

MM Pozyski v. Twp. Manalapan

2/28/77

transcript  
of judge's decision

Pg 27

MM0000405

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION MONMOUTH COUNTY  
Docket L-31114-75 P.W.

HARRY S. POZYCKI, SR., et als, )

Plaintiffs, )

vs. )

JUDGE'S DECISION

THE TOWNSHIP OF MANALAPAN, )

Defendant. )

Monmouth County Court House  
Freehold, New Jersey  
February 28, 1977

B E F O R E:

Honorable MERRITT LANE, JR., A.J.S.C.

A P P E A R A N C E S:

DAVID J. FRIZELL, ESQUIRE,  
Attorney for the Plaintiffs.

RICHARD T. O'CONNOR, ESQUIRE,  
Attorney for the Defendant.

ANNETTE R. KANE, C.S.R.,  
Official Court Reporter.

1 THE COURT: I commend the attorney's for  
2 the job that each of them has done. You've  
3 been of very great help to the Court.

4 It's unfortunate that the trial of this  
5 case has been extended as much as it has and the  
6 fault is all mine. I remember trying cases  
7 before Assignment Judges and it is enough to  
8 drive an attorney up the wall. But unfortun-  
9 ately, that's our system.

10 In this action in lieu of prerogative  
11 writs, plaintiffs challenge the validity of the  
12 zoning ordinance of Manalapan Township, both on  
13 Mount Laurel grounds and as the ordinance applies  
14 to their property.

15 The issues that appear in the pretrial  
16 order are:

17 (a) What is the defendant's fair share  
18 of the regional need for low and moderate income  
19 housing?

20 What is low and moderate income housing?

21 What is the regional need therefore?

22 What is defendant's fair share?

23 (b) Is the Manalapan Township Zoning  
24 Ordinance reasonable and does it provide for  
25 the general welfare of the community in terms

1 of its substantive planning content?

2 What minimal standards of rational plan-  
3 ning must be incorporated into a municipal  
4 zoning ordinance, in order for it to pass the  
5 test of reasonability?

6 Can a zoning ordinance be found to be  
7 reasonable if it is shown that it encourages  
8 urban sprawl, discourages the conservation of  
9 open space and valuable natural resources, dis-  
10 courages coordination of the various public and  
11 private procedures and activities shaping land  
12 development with a view of lessening the cost  
13 of such development and to the more efficient  
14 use of land, ignores virtually every fundamental  
15 principle of good civic design?

16 (c) What effect does the relative ration-  
17 ality of the zoning adoption process have on  
18 the presumption of correctness?

19 If it is shown the ordinance was not  
20 adopted pursuant to a rational process and/or  
21 was, in fact, adopted for reasons and purposes  
22 extraneous to zoning, does the ordinance enjoy  
23 any presumption of validity?

24 (d) What is the appropriate remedy where  
25 there is shown an historical reluctance and

1 resistance to traditional forms of judicial  
2 action on the part of the defendant, the avail-  
3 ability of rational alternatives?

4 The complaint was amended at the time of  
5 the pretrial and there was added as an issue:

6 (e) An order declaring the Manalapan  
7 Township Zoning Ordinance to be invalid for  
8 failure to provide for a variety and choice of  
9 housing types; for failure to make low and  
10 moderate income housing realistically available;  
11 for failure to zone reasonably and for the  
12 general welfare of the Township, in that the  
13 zone plan promotes urban sprawl and the degra-  
14 dation of the environment; and for failure to  
15 adopt the zone plan, pursuant to a rational  
16 process.

17 Manalapan Township is a township of about  
18 thirty-one square miles or a little over 20,000  
19 acres in central western Monmouth County, about  
20 forty-eight miles southwest of New York City.  
21 It's seventeen miles from the City of New  
22 Brunswick, twenty-three miles from Trenton.  
23 It's about twenty miles from the Atlantic Ocean.

24 In 1960, it had a population of 3,990,  
25 853 more than in 1950. By 1970, the population

1 had increased to 14,049, a percentage increase  
2 of something over 250 percent. In January,  
3 1976, it had a population of a little over  
4 18,000. The population projected by the County  
5 for 1985 is 30,600. In 1960, it was essentially  
6 a rural, agricultural area. It had no sizable  
7 settlements or commercial or industrial enter-  
8 prises. By 1970, the density population of  
9 Manalapan was 429 persons a square mile, which  
10 takes us out of the rural area class. It is  
11 in the general New York City-Northeastern New  
12 Jersey Metropolitan Region.

13 U.S. 9, Route 9, runs north and south,  
14 crossing the northwestern section of the Town-  
15 ship. State Highway 33 bisects the southern  
16 half of the Township. The New Jersey Turnpike  
17 is a few miles to the west of the Township and  
18 the Garden State Parkway is a few miles to the  
19 east. State Highways 34 and 35 are not too far  
20 away from the Township.

21 The zoning ordinance with which we are  
22 concerned zones 3,312 acres for industry and  
23 office research, which is about sixteen or seven-  
24 teen percent of the land in the Township develop-  
25 able land. 2,553 acres are zoned for commercial

usage, which is about fifteen percent of the land. The majority of the commercial zoning is in a strip pattern along Routes 9 and 33. There is no concentrated retail commercial area in the Township.

I suppose it can be considered that Englishtown, which is surrounded by the Township, does constitute a concentrated commercial area.

In the northern portion of the Township, there has been development in the conventional form of major subdivisions. Earlier zoning ordinances permitted only single-family, detached dwellings for the residential development.

The County Planning Board predicts, by the year 2000, the population in Manalapan will be something over 45,000 persons.

Plaintiffs are the owners of tracts of land in the southern portion of the Township, not too far from the intersection of Routes 33 and 527. They purchased the land involved in the early 1960's, when it was partially zoned for residential uses with a half-acre minimum lot size. In March of 1966, a zoning ordinance

1 was adopted, increasing the minimum lot size to  
2 one acre.

3 In or on September 27, 1967, the governing  
4 body adopted an amendment to the zoning ordinance  
5 to add additional industrial and commercial  
6 zones. On December 27 of that year, there was  
7 another amendment to increase the minimum square  
8 footage required for the homes. On January 31,  
9 1968, the governing body voted to extend the  
10 life of the minimum lot size of one acre for  
11 nine months. On December 11 of that year, a  
12 new zoning ordinance was adopted, which increased  
13 the minimum residential lot size in the southern  
14 part of the Township to one and a half acres.

15 On July 25, 1973, there was a building  
16 moratorium. And the ordinance provided that  
17 there be no more subdivision approvals until  
18 January 21, 1974. Before that date, this mora-  
19 torium was extended until May 31, 1974. And  
20 it was again extended to August 31, 1974. And  
21 then on August 28, 1974, it was extended to  
22 November 30, 1974.

23 The Township did engage a planning asso-  
24 ciation to develop a master plan for the Town-  
25 ship. There were hearings on the proposed



1 master plan towards the end of 1974. But, in  
2 fact, to this day, no master plan has been  
3 adopted.

4 Up until the present ordinance, the land-  
5 use regulations permitted only large lot single-  
6 family residential units. There was an excep-  
7 tion to this provision in Covered Bridge, which  
8 is a senior citizens' housing development. The  
9 median family income in the Township in 1969  
10 was about \$14,500. Only 7.1 percent of the  
11 households were in what would be called the  
12 low income range. 11.5 of the households were  
13 in the moderate income range.

14 Now, the testimony shows that the Township  
15 has 16,243 acres of developable land, of which  
16 13,286 acres are zoned for residential use.  
17 The portion of land in the Township that is  
18 developable amounts to about 8.5 percent of that  
19 in the County.

20 There is no doubt that Manalapan has acted  
21 affirmatively to control development and to  
22 attract a selective type of growth. The stat-  
23 istics indicate that the effect of the zoning  
24 regulations has been to tend to exclude persons  
25 of low and moderate income.

1 Now, this, of course, follows -- or it  
2 follows from this youths and older persons are  
3 excluded.

4 In 1975, in Woodward Associates v. Zoning  
5 Board of Adjustment of the Township of Manalapan,  
6 et als, this Court ordered the Township to amend  
7 its zoning ordinance to provide for an appropri-  
8 ate variety and choice of housing. The Township  
9 was given three months. No ordinance was intro-  
10 duced within that time.

11 So far as the evidence shows, there was  
12 no resolution retaining the services of a  
13 municipal planner in that time.

14 The Planning Board, within that time, did  
15 not recommend any amendments to the ordinance  
16 which the Court had declared invalid. On  
17 October 22, 1975, the Appellate Division granted  
18 a motion of the Township, staying the judgment  
19 until February 1, 1976.

20 On March 31, 1976, the zoning ordinance  
21 before the Court was introduced. And on April  
22 12, 1976, the ordinance was adopted.

23 Now, this zoning ordinance, as I under-  
24 stand the testimony, zoned some eleven thousand  
25 plus acres for residential purposes, of which

1 about 6,000 acres are currently developed." The  
2 zoning ordinance zones one thousand twenty-four  
3 plus acres R-40, 1,172 acres R-30-40, 9,524 acres  
4 R-20. Now, the R-40 is 40,000 square feet. The  
5 R-30-40 can be a combination. The R-20 is 20,000  
6 square feet. And it's perfectly clear to me  
7 that all of these lot sizes are large lots.  
8 There are some 842 acres in the MR zone. The  
9 regulations for this zone require that 60 per-  
10 cent of the lot be developed under the R-20  
11 guidelines.

12 There is a provision for townhouses with  
13 a greater density than provided in the R-20  
14 zone.

15 The ordinance totally excludes rental  
16 units. There is no zone in the Township that  
17 allows any residential use other than single-  
18 family dwellings, with the exception of the  
19 townhouses. There are no provisions for apart-  
20 ments. There are no provisions for two-family  
21 houses. There are no provisions for mobile  
22 homes. There are no provisions for housing on  
23 small lots. There is, in fact, no provision for  
24 any housing that can be acquired by somebody in  
25 the low income group and very, very little, really.

1 I think none for moderate income.

2 Now, the argument is that the zoning  
3 ordinance is invalid, in that it fails to pro-  
4 vide a variety and choice of housing types for  
5 all categories of persons and further fails to  
6 provide for its fair share of the regional need  
7 for low and moderate income housing.

8 N.J. Constitution of 1947, Article IV,  
9 Section VI, paragraph 2 grants the Legislature  
10 power to enact enabling legislation to empower  
11 municipalities to enact zoning legislation.

12 N.J.S.A. 40:55D-1, et sec, now governs  
13 land-use regulations. Section II of that act  
14 sets forth the essential considerations that  
15 must be followed in adopting land-use regula-  
16 tions.

17 The authority to zone is based on the  
18 enabling act, which, as I have said, sets forth  
19 specific purposes.

20 Now, we're in a transitional period right  
21 now. This ordinance before the Court was not  
22 adopted under the new land-use act, to which  
23 I referred, but rather it was adopted under  
24 the old act which had existed for quite a per-  
25 iod of time, which was not as explicit as the

1 new and presently governing act is.

2 Reasonable zoning regulations designed to  
3 promote an early physical development of the  
4 municipality according to a land-use pattern  
5 do represent a valid exercise of the police  
6 power. They are -- the regulations are not  
7 constitutionally offensive when reasonable in  
8 degree and when considered necessary by the  
9 governing body to the physically harmonious  
10 growth of the land use in the municipality.  
11 In such circumstances, they serve an overall  
12 public -- the overall public interest of the  
13 community. All zoning legislation is subject  
14 to constitutional limitations that it not be  
15 unreasonable or capricious and that the means  
16 selected by such legislation shall have a real  
17 and substantial relation to the legitimate pur-  
18 poses sought to be attained.

19 Constitutional guarantees require that  
20 zoning power not be utilized beyond the public  
21 need or impress unnecessary and excessive  
22 restrictions on the use of private property or  
23 pursuit of useful activities.

24 The test of the validity of the municipal  
25 zoning ordinance is the reasonableness of the

1 ordinance viewed in light of existing circum-  
2 stances in the community used in a broad sense  
3 and the physical characteristics of the area.

4 It used to be said that the party  
5 attacking the validity of a zoning ordinance  
6 has a heavy burden of affirmatively showing  
7 that the ordinance bears no reasonable rela-  
8 tionship to public health, morals, safety or  
9 welfare. Proof of unreasonableness had to be  
10 beyond debate. Even that presumption could be  
11 overcome by a showing on its face or in the  
12 light of facts of which judicial notice can be  
13 taken, of transgression of constitutional  
14 limitations or bounds of reason.

15 Usually, the judicial role in reviewing  
16 a zoning ordinance is tightly circumscribed.  
17 There used to be a strong presumption in favor  
18 of its validity. A Court could not pass upon  
19 the wisdom or lack of wisdom of the ordinance.  
20 It could only invalidate a zoning ordinance if  
21 the presumption in favor of its validity was  
22 overcome by a clear, affirmative showing that  
23 the ordinance was arbitrary or unreasonable.

24 It was said that the functions of legis-  
25 lative bodies and the judicial forums were

1 distinct.

2 In Southern Burlington County NAACP v.  
3 Tp. of Mount Laurel, 67 N.J. 151, the Supreme  
4 Court considered an attack of the zoning plan  
5 of Mount Laurel Township. That attack had been  
6 brought by various individual plaintiffs and by  
7 three organizations representing the housing and  
8 other interests of racial minorities. Plaintiffs  
9 argued that Mount Laurel's system of land-use  
10 regulation was invalid, in that it excluded low  
11 and moderate income families from the munici-  
12 pality.

13 The Supreme Court held the zoning ordi-  
14 nance to be invalid, to the extent that it did  
15 not provide the reasonable opportunity for an  
16 appropriate variety of housing to meet the needs,  
17 desires and resources of all categories of peo-  
18 ple who might desire to live in Mount Laurel.

19 The Court held that a presumptive obliga-  
20 tion exists for each municipality affirmatively  
21 to plan and provide for such variety and choice  
22 of housing. And the Court went on to state:

23 "We have spoken of this obligation of  
24 such municipalities as presumptive. The term  
25 has two aspects; procedural and substantive.

1                   Procedurally, we think the basic importance of  
2                   appropriate housing for all dictates that, when  
3                   it is shown that a developing municipality in  
4                   its land-use regulations has not made realistic-  
5                   ally possible a variety and choice of housing,  
6                   including adequate provision to afford the  
7                   opportunity for low and moderate income housing  
8                   or has expressly prescribed requirements or  
9                   restrictions which preclude or substantially  
10                  hinder it, a facial showing of violation of  
11                  substantive due process or equal protection  
12                  under the State Constitution has been made out  
13                  and the burden, and it is a heavy one, shifts  
14                  to the municipality to establish a valid basis  
15                  for its action or non-action. Robinson v.  
16                  Cahill, supra, 62 N.J. at 491-492, and cases  
17                  cited therein. The substantive aspect of pre-  
18                  sumptive relates to the specifics, on the one  
19                  hand, of what municipal land-use regulation  
20                  provisions, or the absence thereof, will evi-  
21                  dence invalidity and shift the burden of proof  
22                  and, on the other hand, of what bases and con-  
23                  siderations will carry the municipality's  
24                  burden and sustain what it has done or failed  
25                  to do. Both kinds of specifics may well vary



1 between municipalities according to peculiar  
2 circumstances." (180-181)

3 There is an aspect of the defense that  
4 seems to argue that plaintiffs who seek to  
5 develop should not be permitted to maintain  
6 their attack on the ordinance. And these  
7 plaintiffs do seek to develop. I might, in  
8 theory, agree with that position. However,  
9 plaintiffs have owned the land since the early  
10 1960's. And during this time, they have been  
11 taxpayers. I fail to see how it would be  
12 constitutional to allow a resident who is not  
13 a developer to attack an ordinance but deny  
14 that right to developers merely because they  
15 want to make use of their property by develop-  
16 ment. If plaintiffs were contract purchasers,  
17 there might be a reason to distinguish, but I'm  
18 not even sure of that.

19 It is argued by defendant that the Mount  
20 Laurel decision is not applicable to the situ-  
21 ation before the Court. Defendant admits  
22 they're not providing for apartments within the  
23 Township. However, it says that the existing  
24 units and housing provided under the ordinance  
25 provide a variety of housing for low and moderate

1 income individuals. It also says that it is not  
2 a developing community in the path of substan-  
3 tial future development.

4 I cannot in any way agree with that con-  
5 tention. There is no doubt at all from the  
6 evidence that, not only Manalapan Township, but  
7 every township in Monmouth County, except those  
8 that are almost full, are developing municipali-  
9 ties as that term is used by the Supreme Court  
10 in the Mount Laurel case. But even beyond that,  
11 the Mount Laurel case cannot be so easily dis-  
12 tinguished. The variety of housing to which  
13 the Court there addressed itself included but  
14 it was not limited to low and moderate income  
15 housing. What the Court was basically concerned  
16 with was the fact that the Mount Laurel ordin-  
17 ance permitted only one type of housing. Single-  
18 family detached dwellings. And in that case,  
19 that multi-family housing, including garden  
20 apartments and townhouses, was prohibited. 67  
21 N.J. at 181. It noted that, not only were many  
22 people incapable of affording such housing, but  
23 that many, including young people and elderly  
24 and retired persons, did not desire such housing.  
25 67 N.J. at 181. In that case, the Court further

1 held that each municipality must meet its fair  
2 share of the present and prospective regional  
3 need for low and moderate income housing.

4 Theoretically, if no such need exists in the  
5 region around Manalapan, defendant need not so  
6 provide.

7 However, the Court also held that, when a  
8 municipality has not made realistically possible  
9 a variety and choice of all forms of housing,  
10 including but not limited to low and moderate  
11 income housing, it bears the heavy burden of  
12 justifying its action or non-action.

13 As a general matter, our society depends  
14 upon private enterprise for the provision of  
15 our housing needs. In times of economic stress,  
16 such as we are experiencing now, the private  
17 sector being susceptible to the ravages of  
18 market forces caused by inflation and other  
19 economic factors may be inadequate to the task  
20 of providing the variety of housing needed,  
21 especially low income housing, unless aided by  
22 subsidization or external incentive. See  
23 Oakwood at Madison, Inc. v. Tp. of Madison,  
24 Slip Opinion, page 34. Sources extraneous to  
25 the unaided private building industry cannot be

1 depended upon to produce any substantial propor-  
2 tion of the housing needed and affordable by  
3 most of the lower income population. id. at 35.

4 As I've said, there is no doubt that  
5 Manalapan is a developing municipality. It is  
6 a part of the 22-county urban metropolitan  
7 region.

8 In Oakwood, supra, Judge Conford, writing  
9 for the Court, discussed the municipality's  
10 assertion that, under such economic realities,  
11 the mandate in Mount Laurel is impracticable  
12 and that litigation to enforce the principles  
13 of Mount Laurel was futile. The Judge said:

14 "To the extent that the builders of hous-  
15 ing in a developing municipality like Madison  
16 cannot through publicly assisted means or appro-  
17 priately legislated incentives (as to which,  
18 see infra) provide the municipality's fair share  
19 of the regional need for lower income housing,  
20 it is incumbent on the governing body to adjust  
21 its zoning regulations so as to render possible  
22 and feasible the 'least cost' housing, consis-  
23 tent with minimum standards of health and safety,  
24 which private industry will undertake, and in  
25 amounts sufficient to satisfy the deficit in the

1 hypothesized fair share. As the matter was put  
2 in a supplemental amicus brief of The Public  
3 Advocate:

4 ' \* \* \* for now, and in the foreseeable  
5 future, it is absolutely essential to build a  
6 substantial amount of housing units at the  
7 lowest cost feasible and consistent with health  
8 and safety. Builders now must be given the  
9 opportunity to build as inexpensively as pos-  
10 sible in order to accomodate the low, moderate-  
11 subsidized and, especially, moderate-conventional  
12 population. Thus, in one sense, future dispar-  
13 ities in the increases in housing cost and median  
14 income are not relevant; that is, we should be  
15 building at the lowest cost feasible now.'

16 \* \* \* "Nothing less than zoning for least  
17 cost housing will, in the indicated circum-  
18 stances, satisfy the mandate of Mount Laurel."  
19 Slip Opinion, pages 36 and 37.

20 While compliance with the Court's direc-  
21 tion may not provide newly-constructed housing  
22 for all lower income categories, it will, never-  
23 theless, according to the Supreme Court in  
24 Oakwood, through the filtering-down process,  
25 tend to augment the total supply of available

1 housing in such a manner as will indirectly  
2 provide additional and better housing for the  
3 insufficiently and inadequately housed of the  
4 region's lower income population.

5 In analyzing a municipal zoning ordinance's  
6 compliance with the least cost approach, the  
7 Court must consider both the quantitative and  
8 qualitative consequences dictated by such  
9 ordinance. This would include examining the  
10 amount of land allocated to achieve least cost  
11 purposes. Oakwood suggests that overzoning  
12 for these categories might be appropriate in  
13 order to produce any likelihood that a desired  
14 quota can be met. Slip Opinion, page 46.  
15 This is to offset the probability that some  
16 owners will not use the property in accordance  
17 with the least cost purpose and the probable  
18 occupation of least cost housing by higher  
19 income persons wishing to economize.

20 The Court should also ask whether the  
21 ordinance makes allowance for what is described  
22 as very small lots. Slip Opinion, page 41.  
23 Do the provisions of the ordinance, when com-  
24 bined with the economics of building, dictate  
25 small multi-family units, even though facially

1 the ordinance, standing alone, might appear to  
2 permit otherwise. [Slip Opinion, page 42.] Also,  
3 does the ordinance or another ordinance require  
4 certain excessive dedication or improvements  
5 which add to the costs of development and con-  
6 sequently raise the price of housing.

7 The Court will also consider whether the  
8 ordinance contains unwarranted procedural or  
9 application requirements which make for costly  
10 delays which again will be reflected in addi-  
11 tional costs for housing. [Slip Opinion, page  
12 51.]

13 With respect to issue (a) of the pretrial  
14 order, Oakwood offers the following observations:

15 "1. Based upon our analysis and findings  
16 in IV and VI, the 1973 ordinance is clearly  
17 deficient in meeting Madison's obligation to  
18 share in providing the opportunity for lower  
19 cost housing needed in the region, whether or  
20 not the specific fair share estimates submitted  
21 by the defendant are acceptable. These estimates  
22 are, in any event, defective at least in not  
23 including prospective need beyond 1975.

24 "2. The objective of a Court before  
25 which a zoning ordinance is challenged on Mount

1        Laurel grounds is to determine whether it  
2        realistically permits the opportunity to pro-  
3        vide a fair and reasonable share of the region's  
4        need for housing for the lower income population.

5        " 3. The region referred to in 2 is that  
6        general area which constitutes, more or less,  
7        the housing market area of which the subject  
8        municipality is a part and from which the pros-  
9        pective population of the municipality would  
10       substantially be drawn, in the absence of  
11       exclusionary zoning.

12       " 4. Fair share allocation studies sub-  
13       mitted in evidence may be given such weight as  
14       they appear to merit in the light of statements  
15       2 and 3 above. But the Court is not required,  
16       in the determination of the matter, itself to  
17       adopt fair share housing quotas for the munici-  
18       pality in question or to make findings in  
19       reference thereto." [Slip Opinion, page 80 and  
20       81.]

21       I would point out that this analysis does  
22       not accept a county as per se the appropriate  
23       region.

24       If the Court chooses to select quotas  
25       for fair share or pinpoint low and moderate



1 income housing, it would rely or at least place  
2 weight on plaintiffs' studies. Plaintiffs'  
3 studies appear to be more comprehensive and  
4 logically valid. The defendant's study is defi-  
5 cient, in that it does not take into account  
6 unmet housing needs resulting from previous  
7 exclusionary practices.

8 In that Manalapan's ordinance only pro-  
9 vides for single-family, large-lot housing with  
10 a small provision for expensive townhouses and  
11 excludes apartments and rental housing, it is  
12 clear that it has not provided the variety of  
13 housing talked about in Mount Laurel and Oakwood.

14 The ordinance does not take into account  
15 the least cost approach. Furthermore, it is  
16 obvious that it does not deal adequately with  
17 environmental concerns. The location of the  
18 MR zones is not rational.

19 I accept Mr. Nellesen's testimony as to  
20 the constraints on those locations. The land  
21 zoned for industrial, office research and com-  
22 mercial is far too great.

23 The ordinance is, therefore, invalid and  
24 unreasonable, as not providing for the general  
25 welfare and for failure to make provision for

1 the Township's fair share of the region's hous-  
2 ing needs.

3 A judgment will issue, requiring the  
4 Township to make proper provisions for a variety  
5 of housing in light of Mount Laurel and Oakwood,  
6 with proper consideration given to the concept  
7 of least cost and to multi-family housing and  
8 with proper consideration given to environmental  
9 concerns and with substantially cutting down  
10 the amount of land zoned for industrial, office  
11 research and commercial. Clustering must be  
12 permitted. Reasonable figures as to the need  
13 must be developed by the municipality.

14 If the judgment is not carried out within  
15 180 days, absent good cause and a showing of  
16 progress to that point, the Court will give  
17 serious consideration to imposing judicial  
18 supervision and fashioning a proper ordinance.

19 I would be reluctant to accept plaintiff's  
20 plan as a whole, as the model, because, although  
21 it appears to be better than that of defendant,  
22 it was not drawn specifically with the least  
23 cost concept in mind, nor does it adequately  
24 consider the entire Township.

25 This judicial supervision might be

1 necessary because of the defendant's failure  
2 to comply with the Court's earlier judgment.  
3 I might say that it did make a small step in an  
4 effort to comply. But as I read Oakwood,  
5 Oakwood is saying you don't tell the munici-  
6 pality specifically what to do. Rather you  
7 give them the general guidelines and then if  
8 they don't do it, you, the Court, zones the  
9 municipality. I cannot interpret Oakwood any  
10 other way.

11 There is no specific remedy to be ordered  
12 for the plaintiff, although there is authority  
13 for a specific remedy. See Oakwood, supra,  
14 Slip Opinion, pages 89-94. It should be rarely  
15 granted. Plaintiff here does not present the  
16 same circumstances as the plaintiff did in  
17 Oakwood.

18 The judgment will carry costs for the  
19 plaintiff.

20 Is there anything I did not dispose of,  
21 Mr. Frizell?

22 MR. FRIZELL: I don't believe so, Your  
23 Honor.

24 THE COURT: Mr. O'Connor?

25 MR. O'CONNOR: No, Your Honor.

1 THE COURT: All right. Again I thank the  
2 attorneys very much for their help.  
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6 - C E R T I F I C A T E -  
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8 I, ANNETTE R. KANE, a Certified Shorthand  
9 Reporter and Notary Public of the State of New Jersey, do  
10 hereby certify that the foregoing is a true and accurate  
11 transcription of my stenographic notes as taken by me on  
12 the date, time and place hereinbefore set forth.

13 *Annette R. Kane, O.C.R.*  
14 ANNETTE R. KANE, C.S.R.,  
15 Official Court Reporter.  
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