, the number of units allocated to Bedminster by the Public Advocate as its share of the prospective need was reduced by only 134, or 11.3 percent. Based on the facts recited above, using the vacant developable land figures supplied by the Allocation Report would probably cause greater distortion.

²⁰ Township of Bedminster Master Plan Program, Part II, Development Plan, August 1982, Land Use Plan, p.1.

gradual since it will consist of many developments using smaller sites. Thus the assumption that Bedminster's job growth in the next six years will represent the same proportion of the region's growth as that which occurred in the last six years is exaggerated. This further emphasizes that acceptance of the Public Advocate's assumptions produces a very conservative figure.

* * *

Dobbs disagrees with the Public Advocate's prospective fair share allocation of 1,179 units. Without any warrant in Mount Laurel II, he allocates the agreed-upon 58,036 units first to each county in the region and only then to each municipality on the basis of its share of the county's vacant developable land. I have already discussed the unreliability of the estimates of vacant developable land and the unacceptability of the definition used in the Allocation Report. Also the Mount Laurel II decision clearly mandates that each municipality provide for its fair share of the prospective need of its entire region. If Somerset County is to be used as "the region" for the purpose of allocating the need, then it would seem appropriate that it also be used as "the region" for the purpose of

determining that need. Dobbs' allocation to each municipality of its share of the total allocation to the County totally ignores the relationship emphasized in Mount Laurel II between housing obligation and rateables produced by the employment centers that generate the housing need. For these several reasons I rejected Dobbs' estimate of 1,360-units as Bedminster's allocation of prospective need.

* * *

Applying the Public Advocate's allocation methodology to the prospective need in the 4-county West Central Region determined by the CUPR Study produces the following results:

<u>Jurisdiction</u>	<u>Private Covered Jobs: 1975-1981</u>		
	<u>1975</u>	<u>1981</u>	<u>Difference</u>
Hunterdon	14,991	19,420	+ 4,430
Middlesex	197,382	243,547	+46,165
Somerset	63,130	82,496	+19,366
Warren	<u>22,635</u>	<u>25,084</u>	<u>+ 2,449</u>
Total			72,410
Bedminster	838	4,396	+ 3,558

Bedminster's job growth between 1975 and 1981 thus represents 4.9 percent of that of the 4-County Region. Applied to that portion of the 20,283-unit prospective regional need that is unmet by the conventional housing market (see Section 2.a.) this produces 994 units as Bedminster's share.

Because the CUPR Study does not provide county by county information, it is not possible to disaggregate the data for the purpose of forming and reforming regions. As a result, it is not possible to examine what the effect would be of applying the Public Advocate's allocation methodology to the prospective need for the 8-county region if such need were determined in accordance with the CUPR methodology. A reasonable and conservative approximation can be derived, however, by discounting the incremental need attributable to Hunterdon, Warren and Sussex Counties which is probably relatively minor. Since the 11-county region which results from combining the CUPR Northeast, Northwest and West Central Regions includes and is larger than the Public Advocate's 8-county region, a comparison of the two is useful:

	<u>CUPR 11-County Area</u> ²¹	<u>Public Advocate's 8-County Region</u>
Present Need	37,524	104,364
Prospective Need	<u>30,380</u>	<u>58,036</u>
Total	67,904	162,400

Thus, omitting the needs of Hunterdon, Warren and Sussex Counties, the total prospective need determined by the CUPR

²¹CUPR, op. cit., Exhibits 4-17, 5-18 and 5-19, pp. 283-285.

Study is 47.6% lower than that determined by the Public Advocate. Applying Bedminster's 1.8% share of its 8-County Region's recent growth to CUPR's 30,380 prospective need for the 11-county "region" produces an allocation to Bedminster of only 547 units.

If the vacant developable land figures in the Allocation Report were used in conjunction with the CUPR Study, instead of increasing they would reduce the allocation to Bedminster by 25.5 percent, as follows:

<u>Jurisdiction</u>	<u>Vacant Developable Land (in Acres)</u>
Hunterdon	67,981
Middlesex	62,810
Somerset	46,562
Warren	<u>59,032</u>
Total	236,385
Bedminster	5,675

Bedminster's share of the region's vacant developable land is thus 2.4 percent. Using the Public Advocate's methodology of averaging this factor with Bedminster's 4.9 percent of the job growth in the 4-County Region produces a composite allocation factor of 3.65 percent. When applied to the 20,283-unit prospective regional need determined by CUPR this produces only 740 units as Bedminster's share as

against the 994 units that resulted from using the job growth factor as the sole allocation criterion.

* * *

The use of the Township's share of the present total employment in the region as a second allocation criterion was examined, but rejected. As indicated above, the Mount Laurel II decision favors factoring in ratables that accompany new employment. To some extent, the Township's relative ability to support the development mandated by Mount Laurel II can be measured by its share of the region's total non-residential ratables which, in turn, are related to the total number of private covered jobs in the community. In 1981, Bedminster's covered employment amounted to 4,396, or 0.257% of the region's 1,709,286 total. Averaged with Bedminster's 1.8% share of the region's employment growth this produces a composite allocation factor of 1.03 which would bring Bedminster's fair share of the region's prospective need down to 598 units.

This criterion was rejected because a municipality's ability to support the services and facilities which are paid for largely by the real estate tax cannot be measured only from the revenue end. These costs are much higher per capita in old cities with crumbling infrastructure, decaying housing,

and a high fiscal overburden of police, fire, sanitation and education costs due to the high density concentrations of lower income households. Furthermore, most of the services required by the residents of condominium developments such as The Hills are user-supported, whereas in older urban areas such costs fall largely upon the real estate tax base. Also, as Bedminster's costs of servicing the new development increase, so will its non-residential tax base following construction of The Hills commercial center, the City-Federal Savings and Loan Association's headquarters building, and others.

c. Recommended Allocation of Prospective Need to Bedminster

After consideration of the above, I recommend that Bedminster's share of the 1990 prospective housing need in its housing region be established at 908 units. This figure was arrived at by (1) reducing the 1,179 unit allocation proposed by the Public Advocate to 1,045 units, as explained above; (2) by averaging the two CUPR-based figures of 994 and 547,²² which produces an allocation of 771 units; and (3) averaging 1,045 with 771. The resulting 908-unit

²²This figure represents the prospective need for an 11-county region, as explained above.

allocation compares with 666-741 units proposed by the Township and the 1,360 figure urged by Dobbs.

3. Determination and Allocation of Present Need

A municipality's fair share of the "present need" consists of the replacement need for its existing dilapidated and overcrowded units that are occupied by low- and moderate-income households plus an appropriately determined proportion of the excess "present need" of older, built-up communities.

* * *

Dobbs has added another component of municipal "present need" which he calls "Expected to Reside [in the municipality] by Reason of Employment." He calculates this component by comparing the percentage of all persons employed in Somerset County who commute into the county from elsewhere with the average percentage of incommuters to all other counties in the 8-county region.

Based on unpublished 1980 Census data supplied by Clarke and Caton,²³ Dobbs claims that 38,611, or 46 percent, of all persons employed in Somerset County in 1980 resided outside of the county. Since the average in-commuting to all 8

²³ Clarke & Caton, op. cit., Table E-6, p. 37.

counties in the region is only 37%, there is an excess of 3,473 in-commuters, 40 percent of whom, representing 1,376 households, have low or moderate incomes. Without any supporting evidence that the percentage of lower income persons among those who commute (probably by car) to jobs in Somerset County equals the State-wide average of such persons (which includes non-working single-parent households, the handicapped and the retired), Dobbs claims that this calls for the provision of 1,376 units of Mount Laurel-type housing in Somerset County. As the final step, Dobbs then adds 14% of that number, or 192 units, to Bedminster's share of Mount Laurel housing, based on the sole criterion of Bedminster's share of all of the County's vacant developable land, which, as discussed above, is the most unreliable of all allocation criteria commonly in use.

Quite apart from its basic imperfections, this reasoning totally ignores that the 1980 Census also shows that 45,370, or 49.5 percent, of all of Somerset County's "employed residents" work outside the county. If those who "in-commute" are counted as persons "expected to reside" in Somerset County by reason of employment, then those who "out-commute" should be counted as persons who can be expected to reside elsewhere.

If the 192 units needed for those "expected to reside" in Somerset County is the product of reducing the in-commuting to the average of all 8 counties, the same procedure in reverse should produce the number of units to be subtracted from Somerset County's responsibility. Excluding the 8,275 persons whose place of work was not reported, the 1980 Census found that 46,331 persons, or 50.5% of the total, both work and live in the county and 45,370, or 49.5%, work elsewhere.

Based on unpublished 1980 Census data supplied to me by the Regional Plan Association, the average "out-commuting" for all 8 counties in the region is 38.34 percent. This is 11.16 percent less than Somerset County's 49.5 percent of out-commuters. Since the difference between the 46 percent of all those employed in the County who in-commute and the 37 percent region-wide average is only 9 percent, use of this criterion for allocation purposes would reduce rather than increase Bedminster's fair share of the present need.

In addition, given the high current number of two-income households, it would probably be totally futile to attempt to equalize in- and out-commuting since, if a given household is located in the county of employment of one of the wage-earners, it may still entail out-commuting for the other.

Use of the "expected to reside" criterion was rejected, however, primarily because nowhere in its Mount Laurel II decision did the Supreme Court suggest that equalizing existing in and out commuting among the State's counties is a part of the constitutional obligation of municipalities. The above discussion is supplied only to show that, in any event, the methodology used by Dobbs is one-sided and therefore flawed.

a. Indigenous Need

There is little disagreement regarding Bedminster's relatively minor responsibility with respect to its own existing deficient or overcrowded units. Dobbs accepts Bedminster's estimate of 39 such units. The Public Advocate's figure is 59. The difference between the two figures is primarily definitional since the Township includes as deficient only 11 units lacking kitchens and 22 lacking complete plumbing. The Public Advocate excludes the 11 units lacking kitchens-- as well as 6 units found by the Township to be overcrowded-- but includes 30 units having inadequate heating facilities or none at all. Using a more sophisticated analysis, the Public Advocate then assumes that only 82 percent, or 43 of the resulting 52 units, are occupied by low and moderate income households and then adds 16 units which are needed "to provide mobility and choice in an otherwise tight and inflated housing market." This brings the total to 59, or

20 units above the number determined to be needed by the Township.

Before dealing with the difference, it is important to establish the type of remedial measures called for by any "indigenous need" determined in this manner. The customary equating of this "need" with the need for new construction of the same number of units is fallacious. A unit lacking some item of plumbing or having an inadequate heating system, or needing general rehabilitation can often be improved. While in many instances, and especially so in older urban areas, an absence of these facilities indicates the presence of multiple deficiencies, this need not be so in a community like Bedminster. Until better estimates are produced through the only means that is truly reliable, namely local house by house surveys, I believe that not more than one third of the 43 deficient units should be counted as needing to be replaced.

As for the few overcrowded units that are otherwise in sound condition, it is entirely possible that none will need to be replaced. When new units affordable to all income groups, including low and moderate income households, are constructed in the community the mismatch between unit sizes and sizes of households occupying them can be straightened out. The sound units which would be thus vacated could be used

instead of new ones to accommodate appropriately sized "prospective need" households. If the vacated units are affordable to low and moderate income households, they could be used as part of the municipality's Mount Laurel II compliance offering.

Thus, at this time, I believe that it is appropriate to assume that the 43 units which were deemed by the Public Advocate to comprise Bedminster's indigenous need should be reduced to the 14 requiring replacement. To these should be added the 16 units needed to achieve the desired vacancy rate in the existing low- and moderate income housing supply. I recommend therefore that the total indigenous need for Bedminster Township be set at 30. This is nine units below the Bedminster and Dobbs estimates and twenty-nine units below that of the Public Advocate.

b. Determination and Re-allocation of Surplus "Present Need"

To meet the New Jersey Supreme Court's mandate that no municipality be burdened with more than its fair share of the present need of the region, the Public Advocate has determined that the "present need" replacement burden to be assumed by each municipality should not exceed the 6.795 percent of the region's total number of occupied year round housing units which consists of deteriorated or overcrowded

units occupied by Mount Laurel eligible households. In Bedminster, this results in a replacement need allocation of 61 units, 18 more than the 43-unit indigenous "present need" determined by the Public Advocate. The Public Advocate correctly recognizes that the process of redistributing the low- and moderate-income population from one part of the region to another by providing housing units for that specific purpose must be allowed a full generation (30 years) to permit a corresponding redistribution of economic activities and employment opportunities. He thus allocates 6 replacement units to the Township of Bedminster for the period until 1990. I concur with this number.

* * *

Bedminster's own calculations of surplus "present need" are based on the region delineated by it which was not accepted.

* * *

Dobbs differs with the Public Advocate's formulation. His determination of the surplus "present need" of the region accepts the Public Advocate's method of deriving the regional average which should not be exceeded (6.8%). He then re-allocates the surplus in excess of 6.8% from three counties (Essex, Hudson and Passaic) to the remaining five

counties in proportion to the average of each of the five counties' share of the existing employment and vacant developable land in the five counties. As the last step he then allocates to Bedminster the burden of supplying 417 units based on the Township's average share of Somerset County's vacant developable land, only.

This methodology first relieves all communities in Essex, Hudson and Passaic Counties of any responsibility, regardless of whether their "present need" does or does not exceed 6.8% of their occupied year round housing units. It also ignores the Mount Laurel II mandate that each municipality be required to shoulder its fair share of the housing needs of its entire region. It is clearly inappropriate to manipulate the definition of "the region" and the allocation methodology every time one deals with one or another aspect of housing need. Why, for instance, should replacement units to Somerset County be allocated on the basis of the average of its share of the employment and the vacant developable land in its freshly tailored region, while the allocation to Bedminster is based only on its share of the county's vacant developable land which, as discussed previously, is a highly unreliable criterion? The reasoning is strained, the methodology suspect, and the results exaggerated.

Even more serious, however, is the basic difference in allocation methodology between Dobbs and the Public Advocate. The latter starts with the fact that, on a region-wide basis, the proportion of deteriorated and overcrowded units occupied by Mount Laurel II-eligible households averages 6.795 percent of the region's total occupied housing units. The Public Advocate then redistributes the population living under unacceptable conditions among all communities in the region whose percentage of housing needing "replacement" is below that region-wide average. He does this in such a way that the allocation to each municipality, together with its existing unacceptably housed households, will equal the average for the region. This method, by taking into account the existing size of the community, follows the Supreme Court's admonition that no municipality should be "radically transformed by a deluge of low and moderate income developments."²⁴ This, however, would be precisely the outcome if Dobbs' methodology were to be followed. When added to the existing 39-43 units representing the Township's "indigenous need," the 417 redistributive lower income units allocated to Bedminster by Dobbs would equal some 48.4 percent of the Township's existing occupied housing units!

²⁴92 N.J. 219.

4. Summation of Bedminster's Recommended Fair Shares

The Township's total allocation of the present and prospective need for low- and moderate-income housing recommended in this report thus amounts to the following:

<u>Present Need</u>		
Indigenous	30	
Re-allocated Surplus	<u>6</u>	
Sub-Total		36
<u>Prospective Need</u>		<u>908</u>
Total		944

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

Bedminster's response to its obligation under Mount Laurel II has taken two forms:

- a. The Township has rezoned certain portions of the "growth" corridor delineated in the SDGP that were defined in Allan Deane V. Township of Bedminster, and sanctioned in a prior Court order in this action.

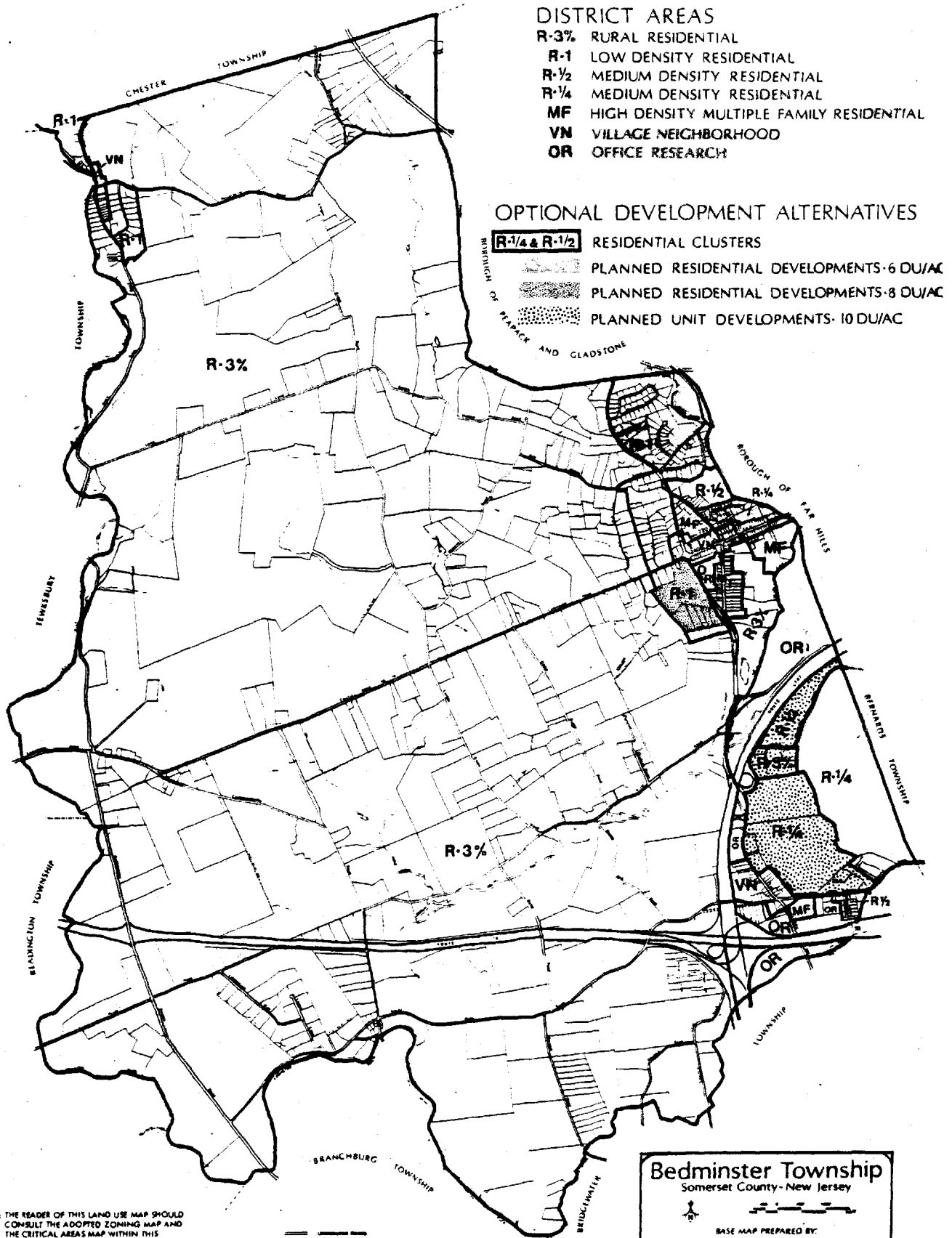
- b. It has modified its land development regulations by creating new zoning districts, some of which included mandatory set-asides for subsidized or least-cost housing. The Court found that these provisions satisfied the mandate of Mount Laurel I. Following Mount Laurel II, the Township introduced an amendment to its Land Development Regulations, action on which was stayed pending a determination of Bedminster's housing region and fair shares under the revised mandate and a review of the amendment itself as to its compliance with Mount Laurel II.

a. Bedminster's Zoning Map

The new zoning map is enclosed in this report (see Land Use Plan). Only 12 sites in the modified "growth" corridor were

Land Use Plan

APRIL, 1982



DISTRICT AREAS

- R-3% RURAL RESIDENTIAL
- R-1 LOW DENSITY RESIDENTIAL
- R-1/2 MEDIUM DENSITY RESIDENTIAL
- R-1/4 MEDIUM DENSITY RESIDENTIAL
- MF HIGH DENSITY MULTIPLE FAMILY RESIDENTIAL
- VN VILLAGE NEIGHBORHOOD
- OR OFFICE RESEARCH

OPTIONAL DEVELOPMENT ALTERNATIVES

- R-1/4 & R-1/2 RESIDENTIAL CLUSTERS
- PLANNED RESIDENTIAL DEVELOPMENTS-6 DU/AC
- PLANNED RESIDENTIAL DEVELOPMENTS-8 DU/AC
- PLANNED UNIT DEVELOPMENTS-10 DU/AC

NOTE: THE READER OF THIS LAND USE MAP SHOULD CONSULT THE ADOPTED ZONING MAP AND THE CRITICAL AREAS MAP WITHIN THIS DOCUMENT FOR THE LOCATION OF "CRITICAL AREAS" AS PERMITTED AND COMPROHENSIVE.

Bedminster Township
Somerset County - New Jersey

BASE MAP PREPARED BY:
Bedminster Township, Somerset County, N.J.

zoned specifically in response to the court mandate to provide for low- and moderate-income units. These sites are shown on the map entitled Identification of MF, PRD and PUD Land Areas.

The total capacity of each site and the number of low- and moderate-income units that could be produced on each was analyzed by both Bedminster and Dobbs. Since publication of its August 1982 Master Plan Housing Element which was addressed by Dobbs in his analysis, Bedminster has revised its capacity study on the basis of more accurate recent information regarding the extent of "critical" areas.²⁵

Shown in Table 1 are the 12 sites and their total development capacity as determined by Bedminster and Dobbs.

(Bedminster identifies the sites by means of letters--A to L--whereas Dobbs uses the numbers 1 to 12.) The capacity of each site is expressed in dwelling units within the limits set by the applicable land development regulations including the effect of any portion of the site being characterized as "critical" (i.e. being susceptible to flooding or having a slope in excess of 15 percent).

²⁵ Flood Insurance Rate Maps and Floodway Boundary-Floodway Maps prepared by the Federal Emergency Management Agency and dated September 30, 1982.

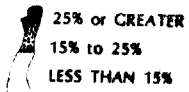
Identification of "MF", "PRD", and "PUD" land areas.

Critical Areas

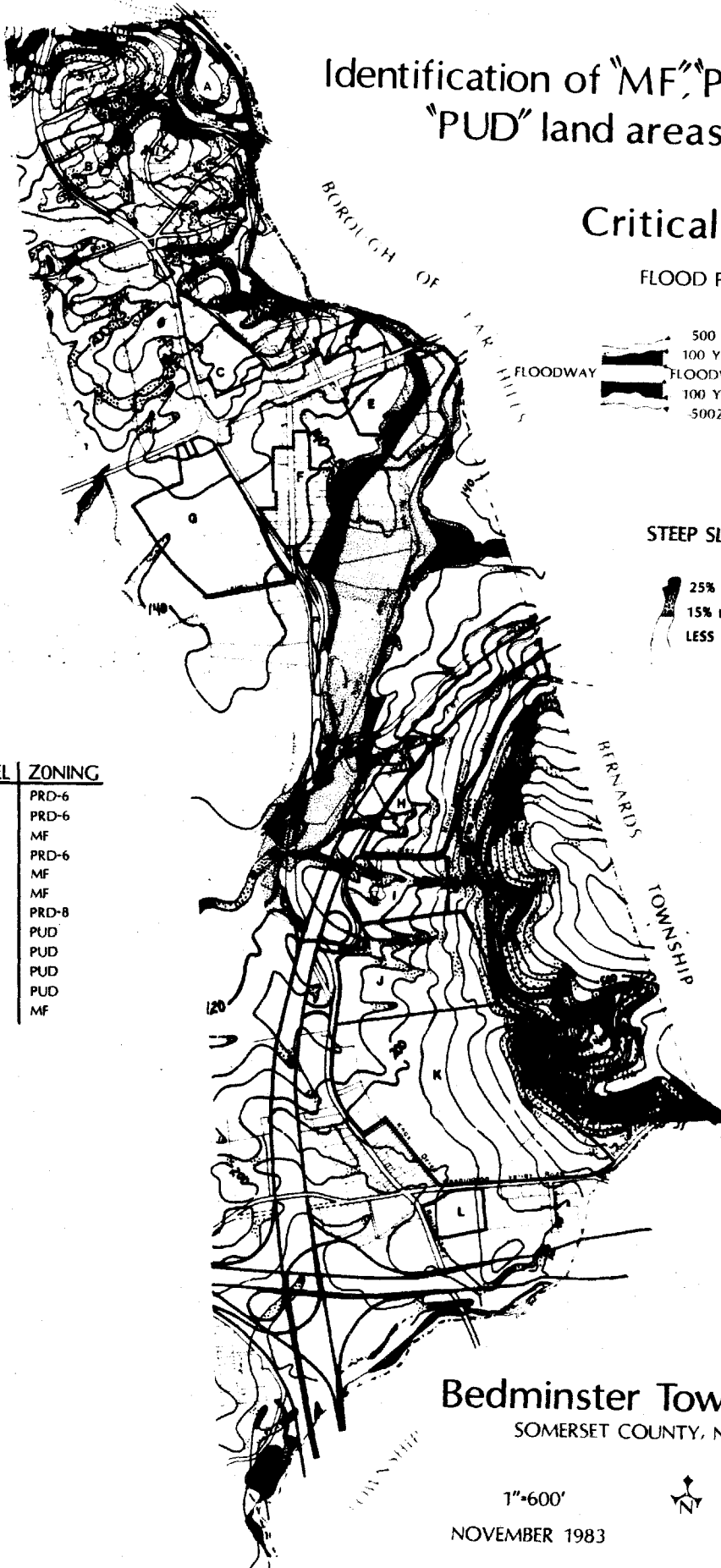
FLOOD PLAINS



STEEP SLOPES



PARCEL	ZONING
A	PRD-6
B	PRD-6
C	MF
D	PRD-6
E	MF
F	MF
G	PRD-8
H	PUD
I	PUD
J	PUD
K	PUD
L	MF



Bedminster Township
SOMERSET COUNTY, N. J.

1"=600'



NOVEMBER 1983

Table 1

SITES ZONED MF, PRD, AND PUD
Bedminster Township

<u>Site Identification</u>		<u>Capacity in Dwelling Units</u>	
<u>Bedminster</u>	<u>Dobbs</u>	<u>Bedminster</u>	<u>Dobbs</u>
A	1	66	134
B	2	80	79
C	3	290	67
D	4	36	81
E	5	199	146
F	6	306	0
G	7	514	517
H	8	449	414
I	9	257	0
J	10	599	0
K	11	1,287	1,287
L	12	<u>177</u>	<u>178</u>
Total		4,260	2,903

Upon review of these sites and with the benefit of the more recent topographic and hydrological data used by Bedminster, I have determined that the 12 sites have the capacities set forth in Table 2, below. The reasons for the difference between these determinations and those offered by either Bedminster or Dobbs are supplied in the explanatory notes which follow the table. Minor differences were overlooked.

Table 2

SITE CAPACITY

<u>Site Identification</u>		<u>Capacity</u>
<u>Bedminster</u>	<u>Dobbs</u>	
A	1	66
B	2	80
C	3	165
D	4	36
E	5	199
F	6	0
G	7	514
H	8	414
I	9	257
J	10	599
K	11	1,287
L	12	177
Total		3,794

Site A (No. 1) Dobbs assumed that only 11 acres of this 23-acre site are critical. In fact, the proportions are reversed.

Site C (No. 3) The total area of this site amounts to 24.77 acres. It is zoned MF (a classification which permits 12 dwelling units per acre). Dobbs' analysis found only one vacant developable parcel containing 5.57 acres. In fact, despite the presence of single family houses, three others, with a combined area of 8.22 acres, can be assumed to be available. I base this opinion on the probability that the higher value of the land for multi-family development will lead its owners to dispose of their oversized

lots. The total area available for development is thus increased to 13.78 acres with a resulting yield of 165 units.

Site D (No. 4) Dobbs assumed that the entire 13.8 acres are "non-critical." Based on the update of environmental factors mentioned above, Bedminster has revised its evaluation of this site by showing 7.8 acres as "critical" and 5.8 acres as suitable for development at the permitted density of 6 units per acre.

Site E (No. 5) The difference between the 199-unit capacity of this site claimed by Bedminster and the 146-unit credited to it by Dobbs is derived from a difference in the measurement of the "critical" area. Dobbs characterized 31.58 of the total of 43.24 acres as "critical" whereas Bedminster found that only 27.1 acres were so affected. Since Bedminster had the advantage of updated information I concur with its determination.

Site F (No. 6) This site, which is zoned MF permitting multi-family development at a density of 12 units per acre, consists of a strip straddling Route 206 between its point of separation from Route 202 and a point south of Lamington Road. With one or two exceptions, the frontages along both sides of the road are developed with one family houses. Eleven lots containing 18.5 acres of the site's total of 30.14 acres, all have a depth of some 600 feet. Taking into account that 4 of the 18.5 acres are "critical," the capacity of the site is 174 units.

Dobbs assigned zero capacity to this site because of the difficulty and cost of site assembly. In the short run, he is probably correct. In the long run, market pressures can be expected to cause the assembly of at least the rear portions of these lots with one or two points of access to Route 206. For purposes of this study, however, I have concurred with Dobbs' evaluation.

Site H (No. 8) Dobbs assumes that 20% of this 51.76-acre site will be developed for commercial uses, as permitted under the Township's applicable Planned Unit Development District regulations. Even though, as Dobbs also notes, the access to this site is difficult--which to me suggests that the optional use of 20% of the site for commercial uses will be foregone--I have accepted Dobbs' evaluation.

Site I (No. 9) This site encompasses 31.79 acres, of which 6.2 are "critical." It contains 4 single family houses on lots which average 7.95 acres. The zoning permits 10 dwellings per acre. The total value of the entire tract for such development can be conservatively estimated at close to \$4 million (using the generally accepted premise that developers are prepared to pay around \$15,000 per unimproved acre of readily useable land zoned for townhouse development). For these reasons, I rejected Dobbs'

assumption that the existing houses render this land unavailable for development.

Site J (No. 10) Bedminster and Dobbs agree on the capacity of the site, but Dobbs alleges that the presence of a single house on this eminently developable 73.25-acre site makes it unavailable for development. The site adjoins The Hills and the approved site plan of the Hills development provides access to this site. Its development capacity of nearly 600 units under its 10 units per acre PUD classification makes it worth perhaps as much as \$9 million or more. Under the circumstances, I cannot support Dobbs' claim that this site should not be counted.

b. Bedminster's Land Development Regulations

1. Several requirements in the existing Bedminster Land Development Regulations should be eliminated since they cannot be implemented without subsidies which are not currently available. These include the requirement that 25 percent of the units

affordable to low- and moderate-income households (hereinafter referred to as "affordable units") be provided in the form of senior citizen housing; that 35 percent of the said units be provided in the form of rental housing; and that 5 percent of the rental or sales units have at least four bedrooms.

2. To achieve a balanced distribution of units, by size, to correspond with the currently prevailing sizes of households, the bedroom mix should be revised so as to require that, of the affordable units intended for each income class (low and moderate) not more than 50 percent consist of units with one bedroom or less and not less than 20 percent have three bedrooms.
3. The regulations governing developments in "MF" High Density Multiple Family Districts should be revised to require a 20 percent affordable unit set-aside, similar in all respects to that which will apply to the Planned Residential Developments and Planned Unit Developments.
4. The ability of developers to comply with the affordability-related requirements of the land

development ordinance will be affected by changing conditions such as interest rates, availability and nature of housing subsidy programs, building costs, required off-tract improvements, allocation of the cost of infrastructure improvements between the developer and the Township, etc. The normal variance procedure through the Zoning Board of Adjustment is not applicable, particularly since, as a matter of policy which only the Township Committee can decide, the Township can--and, under Mount Laurel II, may have to--assume direct responsibility for actions, including changes in the applicable zoning regulations, that may be required to enable it to comply with its mandate.

It is also important to avoid wherever possible the need to litigate disagreements as to the respective responsibilities of the developer and the Township.

In discussions with the Office of the Public Advocate, a suggestion emerged which seems to have a great deal of merit. First, a developer would be required to prove to the Township that he cannot comply with the affordability-related provisions of the local regulations.

If the Township does not feel the need to provide some form of relief, at the developer's expense, the parties would each select a mediator and the two mediators would mutually agree on a third. The product of the mediators' work would be a recommended, rather than binding, solution. If, despite the mutuality of interest of the two parties in the realization of a development meeting Mount Laurel criteria on the pre-zoned site, the mediators' recommendations are not accepted, the matter would end up in court. The fact that the cost of this process would be paid by the developer would tend to limit the number of frivolous and baseless attempts to increase the yield of the property in the absence of basic impediments to full compliance with the regulations.

5. I have given considerations to the possibility that a developer of market rate housing may have no interest in the provision of affordable units as part of his development and that the regulations might permit him to meet that requirement by making a contribution to a developer specializing in such housing for use on some other site. This method seems to have been successfully used in

Orange County, California. I have serious reservations regarding the applicability of this method to Bedminster for two principal reasons: first, it would tend to result in the segregation of the affordable units rather than their being provided as an integral part of market rate developments, as apparently it is possible to achieve under the proposed regulations; and, second, the difficulty of phasing in the construction of the required affordable units with that of the market rate units, as required under Section 13-805.3.h of the Bedminster Land Development Ordinance.

6. I believe that the modifications suggested above would bring the Township's Land Development Regulations in compliance with Mount Laurel II. I have requested the Township's Planning Consultant to comment on these proposals. His reaction, which is presented in Appendix A to this report, includes comments regarding some provisions which I had under considerations but which I decided against making a part of my recommendations. (The letter from Kenneth E. Meiser, Esq., Deputy Director, Division of Public Interest Advocacy, Department of the Public Advocate, which is

referred to in Mr. Coppola's letter in Appendix A is inserted immediately following).

c. Does the Bedminster Zoning Provide a Reasonable Opportunity for the Provision of Low- and Moderate Income Housing?

The answer to the question in the above title is a function of the probable number of affordable units that would be provided under the applicable regulations on each of the sites zoned to permit housing at higher densities (6 to 12 units per acre).

The analysis which follows deals with the several sites in the order of the immediacy of their availability for development and assumes that the "affordability" aspects of the Land Development Regulations will be adjusted to comply fully with Mount Laurel II.

(1) Sites Available for Early Development

Site K (11) The Hills development will produce 260 units approved as affordable by the Court.

Sites I (9) and J (10) These two sites, which are zoned for 10 units per acre with a mandatory 20 percent affordable

housing set-aside, have access to adequate sewer capacity and can thus be assumed to provide a reasonable opportunity for the construction of 171 units of affordable housing (one-fifth of their aggregate capacity of 856 units).²⁶

Site L (12) This site, which is zoned MF and which has a capacity of 177 units, also has access to available sewer capacity. The current regulations do not impose a mandatory set-aside in MF Districts. The Township's proposed amendment, however, would impose a 35% minimum affordable housing requirement. As discussed in the analysis of those Bedminster Land Development Regulations that are related to affordable housing in the previous section of this report, the economic feasibility of a 35% requirement is doubtful. For this

²⁶ See letter from Richard Thomas Coppola, Planning Consultant to Bedminster Township in Appendix B.

reason, I am crediting this site with only 20% of its total capacity, or 35 units.²⁷

Site E (5) This site, which is also zoned MF, has a total capacity of 199 units, including 40 affordable units (at 20% of the total). The availability of this site is a function of the successful resolution of two problems which diminish the ability of the existing Bedminster-Far Hills sewage treatment plant to accept additional loads. Part of the existing capacity of the plant is being held in reserve for AT&T in addition to its current usage. AT&T may be willing to relinquish this excess. The capacity of the plant is also affected by storm water infiltration which may be curable.²⁸

²⁷ Ibid.

²⁸ Ibid.

The Township will attempt to work out these problems in the near future. Since the Mount Laurel II mandate allows the Township up to six years for the development of the needed sites, I believe that this site should be credited with at least 20% of its capacity at this time. If the Township's efforts fail to resolve the sewerage capacity problem within the next year or two, other sites would have to be substituted.

One alternate possibility is using the entire site for subsidized senior citizen housing, in which case its entire 199-unit capacity would be devoted to affordable housing. I deem this to be a realistic alternative inasmuch as the federal Section 202 Senior Citizen Housing program is still available and the location of the site, immediately adjoining the Bedminster Village Center, makes it eminently suitable for such housing.

Funding commitments for Section 202 projects are awarded exclusively to non-governmental non-profit sponsors on a competitive basis, so that the Township's interest, desire and success in encouraging the establishment of, or the assumption of responsibility by an eligible sponsor organization in the next two or three years will be a major determinant of whether the site will be credited with 40 or 199 units towards its compliance with Mount Laurel II.²⁹

Altogether the sites which can be classified as providing the required "reasonable opportunity" thus have the capacity for 506 to 665 units of affordable housing.

(2) Sites Available for Later Development

Sites A (1) and D (4) zoned PRD at 6 units per acre, together have a capacity of 102 units and

²⁹ Site L (12), which is also located near shopping in the Pluckemin Village area, was not credited with the possibility of its being used for Section 202 housing in its entirety because, without a substantial change in federal housing policies, Bedminster would be unlikely to gain approval of two sites within a two to three year period.

could thus provide 20 units of affordable housing. Site G (7), zoned PRD at 8 units per acre, has a capacity of 514 units, or 103 affordable units. Site H (8) has a capacity of 414 units, including 83 affordable units, under its PUD, 10-unit per acre zoning. All four sites will only be useable following expansion of sewer services which will require time.

The availability within the next six years of Sites B (2) and C (3), with their aggregate capacity of 245 units (including 49 affordable units) is conjectural since it would depend upon site assembly, redevelopment, or willingness of individual owners to proceed with relatively small developments on their own.

The 255-unit affordable housing capacity of the six sites discussed above, though real, is thus not credited against Bedminster's current mandate under Mount Laurel II.

To summarize:

	<u>Site Nos.</u>	<u>Affordable Units</u>
<u>Available for Immediate Development:</u>	I (9) & J (10)	171
	K (11)	260
	L (12)	<u>45</u>
Sub-Total		466
<u>Probably Available Within Three Years:</u>	E (5)	<u>40-199</u>
Total Affordable Units Reasonably Provided For:		506-665
<u>Other Affordable Units Which May Be Constructed on Rezoned Sites after 1990</u>	A(1), B(2), C(3), D(4), G(7), H(8)	<u>255</u>
<u>Total Zoned Capacity</u>		761-920

* * *

Phasing. In its decision, the Supreme Court was aware of the possibly deleterious effect of a wave of development too sudden and large to be absorbed in an orderly fashion by small rural or suburban municipalities:

"...any changes brought about by this opinion need not be drastic or destructive. Our scenic and rural areas will remain essentially scenic and rural, and our suburban communities will retain their basic suburban character..."³⁰

In a communication to me dated December 19, 1983, Mr. Richard Coppola, Bedminster's planning consultant, stated in part as follows:

³⁰ 92 N.J. 220.

"...the current (1980) population of the Township is 2,469 people who are housed in 938 total housing units. With the development of The Hills PUD only, the population of the Township will have increased by a factor of 2.3 to 5,670 people. When currently sewerred Sites I, J and L also are developed, the population of the Township will have increased to 8,180 people, which is more than three (3) times the current population. At that time, and assuming no other residential development in the municipality has occurred, the total number of dwelling units in the municipality will have increased three and one-half (3.5) times.

The impact on the school systems serving the Township is even more dramatic. By the time The Hills PUD is developed, the Township may have to expand its lone elementary school since the rated functional capacity of the school will have been exceeded. Additionally, Bedminster Township will have doubled the number of students it currently sends to the regional high school located in Bernards Township. At the time that Sites I, J and L are developed, the Township will need additional elementary school space equal, almost, to that which currently exists (709 elementary age students vs 404 rated functional capacity)."

The impact described above would result from development that would produce 506 certain affordable units and possibly as many as 665.³¹ The Township's "fair share" allocation recommended in this report amounts to 944 units of such housing. The difference between the 944 required affordable housing units and the 506-665 units provided for thus amounts to 279-438 units. If these additional units were

³¹ Although the impact may be reduced slightly if Site E(5) is developed with senior citizen housing.

provided through a 20 percent mandatory set-aside, the total required additional development would amount to 1,395-2,190 units. This would add approximately 3,400 to 5,350 persons to Bedminster's already projected 1990 population of 8,180 inhabitants. The total increase above the Township's 1980 population of 2,469 would thus amount to between 9,100 and 11,050 persons, while the rate of increase would be 465 to 545 percent! This increase would occur not in ten, but in six years, since the population of the Township has remained relatively stable between 1980 and the end of 1983.

I believe that such a rate of growth would be excessive. It would destroy many of the intangible values which invest Bedminster with its present quality. On the other hand, providing 506-665 units of Mount Laurel II-type housing within six years will definitely cause it to lose that negative quality--exclusionary zoning--which the Mount Laurel II decision intends to eradicate.

My opinion is based also on the possibility that, if the methodology recommended in the CUPR Study is accepted in the near future, Bedminster's allocation may be lowered to approximately the level provided for in its current zoning.

Any continuing imbalance that may result from acceptance of this level of compliance at this time would be subject to

review and adjustment at the end of the six year repose period.

d. Recommendation

Based on the above, I recommend that the Township's current zoning, modified (1) so as to require a mandatory set-aside of not less than 20 percent of affordable units in all MF Districts, and (2) adjusted so as to bring all its other "affordability"-related requirements into compliance with Mount Laurel II mandate, be found to comply with the Mount Laurel II requirement that, by 1990, Bedminster provide a reasonable opportunity for the construction of its fair share of the present and prospective low- and moderate-income housing need in its housing region.

APPENDIX A

January 8, 1984

George M. Raymond, P. P.
Raymond, Parish, Pine & Wiener, Inc.
555 White Plains Road
Tarrytown, New York 10591

Re: Bedminster Township's Zone Plan:
Meeting Its "Mt. Laurel II" Obligations.

Dear Mr. Raymond:

As you requested, and pursuant to questions raised by Kenneth E. Meiser in his letter of December 19, 1983, I offer the following comments, although they should not be construed to be the position of the Bedminster municipal officials, since time did not permit a meeting with the Planning Board and Township Committee:

- Regarding Sr. Citizen housing, the current mandatory provisions should be removed; however, there should continue to be provisions permitting such housing, since the parking and bulk requirements will be different than those appropriate for family housing.
- Regarding bedroom ratio requirements, the suggested 50% maximum for 1-bedroom and 20% minimum for 3-bedroom units appears reasonable.
- Regarding the elimination of a minimum percentage of rental units, I need to hear the arguments why such dwelling units are unrealistic.
- Regarding the Public Advocate's position that 20% is the most any developer should be required to set-aside for low and/or moderate income housing, we feel that the percentage should be evaluated in terms of the specific site and ordinance provisions; we feel that 22% is reasonable in Bedminster Township for the "MF" Districts.
- Regarding the proposal to increase the density of the PRD-6 areas from six (6) to eight (8) dwelling units per gross acre of land area, we emphasize the fact that the current ordinance provisions provide a net density for the development of the "non-critical" acreage in excess of six (6) dwelling units per acre, because of the transfer of development credits from the "critical" lands to the "non-critical" acreage.
- Regarding the idea of instituting a mechanism at the local level for adjusting the prevailing ordinance requirements at the developer's request and pursuant to facts offered by the developer to the Township, while we recognize the intent of the "flexibility" suggestions offered by



State of New Jersey

DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF PUBLIC INTEREST ADVOCACY

CN 850
TRENTON, NEW JERSEY 08625

RICHARD E. SHAPIRO
DIRECTOR
TEL: 609-292-1693

JOSEPH H. RODRIGUEZ
PUBLIC ADVOCATE

December 19, 1983

George Raymond
555 White Plains
Tarrytown, New York 10591

Dear George,

Most of the attention in Park 2 of your Bedminster assignment has focused upon fair share issues. There are other issues, however, which should not be lost in the shuffle. Since I am leaving for a week's vacation, December 19th, I wanted to send you an outline of these issues before I left. I consider the last issue on this list to be most important.

1. Items Waived in Alan Deane Settlement. Our settlement involved the waiver of the requirements for senior citizen housing, bedroom ratios and rental housing. I believe the senior citizen provision should be removed from the ordinance. I think the present bedroom ratio requirement is too burdensome. I would suggest a maximum of 50% one bedrooms, and a minimum of 20% three bedrooms. I do not see how we can realistically require a developer in today's economy to construct a percentage of rental units.

2. Inclusionary Requirements. The Public Advocate opposes any requirement which would force a developer to provide 35% low and moderate income housing. The Department believes that 20% is the most any developer should be expected to provide.

3. PRD 6, 8 and MF Zones Some review should be given to certain features of these zones to determine whether it is possible to increase the likelihood that lower income housing will actually be constructed.

Pursuant to 13-606.3 garden apartments are not permitted in PRD-6 zones, although townhouses are. Our experience has been that most developers are planning to provide their lower income housing through garden condominiums.

There is also concern about whether the maximum density of 6 to the acre for the PRD-6 should not be raised. The same 20% requirement is imposed on all PRD developers, regardless of whether

George Raymond
Page 2
December 19, 1983

their density is 6 or 10 to the acre. Six to the acre density seems on the low side to support a 20% Mt. Laurel II requirement.

The MF zone permits a maximum density of 12 to the acre, regardless of whether townhouses or garden apartments are constructed. The Public Advocate's expert report submitted to the master in the Southern Burlington County N.A.A.C.P. v. Mt. Laurel Tp. case recommended densities of 14 to the acre for a townhouse, 18 for a two-story garden apartment and 22 to the acre for a three-story garden apartment. It should also be noted that the Affordable Housing Handbook prepared by the Department of Community Affairs (1980) states at p. 27:

As a means of providing some indication of what constitutes appropriate densities for various housing types we offer the following table:

<u>Type of Unit</u>	<u>Optimum Density Range (Per Gross Acre)</u>
Townhouse, Quadruplex, etc.	10-20 units
Garden apartments	15-25 units

Consideration needs to be given to raising this density, particularly for garden apartments.

4. Flexibility for a Mt. Laurel II developer. This is the most crucial question of all. The Bedminster ordinance, as amended, would require that a developer provide 10% lower income housing and 10% moderate income housing if he wants to take advantage of the PUD or MF provisions. We strongly support this provision. Nevertheless, none of us can see the future. None of us knows what interest rates will be three years in the future. What if, because of a rise in interest rates, it is simply not feasible for a developer to provide under the terms of the ordinance 10% lower income housing affordable to households with incomes at 50% of median, paying 25% of their income for shelter? It is no answer to say that the developer should either wait for interest rates to go down or file suit challenging the ordinance. More litigation is the last thing Bedminster wants or needs.

The Public Advocate's proposal is that in such a case the developer should be entitled to request the Planning Board to modify the terms of the ordinance by either giving the developer additional assistance in meeting the requirements or easing the terms of the 10-10 requirement. Furthermore the developer could

George Raymond
Page 3
December 19, 1983

request the master to review, at the developer's expense, the request for a modification and make recommendations.


The ordinance should permit the planning board or the governing body to increase densities, reduce cost generating features or fees, modify bedroom ratios, and grant tax abatements, when the master finds it necessary. Alternatively, the master could permit the low income units to be increased in price where absolutely necessary (e.g., permitted to sell at prices affordable to persons at 60% of median. In no event, however, could the developer provide less than 20% of his development as lower income housing, so the development would still fully count towards Bedminster's fair share.

Should the master be unable to continue in this role, the Planning Board should appoint a replacement, considering the suggestions of the master.

I don't know if the ordinance could adequately lay out the factors the Planning Board or the master could consider in evaluating a request for a waiver. It is obvious that the most crucial factor will be interest rates. Special attention must be given to that. Beyond this general statement, I am not sure whether any attempt to list factors worthy of consideration would be productive.

I hope these suggestions have been helpful.

Sincerely,


KENNETH E. MEISER
Deputy Director

KEM:id
cc: Alfred Ferguson
Henry Hill
Peter O'Connor
Rich Coppola

(dictated by not proofread)

APPENDIX B

January 8, 1984

George M. Raymond, P. P.
Raymond, Parish, Pine & Wiener, Inc.
555 White Plains Road
Tarrytown, New York 10591

Re: Bedminster Township's Zone Plan:
Meeting Its "Mt. Laurel II" Obligations.

Dear Mr. Raymond:

As you requested, and pursuant to questions raised by Peter O'Conner, Esq. in response to my December 19, 1983 report, I have confirmed the following information with Messrs. Cilo and Ferguson regarding the Environmental Disposal Corporation and the Bedminster/Far Hills sewerage treatment plants:

Environmental Disposal Corporation (EDC) Plant

- The Environmental Disposal Corporation has been granted a private franchise by the Public Utilities Commission to provide sewerage treatment capabilities to a specified land area in Bedminster Township.
- The franchise area generally includes the lands bounded by Routes I-287 and I-78 in Bedminster Township, including the Village of Pluckemin, and specifically encompasses Parcels I, J, K & L as identified in my December 19, 1983 report (2,320 units, including approximately 475 low and moderate income units).
- The EDC plant is designed to accommodate 1,250,000 gpd, but due to receiving water limitations, the approved operating capacity is expected to be approximately 850,000 gpd.
- Sewerage treatment needs for the franchise area is estimated by EDC to be 858,488 gpd when full development is achieved, including 256,050 gpd earmarked to serve a portion of "The Hills" development in Bernards Township.

Bedminster/Far Hills (BFH) Plant

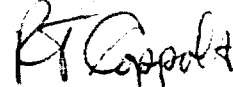
- The Bedminster/Far Hills plant has a design capacity (as limited by the N.J.D.E.P.) of 200,000 gpd. The existing average daily flow to the plant is 145,000 gpd; therefore, 55,000 gpd or approximately 229 additional dwelling units (@ 240 gpd/unit) could come "on line" before the present plant has to be expanded, assuming that A.T.&T. relinquishes or defers its allocated capacity and the infiltration problems experienced by the plant are brought under reasonable control.

January 8, 1984
page two.

George M. Raymond, P.P.

- There is no formal written agreement between Bedminster Township and A.T.&T. regarding its allocated capacity; instead, it was a consideration at the time of site plan approval, based upon the then unknown specific capacity need of the proposed A.T.&T. facility and the possibility that A.T.&T. might expand the facility. However, since that time, the capacity needs of A.T.&T. have been documented and there are no plans to expand the facility.
- Clearly, with the capacity for multiple family residential development in the EDC plant, Bedminster Township has the time to work out the ultimate resolution of the capacity of the BFH plant without detriment to its obligations under "Mt. Laurel II".

Truly yours,



Richard Thomas Coppola

RTC

cc:

Mayor Paul F. Gavin

J. William Scher, Planning Board Chairman

Alfred L. Ferguson, Esq., Special Counsel