MM – Washington Township 3/23/77

Pascack Association v. Washington
Waldy, Inc., v. Board of Adjustment and the Twp Council of Washington

Appeal heard by the Supreme Court of New Jersey

Pgs. 29

MM0000560

SUPREME COURT OF NEW JERSEY
A-130 September Term 1975

PASCACK ASSOCIATION, LIMITED,

Plaintiff-Appellant,

v.

MAYOR and COUNCIL OF THE TOWNSHIP OF WASHINGTON, BERGEN COUNTY, NEW JERSEY,

Defendants-Respondents.

WALDY, INC.,

Plaintiff-Appellant,

v.

THE BOARD OF ADJUSTMENT AND THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WASHINGTON, BERGEN COUNTY, NEW JERSEY, and WASHINGTON LAKES ASSOCIATION, a corporation of the State of New Jersey,

Defendants-Respondents.

Argued May 25, 1976 -- Decided 3-23-77

On certification to the Superior Court, Appellate Division.

Mr. Alan J. Werksman argued the cause for appellants (Messrs. Werksman, Saffron, Cohen, Sylvester & Miller, attorneys; Mr. Werksman and Mr. Eugene P. Sylvester on the brief).

Mr. Leonard Adler argued the cause for respondents Mayor and Council and Board of Adjustment of Washington Township.

Mr. Peter A. Buchsbaum, Assistant Deputy Public Advocate, argued the cause for amicus curiae Public Advocate (Mr. Stanley C. VanNess, Public Advocate, attorney; Mr. Buchsbaum, Mr. Carl S. Bisgaier, Deputy Director of Division of Public Interest Advocacy, and Mr. Kenneth E. Meiser, Assistant Deputy Public Advocate, on the brief).

No appearance was made on behalf of respondent Washington Lakes Association.

The opinion of the Court was delivered by

CONFORD, P.J.A.D. (temporarily assigned).

This appeal projects the significant issue as to whether, in the wake of the decisions of this court imposing upon developing municipalities the obligation of providing by zoning for the opportunity to create housing for the low and moderate income segments of the population, see So. Burl. Cty. N.A.A.C.P. v Tp. of Mt. Laurel, 67 N.J. 151, app. dism. and cert. den., 423 U.S. 803 (1975) (Mount Laurel, hereinafter); Oakwood at Madison, Inc. et al. v The Township of Madison, ___ N.J. ____ (1977), (Oakwood at Madison, hereinafter) all municipalities, regardless of the state or character of their development, have an obligation to zone for multi-family housing on behalf of middle income occupants if there is a local and regional shortage of multi-family housing in general. More specifically, the issue is whether there is such an obligation on the part of a small municipality, developed substantially fully upon detached single-family dwellings and restricted accordingly in the residential provisions of its zoning ordinance.

Holding in the affirmative on the stated issues, the judgment of the Law Division mandated the grant of a building permit for such purpose to the appellant property owner with respect to its 30-acre tract of land. The Appellate Division reversed, and we granted certification to pass upon the important questions presented. 69 N.J. 73 (1975).

The initial action herein was commenced in 1970 when plaintiff Pascack Association Limited ("Pascack") filed a complaint in lieu of prerogative writ, attacking the rezoning of its property to permit the additional use of offices and research (OR) and challenging the validity of the prior ordinance limiting its residential development to two-acre single-family lots. Thereafter, in August 1971, Waldy, Inc. ("Waldy"), contract purchaser of the property involved, after unsuccessfully applying for a variance to build a 520 unit garden apartment complex on the property, began an action to set aside the variance denial and challenge the entire ordinance for failing to make provision anywhere for multi-family and rental housing. Shortly thereafter the actions were consolidated for trial. In May 1972 by leave of court an amended complaint was filed by both plaintiffs joining as party-defendant the trustees of the Washington Lakes Association and contesting the validity of certain private deed restrictions on file with the Bergen County Clerk's Office, enforcement of which would preclude plaintiffs' proposed development on a portion of the tract.

On December 20, 1972, the trial court after a hearing issued a memorandum decision: (1) holding invalid the two-acre minimum lot size for single-family residences; (2) holding the entire Washington Township zoning ordinance invalid for failure to make any provision for "multiple and rental housing"; and (3) reversing the board of adjustment's denial of a recommendation for a use variance and remanding the application to the board for reconsideration.

The consequent judgment, entered January 16, 1973, restricted the invalidation of the ordinance to its prohibition of "multiple and rental housing" and the nullification of the lot size limitation. The order recited that it was a "final judgment" and that the court did not retain jurisdiction. There was no direction to the municipality to rezone within any specified period of time, as is customary in such situations.

On January 29, 1973, presumably in response to the judgment, the township passed Ordinance No. 73-1, rezoning a different 34-acre area (in diverse ownership) for multi-family residential use. On February 15, 1973 the board of adjustment again denied the application for a variance, and this decision was never appealed by plaintiffs.

On June 29, 1973, notwithstanding the trial court had not retained jurisdiction, plaintiffs moved in the action to compel the township to issue a building permit for the proposed

520-unit garden apartment complex. At the hearing on the motion, they charged that Ordinance 73-1 failed to "comply" with the court's prior judgment in that although 34 acres were zoned multi-family, in practical terms only 5 acres were available for multi-family construction and the zoning restrictions of the multi-family zone precluded construction meeting the economic and social needs of the area. The trial court agreed with this position, and on July 9, 1973 ordered the township to complete within 60 days "all rezoning required for compliance with the prior Judgment." Defendants moved for an extension of time on the grounds that the township planning board had recommended adoption of an ordinance rezoning plaintiff's property and that litigation challenging Ordinance 73-1 was pending, but the motion was denied on August 1, 1973.

An appeal from both the July 9, 1973 and January 12, 1973 judgments was filed by the township on August 22, 1973. No timely rezoning having occurred, plaintiffs moved for an order directing the township to issue a building permit to plaintiffs for their proposed multi-family garden apartment complex. In response, the court in October 1973 appointed two planning experts to advise the court on whether Ordinance 73-1 complied with the court's January 1973 judgment, and, if not, to recommend a zoning plan which would so comply.

On January 9, 1974 the experts submitted their report and recommendations. They concluded that Ordinance 73-1 did not comply with the judgment and recommended inclusion of the plaintiffs' tract in the multi-family zone. In addition, they recommended densities in the multi-family zone of at least 6 and up to 9 units per acre. After a hearing on the report the trial court on February 26, 1974 filed an opinion, 131 N.J. Super. 195, ordering:

1) The issuance of a building permit to plaintiffs for construction of a two story garden apartment complex upon proper application by plaintiffs to all necessary agencies for site plan review;

2) The "maximum number" (sic) of multi-family units permitted plaintiff as a matter of right should be no less than 9 per acre;

3) Certain specified regulatory provisions (e.g., minimum off-street parking facilities, number of bedrooms, minimum floor area) were attached to plaintiffs' permit.

On February 6, 1974, over objection by both the township and Washington Lakes Association, the court dismissed as of October 30, 1972, without prejudice, the complaint attacking the validity of the private deed restrictions of that Association.

Defendant township filed another appeal from the January 12, 1973 judgment and the July 9, 1973 order, as well as from the February 6, 1974 order. Plaintiffs cross-appealed from the apartment specifications set forth in the court's judgment.

Plaintiffs moved to dismiss those portions of the consolidated appeals seeking to review the January 12, 1973 judgment as beyond the 45-day time limit provided by the rules for appealing a final judgment. The Appellate Division reserved decision on the motion until determination of the entire appeal, and it ultimately denied the motion because of the "public importance" of the judgment.

Pending the appeal herein, this court decided Mount Laurel in March 1975. The Appellate Division invited supplemental briefs as to the effect of that ruling on the trial court's determination of the invalidity of the ordinance for failure to zone for multi-family housing. In reversing, the Appellate Division, in an unreported per curiam opinion, held that Mount Laurel was not applicable, primarily for the reason that that decision was not authoritative except as to developing municipalities — a category not represented by the township. We have concluded that that determination was essentially correct, and affirm to that extent.

I

We direct our attention first to the trial court holding that the ordinance was defective in not providing for multi-family housing. This determination rested on certain essentially undisputed operative facts. The township comprises 1,984 acres or 3¼ square miles. It is one of a group of Bergen County residential communities popularly referred to as the Pascack Valley, of which Washington Township is southernmost. The residential nature of the township is almost exclusively single family, on lots ranging from 5000 sq. ft. to two acres or more. These residences take up 94.5% of the land; commercial uses occupy 3.25%, and there are no industrial or multi-family residential uses (except a few two-family houses). The remaining 2.3% is vacant land, there being no single parcel larger than that here involved.

The 1970 census population was 10,577, with a projection for 1980 on the master plan (made in 1963) of 10,800. There were in 1970 2,742 dwelling units. The growth of population since 1960 has been rapid, outstripping the rate of increase in surrounding municipalities. Housing density has increased from 41 units per square mile in 1950 to 862 in 1970. The average house was valued at $37,508 in 1970. Most houses are on lots of 75 x 100 feet or 100 x 100 feet, but there are many on half-acre lots and a considerable number larger.

In April 1970, 10% of the total single-family homes were renter occupied. In 1971 Bergen County had approximately 283,700 housing units, of which 90,360, or 31.9%, were rental. This may be compared with 5% for the Pascack Valley region. Five of the eight municipalities in the Pascack Valley region have no multi-family units, and the ratio of single-family units to all others is higher in the county than in the State as a whole.

The subject property is the largest undeveloped tract in the township. The plot is roughly rectangular in shape and, except for a few small lots, takes up the whole of the southeast corner of Pascack Road and Washington Avenue, with a total frontage of 774 feet on the former and 370 feet on the latter. On the east the tract abuts a single-family residential area on 7,500 and 10,000 square foot lots. To the west across Pascack Road is a restaurant and a bank followed by single-family residences in both directions. Proceeding west on Washington Avenue near plaintiff's property is a gas station, followed by a small used car lot and another gas station. Going east along Washington Avenue is a municipal firehouse followed by single-family residences. Aside from a vacant 9-acre parcel to the south, the tract mainly abuts single-family homes.

Although the plaintiffs' project has been represented by them at various times to be designed to accommodate middle to moderate income renters, they firmly took the position at the hearing in January 1974 that if limited to a density of nine units per acre (as provided in the final judgment) they would not be able to provide rental units but only condominiums at a sale price of $50,000. In that event, moreover, there would be approximately 270 rather than 520 units.

II

Plaintiffs contend the Appellate Division should have dismissed the appeal from the January 1973 order as untimely in view of the trial court having designated it a final judgment. However, the substantive treatment of the subject matter by the trial court after the January 1973 order, its failure to expressly determine that there was "no just reason for delay", see R. 4:42-2, and the remand as to the variance issue, all combine to create ambiguity as to the finality of the January 1973 order. See Application of Tiene, 19 N.J. 149, 161 (1955). In any event, since subsequent orders of the court were appealable and were timely appealed, and the relationship thereto of the earlier order highly

germane, we concur in the retention of the appeal by the Appellate Division, for all the reasons stated as well as the public importance of the issues presented.

III

The determination of the trial court as to invalidity of the ordinance in respect of absence of provision for multi-family housing was based upon the shortage of housing in Bergen County and the Pascack Valley region. The court found this condition operated to create a scarcity of dwelling accommodations affordable by persons, in and out of Washington Township, who needed housing but who were not able to make the average down payment of $8,000, or did not have the $19,000 minimum income requisite to meet bank standards for a loan needed to purchase the average priced home for sale in the township.

The opinion of the court was that "All segments of the population should have a reasonable choice of living environments to the extent that it is possible *** "; and that where, as in this part of Bergen County, there is a need for multi-family housing, there is "a statutory requirement to provide as part of a comprehensive plan for a well-balanced community at least some area, however limited it must be under the circumstances present here, where such housing may be constructed." Throughout the opinion zoning not providing for multi-family housing is described as "exclusionary zoning."

The trial opinion and judgment here was rendered prior to this court's determination in Mount Laurel, but plaintiffs bring to their aid the thesis that that case supports the trial court's rationale. However, the relevance of Mount Laurel here is affected by two important considerations: (1) the population category effectively excluded by the ordinance involved in Mount Laurel — and the class intended to be relieved by our decision therein — was that of persons of low and moderate income; (2) the municipal category subjected to the mandate of the decision was that of the "developing municipality."[1] It required the combined circumstances of the economic helplessness of the lower income classes to find .

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1. The heart of the decision was thus rendered:

> We conclude that every such [developing] municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefor. [67 N.J. at 174.] See also 67 N.J. at 188.

adequate housing and the wantonness of foreclosing them therefrom by zoning in municipalities in a state of ongoing development with sizeable areas of remaining vacant developable land that moved this court to a decision which we frankly acknowledged as "the advanced view of zoning law as applied to housing laid down by this opinion." 67 N.J. at 192.

We have recently reaffirmed and faithfully enforced the principles of Mount Laurel in an appropriate fact situation. See Oakwood at Madison, supra. But it would be a mistake to interpret Mount Laurel as a comprehensive displacement of sound and long established principles concerning judicial respect for local policy decisions in the zoning field. What we said recently in this regard in Bow & Arrow Manor v Town of West Orange, 63 N.J. 335, 343 (1973), is worth repeating as continuing sound law:

> It is fundamental that zoning is a municipal legislative function, beyond the purview of interference by the courts unless an ordinance is seen in whole or in application to any particular property to be clearly arbitrary, capricious or unreasonable, or plainly contrary to fundamental principles of zoning or the statute. N.J.S.A. 40:55-31, 32. It is commonplace in municipal planning and zoning that there is frequently, and certainly here, a variety of possible zoning plans, districts, boundaries, and use restriction classifications, any of which would repre-

> sent a defensible exercise of the municipal legislative judgment. It is not the function of the court to rewrite or annul a particular zoning scheme duly adopted by a governing body merely because the court would have done it differently or because the preponderance of the weight of the expert testimony adduced at a trial is at variance with the local legislative judgment. If the latter is at least debatable it is to be sustained.

See also Kozesnik v Montgomery Twp., 24 N.J. 154, 167 (1957); Vickers v Tp. Com. of Gloucester Tp., 37 N.J. 232, 242 (1962), cert. den. and app. dism. 371 U.S. 233 (1963).

There is no per se principle in this State mandating zoning for multi-family housing by every municipality regardless of its circumstances with respect to degree or nature of development. This court confronted a cognate problem in Fanale v Hasbrouck Heights, 26 N.J. 320 (1958). We there reversed a trial court decision invalidating an ordinance prohibiting any further construction of apartment houses in the entire borough. We said (at 325-326):

> It cannot be said that every municipality must provide for every use somewhere within its borders. Duffcon Concrete Products, Inc. v Borough of Cresskill, 1 N.J. 509 (1949); Pierro v Baxendale, 20 N.J. 17 (1955). Whether a use may be wholly prohibited depends upon its compatibility with the circumstances of the particular municipality, judged in the light of the standards for zoning set forth in R.S. 40:55-32.

> Apartment houses are not inherently benign. On the contrary, they present problems of congestion and may have a deleterious impact upon other uses. Village of Euclid, Ohio v Ambler Realty Co., 272 U.S. 365, 394, 47 S. Ct. 114, 71 L. Ed. 303 (1926). Accordingly, an ordinance has been upheld although it confined apartment houses to a small portion of the municipality. Guaclides v Borough of Englewood Cliffs, 11 N.J. Super. 405 (App. Div. 1951); Fox Meadow Estates, Inc. v Culley, 233 App. Div. 250, 252 N.Y.S. 178 (App. Div. 1931), affirmed, 261 N.Y. 506, 185 N.E. 714 (Ct. App. 1933). And elsewhere it has been broadly said that circumstances may permit a municipality to zone for a single use to retain its residential character. Valley View Village, Inc. v Proffett, 221 F. 2d 412 (6 Cir. 1955); Connor v Township of Chanhassen, 249 Minn. 205, 81 N.W. 2d 789, 795 (Sup. Ct. 1957). No definitive pattern can be judicially prescribed; each case must turn upon its own facts.

While it is true that in Fanale, as contrasted with the factual situation here, the municipality already had a substantial number of apartments when the prohibitory ordinance was adopted, the principles enunciated in the foregoing excerpt from Fanale are nevertheless pertinent here. It is obvious that among the 567 municipalities in the State there is an infinite variety of circumstances and conditions, including kinds and degrees of development of all sorts, germane to the advisability and suitability of any particular zoning scheme and plan in the general interest. There must

necessarily be corresponding breadth in the legitimate range of discretionary decision by local legislative bodies as to regulation and restriction of uses by zoning. The legislative designation of the purposes and criteria of zoning, as set forth in N.J.S.A. 40:55-32, is broad and comprehensive, its most dominant notes being (a) avoidance of undue crowding of uses: e.g., "lessen congestion in the streets; *** provide adequate light and air; prevent the overcrowding of land or buildings; avoid undue concentration of population *** "; and (b) consideration of the character of the district and its peculiar suitability for particular uses and encouraging the most appropriate use of land throughout the municipality.[2]

Beyond the judicial strictures against arbitrariness or patent unreasonableness, it is merely required that there be a substantial relation between the restraints put upon the use of the lands and the public health, safety, morals, or the general good and welfare in one or more of the particulars involved in the exercise of the use-zoning process specified in the statute. Delawanna Iron and Metal Co. v Albrecht, 9 N.J. 424, 429 (1952).

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2. The purposes and objects of zoning reflected by the new Municipal Land Use Law, L. 1975, c. 291 (effective August 1, 1976) N.J.S.A. 40:55D-1 et seq., although broadened in several respects, are not essentially dissimilar from those enunciated above. See N.J.S.A. 40:55D-2 a., c., e., g., j., 49a., 52b. And see Oakwood at Madison; supra, slip opinion at 10-11.

Without in any way deprecating the recent salutary judicial, executive and legislative efforts at promoting the construction of multi-family housing to meet an obvious and urgent need therefor, see Mount Laurel, supra, 67 N.J. at 178-180; Oakwood at Madison, supra, slip opinion at 65-65A, 69, there has been no fundamental change, beyond the holding in Mount Laurel itself, in the statutory and constitutional policy of this State to vest basic local zoning policy in local legislative officials. N.J. Const. 1947, Art. 4, § 6, par. 2; cf. Art. 4, § 7, par. 11 (liberal construction of powers of municipal corporations). Thus, maintaining the character of a fully developed, predominantly single-family residential community constitutes an appropriate desideratum of zoning to which a municipal governing body may legitimately give substantial weight in arriving at a policy legislative decision as to whether, or to what extent, to admit multi-family housing in such vacant land areas as remain in such a community. Cf. Village of Belle Terre v Boraas, 416 U.S. 1, 9 (1974); Fanale v Hasbrouck Heights, supra, 26 N.J. at 326, quoted above.

Unless there is something in Mount Laurel, either directly or by compelling analogy, to persuade otherwise, the long held principles just stated must be controlling here. During the period of development of Washington Township it served a widespread contemporaneous demand of people employed

elsewhere for single-family residential housing — a kind of housing traditionally highly valued by the American family — and until fairly recent years affordable by the average family. Such development was characteristic of many communities. It served a basic social and regional need. There was thus nothing invidious about such development or about the decision of the township municipal planners in 1963 to continue that basic scheme of development in order to maintain the established character of the community. Such a determination fully accorded with the statutory criteria of consideration of the character of the municipality and the most appropriate use of land throughout the municipality. As to the potential deleterious zoning effects of emplacing apartment house projects amidst solid single-family development, as here, see Leimann v Board of Adjustment, Cranford Tp., 9 N.J. 336, 341-342 (1952); Shipman v Town of Montclair, 16 N.J. Super. 365, 370 (App. Div. 1951). In the same tenor, in part, was the report of the planning experts appointed by the trial court and the testimony of the opposing planning experts herein.

The decision of the municipal legislators, prior to the institution of the present litigation, to keep the municipality free from multi-family development, was, for the reasons stated above, not an arbitrary one, although, con-

cededly, respectable arguments could be mounted for a different policy determination.

Nor is the reasonableness of the municipal residential zoning policy affected by the experimental and defensible zoning decision to try to attract commercial ratables by expanding the permitted uses of some areas, including the instant property, for professional, office and research purposes.[3] See Gruber v Mayor and Tp. Com. of Raritan Tp., 39 N.J. 1, 9-11 (1962); Mount Laurel, supra, 67 N.J. at 185. Whether that regulation was so factually unjustified as to merit judicial nullification was not decided by the trial court and is not an issue here.

But the overriding point we make is that it is not for the courts to substitute their conception of what the public welfare requires by way of zoning for the views of those in whom the Legislature and the local electorate have vested that responsibility. The judicial role is circumscribed by the limitations stated by this court in such decisions as Bow & Arrow Manor and Kozesnik, both cited above.

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3. The zoning amendment placing the locus in quo in a 2-acre minimum residential classification is another matter, to be dealt with later herein.

In short, it is limited to the assessment of a claim that the restrictions of the ordinance are patently arbitrary or unreasonable or violative of the statute, not that they do not match the plaintiff's or the court's conception of the requirements of the general welfare, whether within the town or the region.

The Public Advocate argues that the lesson of Mount Laurel and the implications of such decisions as Sente v Mayor and Mun. Coun. Clifton, 66 N.J. 204 (1974) and DeSimone v Greater Englewood Housing Corp. No. 1, 56 N.J. 428 (1970), are that housing needs of all segments of the population are a priority charge on the zoning regulations of all municipalities, whether or not developed. There is no such implication in the cases cited, individually or collectively. None of them stands for the proposition that because of the conceded general shortage of multi-family housing the zoning statute has, in effect, been amended to render such housing an absolutely mandatory component of every zoning ordinance — as virtually contended for by plaintiffs and the Public Advocate. In this regard, it is significant that the Legislature has just completed a comprehensive revision of the zoning statute and has made no change approaching the impact

of the proposition just stated. See note 2, supra, p. 16.

There are allusions in the briefs to approving references in our cases to zoning for an appropriate variety and choice of housing, see, e.g., Mount Laurel, 67 N.J. at 174, 179, 187, and corollary arguments that such references support the thesis that all municipalities must zone for housing for all categories of the population, middle and upper classes as well as low and moderate income. A moment's reflection will suffice to confirm the fact that such references contemplate fairly sizeable developing, not fully developed municipalities — particularly small ones — which may vary in character from such a tiny municipality as Winfield in Union County, developed in a dense, moderate-income, multi-family residential pattern, to one like the subject municipality, homogeneously and completely developed as a middle-upper income, moderate to low density, single-family community. The ideal of the well balanced community, providing all kinds of housing for a cross-section of the regional population pattern, is, quite obviously, realizable physically only in the kind of developing municipality of sizeable

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4. The only apparent substantive use change in the recent Municipal Land Use Law specifically dealing with housing density is that authorizing "senior citizen community housing construction consistent with provisions permitting other residential uses of a similar density in the same zoning district." N.J.S.A. 40:55D-21; 52g. See Taxpayers Association of Weymouth v Weymouth Tp., 71 N.J. 249, 288-289, 296-297 (1976).

To the extent that it is held in Windmill Estates, Inc. et al. v Zoning Board of Adjustment of the Borough of Totowa et al., ___ N.J. Super. ___ (Law Div. 1976), that anything contained in the Municipal Land Use Law affects or alters the developing municipality criterion of Mount Laurel, we disapprove such holding.

area identified in Mount Laurel as such, see 67 N.J. at 160, or perhaps in a developed municipality undergoing thorough-going redevelopment of blighted areas.[5]

What Justice Hall probably had in mind, in this regard, when writing for the court in Mount Laurel, supra, was foreshadowed when he said, in his noted dissent in Vickers v Tp. Com. of Gloucester Tp., supra (37 N.J. at 252, 253)

> The instant case, both in its physical setting and in the issues raised, is typical of land use controversies now current in so many New Jersey municipalities on the outer ring of the built up urban and suburban areas. These are municipalities with relatively few people and a lot of open space, but in the throes, or soon to be reached by the inevitable tide, of industrial and commercial decentralization and mass population migration from the already densely settled central cores. They are not small, homogeneous communities with permanent character already established, like the settled suburbs surrounding the cities in which planning and zoning may properly be geared around things as they are and as they will pretty much continue to be. (emphasis added).

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5. Planning experts Rose and Levin, after applauding the movement in Mount Laurel toward zoning requirements for regional housing needs, argue that to "balance" this decision there is needed "an equally forceful judicial expression of the importance of another planning constraint, i.e., the suitability of each municipality to accommodate the required housing units". (emphasis the authors'). "What is a 'Developing Municipality' within the Meaning of the Mount Laurel Decision?", 4 Real Est. L. J. 359, 386 (1976).

We are, of course, not insensitive to the current social need for larger quantities of affordable housing of all kinds for the general population. See Mount Laurel; Oakwood at Madison, supra, both passim; Inganamort, et al. v Bor. of Fort Lee, et al., 62 N.J. 521, 527 (1973). A possibility of some relief in that regard is contained within the statutory special exception or variance processes. See Mount Laurel, 67 N.J. at 181-182, n. 12. But insofar as review of the validity of a zoning ordinance is concerned, the judicial branch is not suited to the role of an ad hoc super zoning legislature, particularly in the area of adjusting claims for satisfaction by individual municipalities of regional needs, whether as to housing or any other important social need affected by zoning. The closely contested expert planning proofs before the trial court with respect to the utility of the subject tract for various kinds of housing, office and research uses, hospitals and nursing homes, banks and public recreational facilities, is illustrative of the reasonable differences of opinion in this area. We went as far in that general direction as comports with the limitations of the judicial function, in our determinations in Mount Laurel, supra, and Oakwood at Madison, supra. The sociological problems presented by this and similar cases, and of concern not only to our dissenting brother, but ourselves, call for legislation vesting appropriate developmental control in State or regional administrative agencies. See A.L.I. Model Land Development Code (Proposed Official Draft 1975) Commentary on Article 7, pp. 284-291; Proposed "Comprehensive and Balanced

Housing Plan Act", Senate No. 3139 (1977), (Sens. Greenberg, Merlino and McGahn); cf. Oakwood at Madison, supra, at 16, 65-66, 67-69. The problem is not an appropriate subject of judicial superintendence. Clearly the legislature, and the executive within proper delegation, have the power to impose zoning housing regulations on a regional basis which would ignore municipal boundary lines and provide recourse to all developable land wherever situated, Oakwood at Madison, ubi cit. supra. Nothing in this opinion, contrary to the assertion in the dissent (slip opinion pp. 24-25), is calculated to preclude that salutary course.

We concur in the Appellate Division judgment setting aside the trial court adjudication of illegality of the Washington ordinance for failure to zone for multi-family residential use.

This conclusion renders it unnecessary to deal with the orders of the trial court enforcing that determination, i.e., the appointment of experts in aid of the court's judgment and the remedy of ordering the grant of a building permit to the plaintiffs. Those actions of course fall with the setting aside of the underlying adjudication by the trial court.

II

As seen above, the judgment[6] of the trial court held the 1967 ordinance amendment, increasing minimum lot requirements of the subject property from 10,000 square feet

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6. The language of the judgment is broad enough to invalidate the 2-acre minimum lot requirement for commercial as well as residential purposes. However, the court's opinion did not deal with the former aspect of the zoning, no argument with respect thereto is pursued by plaintiffs on the appeal, and we are assuming the effect of the judgment is confined to residential uses.

to two acres, to be invalid. In this regard the trial court determination was articulated as follows:

> With due regard for the presumptive validity of local zoning action it is readily apparent that the two-acre residential requirement of Ordinance 67-3 is beyond the permissible reach of the zoning power in this instance. The power to zone is not unlimited, but must in the first instance conform to the statutory requirements prescribed by the legislature in N.J.S. 40:55-32. Thus, at a minimum the zoning power must be exercised "in accordance with a comprehensive plan" (ibid.) so as
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> > "*** to prevent a capricious exercise of the legislative power resulting in haphazard or piecemeal zoning." Kozesnik v Montgomery Twp., supra at 166.
>
> The comprehensive plan requirement was obviously ignored when the Township increased the minimum lot size for residential use of this property more than eight fold--from 10,000 square feet to two acres. There is nothing in the record here or in the zoning ordinance itself to indicate that the amendment in question was anything more than "haphazard or piecemeal zoning". The minutes of the Township Committee and the Planning Board do not disclose any reason for or purpose to be served by the amendment, except for a statement by a member of the planning Board that any residential development of this property should be prohibited.
>
> The imposition of a two-acre minimum for residential use would appear to have been a reflex response to the filing of an application by Waldy for a subdivision

of the property and its evident purpose was not to further a comprehensive zoning plan but to inhibit plaintiffs' development of the property for residential use. It should be noted that the lowest residential density otherwise required under the Township's zoning ordinance is one acre, and that is reserved for a relatively limited area of the community in the extreme northwest corner. Plaintiffs' property, on the other hand, is substantially surrounded by existing residential development on lots containing 10,000 square feet or less. It shares the same physical characteristics as the neighboring properties, and the defendant has not offered any evidence to show that there was a rational basis for imposing such drastically different and discriminatory density requirements for the subject property.

Support for this conclusion is also found in the Master Plan adopted less than four years before the enactment of this amendment to the zoning ordinance. While a Master Plan is not "necessarily synonymous" with the comprehensive plan required by statute, see Johnson v Twp. of Montville, 109 N.J. Super. 511, 520 (App. Div. 1970), it is certainly suggestive of a municipality's long-range zoning plan and the objectives to be realized through zoning. Here, the Master Plan contained no hint or suggestion that the characteristics of the plaintiffs' property were such as to require a different density use treatment than the lands surrounding it. Indeed, the Plan recommended that it be accorded the same zoning restrictions with respect to density as existed before the Plan and in keeping with the zoning of the neighboring tracts. The sudden shift to two-acre residential zoning in the context found here cannot be sustained under our statutory or decisional law. As applied to the factual conditions of the present case, Ordinance 67-3 is arbitrary and dis-

> criminatory, and it bears no substantial relationship to the purposes of zoning set forth in N.J.S. 40:55-32. It is therefore invalid. Zampieri v River Vale Tp., 29 N.J. 599 (1959); Roselle v Wright, 21 N.J. 400 (1956); Katobimar Realty Co. v Webster, 20 N.J. 114 (1955); Scarborough Apartments, Inc. v City of Englewood, 9 N.J. 182 (1952).

The Appellate Division opinion did not deal with this issue.[7] We are satisfied that in this regard the trial court was eminently right, and we modify the Appellate Division judgment to the extent of affirming that portion of the judgment for the reasons expressed by the court, as quoted above. We add to the cases cited by it Schere v Township of Freehold, 119 N.J. Super. 433 (App. Div.) certif. den. 62 N.J. 69 (1972), cert. den. 410 U.S. 931 (1973).

Under all the circumstances, it appears just that the invalidation of the 2-acre requirement be attended by a revival of the former 10,000 square foot minimum zoning for the property in question in relation to residential one-family development. We so hold. This is subject, of course, to any valid subsequent rezoning of the property by the township.

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7. Although the notice of appeal by the township was from the whole of the trial court judgment, its brief "inadvertently" did not address the issue. Its reply brief does so, however, and we think it well to dispose of the question on the merits.

III

Both the township and the Washington Lakes Association question the propriety of the trial court ordering issuance of a building permit in this case without first adjudicating on its merits plaintiffs' amended complaint that the deed restrictions affecting part of the property were invalid. Instead, the court dismissed the amended complaint in that respect without prejudice. The appropriateness of that action may be questioned. See Vacca v Stika, 21 N.J. 471, 476 (1956). However, with our vacation of the court's order directing issuance of a building permit for garden apartments, the deed restriction issue appears to have become moot. Moreover, neither plaintiffs nor the Association, who are the only parties in interest on the matter, have appealed from the trial court dismissal of the amended complaint. The question is consequently not before us.

IV

The township filed a motion prior to argument herein to dismiss the appeals as moot. This was based on the following facts. The complaint of plaintiff Pascack, a limited partnership, raised only the validity of the OR zoning and of the two-acre zoning limitation, not

the contention of invalidity of the ordinance in relation to absence of zoning for multi-family housing. The latter position was taken in the complaint of plaintiff Waldy only. In the meantime, title to the tract was transferred from Pascack to 3201 and 3202 Associates, Inc., and subsequently back to Pascack by the latter corporation. The township argues that since Pascack, the sole owner and party in interest, has obtained the relief it sought, it no longer has an interest in the controversy; and that no one remains in the case with an interest in the contention raised by the now-absent Waldy or in the consequent judgment.

The first of the latter assertions is clearly unfounded since the township has appealed the issue of the two-acre zoning. As to the second argument, we deem it hyper-technical. In a real sense, the ultimate judgment of the court on the issue raised by Waldy, i.e., ordering the issuance of a building permit for the property, redounded to the benefit of the owner of the property, whoever that might be. Thus, having in mind also the joinder of the actions below and the public importance of a final resolution of all the issues by this court, we deny the motion.

Judgment modified in accordance with this opinion. No costs, but the order of the trial court with respect to defrayal of costs of the report of the experts is to stand.