RULS - AD - 1985 - 80

2/20/85

- Cover letter to Judge (1)
- Reply Memorandum in Support of Leonard Dobbs' Right to A Builder's Remedy (69)
- Appendix to Memorandum in Support of Leonard Dobbs' Right to a Builder's Remedy (30)

pg. 94

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RULS - AD - 1985 - 80

February 20, 1985

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FEB 21 1985

Honorable Eugene D. Serpentelli
Superior Court of New Jersey
Courthouse
CN-2191
Toms River, New Jersey 08754

Re: Dobbs v. Bedminster

Dear Judge Serpentelli:

I enclose herewith an orginal and one copy of the Reply Memorandum of Leonard Dobbs on the builder's remedy issue.

Should the Court desire any testimony with respect to this matter, we will of course promptly comply. We would welcome the opportunity to address, by way of oral argument, any concerns which the Court might have with respect to the arguments which have been raised by all parties.

By copy of this letter, I am providing a copy of the Reply Memorandum to all counsel.

Respectfully,

Raymond R. Wiss

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:SOMERSET COUNTY

ALLAN DEANE CORPORATION, Plaintiff, and LYNN CEISWICK, et al, Plaintiff-Intervenors, v. TOWNSHIP OF BEDMINSTER, et al, Defendants.	CIVIL ACTION Docket No. L-36896-70 P.W.
LYNN CEISWICK, et al, Plaintiffs, v. TOWNSHIP OF BEDMINSTER, et al, Defendants.	Docket No. L-28061-71 P.W.
LEONARD DOBBS, Plaintiff, v. TOWNSHIP OF BEDMINSTER, Defendant.	Docket No. L-12502-80 P.W.

REPLY MEMORANDUM IN SUPPORT OF LEONARD DOBBS' RIGHT TO A BUILDER'S REMEDY

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TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

ARGUMENT

Reply to Raymond Submission 5

Reply to Public Advocate Submission 13

Reply to Township Submission 33

Reply to Coppola Submission 56

CONCLUSION 58

PRELIMINARY STATEMENT

The following is a reply to the submissions made on the builder's remedy issue by Messrs. Raymond, Meiser, Ferguson, and Coppola. Pending receipt of the delayed submissions by Messrs. Ferguson and Coppola, replies were prepared to the submissions on an as received basis. Rather than further delaying this Court's disposition of the builder's remedy issue, we have hereinafter individually replied to each of these four submissions, in lieu of submitting an integrated reply. We apologize for the occasional repetition but believe that it is more important to expedite a final determination of the matter sub judice.

* * *

The January 21, 1985 Memorandum filed in support of Dobbs' right to a builder's remedy did not address the contribution made by Leonard Dobbs on the issue of "affordability" because it was anticipated that the Court's opinion on the "compliance package" would be rendered before the filing of this Reply Memorandum and would include specific findings with respect to the "affordability" issue. Such findings would presumably include standards and ranges of affordability as to the Hills I units; determinations respecting the absence of a substantial financial contribution by Hills as the developer of the Hills I site; the failure of the Township to assist in the reduction of the cost of the Hills I units through fee waivers

and federal, state, or local grant aid; disincentives to developers of other Mount Laurel units resulting from the disclosure provisions in the proposed compliance ordinance; and the lack of a definition in the ordinance of the "reasonable range" requirement for the provision of low and moderate income units.

While the Court has apparently decided to issue a comprehensive opinion on both the "compliance" issue and the builder's remedy issue, and while Dobbs reserves the right to submit a Supplemental Brief as to any conditions which attach to the compliance determination, Dobbs, in support of his right to a builder's remedy, notes the following substantial contributions which were made by him on the affordability issue which we believe should be reflected in conditions to the Township's compliance package:

1. Dobbs made a substantial contribution to the compliance package on the issue of "affordability" by being the only party to address the fact that the Hills I units, approved in expedient fashion based upon the representations of the Public Advocate, the Township, and Hills, are not, in fact, affordable to low and moderate income families. This was proven through the cross-examination of Alan Mallach during which it was acknowledged that the Hills I units exceeded, by at least a few dollars per month, the income capability of families at the ceiling levels for the low and moderate categories. This effort demonstrated that the units were not affordable to a reasonable range of families in the low and moderate income categories, as required by the Township's proposed compliance ordinance. This conclusion was supported by the D'Anastasio Report, submitted by

Dobbs during the compliance hearing, which is also offered into evidence with respect to the builder's remedy hearing.

2. Dobbs also demonstrated through the D'Anastasio Report, the fact -- uncontested by Hills, the Township, or the Public Advocate -- that the financial contribution of Hills, aside from the land, was, at best, nominal, and that the financial contribution of the Township was nonexistent. Dobbs anticipates that this evidence will convince the court that financial assistance from the developer and Township are essential and required ingredients under Mount Laurel II in the absence of federal subsidy programs. Such required aid should be a condition of all Mount Laurel II development under the Township's compliance package.

3. Dobbs also addressed, through the D'Anastasio Report, deficiencies in the Township's proposed ordinance which prohibited a retroactive application of the municipal fee waivers (Paragraph 7 of the Compliance Agreement) to the Hills I units, and which require a developer seeking relief from certain provisions of the ordinance to make full financial disclosure, Section 13-606.3i. These provisions should be revised in the Township's ordinance and such revisions should again be conditions of the Court's approval of the compliance package.

4. There is no definition in the Township's proposed ordinance for the "reasonable range" requirement under the affordability section. Developers will therefore be subjected to the arbitrariness of the Township's dictates on this issue, and the likelihood that low and moderate income housing will be constructed will be reduced. Dobbs raised this issue and

submits that an ordinance revision is necessary to enable developers to calculate the extent of their financial commitment to the low and moderate income component. The Court's approval should require a clear definition of "reasonable range".

In sum, Dobbs' contributions on the affordability issue -- although to date ignored by the Township -- are substantial and should be incorporated as conditions to any grant of compliance by this Court. This contribution, like the contribution of Dobbs on other issues, underscores his right to a builder's remedy.

ARGUMENT

Reply to Raymond Submission

As the Supreme Court recognized in Mount Laurel II, provision of adequate infrastructure, including sewer, is an essential element to the requirement that any proposed compliance package must offer a "reasonable opportunity" for construction of the low and moderate income units included therein.

> Defendant's planner estimated that only 30 units could be built in this zone, and conceded under no circumstances would anything be built for five to six years since there would be no sewer or water access available until then. Lower income housing on this tract is a phantom.

Mt. Laurel II, 92 N.J. at 298. (Emphasis added.) This standard was recognized by the Public Advocate, who, in his January 24, 1984 letter to this Court (PPA-4, at 7), stated:

> Without a satisfactory sewerage plan, an inclusionary zoning ordinance is meaningless. Indeed, without a sanitary waste option - sewer, package treatment, etc. - the township could rezone all lands in the municipality at 20 to the acre and no lower income housing would be produced. Resolution of unanswered questions about sewer capacity then is crucial to any determination of the adequacy of a fair share plan.

(PPA-4, at 7.)

In his January 24, 1985 submission, Mr. Raymond discusses the role which he claims to have played with regard to the all-important sewer issue. Unlike the Public Advocate (see discussion infra), Mr. Raymond gives little, indeed no, credit to Dobbs for his substantial contributions on this issue. Rather, on the basis of a May 27, 1980 letter which he wrote to

Judge Leahy, and comments made by him in his January 10, 1984 and April 11, 1984 reports to this Court, Mr. Raymond seeks to take primary credit for resolution of this issue notwithstanding the fact that he recommended that this Court approve the Township's December 1983 compliance package without a sewer plan. In fact, the references relied upon by Mr. Raymond demonstrate the limited and superficial role played by Mr. Raymond on this issue and the value of and necessity for the Dobbs contribution.

Mr. Raymond argues that he "raised the issue of site sewerability" in his very first report to Judge Leahy, dated May 27, 1980. (Raymond January 24, 1985 submission, at 1.) Review of the May 27, 1980 report demonstrates, however, that while Mr. Raymond noted, generally, that development of residential units would be limited by availability of sewers, he recommended that the Court take a "wait and see" attitude and defer to the judgment of the Township on this issue, retaining jurisdiction "to the extent necessary to carry out and supervise the acts and procedures" relating to the sewer issue. (Raymond May 27, 1980 report, at 9.)

This approach was reiterated by Mr. Raymond in his reports to this Court. While noting the obvious (i.e., that development of residential units was contingent upon provision of adequate infrastructure), Mr. Raymond failed, in either his January 10, 1984 report or his April 11, 1984 report, to address the validity of the Township's sewering proposal or its underlying assumptions respecting availability and allocation of sewer service. Moreover, Mr. Raymond did not even recommend to this Court that the Township's compliance package include specific

provision for the sewering of sites in the package. Rather, Mr. Raymond now argues, incredibly, that because it was impossible to construct the necessary infrastructure before the Court ruled on the Township's compliance package, it was, therefore, premature for the Court to address the question of whether adequate provision had been made for such infrastructure:

> This work would have to be done after the entering of the Order conditionally accepting the sites since it clearly cannot be accomplished within a period of time the length of which is limited in response to the need to resolve as speedily as possible the broader Mount Laurel compliance issue.

(Raymond January 25, 1985 letter, at 2.)

As the EDC sewer agreement and the BFH clarification agreement demonstrate, it was possible -- indeed necessary -- to make specific provision for sewer infrastructure as part of the Township's compliance package. Despite noting the importance of sewer infrastructure in his May 27, 1980 letter, Mr. Raymond recommended approval of the Township's compliance package which, as of December 1983, made no provision for the sewering of sites which had been included therein and, worse, was premised upon false assumptions respecting sewer availability which were in turn blindly accepted by Mr. Raymond, notwithstanding Dobbs' earlier critique. In his reports to this Court, Mr. Raymond recommended simply that the Township's compliance package be accepted and reviewed at some later date in order to determine whether the necessary sewer infrastructure had, in fact, been provided. For example, in the transmittal letter filed with his January 10, 1984 report, Mr. Raymond stated:

> 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.

(J-2, transmittal letter, at 4. See also J-1, at 22.)

This "wait and see" approach was totally inconsistent with the requirements of Mount Laurel II and Mr. Raymond's responsibilities as Master and would have had the effect of presently denying a builder's remedy to Dobbs, only to have the Court learn some years later that adequate provision for sewer infrastructure had not been made. If Dobbs' builder's remedy was so denied, he would not have been available to the Court at a later date to realistically provide Mount Laurel II units to replace the paper units recommended by Mr. Raymond. Likewise, Dobbs would not have been present to provide the impetus for compliance by the Township (which ultimately included EDC expansion).

Rather than undertaking an appropriate investigation as to whether or not the assumptions underlying the Township's December 1983 compliance package were in fact correct, Mr. Raymond deferred such analysis, noting now that "[i]t would have been difficult for me to reconcile the need for elaborate technical and legal studies with the deadline established by the court." (Raymond January 24, 1985 submission, at 2.) As a consequence, Mr. Raymond recommended that this Court approve sites "which appeared to be sewerable within the projection period." (Raymond January 24, 1985 submission, at 3.) The problem with Mr. Raymond's approach to the sewer issue was that the inquiries

and investigation which were necessary to test the assumptions underlying the Township's December 1983 compliance package were not as involved as he suggested and that, had such inquiries and investigation been properly made, they would have clearly established that these assumptions were erroneous and that sites which appeared to be immediately sewerable were not, in fact, sewerable on this basis. At a minimum, these issues could have and should have been raised by Mr. Raymond with the recommendation that they be analyzed before approval of the Township's compliance package.

Given Mr. Raymond's limited perception of his role, this task fell to Dobbs. Dr. Hordon, in his January 13, 1984 report (PD-6) following up on the inquiries suggested in Mr. O'Connor's December 29, 1983 letter (submitted with the Dobbs' Memorandum previously filed with this Court), demonstrated that the Township's representations as to the capacity of the BFH plant and the availability of capacity at the EDC plant were clearly erroneous and that only the Hills I site was immediately sewerable.

In this regard, the suggestion by Mr. Raymond in his January 24, 1985 letter that he expected that the Court would resolve any allocation problems at EDC is an after-the-fact rationalization. In fact, Mr. Raymond acknowledged in his compliance hearing testimony that he did not even know of the allocation problem until he received Dr. Hordon's January 13, 1984 report (Raymond 11/9/84 testimony), several days after he (Raymond) had submitted his January 10, 1984 report to the Court recommending approval of the Township's compliance package.

In his recent submission, Mr. Raymond states that the fact that "a more advanced solution proved capable of being devised" did not disprove his approach. (Raymond January 24, 1985 submission, at 3.) This is a euphemistic way of saying that the Township's December 1983 compliance package was woefully inadequate and that even Raymond now recognized it as such. As a result of the efforts of Dobbs and his submission of reports demonstrating that the Township's December 1983 compliance package was premised upon fundamentally misleading or inaccurate assumptions, the Township has, in entering into the EDC expansion agreement and the BFH clarification agreement and in substituting more appropriate sites, finally done that which it should have done as part of its original compliance package -- a package upon which it was at all times seeking an order of repose. Because of the Dobbs critique, this Court will not be forced to learn, if at all, some two or three years down the road that the Township's compliance package was unworkable from the outset and incapable of achieving Mount Laurel II housing beyond the Hills I development. The modifications to the Township's compliance package, which have resulted principally from the efforts of Dobbs, demonstrate that the deference of Mr. Raymond to the Township was ill-founded and that Mr. Raymond's approach to the sewer issue was totally inadequate.

Mr. Raymond has suggested that the modifications to the Township's compliance package were accomplished without regard to the Dobbs' critique as the result of concerted action by the Township, Hills, and EDC. This suggestion is naive and totally unsupported by the record. The first suggestion of an EDC ex

pansion occurred well after the submission of the December 1983 compliance package by the Township, and only after Dobbs' experts had demonstrated, in their reports, that the EDC plant was fully allocated and that an expansion of the facility was necessary to sewer any additional sites. See, e.g., PD-6, at 3; PD-12, at 3.) An EDC expansion was first proposed when (after the Dobbs critique and after Dobbs stood ready, willing, and able to develop and sewer his site through a private treatment plant) the Township offered an inducement to Hills (the Hills II development) to secure the consent of Hills to an expansion of the EDC facility. Clearly, the concerted action between the Township, Hills, and EDC was "after the fact" and resulted principally from the Township's desire to exclude Dobbs at any cost.

Finally, in his recent submission, Mr. Raymond makes reference to his earlier "builder's remedy memorandum" in which he argued that there were "only a few differences in detail" between the Township's ultimate compliance package and its December 1983 compliance package and that Dobbs was responsible for no specifically identifiable part of the Township's ultimate compliance package (DT-18, at 3-5). This suggestion is clearly baseless, in light, inter alia, of the addition of Hills II and other sites; the deletion of a number of sites and substantial changes with respect to others; the agreement by the Township and Hills to undertake an expansion of the EDC plant; and the upgrading of the BFH plant -- all of which were significantly contributed to by Dobbs' critique and by Dobbs' presence. Moreover, this suggestion is inconsistent with Mr. Raymond's compli

ance hearing testimony -- that the package which he reviewed in his April 11, 1984 report was "a different package" than the Township's December 1983 compliance package. (Raymond 11/8/84 testimony.)

Reply to Public Advocate Submission

The Sewer Issue. In marked contrast to Mr. Raymond, the Public Advocate, in his submission, acknowledges the valuable and critical role played by Dobbs with respect to the sewer issue. See, e.g., the Public Advocate's January 28, 1985 Memorandum, at 2:

> Dobbs did make a real contribution on the issue of sewers and the need for sewer expansion.

See also id., at 28 (wherein the Public Advocate acknowledges that Dobbs' contribution, through his reports on sewer problems, was a reason favoring the award of a builder's remedy to him).

Having acknowledged the important role played by Dobbs in these proceedings, the Public Advocate, however, suggests (i) that this contribution may be outweighed by other factors since Dobbs is seeking a "discretionary" builder's remedy, and (ii) that this contribution is somehow less important because it was made in the context of an "ordinance revision process" rather than at the time the Township's original ordinance was contested. Neither caveat has any merit.

Preliminarily, it is difficult to understand the Public Advocate's resistance to an award by this Court of a builder's remedy to Dobbs. The purpose of the Department of the Public Advocate, insofar as it relates to Mount Laurel proceedings, is presumably to champion the rights of low and moderate income persons, by securing construction of inclusionary developments within the State of New Jersey. While the Public Advocate has argued that the exclusion of Dobbs will result in "certainty" by

virtue of approval of the Township's compliance package, the only sites having a present prospect of low and moderate income development in such package are Hills I and Hills II, sites which this Court can clearly direct be included (subject to meeting affordability requirements) in any modified package which includes Dobbs. On the other hand, the exclusion of Dobbs would mean the exclusion of a substantial low and moderate income housing project certain of development -- in marked contrast to the imaginary housing referred to by Mr. Mallach in his compliance hearing testimony (Mallach 11/16/84 testimony). It is clear, at this juncture of the case, that the Court, in considering the builder's remedy issue as it pertains to Dobbs, is evaluating units which are, in fact, very real.

The Public Advocate has acquiesced to the threats of the Township that the settlement package will be "taken off the table" if this Court were to award a builder's remedy to Dobbs. This fear is unfounded, however, since the Court clearly has the power, having heard eighteen days of testimony as to the sites included in the Township's compliance package, to award Dobbs a builder's remedy while preserving the balance of the compliance package as appropriate. Any other result would severely undercut the Mount Laurel II decision by making any proposed compliance package subject to a "do over" should a municipality not receive approval of each of the elements which it sought to include in the package. In short, the Court's decision on the builder's remedy issue will leave either aggrieved party with the same remedy (i.e., the right of appeal).

Equally difficult to comprehend is the Public Advocate's

attempt, after acknowledging the importance of Dobbs' contribution on the sewer issue, to now minimize the significance of this issue. As previously noted, the Public Advocate, consistent with the Supreme Court's holding in Mount Laurel II, cautioned this Court, after Dobbs had successfuly challenged the erroneous assumptions underlying the Township's December 1983 compliance package:

> Without a satisfactory sewerage plan, an inclusionary zoning ordinance is meaningless. Indeed, without a sanitary waste option - sewer, package treatment, etc. - the Township could rezone all lands in the municipality at 20 to the acre and no lower income housing would be produced. Resolution of unanswered questions about sewer capacity then is crucial to any determination of the adequacy of a fair share plan.

(PPA-4, at 7.) (Emphasis added.) In his January 24, 1984 letter to the Court, the Public Advocate was, in effect, saying that if the sewer issue was not appropriately addressed, all of the other elements of the Township's compliance (e.g., fair share, nonprofit corporation, ordinance provisions, site selection, etc.) were mere trappings. Given the particular circumstances of this case, and especially given the misleading assumptions underlying the compliance package upon which the Township was seeking repose in December 1983, the sewer issue was an issue of paramount importance. It is totally inconsistent for the Public Advocate to recognize the critical importance of the sewer issue in his January 24, 1984 letter to the Court, and to further acknowledge in his recent submission the valuable role played by Dobbs with respect to this issue, while at the same time arguing that Dobbs' right to a builder's remedy is somehow "outweighed" by "other" factors.

Dobbs' Status as a Mount Laurel Plaintiff. The Public Advocate argues that since Dobbs never filed a Mount Laurel complaint, he cannot be entitled to a builder's remedy. This argument is clearly at variance with the record in this matter.

The Public Advocate describes at length the Complaint filed by Dobbs in 1980, treating only in a footnote the Amended and Supplemental Complaint which brought Dobbs before this Court. Dobbs amended his Complaint in August 1983 to, inter alia, reflect his revised June 14, 1983 development proposal, which made the following specific provision for Mount Laurel II housing:

> Forty acres will be utilized for the development of high density multi-family housing. A substantial percentage of the housing units in this section will be for low and moderate income persons, as defined in the Mt. Laurel II decision. The exact amount is to be determined by mutual agreement, when the Township's fair share housing allocation has been determined. The units for low and moderate income persons will be subsidized by the commercial and other housing sections of the total development in order to reduce: (a) land cost; (b) site improvement cost, including, but not limited to, water and sewer systems, roadways, curbs and lighting; (c) professional fees, including, but not limited to, legal, planning and engineering; (d) municipal fees; and (e) the capital cost of construction and financing related thereto.

(PD-27, at 2.) In his Amended Complaint, Dobbs alleged:

> On June 17, 1983, plaintiff in a submission to defendant township, detailed and defined the residential component of plaintiff's planned unit development, which submission provides a low and moderate income housing component and enhances the reasonableness of the plaintiff's overall proposal by addressing part of the township's Mt. Laurel II obligation.
>
> To date the defendant township has refused to voluntarily provide housing oppor-

> tunities for low and moderate income persons and has only rezoned to purportedly provide such opportunities after being ordered to do so by the courts. However, the housing opportunities provided by the township in response to the court fall far short of the township's fair share housing obligation; thus, making the low and moderate income housing component of the plaintiff's proposal even more reasonable and essential to satisfying the township's fair share housing obligation.

(Amended Complaint, paragraph 21.)

After reviewing Dobbs' Amended Complaint, Your Honor, in an October 3, 1983 letter to Judge Diana (a copy of which is enclosed in the Appendix filed herewith) ruled:

> I have reviewed the pleadings in the above-referenced matter and have determined that Mount Laurel II issues are involved.

(Emphasis added.) It was upon this basis that the Court retained the file in this matter and permitted Dobbs and his experts to extensively critique the Township's compliance package on the issues of fair share, region, and realistic opportunity. (See PD-16, at 4.)

Given the fact that Dobbs already had a litigation pending against the Township, the appropriate procedure under the Court Rules, which was followed by Dobbs, was to move to amend and supplement his existing complaint rather than filing a new Complaint. (See, e.g., R. 4:27-1(b).) While this Court continued the stay of the proceedings initiated by the Compliant filed by Dobbs in 1980, this ruling was made expressly subject to the condition that "counsel and experts for the plaintiff Dobbs and for the intervenors are given leave to participate in submitting material to the Master in the Allan-Deane litigation pursuant to paragraph D of an Order in that litigation entered simultane-

ously with this order." (See November 3, 1983 Case Management Order attached to the Public Advocate's January 28, 1985 submission.) The fact that this Court, having determined that the Dobbs' Amended Complaint raised Mount Laurel II issues, chose then to defer disposition of Dobbs' Motion to Amend, while effectively giving him the same relief as to the Mount Laurel II issues by permitting him the right to participate in the proceedings in the Allan-Deane case, certainly does not give the Public Advocate a credible basis for arguing that no Mount Laurel II Complaint was filed by Dobbs. For Dobbs to have filed a separate complaint at that point, after this action by the Court, would have been a formalistic gesture -- and one contrary to the spirit and substance of the informal case management procedures employed by the Court.

While the Public Advocate argues that Dobbs did not raise Mount Laurel I issues in his 1980 Complaint, this is clearly irrelevant for the purpose of determining whether Dobbs is entitled to a builder's remedy as a result of the contributions made by him to the Township's compliance package after he had submitted his Amended Complaint (which pleading did in fact raise Mount Laurel II issues). A principal purpose of the Amended Complaint was, as noted, to update the pleadings to reflect the fact of Dobbs' June 1983 submission to the Township, which provided that 40 acres of his site would be utilized for the development of high density multi-family housing, a substantial percentage of which would be for low and moderate income persons, as defined in the Mt. Laurel II decision. (PD-17, at 2.) One of the premises for this revision to Dobbs' development

proposal was the inadequacy, from a Mount Laurel II standpoint, of the Township's zoning. As Dobbs noted in his June 1983 submission:

> [T]he planned unit development which I have proposed, with its combination of commercial and housing components, will not only provide for zoning which is appropriate for the property but will also enable the municipality to assist in satisfying its "fair share" obligation under Mount Laurel II ....

(PD-27, at 3.) (See also Dobbs' Amended Complaint, at 6-7.)

Consistent with the view expressed in its October 3, 1983 letter, this Court reiterated, at the very first Case Management Conference on October 6, 1983, its view that the Dobbs' complaint raised Mount Laurel II issues.

It was also clear from the initial Case Management Conference (i) that Dobbs was challenging the Township's compliance efforts as not meeting the requirements of Mount Laurel II and (ii) that Dobbs was proposing substantial low and moderate income housing. Since October 6, 1983, Dobbs was in no different position than any other Mount Laurel II plaintiff. The more informal procedures utilized by this Court in the Case Management process certainly should in no way detract from Dobbs' right to a builder's remedy. Moreover, on a number of occasions during Case Management Conferences in this matter, and as early as March 1984, this Court, fully aware of the procedural status of the case, indicated that Dobbs may well be entitled to a builder's remedy. Consistent with its earlier rejection of the view that Dobbs was not a Mount Laurel plaintiff, this Court, on the first day of the compliance hearing, overruled the objection

of the Township's counsel regarding reference to Dobbs as a plaintiff in this matter.

In sum, the Public Advocate's argument that "Dobbs is ineligible for a builder's remedy because he never filed a Mount Laurel complaint" and that "his complaint sought merely to build a regional shopping center on grounds totally unrelated to Mount Laurel (Public Advocate's January 28, 1985 submission, at 5) is totally belied by the record, by Dobbs' Amended Complaint, by the ruling made by this Court in early October 1983 permitting Dobbs' participation in this matter, and by the Court's treatment of Dobbs' status in these proceedings since the very first Case Management Conference.

Success in Mount Laurel Litigation. Arguing that Dobbs has not "succeeded in Mount Laurel litigation," the Public Advocate completely ignores Dobbs' successful challenge to the Township's December 1983 compliance package. Although inconsistently conceding that Dobbs would be entitled to a builder's remedy if he successfully challenged the Township's ultimate compliance package, the Public Advocate relies upon the "time of decision" rule in an effort to defeat Dobbs' right to a builder's remedy. Such reliance is misplaced, however, and, as discussed infra, the "time of decision" rule does not militate against Dobbs' right to a builder's remedy.

An important distinction must be made between application of the "time of decision" rule so as to permit a Court to consider, for compliance purposes, the last in a series of revisions to a municipal zoning ordinance, and application of the

"time of decision" rule to bar a builder's remedy to one who has successfully challenged the municipal zoning ordinance in effect at the time of his Mount Laurel II challenge. The former may, in appropriate circumstances, be proper under traditional law; the latter is clearly inconsistent with the builder's remedy provisions of the Mount Laurel II decision.

In this case, several years after its zoning had been invalidated by Judge Leahy under Mount Laurel I, and many months after the Mount Laurel II decision had been rendered, the Township was compelled to rezone in a manner consistent with these decisions. However, the December 1983 compliance package, profferred by the Township in accordance with to the deadlines set forth in this Court's November 6, 1983 Case Management Order, and upon which the Township was seeking repose, was woefully inadequate. While this Court could have entered an order of noncompliance, it chose to give the Township another chance and additional deadlines -- deadlines which were repeatedly extended because of the failure of the Township to submit a compliance package.

In considering the Township's ultimate compliance package, the Court has implicitly applied a form of the "time of decision" rule. However, the willingness of this Court to do this has, from the outset, been predicated upon the assumption that any order of compliance based upon the Township's ultimate compliance package be subject to Dobbs' entitlement to a builder's remedy. Indeed, any other approach would be totally contrary to the Mount Laurel II decision -- and, more particularly, to the builder's remedy established therein.

One of the essential tenets of the Mount Laurel II decision was that "builder's remedies must be made more readily available to achieve compliance with Mount Laurel." Mount Laurel II, 92 N.J. at 279. In this case, the Public Advocate is, to the contrary, suggesting a means by which builder's remedies can be completely emasculated. While it may be appropriate to apply the "time of decision" rule with respect to the compliance issue (but see Mt. Laurel II, 92 N.J. at 200 n.1, 306-07) it is clearly inappropriate to apply such rule in a manner which will, in effect, automatically defeat a builder's remedy and, in the process, destroy the "bright line" standard which this Court has repeatedly advocated.

Dobbs successfully challenged the Township's December 1983 compliance package; he also contributed substantially to the Township's ultimate compliance package. The fact that the Township may have finally done that which it should have done prior to Dobbs' Mount Laurel II challenge should in no way detract from Dobbs' right to a builder's remedy in this case.

In arguing for application of the "time of decision" rule, the Public Advocate proceeds on the assumption that the 1980 ordinance is the standard by which Dobbs' right to a builder's remedy must be judged. However, not only is this argument inconsistent with the Public Advocate's concession that Dobbs would be entitled to a builder's remedy if he successfully challenged the Township's ultimate compliance package, but it also ignores the fact that the Township was asking this Court to grant repose based upon its December 1983 compliance package.

Finally, it is ludicrous for the Public Advocate to sug-

gest that Dobbs participated only in the "ordinance revision" proceedings and did not participate in the compliance aspect of the case. (Public Advocate's January 28, 1985 Memorandum, at 8.) The parties spent eighteen days before Your Honor at a "compliance" hearing -- so described by Your Honor and by all of the parties. The proceedings before this Court commencing on October 6, 1983 and extending through the completion of the compliance hearing involved an effort to determine whether the Township's December 1983 compliance package and the revisions thereto met Mount Laurel II standards. The original package clearly did not, and absent the changes made as a result of Dobbs' challenge and presence, neither would the ultimate package. The Public Advocate's belated attempt to minimize the significance of these proceedings and, in effect, to change the "ground rules" at this point should not be sanctioned by this Court.

The Public Advocate's Amicus Curiae Argument. The Public Advocate's characterization of Dobbs' participation in this matter as that of an amicus curiae is absurd. Dobbs has had an adversarial interest in these proceedings from the very first Case Management Conference. He has challenged the Township's compliance package in an effort to have his site developed for substantial low and moderate income housing. Dobbs clearly has not performed the role of an amicus curiae. See, e.g., Casey v. Male, 63 N.J. Super. 255, 259 (Essex County Ct. 1960) (the role of an amicus curiae is that of an advisor, not an advocate or partisan).

While the Township has endeavored to prevent this Court's consideration of the Dobbs site in these proceedings, its efforts have been unsuccessful. At the January 1984 Case Management Conference, this Court directed that the Township and the Master give consideration to an all-residential development of the Dobbs site. (See, e.g., this Court's follow-up January 30, 1984 memorandum to all counsel, included in the Appendix filed herewith.) Similarly, on May 25, 1984, this Court directed the Township to consider "the availability of sites most readily developable at this time, including Dobbs and Timber." (PD-46, at 3.) Also, the availability of the Dobbs site was a major subject of testimony during the eighteen-day compliance hearing in this matter.

In sum, there is absolutely no basis for the Public Advocate's suggestion that Dobbs has been only an impartial, neutral participant making academic contributions in this case. Dobbs, fulfilling the role of a Mount Laurel II plaintiff, has been the principal, if not the only, adversary of the Township in this matter since the very first Case Management Conference.

"Discretionary" Builder's Remedies. Judge Skillman in the Morris County case held that a developer who has played a substantial role in bringing about the rezoning of a Township might well be entitled to a builder's remedy because approval of a settlement at the builder's expense would be inconsistent with the Mount Laurel II decision to expand builder's remedies. Morris County Fair Housing Council v. Boonton Township, Nos. L-60001-78 P.W., L-54500-83 P.W., slip op. at 14 n.3 (Law Div.

May 25, 1984). To say, as the Public Advocate does, that this type of builder's remedy is "discretionary", while a builder's remedy based upon a successful challenge to a municipal zoning ordinance is not, is a distinction without a difference. Both builder's remedies are discretionary only in the sense that any determination by the Court involves the exercise of discretion.

Moreover, the Public Advocate's suggestion that a "discretionary" builder's remedy would be granted "where there is no entitlement" begs the question. If the policy reasons underlying the builder's remedy warrant the award of a builder's remedy in a particular case because of the substantial contributions of a developer, then there is an entitlement.

The Public Advocate's reference to a "discretionary" builder's remedy unfortunately goes beyond mere semantics. Relying upon this artificial construct, the Public Advocate argues for the application of a different standard for evaluation of Dobbs' builder's remedy claim than that prescribed by the Supreme Court in the Mount Laurel II decision. For example, the Public Advocate argues that Dobbs' claim to such a builder's remedy can be overcome by a demonstration that the Township prefers alternative ("nodal") zoning; this is flatly contrary to the Mount Laurel II requirement that a builder's remedy can be overcome only by a showing that because of environmental or other substantial planning concerns, the builder's project is clearly contrary to sound land use planning. Id. at 279-80.

Balancing. The balancing to be done in this case is no different than that required in any other case where the Court

must determine whether a developer is entitled to a builder's remedy. Whether viewed in terms of Dobbs' successful challenge to the Township's December 1983 compliance package, or the substantial contributions made by Dobbs to the Township's ultimate settlement package, or, more properly, a combination of the two, Dobbs' right to a builder's remedy is clearly not outweighed by the relatively minor and frequently misstated factors relied upon by the Public Advocate in his Memorandum.

(a) The Township's Efforts at "Early Settlement". Dobbs' position with respect to the Township's recent efforts to claim credit for "voluntary compliance" has been detailed in the Memorandum previously filed with the Court. In sum, however, a municipality which has been the defendant in a Mount Laurel litigation for more than a decade should not be in a position to claim voluntary compliance, especially where the Township's December 1983 compliance package, upon which the Township sought an order of repose, was based upon misrepresentations or studied omissions, and where the Township's ultimate compliance package came about only after continued ultimatums from the Court.

(b) The Township's Claim to the First Mount Laurel Development in New Jersey. Since the Township, because of its highly exclusionary zoning, was one of the first municipalities sued on Mount Laurel grounds in this State, and since the Township was one of the first muncipalities against which a builder's remedy was awarded, it is not surprising that Mount Laurel housing is now being built within its borders. It would

be a perversion of the history of this matter, however, to give the Township credit for the very housing that the Township resisted for many years and which is presently being constructed only because it has been so ordered by the Courts of this State.

The absence of any real effort on the part of the Township with respect to affirmative measures further undermines any claim by the Township that it is entitled to special treatment. The Township's position has been consistent. It has been willing to do that which costs nothing (e.g., writing a letter to the M.F.A.). However, when the Township has been called upon to expend monies toward Mount Laurel II compliance, it has consistently refused.

(c) Dobbs' Attitude Toward Lower Income Housing. The Public Advocate devotes extensive attention to the time, prior to June 1983, when Dobbs' proposed commercial development made no specific provision for Mount Laurel housing. However, entitlement to a builder's remedy is not measured by the development proposals antedating the developer's Mount Laurel II challenge. The relevant development proposal (see arguments infra) clearly provided for substantial housing (i.e., more than 25% of the Township's 819 fair share number) and can hardly be characterized, as the Public Advocate does, as "window-dressing."

(d) Dobbs' "Amicus Curiae" Status. The Public Advocate's argument that Dobbs' role was analogous to that of an "amicus curiae" is discussed and refuted supra. In summary,

Dobbs' challenges to the Township's compliance package were not gratuitously or academically made; they were made by a developer who is ready, willing, and able to construct substantial low and moderate income housing in Bedminster Township and who was attempting, by his challenges, to achieve this end. This Court so recognized Dobbs' role and commented on Dobbs' possible entitlement to a builder's remedy as early as the March 1984 Case Management Conference in this Matter.

(e) The November 18, 1983 Order. The Public Advocate relies upon language from the Case Management Order entered by this Court on November 18, 1983 to suggest that the Township was not required to propose compliant amendments to its zoning prior to the Master's review of and Dobbs' challenge to the Township's compliance package. The Public Advocate's reliance on this Order is misplaced. The Order only acknowledges that the Township "has delayed any further ordinance revisions" [i.e., formal adoption of revised ordinances] pending the Master's reports to this Court. As discussed at length in the Memorandum previously filed with this Court, the Township was obligated by the November 3, 1983 Case Management Order to present its compliance package for review by the Master and critique by Dobbs. This was in fact done, and the Master recommended approval of such package. The fact that the Township had not formally adopted the ordinance changes does not detract from Dobbs' right to a builder's remedy.

(f) The Township's "Planning Reasons" for Opposing Dobbs. As noted in the Memorandum previously filed with the Court, this case does not present a prioritization issue. If a builder's remedy is available to any developer as a result of efforts made since the initial Case Management Conferences in this matter, it is available to Dobbs -- and Dobbs alone.

Even if prioritization were an issue, the Court would first have to make a determination as to Dobbs' entitlement to a builder's remedy. As this Court noted in the Franklin Township cases:

> At the entitlement stage the examination will focus on the legal criteria established by the Court to warrant the award or denial of a remedy. The right to a remedy will not turn on municipal site preferences.

J. W. Field Co., Inc. v. Township of Franklin, Nos. L-6583-84 P.W., L-7917-84 P.W., L-14096-84 P.W., L-19811-84 P.W., slip op. at 17 (Law Div. Jan. 3, 1985). Under these criteria, a builder's remedy cannot be denied (whether characterized as "discretionary" or otherwise) unless the development, due to environmental or substantial planning concerns, is clearly contrary to sound land use planning. The Township clearly cannot demonstrate this with respect to the Dobbs site.

(g) Timing of the Dobbs Development. The Public Advocate argues that Dobbs is in no better position to undertake construction than the owners of the sites, other than Hills I and Hills II, in the Township's compliance package. This is simply not true. Dobbs is a ready, willing, and able developer prepared to sewer his site either with an on-site sewage treat

ment facility or by tying into an expanded EDC plant. None of the other sites referred to by the Public Advocate have such a ready, willing, and able developer or an on-site sewer option. In sum, Dobbs is in a better position to develop his site than the owners of these other sites; and clearly he is in no worse position.

On a number of occasions during the compliance hearing, Your Honor advised that a builder's remedy would not be denied because of a present inability to provide sewer service to a proposed site. Similarly, in the AMG case, this Court noted that the standard for evaluating the impact of sewer availability on the right to a builder's remedy is whether "notwithstanding the township's best efforts, the builders' projects are precluded by the unavailability of sewer capacity or the likelihood that no means are available to handle their effluent in the foreseeable future." AMG Realty Co. v. Township of Warren, Nos. L-23277-80 P.W., L-67820-80 P.W., slip op. at 70 (Law Div. July 16, 1984) (Emphasis added.) This clearly has not been demonstrated in this case. On the contrary, Dobbs has, at the compliance hearing, shown that he can sewer his development with an on-site facility or, if necessary, tie into an expanded EDC facility. The only obstacle to the latter (especially in light of the inclusion of the AT&T site in the Township's settlement package) would be a concerted action by the Township and Hills to exclude Dobbs.

(h) Precedential Effect. The Public Advocate's argument that other developers will not be deterred from seeking

builder's remedies because of the "sui generis" language included in the November 3, 1983 Case Management Order requires a distorted reading of the Order as well as extraordinary naivete. The "sui generis" language in the November 3, 1983 Order, and in subsequent orders, referred to the settlement as to the Hills I development, not to the ultimate compliance package. Moreover, the Court must look at the practical effects of a ruling denying a builder's remedy to one who has expended extraordinary efforts and expenses, which have been, as the Public Advocate concedes, of substantial benefit to the Court.

(i) Facilitation of the Settlement. The Public Advocate's concerns about protracted litigation if Dobbs is awarded a builder's remedy are unfounded. This Court has already conducted an eighteen-day compliance hearing, which provides the basis upon which this Court can formulate a compliant package, including the Dobbs site. Contrary to the Public Advocate's suggestion, this Court should not base its determination as to whether Dobbs is entitled to a builder's remedy upon a concern that additional proceedings may be necessary or that the Township will attempt to withdraw from the settlement or stay rezoning. The Court has adequate measures available to it to direct a remedy should this take place. Rather, the Court should base its ruling upon whether Dobbs, as a result of his actions and efforts, deserves a builder's remedy. Expedience may be the goal of the Public Advocate; fairness and equity must be the goal of this Court.

* * *

Arguing that Mr. Raymond, as well as Dobbs, contributed on the sewer issue, the Public Advocate makes reference to a chart in Mr. Raymond's report, in which Mr. Raymond indicates that 466 units were available for immediate development. Dobbs disproved this assumption and demonstrated that more than 200 of these units required sewer expansion, for which no provision was made in the Township's December 1983 compliance package.

In sum, the Public Advocate's suggestion that there was a chorus of critics as to the Township's December 1983 compliance package is a revisionist view. Mr. Raymond recommended that this Court approve the Township's compliance package (without provision for any sewer expansion), and the Public Advocate only belatedly (on the very day of the January 25, 1984 Case Management Conference) joined in and deferred to Dobbs' extensive critique on the critical issue of sewer availability.

Reply To Township Submission

It is interesting to note that only eight pages of the Township's lengthy Memorandum of Law are even arguably addressed to the merits of Dobbs' challenge to the Township's December 1983 compliance package and the contribution made by Dobbs to the Township's ultimate compliance package. The balance of the Township's Memorandum is devoted to formalistic arguments through which the Township seeks to avoid a discussion of the builder's remedy issue on its merits. The Township's "technical" arguments not only are without merit, but they also totally ignore the nature and substance of the proceedings in this matter since October 1983.

Use of Mount Laurel Litigation as a Bargaining Chip. The Township does not argue that Dobbs ever threatened Mount Laurel litigation to achieve the development of a non-Mount Laurel project, for indeed there would be no support for such a claim. Rather, the Township argues (i) that Dobbs adopted a "strategy of pursuing major, non-residential rezoning while paying token homage to Mt. Laurel II" (Township Memorandum, at 48) and (ii) that Dobbs made an "indirect" threat in comments at a Township committee meeting in February 1983, which implied threat was confirmed by actions taken by Dobbs thereafter (in a June 1983 revision of his development proposal). Neither argument has any merit (the latter, in fact, being belatedly raised by the Township for the first time on the eve of the compliance hearing in this matter).

There is no question but that Dobbs' initial development proposal involved, among other things, the construction of a regional shopping center and that Dobbs instituted suit against the Township in 1980 to be able to so develop his site. The stay of that litigation, curiously referred to by the Township as evidence of Dobbs' bad faith, was sought by Dobbs in order to allow him to negotiate with the Township in an attempt to achieve a mutually satisfactory plan for development of his site. Notwithstanding the passage of several years and various revisions by Dobbs to his development proposal in an effort to reach such an accommodation with the Township, all of Dobbs' efforts to develop his 211 acre site were "stonewalled" by the Township.

It is in this context that Dobbs' February 1983 comments must be considered. Once again, he was asking the Township to sit down with him in order to work out a mutually satisfactory rezoning of his site. As is clear from his statement, he vastly preferred this approach to a resumption of litigation. Moreover, since the time the litigation was stayed, significant changes had taken place.

The Township had adopted a Master Plan which, as Dobbs had urged, provided for Planned Unit Development:

> Planned Unit Developments are recommended on tracts of land at least ten (10) acres in area where indicated on the Lane Use Plan map. Both residential and commercial uses are permitted, and it is specifically intended that sufficient retail and office development be provided to staisfy the needs of the intended population within the PUD as well as the nearby population in neighboring municipalities.
>
> Single family detailed dwellings (6000

> sq. ft. lots); semi-detached dwelling units (3750 sq. ft. lots); townhouses and garden apartments are to be permitted, provided that the total number of dwelling units is no more than ten times (10x) the number of total acres within the tract, excluding those acres devoted to the permitted commercial activities.

(DT-7, Land Use Plan, at 7-8). Further, as to the residential component, the Master Plan provided for multiple family dwellings at 10 dwelling units per acre. (DT-6, REG-16G.)

It was also clear in February 1983 that any Planned Unit development would, in its residential component, have to include Mount Laurel housing. See, e.g., the Master Plan's reference to Mr. Raymond's comments that the Planned Unit Development was a response to Judge Leahy's Mount Laurel I Order (DT-6, REG-19). See also the Housing Element of the Master Plan ultimately adopted in August 1983:

> The adopted Land Development Ordinance of Bedminster Township stipulates inclusionary language applicable to the Planned Residential Development and the Planned Unit Development areas. Specifically, a minimum of twenty percent (20%) of the total number of residential units within a planned development must be subsidized and/or least cost housing, in accordance with the specific provisions included within Sections 13-606.4j. and 13-606.31i. of the Ordinance. The end result is that the prevailing ordinance provisions require the construction of 730 subsidized and/or least cost housing units as part of the development of the designated Planned Residential Development and Planned Unit Development areas.

(DT-8, Hous.-18).

Dobbs had, well prior to February 1983, argued that his site be zoned for Planned Unit Development. In his August 1982 submission, Dobbs proposed that "the Planning Board zone the entire 211-acre site Planned Unit Development (PUD)" (PD-26, at

2). In addition to its commercial component, the August 1982 Dobbs submission provided that 30 acres be developed, consistently with the Master Plan, for residential purposes (i.e., townhouses or other appropriate low-rise dwelling units). There was no question, given the Township's Master Plan and the Township's zoning response to its Mount Laurel I obligation, that this would include Mount Laurel housing. Dobbs had no such doubt; nor should the Township have had any doubt on this score at the time.

In addition to the developments reflected in the Township's Master Plan, Mount Laurel II had also been decided by February 1983. This decision, requiring municipalities to provide a realistic opportunity for their fair share of low and moderate income housing by 1990, provided an additional gloss on the Township's Master Plan and on Dobbs' development proposal.

While Dobbs was still desirous in February 1983 of securing approval for mixed use development, it was clear, after the Master Plan revisions and the Mount Laurel II decision, that any Planned Unit Development proposal would necessarily require provision for substantial Mount Laurel II low and moderate income housing. Consequently, Dobbs revised his development proposal in June 1983 to incorporate these developments. As noted in the reports of Dobbs' experts heretofore received in evidence, as well as in the testimony of Dr. Wallace, it was Dobbs' belief that the hybrid commercial/residential proposal would not only assist the Township in fulfilling its fair share obligation but would, at the same time, minimize the transforma-

tion which the Township might experience in attempting to achieve compliance.

Dobbs makes no apology for making or pursuing his mixed use proposal. The Township had a significant fair share obligation, achievement of which was complicated by the fact that the Township had failed, notwithstanding the existence of this obligation, to begin to make adequate provision for municipal facilities, open space, sewerage treatment, and the like -- planning considerations which would have facilitated the Township's ability to absorb the change which was about to come. Dobbs' mixed use proposal was put forward by him as a means of accomplishing two purposes: (i) appropriate development of the 211-acre Dobbs site; and (ii) substantial contribution to achievement of the Township's fair share obligation in a manner which would minimize the impacts, such as population growth, school expansion, etc., which would otherwise accompany such change, thereby rendering his proposal all the more realistic and reasonable.

The benefits which would have accrued to the Township had Dobbs' June 1983 development proposal, or some variation thereof, been reasonably pursued by the Township, are significant and were described in Dr. Wallace's January 13, 1984 report (PD-5). In addition to the sizeable internal subsidy, taking the form of provision of land at a zero (no cost) basis for the low and moderate income housing component of the project, the provision of all on-site improvements and utility for the site, and substantial financial subsidy, the Dobbs' proposal provided several additional benefits:

1. Minimized impact of population change: The commercial retail center can provide 264 low and moderate income housing units without the attendant population change which would occur if the 264 low and moderate income housing units were a 20% set aside from a larger residential development (264 being 20% of 1320 units).

2. Tax revenue in excess of internal service demand and high enough to offset the service demand of the Hills development: Dr. George Sternlieb et al., in their report Alternative Fiscal Futures, Bedminster Township, NJ, (March 1981, Center for Urban Policy Research), have calculated that this Hills development will generate a $2.53 million dollar municipal deficit annually and would require a doubling of the 1980 tax rate (p. 167, 192). The regional center, assuming valuation at $120,000,000 when completed (p. 194), would provide $1,389,600 per year in property tax for the Township and the schools at the 1983 rate of $1.158.

3. Reduced municipal service demand compared to an equivalent residential development: The commercial retail center and 264 low and moderate income housing units will require far fewer municipal services than any residential development that would generate the same number of Fair Share units. The specific services most heavily impacted for the equivalent housing units would be sewer, school capacity and fire and police service.

4. Practical realistic opportunity to meet Bedminster's Fair Share obligations: Dobbs is a willing developer prepared to move forward immediately and provide substantial subsidy for both construction costs and subsequent operating expenses.

(PD-5, at 4, 6-7.) Rather than giving serious consideration to this means of meeting its fair share obligation, the Township sought to posture itself in order to plead a "radical transformation" defense based upon the alleged impacts of meeting its fair share obligation through mandatory market set asides. In this manner, the Township sought to defeat the Dobbs' proposal which it recognized as being a threat to its exclusionary

efforts in that such proposal would in fact result in the immediate construction of Mount Laurel housing.

The Township's argument that Dobbs was pursuing commercial development while paying only token homage to the Mount Laurel doctrine is utter nonsense. The 250+ low and moderate income units contemplated by the Dobbs mixed use proposal are, by definition, not token. Dobbs' commitment to construct low and moderate income housing, initially as part of a mixed use development, and subsequently as part of a purely residential development, has been steadfast for a period long preceding Dobbs involvement in the Case Management Conference in this matter.

Dobbs' June 1983 development proposal made provision for 40 acres of high density multi-family housing, a substantial percentage of which would be for low and moderate income persons as defined in the Mount Laurel II decision (PD-27, at 2). As noted, Dobbs' earlier submissions, preceding the Mount Laurel II decision, similarly recognized lower income housing as a necessary element of the overall project.

Consistent with the philosophy that negotiation was better than litigation, Dobbs, after the Master Plan changes and after Mount Laurel II decision, approached the Township with respect to his mixed-use proposal in the hopes that an accord would be achieved. In addition to Dobbs' February 1983 comments, Dobbs, at an April 29, 1983 meeting of the Township Committee, excerpted in the Coppola October 30, 1984 submission (DT-3, at 9), pointed out that "he would help with the Township's fair share of housing." Only after this project,

reflected in his June 1983 submission, met with the same response as all of Dobbs' earlier proposals did he resume litigation.

To suggest that Dobbs could somehow be faulted or is somehow precluded from pursuing a builder's remedy because he sought to negotiate development of his site with the Township is a perversion of the Mount Laurel II doctrine. Whether his development was achieved through negotiation or through litigation, it was clear that, after February 1983, the Dobbs development proposal would contain a substantial Mount Laurel II low and moderate income housing component, just as, prior to February 1983, it would include a Mount Laurel I housing element. Contrary to the Township's argument, Dobbs clearly did not blackmail the the Township nor did he threaten to bring Mount Laurel litigation to achieve approval of a project "containing no low and moderate income housing." Mount Laurel II, 92 N.J. at 280. (Emphasis added.)

Equally lame is the Township's argument that Dobbs, by suggesting a mixed use development proposal, should be estopped from obtaining a builder's remedy. Dobbs suggested a creative way for the Township to meet its Mount Laurel II obligation while at the same time minimizing the impacts which would attend the necessary change. Whether the Township can be required to accept such an approach is now a moot question in light of Dobbs' all-residential proposal. Certainly, however, the Township cannot for this reason argue against Dobbs' entitlement to a builder's remedy, when he clearly meets all of the elements necessary for a builder's remedy.

The Township's "bargaining chip" argument is dependent upon its characterization -- or mischaracterization -- of the events of the past several years. The changes which have taken place in the Dobbs proposal are not "chameleon" changes of no significance; rather, they have been legitimate efforts on the part of Dobbs to reach accommodation with the Township through revisions, taking into account developments in the Township's Master Plan and developments in the law, including, particularly, in the Mount Laurel doctrine. Similarly, the attempts to "buy" zoning, referred to in the Township's Memorandum, have been legitimate attempts on the part of Dobbs to needs which might emanate from his development or which might otherwise exist in the Township.

The fallacy of the Township's argument is perhaps best revealed in the following passage from the Township's Memorandum:

> [T]he June, 1983 proposal represented an improper attempt by Dobbs to "have it both ways" with respect to the Mt. Laurel doctrine. On the one hand, some lower income housing was included in a superficial and belated effort to protect Dobbs' possible rights as a potential Mt. Laurel litigant. On the other hand, the amount of lower income housing was so inconsequential relative to the remainder of the proposed development that there was only a de minimus change to the basic non-residential character of the development proposal. Dobbs sought by this strategy to continue the vigorous pursuit of his non-residential development objective while at the same time paying lip service to the Mount Laurel doctrine.

(Township Memorandum, at 47.) Perhaps the Township's misunderstanding of the Dobbs proposal stems from its failure or refusal to ever give it any serious consideration. However, it should be clear to this Court, if not to the Township, that Dobbs' com

mitment to provide Mount Laurel II housing is very real and that the housing proposed by him is very substantial. Certainly, Dobbs would prefer to construct low and moderate income housing as part of a mixed use development. Equally clear, however, for more than a year, has been Dobbs' commitment to construct a substantial amount of such housing as part of a purely residential development.

Dobbs' motivation for constructing Mount Laurel II housing is not the issue. What is important are the realities of Dobbs' proposal. The Dobbs proposals have, for several years, contemplated a Mount Laurel housing element and such element has been an important, and not a trivial, element of such proposals. The Township's argument that Dobbs has used the Mount Laurel doctrine as a bargaining chip rests entirely upon the Township's underestimation of Dobbs' commitment to develop substantial low and moderate income housing on his site.

Also, it is significant that being fully aware of the history of this case, the Public Advocate, unlike the Township, is not of the opinion that the facts relied upon by the Township constitute an impermissible threat within the meaning of the Mount Laurel II decision. (See Public Advocate's January 28, 1985 Memorandum, at 18).

Good Faith. The Township's argument that Dobbs has acted in bad faith rests upon the Township's assumption that any mixed use proposal which will generate Mount Laurel II housing necessarily involves bad faith. This assumption is patently false. In fact, as noted, the Township's Master Plan specifi

cally provides for Planned Unit Development (i.e., mixed use).

Moreover, it is curious indeed that the Township would raise a good faith argument -- when the present litigation is the product of the Township's past bad faith and highly exclusionary zoning; when the Township has overtly engaged in blackmail of its own by conditioning its settlement package upon the exclusion of Dobbs; and when the Township has, in bad faith, undertaken every tactic, including specious Green Acres applications and the provision of misleading information to Kupper in order to distort empirical findings which the Township intended to present to this Court, so as to prejudice development of the Dobbs site.

Substantiality of Dobbs Low and Moderate Income Housing Proposal. In its Memorandum, the Township attempts to minimize the significance of the low and moderate housing component of Dobbs June 1983 development proposal, the proposal which formed the basis for Dobbs' Amended Complaint. The Township refers to this component of the Dobbs proposal as, among other things, "minor" and "de minimus" (Township Memorandum at 9, 47). The June 1983 proposal, however, provided that forty acres would be utilized for the development of high-density multi-family housing and that a substantial percentage of these housing units would be for low and moderate income persons as defined in the Mount Laurel II decision (PD-27, at 2).

The Township, apparently misinterpreting Dobbs' June 1983 development proposal, has argued that only 80 low and moderate income housing units would have resulted under the

proposal. Had the Township seen fit to discuss this proposal with Dobbs, it would have realized that "substantial" did not mean simply a 20% set-aside. In fact, at this point in time, the Township was, with respect to purely residential developments, contemplating an even greater percentile set-aside. When Dobbs detailed this proposal in the January 13, 1984 submission of Dr. Wallace (PD-5), the total number of housing units which Dobbs proposed to include in this mixed-use proposal was 264, all of which were low and moderate income housing units.

For the Township to argue that 264 low and moderate income housing units, a number which represents almost one-third (1/3) of the Township's fair share housing obligation, is not "substantial" within the meaning of the Mount Laurel II decision is nonsense. It is apparent that the low and moderate income component (264 units) proposed by Dobbs was "substantial", not only with respect to his overall development proposal (40 acres residential, 132 acres commercial) but also with respect to the Mount Laurel II obligation of the Township as a whole.

It is also interesting to note that the Township, in an apparent effort to continue to waive the "shopping center issue" before the Court, has ignored the fact that, long ago, in the Dobbs' June 1983 development proposal, which formed the basis for Dobbs' Amended Complaint, Dobbs had substituted commercial development and a hotel conference center for the earlier shopping center proposal (PD-27, at 1). The Township's argument that Dobbs is irrevocably wedded to the shopping center proposal is demonstrably untrue. Indeed the March 2, 1984 letter from Dobbs to the Mayor and Township Committee, relied upon by the

Township for its argument that Dobbs continued to press his shopping center proposal, proves the opposite; it was an attempt by Dobbs to clarify the fact that his alternative development proposal did not contemplate a shopping center. Moreover, Dobbs' commitment to this Court to construct an all-residential development containing substantial low and moderate income housing (232 units) further discredits the Township's argument (PD-13).

Dobbs' Status as a Mount Laurel Plaintiff. Rather than repeat the response made to the similar argument made by the Public Advocate that Dobbs is not a Mount Laurel plaintiff, reference is made herein to such reply, supra, at 16. That reply discussed, inter alia, Dobbs' June 1983 development proposal which included substantial Mount Laurel II housing, Dobbs' Amended Complaint which was based on such development proposal and which pointed out the inadequacies of the Township's Mount Laurel II compliance efforts, this Court's ruling that Dobbs' Amended Complaint raised Mount Laurel II issues, and this Court's subsequent treatment, during the Case Management Conferences and compliance hearing, of Dobbs' status. Since the Township raises several additional arguments as to Dobbs' status, the following reply is appropriate.

The essence of the Township's argument is that this Court never formally granted Dobbs leave to intervene in the Allan-Deane litigation. Even though the Court denied without prejudice the formal Motion to Intervene filed by Dobbs in the Spring of 1984, the Court specifically preserved Dobbs' right to

be heard with respect to his builder's remedy claim and indicated that the Court would reconsider the Motion to Intervene if it determined that Dobbs was, in fact, entitled to a builder's remedy. More particularly, this Court, on May 25, 1984, stated:

> Of the Court finds that there is either no right to condemn and a right to a builder's remedy, that is, if Bedminster may not condemn against Dobbs, or there is a right of builders remedy in Dobbs that may not be cut off by condemnation, or that Timber has a right of a builders remedy, then the application for intervention will be reconsidered at that time.

(PD-46, at 4-5). This approach is reflective of this Court's recognition throughout the Case Management Conferences that substance should prevail over form. Similarly, as the Court noted at a Case Management Conference in August 1984, when Dobbs' counsel inquired as to whether a renewal of Dobbs' formal Motion to Intervene was necessary, such a step was not required since Dobbs was granted the right to fully participate in the compliance hearing and builder's remedy hearing to be held in this matter. Also, as noted supra, at the beginning of the compliance hearing, the Court properly gave short shrift to the Township's objection to the reference to Dobbs as a party plaintiff.

As a result of his having filed a Motion to Amend his earlier Complaint against the Township, and as a result of his presenting a development proposal which included substantial low and moderate income housing units, Dobbs has in fact participated in the extensive Case Management Conferences in this matter as well as in the eighteen-day compliance hearing. Dobbs' participation has been equivalent to, if not greater than, that of any other Mount Laurel plaintiff. In light of this fact, the

semantic distinctions urged by the Township are totally without merit.

The Township also argues that Dobbs cannot be a Mount Laurel II plaintiff capable of obtaining a builder's remedy because of his initial mixed use development. This argument is clearly specious. Whether the Court can award a builder's remedy for a mixed use development -- an issue as to which the Court expressed some doubts -- was long ago been rendered moot by Dobbs' all-residential development proposal. The salient facts are (i) that Dobbs participated, as plaintiff, in a Mount Laurel II litigation and (ii) that he has consistently been ready, willing, and able to provide substantial low and moderate, income housing on his site. Dobbs' successful challenge to the Township's December 1983 complaince package and his substantial and significant contributions to the Township's ultimate compliance package, coupled with his status, clearly entitle him to a builder's remedy.

Nor is there any substance to the Township's argument that Dobbs, in the first instance, should have filed a separate Complaint rather than moving to amend his existing Complaint. In light of the entire controversy doctrine, the filing of a Motion to Amend and Supplement, thereby reflecting changes in Dobbs' development proposal and the status of the law (Mount Laurel II), was the appropriate procedure. The filing of a separate Complaint was both inappropriate and unnecessary, especially in light of the fact that this Court took cognizance of the Mount Laurel II issues raised by Dobbs and effectively permitted him to fully participate in the Allan-Deane

proceedings. The procedure suggested by the Township (i.e., the filing of a separate action) and presumably the subsequent filing of a Motion to Consolidate, would have been duplicitous, and necessarily violative of the fundamental policy of our courts pertaining to judicial economy. Also, such a formalistic approach was totally inconsistent with the informal procedures established by this Court in the Case Management Conferences.

Contrary to the Township's argument, the significant point is not whether Dobbs is a plaintiff in the Allan-Deane case. What is important is that Dobbs had filed a Complaint raising Mount Laurel II issues. This is not in serious dispute, and was, in fact, decided by this Court on October 3, 1983, prior to Dobbs' participation in the Case Management Conferences and in the compliance hearing.

Similarly, the Township's argument that Dobbs should have formally moved to intervene or formally moved to amend his Complaint when he proposed his purely residential development ignores the informal process adopted by this Court under the procedures authorized by the New Jersey Supreme Court in the Mount Laurel II decision, and also the fact that for several months prior to such amendment, Dobbs had fully participated in the ongoing compliance proceedings. Indeed it was the Court which, as a result of this involvement by Dobbs, suggested in March 1984, prior to the filing of any formal Motion to Intervene by Dobbs, that he may already be entitled to a builder's remedy.

In short, the merits of Dobbs' claim to a builder's remedy, which, as previously noted, have been scrupulously avoided

by the Township, are controlling. If Dobbs is not entitled to a builder's remedy, then his formal status is unimportant. If, however, as the record amply demonstrates, Dobbs is entitled to a builder's remedy, this Court has established a mechanism by which any need to formally adjudicate his status may be achieved.

The Merits of Dobbs' Builder's Remedy Claim. the Township characterizes Dobbs' argument as follows:

> Dobbs contends that he alone raised the sewerability issue and that this issue would have otherwise been ignored by the Court, the master, and the parties.

(Township memorandum, at 11.) This is a gross mischaracterization of Dobbs' argument and reflects the limited level of analysis employed by the Township in evaluating the merits of Dobbs' builder's remedy claim. Dobbs does not contend that he alone raised the sewerability issue or that the issue would otherwise have been completely ignored. Rather, Dobbs contends that he alone, through his experts, analyzed the assumptions upon which the Township's December 1983 compliance package (recommended favorably by Mr. Raymond) was based. Certainly, the Township had up to that point paid "lip service" to the sewer issue, as had Mr. Raymond. The critical point, however, is that the information which had been furnished to the Court by the Township on this issue was grossly misleading and incomplete. While all parties realized that the Court would necessarily scrutinize any proferred compliance package for its ability to achieve realistic development within the compliance period (1990), it

was only Dobbs, not the Township, not the Master, not the Public Advocate, and not Hills, who brought to the Court's attention the palpable deficiencies and unsupported and erroneous assumptions implicit in the Township's December 1983 package.

The Township and Mr. Raymond argue that since the Court would necessarily scrutinize the compliance package, any improper assumptions or deficiencies would have been duly noted by Your Honor. This type of argument (i.e., "you would have caught us anyway") is indicative of the flippancy which permeated the Township's compliance efforts. It is clearly ludicrous for the Township to now assert that it is inconsequential that Dobbs was correct in his critiques because somehow the baselessness of its compliance efforts would have been discovered by the Court in any event.

In making its argument, the Township grossly misstates the record with respect to the sewer issue. In its Memorandum, the Township refers to the vigorous debate between the Township and Hills on the EDC allocation issue, suggesting that this debate started with the very first Case Management Conference in October 1983. In fact, this debate came about only after Dobbs brought this issue to light -- more particularly, in Dr. Hordon's January 13, 1984 report (PD-6). Mr. Raymond acknowledged this in his compliance hearing testimony when he stated that despite his presence at all of the earlier Case Management Conferences, he was not aware of the allocation issue until he had read Dr. Hordon's report (Raymond 11/9/84 testimony). As this Court will recall, only after Dobbs identified this issue did Mr. Kerwin, at a Case Management Conference in March 1984,

point out that in the absence of a Township/Hills accord, he would demonstrate the fallacies underlying the sewer information provided to the Court by Mr. Coppola.

There is no excuse for the misleading and incomplete information provided by the Township on the sewer issue. Prior to the written submissions by the Township on this issue -- and, more particularly, Mr. Coppola's January 8, 1984 letter to Mr. Raymond -- Peter O'Connor had raised the allocation issue, in a December 29, 1983 letter to Mr. Raymond. Notwithstanding the inquiries with respect to the allocation issue raised in the O'Connor letter, Mr. Coppola, on behalf of the Township, refers to the existing "capacity for multiple family residential development in the EDC plant." (App. B to J-2, at 2). Clearly, Mr. Coppola intended Mr. Raymond and the Court to rely upon this statement, since it was the predicate for the Township's phasing argument. Mr. Raymond, without independent inquiry, relied upon this representation. The Court, having the benefit of Dobbs' analysis, ultimately did not. Moreover, it was the focus upon this issue which opened up other issues which became critical to the Township's ultimate compliance package, including, for example, expansion of the EDC plant, the addition of other sites, and even the BFH upgrade.

The Township's scrupulous avoidance of the merits of Dobbs' builder's remedy claim is understandable. The Township has no credible response to the specific contributions made by Dobbs in revealing the erroneous assumptions upon which its original compliance package was premised. Unlike the Public Advocate, however, the Township is unwilling to give Dobbs

credit for the substantial contribution made by him. Rather, the Township now attempts to argue, without substantiation, that the EDC plant was designed in the first instance to be easily replicated so as to provide sewer service for Mount Laurel development in the Pluckemin area. If this was the case, then there is no adequate explanation for: (i) the fact that the EDC plant was fully allocated, primarily to Hills and to existing Pluckemin; (ii) the fact that the Township's December 1983 compliance package made absolutely no reference to, much less provision for, expansion of the EDC plant. (Further, the Township had never acquired or otherwise dedicated additional land necessary if there was to be an expansion of the EDC plant.) As this Court found out when the capacity/allocation issue was first raised by Dobbs, a significant dispute between the Township and Hills resulted.

The Township's attempt to provide an after-the-fact explanation is further evidenced by reference to the testimony of its own planning consultant. During the compliance hearing, Mr. Coppola stated that in representing to the Court that sufficient sewer capacity existed to service the non-phased-in portion of the December 1983 compliance package, the Township was relying upon the availability of allocated but unused capacity at the EDC plant. If the Township had at all times envisioned replicating the EDC plant in order to meet its fair share housing obligation, then what explanation is there for its initial reliance upon the existing (not expanded) EDC capacity in order to serve its December 1983 compliance package? The transparency of the Township's position is once again evident.

Although the Township now attributes resolution of the sewer issue to the dispute between the Township and Hills, it was Dobbs' critique and Dobbs' presence as a ready, willing and able developer prepared to independently sewer his site, as well as to construct low and moderate income housing thereon, which started and fueled this dispute. The ultimatums which this Court made to the Township were certainly strengthened by both the contribution and presence of Dobbs.

In sum, the Township's argument on the merits of Dobbs' builder's remedy claim, like the Township's formalistic arguments, focuses not upon what took place during the past eighteen months, but rather upon what the situation was years before. Whether Dobbs was a commercial developer four years earlier is not germane to the issue of whether he has been prepared to construct substantial low and moderate income housing. The fact that the Township may have gone along with the EDC plant originally in order to comply with its Court-imposed Mount Laurel I obligation has very little relevance to whether or not the Township's ultimate compliance package would, but for Dobbs' critique, have ever made meaningful provision for sewerage of Mount Laurel II sites.

The Stage of the Proceedings. The Township argues, in effect, that no matter what Dobbs' contribution since October, 1983, he cannot be entitled to a builder's remedy because the proceedings were in the "remedial" or "settlement" stage. It logically follows from the Township's arguments that even if this Court had rejected the Township's settlement package

because of Dobbs' critique, he would not be entitled to a builder's remedy. The Township's argument runs totally contrary to the procedures established by this Court, the statements made by the Court at Case Management Conferences that Dobbs may well be entitled to a builder's remedy by virtue of his participation and contribution to these proceedings, and indeed to the position of the Public Advocate.

The Township's argument rests largely upon the assumption that a "carrot" is not necessary to encourage developer participation during the "remedial" stage of the proceedings. First of all, the Township's characterization of these proceedings as simply "remedial" is misplaced. The noncompliance order entered by Judge Leahy was entered under the Mount Laurel I case. The Mount Laurel II decision created, ab initio, compliance issues which had to be addressed by this Court. Indeed, Dobbs' participation initially focused upon the issues of fair share, region and realistic opportunity for low and moderate income house by 1990. Secondly, as the Court recognized at the compliance hearing, there was a need for an external impetus for compliance in these proceedings. Just because the Township desires repose and alleges that it wants to comply, does not mean that it has, or that it will, so comply without such an impetus. As described in the Memorandum previously filed with this Court, Dobbs, through his extensive critique and through his position as a ready, willing, and able developer, has provided this impetus, which was of significant benefit to the Court in pushing the Township toward real, rather than paper, compliance.

While adversarial participation may not be a prerequi

site to repose in every case, it was clearly appropriate and necessary in this case. Dobbs' participation as a critic of the Township's compliance package, both during the Case Management Conferences and the compliance hearing, provided the mechanism for the Court's receipt of relevant information upon which it could base its determination as to compliance. Dobbs has not, in his submissions, attempted, as the Township argues, to underestimate the role played by the Court. There is, however, a significant difference between the judicial decision-making process and the procedures by which full and complete information is provided to the Court. It is in the latter area, especially, that Dobbs has played a critical role.

The Township may well try to now characterize the proceedings of the past eighteen (18) months as simply a process of negotiation and settlement. However, the initial posture taken by the Township was that of entitlement to repose based upon its December 1983 compliance package.

Reply to Coppola Submission

The Coppola submission adds little to the legal arguments made by the Township. For the most part, Mr. Coppola raises some strawmen, which he then attempts to destroy, but adds little of substantive value to the issues before the Court.

For example, Mr. Coppola argues that Dobbs did not contribute to the determination of the Township's fair share number. Dobbs has not argued that he did, nor is this essential to his claim for a builder's remedy, given his significant contributions in other areas. We would note, however, that should this Court find that the Township's fair share number is 819 units rather than the 656 proposed by the Township, then Dobbs potentially can take some credit. Only Dobbs challenged the discounted fair share number included in the Township's package, and only he offered witnesses testifying as to why such discounted numbers should not be accepted by the Court.

Like the Township, Mr. Coppola fails to specifically address the nature and substance of the Dobbs' critique, especially as it relates to the sewer issue. Totally ignoring the fact that the sewer issue was first raised through the December 29, 1983 O'Connor letter and the critique made by Dr. Hordon in his January 13, 1984 submission (which was only belatedly joined in by the Public Advocate), Mr. Coppola suggests that the Court raised, on its own, the sewer issue at the January 25, 1984 Case Management Conference. Mr. Coppola further argues (rationalizes) that he knew that a 50,000 gallon upgrading of the BFH plant was also necessary and that a reallocation of the EDC

capacity was necessary in order to service those sites which had been included in the Township's original compliance package and designated as "immediately developable". However, he failed at all times to advise the Court or Mr. Raymond of these facts, and only began to address them after they had been raised by Dobbs. Not only did the Township's original compliance package, therefore, include sites represented as being immediately sewerable, which were in fact not so sewerable, but the Township's original compliance package made no provision for either the BFH upgrade or the EDC expansion -- modifications which were critical to the Township's ultimate compliance package.

It is one thing to say that the Court will make the right decision when presented with all the relevant facts. It is quite another to assume that the Court will have this capacity when material and significant facts have not been presented to it, or even to the Master, upon whose recommendations the Court must, to a considerable extent, reasonably rely.

Finally, the suggestions in Mr. Coppola's submission that Hills "volunteered" to set aside Mount Laurel II units on the "top of the hill" ignores the dynamics of the process taking place in the case management conferences. The Township was forced to turn to Hills II when the deficiencies in its original compliance package had been revealed by Dobbs. The negotiations which took place between the Township and Hills, as a result of the Dobbs' critique, were the direct results of Dobbs' efforts and his presence as a viable alternative to the palpably deficient compliance package which was initially submitted by the Township.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that plaintiff, Leonard Dobbs, is entitled to a builder's remedy under Mount Laurel II.

Respectfully submitted,

WINNE, BANTA, RIZZI,
HETHERINGTON & BASRALIAN

By: Raymond R. Wiss
Raymond R. Wiss

Dated: February 20, 1985

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE
C. N. 2191
TOMS RIVER, N. J. 08753

October 3, 1983

Honorable Wilfred P. Diana, A.J.S.C.
Somerset County Court House
P. O. Box 3000
Somerville, N. J. 08876

Re: Dobbs v. Township of Bedminister et als
Docket No. L-12502-80 Somerset County

Dear Judge Diana:

In accordance with the directive of the Administrative Office of the Courts dated September 26, 1983, I wish to advise you that I have reviewed the pleadings in the above referenced matter and have determined that Mount Laurel II issues are involved. I am, therefore, retaining the file. By copy of this letter I am advising the Assignment Clerk, the County Clerk, Superior Court and the attorneys involved.

Very truly yours,

Eugene D. Serpentelli

Eugene D. Serpentelli, J.S.C.

EDS:RDH
cc: William J. Wintermute, Assignment Clerk
cc: Lawrence R. Olson, County Clerk
cc: W. Lewis Bambrick, Superior Court
cc: Joseph Basralian, Esq.
cc: Alfred L. Ferguson, Esq.
cc: Guilet D. Hirsch, Esq.
cc: Thomas Collins, Esq.

RECEIVED

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

WINNE & BANTA
OCEAN COUNTY COURT HOUSE
C. N. 2191
TOMS RIVER, N. J. 08753

January 30, 1984

MEMORANDUM

TO: Kenneth E. Meiser, Esq.
Henry A. Hill, Esq.
Alfred L. Ferguson, Esq.
Joseph Basralian, Esq.
Herbert Vogel, Esq.
Mr. George Raymond

FROM: Judge Serpentelli

RE: Allan-Deane et als v. Bedminister

This will briefly summarize the major items to be resolved regarding all of the litigation concerning Bedminister:

1. Hills and Dobbs will provide details of their proposed development to Bedminister not later than February 3, 1984.

2. The Township will review and respond to those proposals including the preparation of any revised zoning map on or before February 13, 1984.

3. Copies of the submissions by Hills and Dobbs and the response from the Township will be provided to all parties, the Court and Mr. Raymond.

4. Mr. Raymond will review the above referenced material and advise the Court of his intentions as soon as possible after receipt of the above material.

5. Allan Mallach will be commissioned to review proposed method of adjusting median income figures and specifically to advise whether some method other than the use of consumer price index could be utilized. This should be accomplished no later than February 3.

6. Ken Meiser will prepare a proposal for mediation of issues involving possible waiver or deviation from the Township's Mount Laurel II requirements and submit that proposal by February 3.

7. Ken Meiser shall also submit by February 3 a proposal concerning

the use of any excess funds remaining in the nonprofit corporation, if it is necessary to dissolve it.

8. Henry Hill shall take responsibility for resolving all "builder's remedy" issues left outstanding including such questions as the 30 year limitation, foreclosure matters, down payment fund, etc. on or before February 10.

9. Al Ferguson shall prepare the first draft of the judgment memorializing all of the matters agreed upon in the last two days of conferencing so that we do not lose track of those matters which have been resolved. That draft should be circulated in 10 days along with a letter setting forth the unresolved issues which will have to be included in the redraft of the judgment.

I ask that there be strict compliance with the time deadlines so that Hills may meet its obligation with the New Jersey Mortgage Finance Agency and also because it is important that we determine to what extent this case has been resolved. I intend to hold an additional case management conference, on short notice, in February and thereafter set a trial date as to any unresolved matters, if necessary.

EDS:RDH

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:SOMERSET COUNTY

ALLAN DEANE CORPORATION, Plaintiff, and LYNN CEISWICK, et als, Plaintiff-Intervenors, v. TOWNSHIP OF BEDMINSTER, et al, Defendants.	CIVIL ACTION Docket No. L-36896-70 P.W.
LYNN CEISWICK, et als, Plaintiffs, v. TOWNSHIP OF BEDMINSTER, et al, Defendants,	Docket No. L-28061-71 P.W.
LEONARD DOBBS, Plaintiff, v. THE TOWNSHIP OF BEDMINSTER, Defendant.	Docket No. L-12502-80

APPENDIX TO MEMORANDUM IN SUPPORT OF
LEONARD DOBBS' RIGHT TO A BUILDER'S REMEDY

WINNE, BANTA, RIZZI,
HETHERINGTON & BASRALIAN
25 East Salem Street
Hackensack, New Jersey 07602
Attorneys for Leonard Dobbs

Of Counsel:
Joseph L. Basralian
Peter J. O'Connor

On the Brief:
Donald A. Klein
Raymond R. Wiss

APPENDIX TABLE OF CONTENTS

	Page(s)
December 29, 1983 letter from Peter J. O'Connor to George M. Raymond	1
Chart entitled "Chronology - Dobbs' Challenge to Bedminster Township's Proposed Mt. Laurel II Compliance"	4
Chart entitled "Low and Moderate Income Housing Site Evolution"	7
Amended and Supplemental Complaint in Lieu of Prerogative Writ dated August 1983	11

Peter J. O'Connor, Esquire

December 29, 1983

George Raymond, Master
Raymond, Parish, Pine & Weiner, Inc.
555 White Plains Road
Tarrytown, New York 10591-5179

Dear Mr. Raymond:

We are in receipt of your Memorandum dated December 23, 1983 regarding Region, Fair Share and Mount Laurel II compliance in Bedminster v. Allan-Deane. The purpose of this letter is to request certain information which I have discussed with you by telephone and to raise certain questions regarding the sewer issue in Bedminster Township as it affects the housing sites proposed by Bedminster Township. This latter issue was discussed with you by telephone prior to the drafting of your December 23, 1983 report and at the time you felt it was premature to discuss the sewer issue.

(1) Please forward to my office and to Joseph L. Basralian, Esquire, the following documents which were sent to you by Bedminster Township without copies being forwarded by the Township to all parties as required by the Court. Without this information, we are not in a position to fully respond to your report.

(a) December 19, 1983 letter from Richard Coppola, Bedminster Township Planning Consultant, referred to on page 46 of your December 23, 1983 report.

(b) Correspondence and report(s) containing revised Township housing figures, referred to on page 34 of your report under the heading "Bedminster", said figures and information being forwarded to you by Mr. Coppola.

(2) Sewer Issue: In the December 5, 1983 Dobbs submission to you, our critique of the proposed housing sites maintained the positic that the "zoning opportunities" could not be implemented on these sites without sewer service. In your December 23, 1983 report you have conditioned the feasibility of development on certain sites on whether sewer service is provided. You have either specifically or impliedly referred to three factors which affect the provision of sewer service on the sites. The three factors are: (1) the existing capacity being held in reserve for AT&T and the possibility that AT&T may be willing to relinquish this excess; (2) utilization of sewer capacity from the Hills Development Company Treatment Plant; and, (3) Township efforts to cure current deficiencies in its treatment system and expand its sewer service system.

510 Park Boulevard, Cherry Hill, New Jersey 08034 609-663 3400

Your report is silent on whether you had before you Township and/or Sewer Authority plans, specifications and financial schedules and support for curing current sewer system deficiencies and expandin sewer service to the subject sites. Your report was also silent on the existence of a Township/Sewer Authority-AT&T agreement to reserve excess capacity for AT&T and also any agreement by AT&T to forego sai capacity or pledge it for housing development on the subject sites. Your draft report is also silent on the existence of any agreement(s) for the use of sewer capacity from the Hills Development Company Plan on adjacent sites.

In order that we may understand the basis for your comments regarding the likelihood of the provision of sewer service to the subject sites from the above three sources, we request that you submit to us all Township information which was given to you and served as a basis for your report. We make this request because no information was submitted to us by the Township which should have been the case if information was given to you, and also because of the lack of citation by you in your report regarding the source of sewer service. In addition, we specifically request information on the following:

(1) Agreement between the Township/Sewer Authority and AT&T to reserve capacity for AT&T.

(2) Any agreement between AT&T and the Township/Sewer Authority whereby AT&T would forego the use of said excess capacity and permit it to be used to support housing development on the subject sites.

(3) Any agreement between the Township/Sewer Authority and Hills Development Company whereby capacity from the Hills Development Company Plant would be used to service development on adjacent sites.

Finally, on the sewer issue, we would like to know whether the Township has presented you with information that would advise you of the following. If this information has been presented to you, we would appreciate a copy of said information in order that we may comment more fully on the feasibility of sewer service on the subject sites.

(1) What is the present capacity of the Township/Sewer Authority sewer system in Bedminster Township?

(2) How much of said capacity is in use and how much is available for development of the subject sites?

(3) How many units of housing can be serviced by the portion of the sewer capacity which is available for said housing development? (Please indicate whether your definition of "currently available capacity" includes outstanding development commitments which have not yet been utilized).

(4) What are the Township/Sewer Authority's plans to up-grade its present treatment system to cure problems which have been brought to their attention by NJDEP? Has the Township committed financing to address these treatment problems? If so, what is the schedule for curing said problems and what is the financing plan?

(5) Does the Township currently have plans and supportive financing to expand its current sewer system? If so, what are the plans and is there documentation which would indicate financial support by the Township/Sewer Authority to enable said plans to be implemented? What is the time schedule for said implementation and how does said time schedule comport with and support development on the site selected by the Township for Mount Laurel II opportunities?

Mr. Dobbs takes the position that the provision of sewer service to the selected sites is essential for their development. If the above information is not within your knowledge, we submit that this information should be requested by you from the Township before making your final recommendations on the likelihood and feasibility of Mount Laurel II development on the selected sites.

Thank you.

Very truly yours,

Peter J. O'Connor

PETER J. O'CONNOR

PJOC:g
cc: All parties

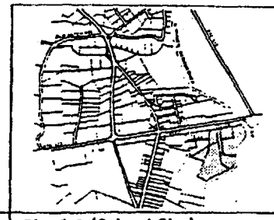
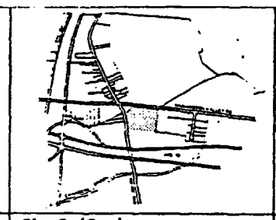
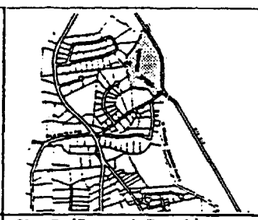
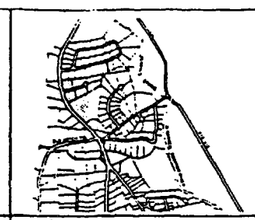
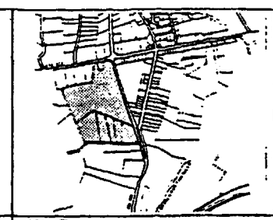
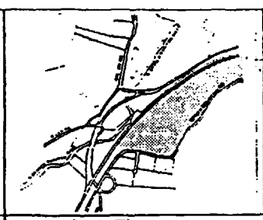
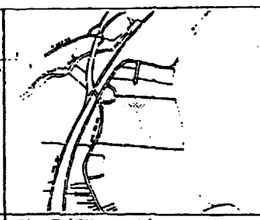
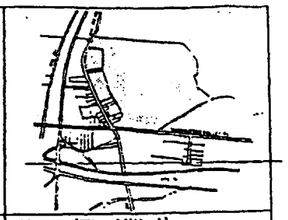
CHRONOLOGY - DOBBS'S CHALLENGE TO BEDMINSTER TOWNSHIP'S PROPOSED MT. LAUREL II COMPLIANCE

Documents/ Case Confs.	Low & Moderate Housing Sites	Phasing	Sewer Capacity	Affordability Test	Affirmative Measures	Miscellaneous
June 14, 1983 Dobbs Submission to Twp.	Substantial low and moderate income housing units (L&M) proposed.					
August 1982 Master Plan Background Report/ August 1983 Master Plan Housing Element	Number of sites: 19 Capacity: 4,902 dwelling units (du), L&M not specified.	Sites distinguished as being "more" or "less" likely to develop.	Additional capacity needs of L&M units not addressed.	Not addressed.	None beyond zoning.	
October 6, 1983 Case Management Conference/ November 3, 1983 Case Management Order						Court directs Raymond to review Hills' proposal and Bedminster compliance. Dobbs permitted to participate on region, fair share, and realistic opportunity for L&M development.
November 17, 1983 P. O'Connor Letter to Court				Hills' L&M units do not meet affordability rules.	No affirmative measures offered.	
December 5, 1983 Dobbs Critique	Development constraints of Township sites identified. Six low density or non-residential sites not reviewed.	Compliance not possible within Mt. Laurel II time limits.	Sewer needs of each site questioned. Bedminster (BFH) plant at capacity, based on information from plant director.	Development costs identified.	Industrial and commercial L&M set aside, overzoning, tax abatement, sewage treatment, utilities, and application for government assistance recommended.	
December 19, 1983 Coppola Report to Raymond	Number of sites: 12 Deleted: 7 Capacity: 4,260 du; 904 L&M du	4 Stages proposed: I- Site K (Hills); II- Sites I, J & L; III- Sites A, D, E, G, & H; IV- Sites B, C, & F.	Site E can be served by BFH plant if infiltration solved and AT&T relinquishes or defers "reserved" capacity. EDC plant can serve 475 L&M du (I,J&L).	Not addressed.	None beyond zoning.	
December 23, 1983 Draft Raymond Report	Number of sites:12 Capacity: 3,794 du; 506-665 L&Mdu; additional 255 du after 1990. Concurs with Dobbs on no capacity in F and lower capacity in H.	Rate of growth required to meet fair share too high. Lower fair share and phasing recommended: (I,J,K, & L immediate, E within 3 years, A,B, C,D,G,&H after 1990).	I,J&L have sewer capacity (EDC plant). BHF plant just resolve infiltration problems and AT&T must relinquish reserve capacity to serve Site E. Sites A,D,G& H require BFH plant expansion.	"Assumes" affordability aspects of ordinance will be adjusted to comply with Mt. Laurel II. 35% set aside for MF not economically feasible. No analysis or specific recommendations of affordability.	None beyond zoning.	
December 29, 1983 P. O'Connor Letter			Sewer questions raised: 1. Present capacity? 2. Amount available for development sites? 3. Housing units buildable with capacity? 4. Plans to upgrade, financing committed schedule? 5.Plans, financing, schedule to expand?			
January 3, 1984 Dobbs Critique of Raymond Draft		Phasing past 1990 does not meet Mt. Laurel II.	No "reasonable opportunity" without sewer availability. Hills only assured site. Sewer capacity of each site assessed.	No supporting documentation on affordability.	Tax abatement, and government subsidies recommended.	
January 8, 1984 Coppola Letter to Raymond			EDC: Franchise area needs are 858,488 gpd, including 256,050 gpd for Bernards Twp. portion of Hills. BFH: 55,000 gpd for 229 du available if AT&T relinquishes or defers its allocated capacity and if infiltration problems are solved.			
January 10, 1984 Final Raymond Report	Number of sites:12 Capacity: 3,794 du; 506-665 L&M du; additional 255 L&M du after 1990	Phasing recommended (466 du immediate, 40-199 du within 3 years, 255 du after 1990). Compliance should be based on " capacity to absorb", not "size of obligation."	Raymond relies on Jan. 8, 1984 Coppola letter accepting conclusion of sufficient EDC capacity to permit Mt. Laurel II compliance with possible expansion of BFH plant.	No analysis or specific findings on affordability. No response to 11/17/83 O'Connor letter.	None beyond zoning.	
January 13, 1984 Hordon Report			Inadequate capacity within EDC and BFH plants for further development. BFH plant at or near capacity; average flows misleading due to AT&T use fluctuation. EDC: Entire capacity allocated; actual Hills needs higher than present allocation (811,750 gpd v. 800,000 gpd).			

Documents/ Case Confs.	Low & Moderate Housing Sites	Phasing	Sewer Capacity	Affordability Test	Affirmative Measures	Miscellaneous
January 13, 1984 Dobbs proposal	264 L&M du					
January 20, 1984 Dobbs Critique of Final Raymond Report	Development constraints of Township sites identified. Additionally, only 260 L&M du buildable due to lack of sewer capacity for other sites.		Total sewer need: 601,681 gpd. Capacity available: 0. I,J&L need 247,920 gpd. E-47,760 gpd. A,B,C,D, G&H need 306,000 gpd.			
January 25-26, 1984 Case Management Conference/ January 30, 1984 Memo from Court		Raymond recommends phasing. Dobbs challenges phasing. Court rejects phasing.	Sewer capacity and reallocation discussed in response to Dobbs challenge.	Allan Mallach commissioned to review affordability. Dobbs continues affordability challenge.		Court requests Dobbs L&M proposal and additional Hills L&M proposal.
February 7, 1984 Dobbs Submission/ Hordon Addendum	Dobbs submits 3 alternative L&M plans. Plan B (1,160 du, 232 L&M du) proposed.		On-site treatment plant feasible per Hordon Addendum.			
March 7, 1984 Raymond Letter to Court		Recommends phasing to reduce impact.			Recommends 1 year deferral by Township for formulation of incentives.	
March 19, 1984 Ferguson Letter	Number of sites: 9 Deleted: 5 Added: 2 Capacity: 3,995 du; 891 L&M du Use Changes: Hills II rezoned PRD-8 (900 du max).		BFH plant will have to expand, but this "should not be undertaken precipitously." EDC has unused capacity and can be increased.			
March 21, 1984 Coppola Report	Number of sites: 9 Deleted: 5 (A,B,E,F&G) Added: 2 Capacity: 3,870-4,020 du; 918-926 L&M du Use Changes: Site A(R-1), B(R-1), E(R-3%), F(R1/2), G(OR/SF Cluster).		H,J,K,L,M,&N in EDC service area (858,000 gpd capacity). C,D can be served by BFH plant when infiltration problems solved. Site I is outside EDC service area			
March 22, 1984 Case Management Conference/ March 28, 1984 Case Management Conference			Dobbs argues sewer problems still not resolved. Court requests further capacity analysis.			Court notes that Dobbs may be entitled to builder's remedy.
March 30, 1984 Dobbs Critique of Coppola Report	Development constraints of Township sites identified, (eg. I,N,C require site assembly, H outside EDC service area). Development constraints dictate delay.		As per WRT, Hordon reports: Inadequate EDC capacity for proposed sites H-N (916,560 gpd v. 850,000 gpd). Sites H&I outside EDC service area. Sites C&D (48,240 gpd) require expansion of BFH plant.			
April 5, 1984 Dobbs Letter to Raymond		Phasing to meet existing need inappropriate.				
April 6, 1984 Ferguson Letter to Raymond			Twp. will support expansion application for EDC plant. BFH has 7,000 gpd unallocated capacity. Twp. proposes to use Dobbs site for EDC and BFH excess effluent which "cannot be discharged into the N. Branch of the Raritan River because of environmental or administrative limitations," contra to Kupper 1983 report.			
April 6, 1984 Callahan Report to Raymond			EDC cannot serve Hills I and all proposed housing in service area. EDC does not want to sewer Site H (AT&T). EDC expansion estimated at 43 months (compared to 50 months for Dobbs, 28 months for BFH). BFH will "probably" not be allowed to treat additional demand from proposed housing within its service area.			

Documents/ Case Confs.	Low & Moderate Housing Sites	Phasing	Sewer Capacity	Affordability Test	Affirmative Measures	Miscellaneous
April 11, 1984 Raymond Report	Number of sites: 9 Capacity: 3,870-4,020 du; 886 L&M du	Recommends 3 stage phasing. (Group I- Hills I&II, Group II- Sites I,J,L&N, Group III- Site H). Recommends Twp. secure agreement of Site C owners to market property together.	Group II requires EDC expansion (43 months). When expansion approved, existing capacity will be released. Dobbs site suggested for spray irrigation. As to Group III Sites C,D,&H, BFH plant expansion to 400,000 gpd recommended (H outside EDC service area). Spray irrigation may also be required.		Recommends non-profit senior citizen housing corporation be formed to apply for housing funds.	Senior housing funds limited. Possibly more funds due to election. "Bedminster's claim... would be given a high priority due to Mt. Laurel."
May 25, 1984 Court Rulings	Overzoning required.	Phasing unacceptable. "Must consider availability of sites most readily developable at this time, including Dobbs & Timber." Cannot credit if other sites are more readily available.				Right to builder's remedy to be considered in the future.
June 1984 Coppola Report	Number of sites: 13 Capacity: 4,219 du; 900 L&M du Hills divided to get site C. Timber divided to get site J/K. Site L- Dobbs rezoned to SF Cluster					Twp. agrees to "cause creation of" non-profit sponsor for senior housing. Proposed ordinance adds to development cost.
July 6, 1984 Twp. Proposed Compliance Agreement	Number of sites: 13 Capacity: 656 du proposed as fair share. 900 L&M du maximum possible with proposed zoning.			Developers must assure affordability.	Twp. agrees to "cause" non-profit sponsor for senior housing. Waiver of subdivision and site plan application fees for L&M building permit fees, C.O. fees, engineering fees for L&M. All conditioned on no L&M housing on Dobbs or Timber property, and 6 year repose.	
August 3, 1984 Court Directive	Court rejects "compromise" fair share of 656 du, and requires 819 L&M du stipulated earlier.	Court rejects phasing.				
August 31, 1984 Hordon Report			Detailed proposal for Dobbs on-site tertiary treatment plant with sub-surface discharge.			
September 1, 1984 Dobbs Critique	Development constraints of L&M sites identified.		EDC expansion necessary as A,B,C,D,E,F&M require 842,000 gpd capacity and G (AT&T) outside service area. BFH expansion required as Sites H&I require 78,240 gpd. Sites J&K (49,725 gpd) outside either service area.	Developers' assurance of affordability is inefficient, adds to cost, and is disincentive to development.		Cost additive elements of ordinance detailed (no compact parking, senior housing building height reduced, developers required to administer L&M housing for 30 years, set percentage of unit sizes, waiver process at developers expense).
September 5, 1984 Coppola Report	Number of sites: 13 Capacity: 4,219 du; 656 fair share; 900 L&M du	Phasing recommended: growth required to meet L&M obligation is excessive; hence moderation of construction necessary.				
September 1984 Ferrara Report			Long term stream monitoring required to evaluate projections of water quality impact of EDC expansion. System must be redesigned for higher flows. Total Dissolved Solids (TDS) and Phosphorus (TP) will exceed water quality standards. EDC plant expansion requires "detailed design and re-evaluation." 10-12 year build out assumed.			
September 11, 1984 Callahan Report			No change of 43 month expansion time estimate despite Ferrara report. Expansion of EDC needed to serve 4,100 du, 950,000 sq ft. commercial, including AT&T			
October 3, 1984 Hordon Report			Dobbs plant can be installed faster than EDC plant and is environmentally preferable. Additional testing required re EDC as TDS and TP will exceed limit			

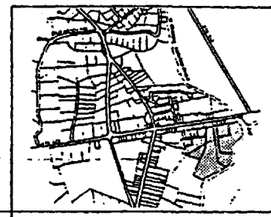
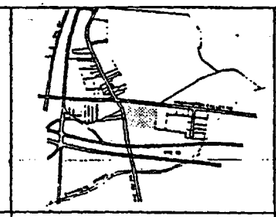
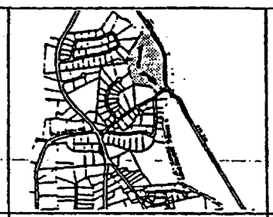
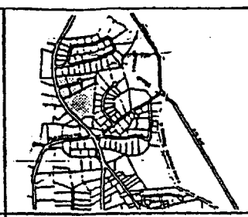
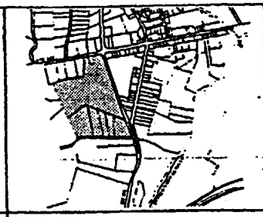
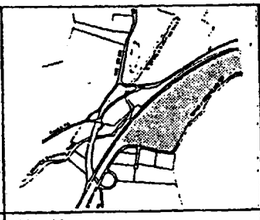
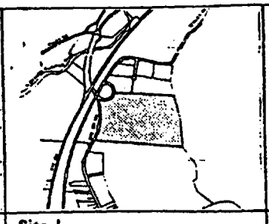
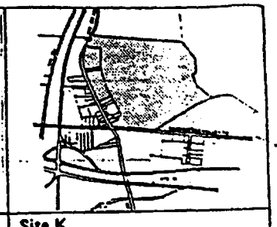
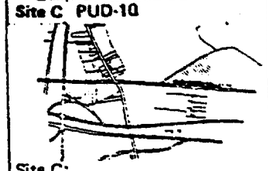
LOW AND MODERATE INCOME HOUSING SITE EVOLUTION

								
	Site 1 * (School Site)	**Site 2 (Ray)**	**Site 3 (Peapack Brook)**	**Site 4**	**Site 5**	**Site 6 (AT&T)**	**Site 7 (Ellsworth)**	**Site 8 (The Hills I)**
August 1982 Master Plan Background Report/ August 1983 Housing Element	Principal development parcel, "more likely to develop than others...currently non-developed and non-severe environmental constraints."	Principal development parcel, "more likely to develop than others...currently non-developed and non-severe environmental constraints."	Principal development parcel, "more likely to develop than others...currently non-developed and non-severe environmental constraints."	Principal development parcel, "more likely to develop than others...currently non-developed and non-severe environmental constraints."	Principal development parcel, "more likely to develop than others...currently non-developed and non-severe environmental constraints."	Principal development parcel, "more likely to develop than others... currently non-developed and non-severe environmental constraints."	Principal development parcel, "more likely to develop than others...currently non-developed and non-severe environmental constraints."	Principal development parcel, "more likely to develop than others...currently non-developed and non-severe environmental constraints."
Zoning **Total Units** **Low and Moderate Income Units**	MF (12 du/acre) 146.128 du None required; 35% set aside proposed in draft ordinance.	MF (12 du/acre) 177.6 du None required; 35% set aside proposed in draft ordinance.	R-1 / PRD-6 200.4 du	R-1 / PRD-6 151.29 du	PRD-8 517.240 du	R-1/4 / PUD-10 414.17 du	R-1/4 / PUD-10 586 du	R1/4 / PUD-10 1444.06 du
	Site 5	**Site 12**	**Site 1**	**Site 2**	**Site 7**	**Site 8**	**Site 10**	**Site 11**
December 5, 1983 Dobbs Critique of Housing Element	Limited access. Outside sewer service area. Multiple owners. Critical acres restricts development.	Adjacent to highest traffic accident location. Wooded site. 35% set aside challenged; 20% recommended.	1/3 of site in flood plain. No sewer.	12.014 ac. single family units under construction. No sewer.	Development proposed. Currently in litigation. No sewer.	Outside EDC franchise area. Access limited. Noise from interstate. Development constrained due to slopes and wooded site.	Estate type development. Unlikely to develop.	Approved at 1287 and 260 du. Commercial option exercised.
	Site E	**Site L**	**Site A**	**Site B**	**Site G**	**Site H**	**Site J**	**Site K**
December 19, 1983 Coppola Report	Available for "near future construction" (Stage III). Revised critical acres to 27.1ac.	Available for "immediate construction" (Stage II). Sewer capacity available.	Vacant site available for "near future construction" (Stage III).	Available for "future construction" (Stage IV). Requires redevelopment.	Available for "future construction" (Stage III).	Vacant site available for "future construction" (Stage II). Sewer not addressed.	Available for "immediate construction" (Stage II).	Approved for construction (Stage I).
Total Units **L&M Units**	199 du 50 du (25% L&M set aside).	177 du 44 du (25% L&M set aside).	66 du 13 du	80 du 16 du	514 du 103 du	449 du 90 du	599 du 120 du	1287 du 260 du
	Site E	**Site L**	**Site A**	**Site B**	**Site G**	**Site H**	**Site J**	**Site K**
December 23, 1983 Draft Raymond Report	"Probably available within 3 years." Availability contingent on solving infiltration and capacity problems at BFH plant. Suggests senior housing.	Available for immediate development. Not credited for senior housing due to unlikelihood of two senior housing projects in Bedminster being approved.	May be constructed after 1990.	May be constructed after 1990. Site assembly required.	May be constructed after 1990.	Concurs with Dobbs. Commercial option reduces units. May be built after 1990.	Higher density will motivate development. Immediate development.	Immediate development.
Total Units **L&M Units**	199 du 40 du (20% L&M set aside).	177 du 35 du (20% L&M set aside).	66 du 13 du	80 du 16 du	514 du 103 du	414 du 83 du	599 du 120 du	1287 du 260 du
	Site E	**Site L**	**Site A**	**Site B**	**Site G**	**Site H**	**Site J**	**Site K**
January 3, 1984 Dobbs Critique of Draft Raymond Report	Outside sewer service area.	Development contingent upon sewer capacity.	Needs sewer.	Needs sewer.	Proposed development in litigation.	Needs sewer.	Development contingent on owner willingness and sewer.	Approved development.
	Site E	**Site L**	**Site A**	**Site B**	**Site G**	**Site H**	**Site J**	**Site K**
January 10, 1984 Final Raymond Report	Same as draft.	Same as draft.	Same as draft.	Same as draft.	Same as draft.	Same as draft.	Development contingent on owner willingness and sewer.	Approved development.
	Site E	**Site L**	**Site A**	**Site B**	**Site G**	**Site H**	**Site J**	**Site K**
January 20, 1984 Dobbs Critique of Final Raymond Report	Proposed 199 units would require 47,760 gpd sewer capacity. Capacity not available	Proposed 177 du would require 42,480 gpd. Capacity not available given existing EDC capacity commitments.	Needs sewer.	Needs sewer.	Needs sewer. Proposed development in litigation.	Needs sewer.	Sewer capacity in question	Approved development

*READ DOWN to follow each site chronologically. The designation changes reflected below correspond to the designation changes made by the parties, eg. Site 1 was also refered to as Site 5 and Site E.

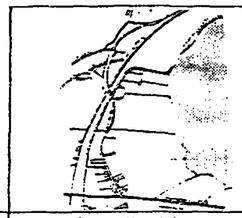
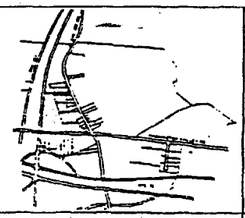
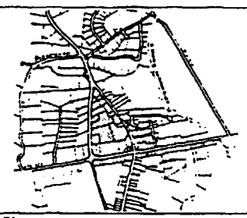
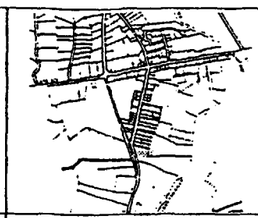
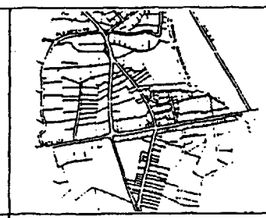
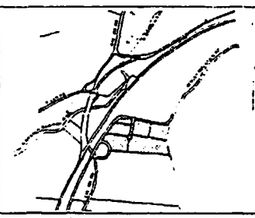
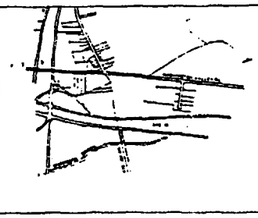
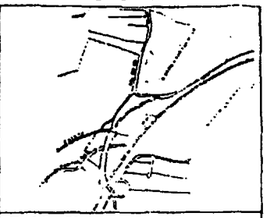
LOW AND MODERATE INCOME HOUSING SITE EVOLUTION

WRT 1B

								
	Site E	**Site L**	**Site A**	**Site B**	**Site G**	**Site H**	**Site J**	**Site K**
March 21, 1984 Coppola Report **Zoning** **Total Units** **L&M Units**	Deleted. R-3% proposed. 16 du 0 du	Senior housing option site. Sewage issue not addressed. MF - Senior Housing Option 177 du 35-177 du	Deleted. R-1 zoning proposed.	Deleted. R-1 zoning proposed.	OR / SF Cluster zoning proposed. No L&M required.	Sewer issue not addressed. 449 du 90 du	 599 du 120 du	 1287 du 260 du
		Site L				**Site H**	**Site J**	**Site K**
March 30, 1984 Dobbs Critique of Coppola Report	———	State funding unlikely for senior housing. Sewer capacity inadequate for proposed sites even with EDC reallocation.	———	———	———	Access, noise and sewer problems noted. Outside EDC service area.	Owner is Township official. Previous offer to purchase refused.	Approved development.
		Site L				**Site H**	**Site J**	**Site K**
April 11, 1984 Raymond Report	———	Group II. EDC expansion required.	———	———	———	Group III. Requires EDC capacity and service area expansion. Callahan suggests BFH plant serve Site H.	Group II. EDC must expand to serve franchise area.	Group I
		Site D			**Site J/K**	**Site G**	**Site E**	**Site A/C**
July 6, 1984 Coppola Report (June 1984) **Total Units** **L&M Units**	———	Open space requirements would have to be relaxed. Senior housing option. Sewage issue not addressed. 177 du 35 du; 125 du if developed as senior housing.	———	———	OR / Cluster proposed. Density bonus in exchange for 4-6 ac. for senior housing, otherwise no L&M.	Sewer issue not addressed. Effect of commercial option on housing capacity (reduction of units) not considered. 449 du 90 du	Effect of commercial option on housing capacity not considered. 599 du 120 du	Site K divided into Sites A&C Site A: Total Units 1287 du L&M Units 260 du Site C PUD-10  Site C: Total Units 172 du L&M Units 34 du
		Site D			**Site J/K**	**Site G**	**Site E**	
September 1, 1984 Dobbs Critique of Coppola Report	———	Development capacity of remainder of site questioned. Highest accident intersection. Access to interstates restricted by jughandle.	———	———	Needs sewer. Outside either service area.	Effect of commercial option on L&M housing capacity not considered. Needs sewer and access improvements. Access to interstates restricted by jughandle.	Effect of commercial option on L&M housing capacity not considered. Interstate access restricted by jughandle. Potential traffic problems with I-287 on-ramp.	Site A: Mt. Laurel II credit for Site A subject to affordability test. Interstate access restricted by jughandle. Site C: Effect of commercial option on L&M housing capacity not considered.
		Site D			**Site J/K**	**Site G**	**Site E**	**Site A/C**
September 5, 1984 Coppola Report	———	Coppola addresses development capacity of remainder of site. 35 du L&M, 90 du if developed as senior housing. Open space requirements would have to be relaxed. EDC has capacity.	———	———	Same comments as July report.	Road improvements required. Needs EDC service area expansion.	EDC has capacity to serve. Access via Hills.	Site C would ease access to Site A.

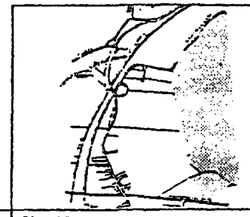
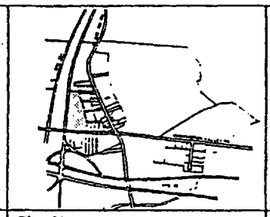
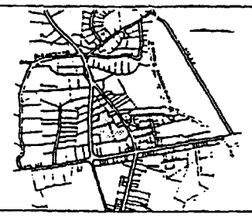
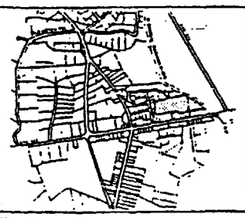
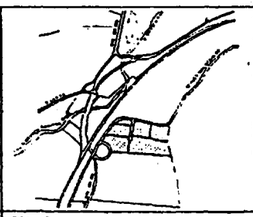
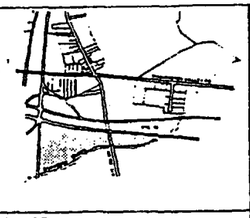
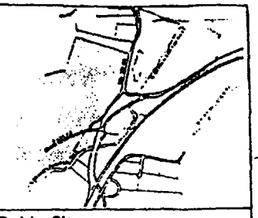
LOW AND MODERATE INCOME HOUSING SITE EVOLUTION

WRT 2A

								
	Site 9 (The Hills II)	**Site 13 * (Johnson)**	**Site 1**	**Site 2**	**Site 3**	**Site 4 (Washington Court)**	**Site 6**	**Dobbs Site**
August 1982 Master Plan Background Report/ August 1983 Housing Element **Zoning** **Total Units** **L&M Units**	Principal development parcel, "more likely to develop than others...currently non-developed and non-severe environmental constraints." R1/4 / Residential Cluster 430.84 du	Principal development parcel, "more likely to develop than others...currently non-developed and non-severe environmental constraints." VN 279,109 sq. ft. commercial	Additional development parcel, "less likely to be developed...because of existing development...or severe environmental constraints." MF 236.552 du Not specified.	Additional development parcel, "less likely to be developed...because of existing development...or severe environmental constraints." MF (12 du/acre) 205.613 du Not specified.	Additional development parcel, "less likely to be developed...because of existing development...or severe environmental constraints." R 1/4 / PRD-6 81.492 du Not specified.	Additional development parcel, "less likely to be developed...because of existing development...or severe environmental constraints." R-3% / PUD-10 254.33 du Not specified.	Additional development parcel, "less likely to be developed...because of existing development...or severe environmental constraints." OR/ Residential Cluster 118 du Not specified.	———
			Site 3	**Site 6**	**Site 4**	**Site 9**	**Site 13**	**Dobbs Site**
December 5, 1983 Dobbs Critique of Housing Element	Not addressed. R1/4 density too low to support L&M housing.	Not addressed. No residential option.	Existing development on majority of the site. Only part of site in BFH sewer area. Site assembly required.	Existing development of entire site. Assembly required.	Limited access.	Developed with single family homes.	Noise from interstates. No sewer.	Substantial L&M housing in June 1983 proposal. Site erroneously excluded from growth corridor. Ready and willing developer.
			Site C	**Site F**	**Site D**	**Site I**		**Dobbs Site**
December 19, 1983 Coppola Report **Total Units** **L&M Units**	Not included.	Not included.	Available for "future construction" (Stage IV). Requires redevelopment. 290 du 73 du (25% L&M set aside).	Available for "future construction" (Stage IV). Requires redevelopment. 306 du 77 du (25% L&M set aside).	Vacant. Available for "future construction" (Stage III). Sewage issue not addressed. 36 du 7 du	Available for "immediate construction" (Stage II). 257 du 51 du	Deleted.	Lists substantial portion of Dobbs tract within SDGP Growth Area.
			Site C	**Site F**	**Site D**	**Site I**		**Dobbs Site**
December 23, 1983 Draft Raymond Report **Total Units** **L&M Units**	Not addressed.	Not addressed.	8.22 ac. vacant; 13,78 ac. developable based on higher density. Development after 1990. 165 du 33 du	Concurs with Dobbs. Site assembly cost and time inhibits development. Deleted. 0 du 0 du	7.8 ac. critical, 5.8 ac. non-critical. Development after 1990. 36 du 7du	4 single family dwellings. Higher density zoning will motivate development. Immediate development. 257 du 51 du	———	Not addressed.
			Site C	**Site F**	**Site D**	**Site I**		**Dobbs Site**
January 3, 1984 Dobbs Critique of Draft Raymond Report	Not addressed.	Not addressed.	Requires sewer and assembly.	Requires site assembly and sewer.	Needs sewer.	Existing development precludes development.	———	Twp. sites inadequate to meet fair share. Dobbs site needed.
			Site C	**Site F**	**Site D**	**Site I**		**Dobbs Site**
January 10, 1984 Final Raymond Report	Not addressed.	Not addressed.	Same as draft.	Same as draft.	Same as draft.	Same as draft.	———	Not addressed.
			Site C	**Site F**	**Site D**	**Site I**		**Dobbs Site**
January 20, 1984 Dobbs Critique of Final Raymond Report	Not addressed.	Not addressed.	Existing development Needs sewer.	Existing development precludes development.	Needs sewer.	Existing development inhibits development.	———	Twp. sites inadequate due to sewer, site assembly. Dobbs site needed.

Sites 10 12 were not considered L&M sites due to low density zoning or non-residential zoning.

LOW AND MODERATE INCOME HOUSING SITE EVOLUTION

								
	Site M	**Site N**	**Site C**	**Site F**	**Site D**	**Site I**	**Site 13**	**Dobbs Site**
March 21, 1984 Coppola Report	Proposed rezoning from R1/4 / Cluster to R1/4 / PRD-8 900 du maximum).	VN / Senior option proposed.		Deleted. Rezoning from MF to R1/2 proposed.	Sewage issue not addressed.			Not included. Dobbs proposal for 232 L&M units rejected.
Zoning							—	
Total Units	900 du	0 du	165 du		36 du	257 du		
L&M Units	180 du	150 du senior	33 du		7 du	51 du		
	Site M	**Site N**	**Site C**		**Site D**	**Site I**		**Dobbs Site**
March 30, 1984 Dobbs Critique of Coppola Report	Severe access problems.	Adjacent to NJDOT maintenance yard. Assembly required.	Sewer capapcity questioned.	—	Sewer and access problems.	Site assembly precludes immediate development. Access and noise problems.	—	Dobbs is ready, willing and able developer. Twp. sites inadequate.
	Site M	**Site N**	**Site C**		**Site D**	**Site I**		**Dobbs Site**
April 11, 1984 Raymond Report	Group I.	Group II. EDC must expand to serve franchise area.	May develop after 1990, due to required site assembly.	—	May develop after 1990.	Group II. EDC plant must expand to serve franchise area.	—	Recommends keeping site in reserve for Mt.Laurel II compliance.
	Site B	**Site M**	**Site I**		**Site H**	**Site F**		**Dobbs Site**
July 6, 1984 Coppola Report (June 1984)	Maximum du increased.	Preferred senior housing site.	Senior housing site.		Sewage issue not addressed.	Sewage issue not addressed.		Proposes rezoning R-3% to SF Cluster. No L&M requirement. 108 du total.
Total Units	928 du	0 du	165 du		36 du	257 du		
L&M Units	180 du	90 du if senior	33 du; 90 du if developed as senior housing	—	7 du	51 du	—	
	Site B	**Site M**	**Site I**		**Site H**	**Site F**		**Dobbs Site**
September 1, 1984 Dobbs Critique of Coppola Report	Slopes restrict access. Needs utilities. Access to interstates restricted by jughandle capacity.	Undesirable housing site due to adjacent maintenence yard and I-287. Access to interstates restricted by jughandle.	Requires site assembly and 39,600 gpd sewer capacity for 165 du.	—	Requires 8,640 gpd for 36 du. BFH sewer expansion required.	Effect of commercial option on L&M housing capacity not considered. Site assembly and road improvements required.	—	Willing developer. Direct interstate access. On-site sewage treatment faster and less enviornmentally damaging than EDC.
	Site B	**Site M**	**Site I**		**Site H**	**Site F**		**Dobbs Site**
September 5, 1984 Coppola Report	Immediate sewer and utility access.	Excellent senior housing location.	Requires site assembly. BFH expansion "possibly" required.	—	BFH infiltration and capacity problems must be resolved.	4 of 6 lots have single family dwellings. Higher density zoning will motivate development.	—	Incorrect assumptions re developability made.

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Attorneys for Plaintiff
Leonard Dobbs

SUPERIOR COURT OF NEW JERS
LAW DIVISION:SOMERSET COUN

LEONARD DOBBS, Plaintiff. v. TOWNSHIP OF BEDMINSTER, Defendant. THE HILLS DEVELOPMENT COMPANY, ROBERT R. HENDERSON, DIANE M. HENDERSON, HENRY E. ENGELBRECHT, and ATTILIO PILLON, Intervenors/Defendants.	DOCKET NO. L-12502-80 CIVIL ACTION AMENDED AND SUPPLEMENTAL COMPLAINT IN LIEU OF PREROGATIVE WRIT

Plaintiff Leonard Dobbs, residing at 111 Central Avenue, Lawrence, New York, by way of Amended and Supplemental Complaint against defendants, says:

FIRST COUNT

1. Plaintiff Dobbs is the contract purchaser of a tract c land consisting of approximately 200 acres located on River Road

in the Township of Bedminster, which tract is located to the immediate west of the junction of River Road and Routes Nos. 202-206 in said township.

2. Defendant township is a municipal corporation organiz and existing under the laws of the State of New Jersey and is a developing municipality within the meaning of the decisional law of the State of New Jersey and the State Development Guideline Plan.

3. Pursuant to an Order of the Superior Court of New Jersey, Law Division, Somerset County, in the action bearing Docket Nos. L-36896-70 P.W. and L-28061-71 P.W., entitled "Allan-Deane Corporation, et al. v. The Township of Bedminster, et al.", defendant township formulated and adopted a revised zoning and land use ordinance, entitled "THE LAND DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF BEDMINSTER" [hereinafter "zoning ordinance"] for the purported purpose of regulating and limiting the use and development of land within its boundaries and to effect certain rezoning of the lands consisting of the so-called corridor of land to the immediate east and west of Routes Nos. 202-206 within the defendant township, except for the plaintiff's property which is contiguous to Routes 202-206, so as to provide for an appropriate variety and choice of low and moderate income housing as required by said Order of the Court.

4. As a result of the aforesaid rezoning and the increased residential development to be permitted by it, the tot. population of defendant township will necessarily undergo an increase in the immediate future.

5. The area occupied by defendant township contains a number of major arteries of traffic, including interstate and state highways, which not only will result in an increase in th population of defendant township but will also significantly affect the character, orientation and economic perspective of defendant township.

6. The true developing corridor of land within the defendant township consists of the areas both to the east and west of Route Nos. 202-206 and has been designated as such in the Somerset County Master Plan, the State Development Guide Plan, and the Regional Development Guide for the Tri-State Region, and there is evidence of a further developing corridor of land on both sides of Interstate-78 both to the east and west of Interstate-287. The corridor definition referred to pa: graph 3 hereof excluded the plaintiff's property on the basis of erroneous broad scale information at a time when defendant township knew of plaintiff's intention to develop such property.

7. The increased employment and economic growth which wil result from development of the aforesaid corridors must be responded to by the defendant township by provision for increased services.

8. Plaintiff requested that the defendant township give consideration to providing for a regional retail and commercial development district or districts within said township, said district or districts to be located in the area of the trac of land for which plaintiff is the contract purchaser, because such land, by virtue of its proximity to the aforesaid major art teries of traffic and location within the developing corridor is ideally situated above all other tracts within the defendant township for such uses and repeatedly requested as a major property owner in defendant township the opportunity to be heard with respect to such proposal.

9. Defendant failed to respond in any manner to such requests by plaintiff, did not rezone the tract of land for which plaintiff is the contract purchaser, and left said tract in a R-Residential zone.

10. As a consequence of the foregoing, plaintiff commenced the within litigation against defendant township in November 198

11. Pending decision on appeals from intervention Orders entered by the trial court, this matter has been stayed since Ju 17, 1981.

12. During the pendency of such stay, plaintiff repeatedly sought an opportunity to fairly present to defendant township anc

the Planning Board of defendant Township, in detail, plaintiff's development proposal and request for zoning change and to have plaintiff's experts make presentations to defendant township wit respect to same.

13. Despite such requests, defendant township has essentially failed, neglected, and refused such opportunity.

14. Also, during the pendency of such stay, plaintiff has submitted to defendant township extensive reports of plaintiff's experts in conjunction with plaintiff's development proposal and request for zoning change, including a site specific soil survey demonstrating the site's unsuitability for septic tank disposal systems.

15. Defendant township has failed to make any response to such submissions by plaintiff.

16. The master plan of defendant township provides for planned unit development (PUD)(i.e., mixed residential and commercial uses).

17. Notwithstanding such provision in the master plan of defendant township, defendant township has rezoned no properties within the township for planned unit development except for a portion of Hills and the property immediately adjacent and another parcel overlooking I-287 characterized by steep slopes and poor access which parcel is not suitable for development.

18. In August 1982, plaintiff revised his development proposal to provide for planned unit development, as called for in the Master Plan of defendant township.

19. Defendant township has failed, neglected, and refused to act on such submission.

20. Defendant township has demonstrated its refusal to consider plaintiff's submission and its effort to frustrate the development proposal contained in such submission by, among other things, the filing in February, 1983 of an application for Green Acres Program funds with respect to the property in question.

21. On June 17, 1983, plaintiff, in a submission to defendant township, detailed and defined the residential component of plaintiff's planned unit development, which submission provides a low and moderate income housing component and enhances the reasonableness of the plaintiff's overall proposal by addressing part of the township's Mt. Laurel II obligation.

To date the defendant township has refused to voluntarily provide housing opportunities for low and moderate income persons and has only rezoned to purportedly provide such opportunities after being ordered to do so by the courts. However, the housing opportunities provided by the township in response to the court fall far short of the township's fair share housing obligation; thus, making the low and moderate

income housing component of the plaintiff's proposal even more reasonable and essential to satisfying the township's fair share housing obligation.

22. Further attempts by plaintiff to effect a rezoning of the tract of land in question through resort to administrative remedies would be futile in light of the opposition which defendant has made known to the particular uses and zoning changes proposed by plaintiff.

23. The uses and zoning changes proposed by plaintiff as aforesaid are designed to meet not only the current needs of the residents of defendant township and surrounding areas, but also the future needs of the township and nearby areas which will be developed pursuant to the adopted zoning.

24. The increase in population caused by the development authorized by defendant township in its zoning ordinance, by the presence of the major arteries of traffic described hereinabove, and by mandates of present New Jersey law will further result in a commensurate increase and expansion in the needs of such population for ancillary uses and services such as those proposed by plaintiff.

25. The uses and zoning changes proposed by plaintiff as aforesaid would be for the public benefit and would serve the general welfare of the defendant township, adjacent areas within

the corridor, and other developing municipalites within the region.

26. The rezoning in accordance with the zoning ordinance adopted by defendant township fails to enact a comprehensive zoning map as it rezones only a small percentage of the total area of the defendant township, and fails to provide for the variety and quantity of low and moderate income housing, retail commercial and other uses which are necessary to serve the uses mandated by the rezoning effected by defendant and by mandates of present New Jersey law.

27. Defendant township has, notwithstanding changes in its zoning ordinances to permit such uses, frustrated efforts by various property owners to develop property in defendant township for such uses.

28. Additionally, it is evident that various areas rezoned by defendant township for such uses have very little or no likelihood of being developed for such uses.

29. Defendant township cannot rely upon the possible development of residential, retail and commercial uses in neighboring municipalities within its region as a purported justification for its failure to provide for such uses in the zoning ordinance adopted by it.

30. Said zoning enactments fail to adequately fulfill the needs and requirements of the general welfare, and is arbitrary, capricious and unreasonable.

WHEREFORE, plaintiff demands judgment against defendant:

A. Declaring the zoning adopted by defendant townsh for the subject property invalid;

B. Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a planned unit devel ment district;

C. Awarding the plaintiff his costs of suit and attorneys fees herein;

D. Granting the plaintiff such further relief as the Court deems just and proper.

SECOND COUNT

1. Plaintiff repeats and reiterates each of the allegations set forth in the First Count of the Complaint and incorporates same herein by reference.

2. By virtue of its failure to adopt a comprehensive zoning map, defendant has failed to plan and zone in a manner which will promote the public health, safety, morals and general welfare, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(a).

3. The Master Plan of defendant township contains the following objective:

> "Retail shopping facilities should be provided within the Court defined Route 202-206 corridor to serve the needs of the existing and anticipated residential population of the Township, and such shopping facilities should be provided as an integral part of the large scale residential development in order to avoid the proliferation of vehicular shopping trips and to prevent the evolution of 'strip' commercial development."

The commercial zoning adopted by defendant township fails to meet the requirements of the Master Plan and the mandates of New Jersey law in that, inter alia:

(i) VN (Village Neighborhood) zones adopted by defendant township constitute 'strip' commercial development as they straddle Lamington Road and Route 202-206 with inadequate land area for on-site circulation.

(ii) PUD (Planned Unit Development) zones adopted by defendant township in its zoning ordinance limit commercial land use to 20% of tract acreage and limit building square footage (so as to prevent the development of regional facilities and other than the property of Hills (Hills being the sucessor to Allan Deane), such zones have limited access and slope problems, making development difficult. Further, Hills has since sold the commercial portion of its PUD zoned property to a developer intending to develop such portion almost entirely for office buildings.

(iii) Plaintiff's property should properly be included in the 202-206 corridor as it is adjacent to said routes, and was excluded based on broad based, as opposed to site specific information.

4. The New Jersey Municipal Land Use Law includes in its section on purpose and intent the following objective:

> "To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private according to their respective environmental requirements in order to meet the needs of all New Jersey citizens."

Further, the Master Plan of defendant township contains the following objective:

> "The Development Plan should strive to prevent the homogenous spread of suburban development throughout the municipality. The Court defined Route 202-206 corridor should continue to be designated for specific types of relatively dense residential uses offering a variety of housing opportunities, as well as relatively intense non-residential development, a sufficient component of which is to serve local needs. (Emphasis added.)

Plaintiff's proposed development (which is appropriately located in terms of regional and local access and serves both local and regional needs), satisfies both of these objectives and yet has been rejected by defendant township.

5. Another objective of the Bedminster Master Plan reads as follows:

"To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site."

Defendant township has not encouraged Planned Unit Development, as evidenced by their selections which lack development potentia and, by the failure of defendant township to adopt the PUD recommendation of the Master Plan which does not limit the percentage of commercial development.

6. Section 405.1 c, d, e, and f, of the zoning ordinance adopted by defendant township, specify permitted uses in the VN (Village Neighborhood) Zone. The permitted uses are, however, all local and retail and service type uses, precluding within this zone commercial uses which serve a larger constituency.

7. The Master Plan and zoning map of defendant township have failed to take into account the massive amount of industria and office development in the region, the access provided by exisiting and soon to be completed highways (I-78) and the attenc ant existing and future needs of the accompanying residences.

8. The Master Plan and zoning map of defendant township have further failed to provide sufficient space in appropriate locations for a variety of, among other things, residential, commercial, and retail districts in order to meet the needs of defendant's present and prospective population, of

the residents of the region in which defendant township is loca and of the citizens of the State as a whole, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(g), and by present New Jersey law.

9. The Master Plan and zoning map of defendant township have further failed to encourage the proper coordination of various public and private activities and the efficient use of land as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(m).

10. The Master Plan and zoning map of defendant township are, in other material respects, inconsistent with and in violation of the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and of the mandates of the present New Jersey law.

11. By seeking to contain business and commercial activities within the rezoned Hills property and property directly north which has poor access and slopes, the Master Plan and zoning ordinance of the defendant township constitute an illegal and improper zoning scheme.

12. As the result of the foregoing deficiencies and shortcomings, the master plan and zoning map of the defendant township are inconsistent with and contrary to the purposes and intent of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the mandates of the present New Jersey law.

WHEREFORE, plaintiff demands judgment against defendant:

A. Declaring the master plan and zoning adopted by defendant township for the subject property invalid;

B. Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a planned unit development district;

C. Awarding the plaintiff his costs of suit and attorneys' fees herein;

D. Granting the plaintiff such further relief as the Court deems just and proper.

THIRD COUNT

1. Plaintiff repeats and reiterates each of the allegations set forth in the First and Second Counts and incorporates same herein by reference.

2. As a developing municipality, defendant township is obligated not only to make possible an appropriate variety and choice of housing, but also to make possible, within its boundaries, an adequate and broad variety of facilities which would serve the needs of defendant's present and prospective population and that of its immediate region.

3. The zoning map adopted by defendant township fails to comply with the foregoing obligations and is, as a result, invalid.

WHEREFORE, plaintiff demands judgment against defendant:

A. Declaring the zoning map adopted by defendant township for the subject property invalid;

B. Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a planned unit development district;

C. Awarding the plaintiff his costs of suit and attorneys fees herein;

D. Granting the plaintiff such further relief as the Court deems just and proper.

FOURTH COUNT

1. Plaintiff repeats and reiterates each of the allegations set forth in the First, Second and Third Counts of the Complaint and incorporates same herein by reference.

2. Under the provisions of the zoning ordinance adopted by defendant township, the tract of land for which plaintiff is a contract purchaser is zoned exclusively for R-3% residential purposes.

3. Said tract lies in the immediate vicinity of major traffic arteries and public thoroughfares, and its highest and best suited use is for regional retail and commercial purposes in a planned unit development district.

4. The present classification of plaintiff's property, p hibiting its use for planned unit development, is arbitrary and unreasonable in that it bears no reasonable relation to the pub health, safety and welfare of the defendant township and its inhabitants and other inhabitants of the developing corridor.

5. For the reasons set forth hereinabove, said zoning map, as applied to plaintiff's property, constitutes an improper and unlawful exercise of the police power delegated to the defendant township, depriving plaintiff of his property with out just compensation or due process of law, and the said zoning ordinance is unconstitutional, null and void.

WHEREFORE, plaintiff demands judgment against defendant:

A. Declaring the zoning adopted by defendant township for the subject property invalid;

B. Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a planned unit develo ment district;

C. Awarding the plaintiff his costs of suit and attorneys' fees herein;

D. Granting the plaintiff such further relief as the Court deems just and proper.

FIFTH COUNT

1. Plaintiff repeats and reiterates each of the allega-

tions contained in the First, Second, Third and Fourth Counts of the Complaint and incorporates same herein by reference.

2. The proximity of plaintiff's property to major traffic arteries and public thoroughfares renders it impossible to utili said property for residential purposes as said property is presently zoned (R-3%), because such residential development near such traffic arteries and public thoroughfares is economicallly impractical, especially given the lot area required by the zoning ordinance adopted by defendant for the district in which plaintiff's property is located.

3. Such residential development is rendered further impracticable by virtue of the fact that soil conditions on plaintiff's property would require either the use of off-site or on-site sewerage treatment, which type of treatment is not economically practical for the residential development which would be required under the present zoning of plaintiff's property.

4. As a direct result, the operation of the zoning ordinance adopted by defendant has so restricted the use of plaintiff's property and reduced its value so as to render said property unsuitable for any economically beneficial purpose, which constitutes a de facto confiscation of said property.

5. For the reasons set forth hereinabove, said zoning

map is unconstitutional, null and void in that it deprives plaintiff of the lawful use of his property without just compensation or due process of law.

WHEREFORE, plaintiff demands judgment against defendant:

A. Declaring the zoning adopted by defendant township for the subject property invalid;

B. Compelling a rezoning of the tract of land for whi plaintiff is a contract purchaser to a planned unit development district;

C. Awarding the plaintiff his costs of suit and attorneys' fees herein;

D. Granting the plaintiff such further relief as the Court deems just and proper.

WINNE, BANTA & RIZZI
Attorneys for Plaintiff
Leonard Dobbs

Dated: August , 1983

By: _____
Josepn L. Basralian