

# WESTCHESTER TOWN LOSES ZONING CASE

## New Castle Is Told to Draft Plan Allowing for Apartments

By **RONALD SMOTHERS**

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WHITE PLAINS, Dec. 8—A justice in State Supreme Court here today struck down the Town of New Castle's prohibitions against multifamily housing as "unconstitutional" and "exclusionary" and ordered the town to give him within six months a plan to allow the construction of 3,500 multi-unit dwellings in the next 10 years.

The judge also noted that there were "substantially similar" ordinances in a number of other communities in northern Westchester County, such as Pound Ridge, Bedford, North Castle, North Salem, Mount Pleasant, Lewisboro and Somers.

### Major Issue in the Suburbs

The decision, which is likely to be appealed, went to the heart of a major issue in the suburbs, where many oppose such higher-density housing as adverse to neighborhood character and environment. Others maintain that banning such housing amounts to racial and economic discrimination.

Ruling in the three-year-old case, Judge Robert J. Trainor said that in the last 20 years the town of 16,000 people had not only failed to consider local and regional housing needs in its zoning, but had, in fact, "refused to consider them."

In so doing, the judge said, the community crossed the boundary between

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zoning for "a phased-growth development program for that community," which he said courts in New York State and elsewhere have allowed, and entered the area of "immunization and exclusion" through zoning.

"In New York" Judge Trainor said, "we have been moving slowly but consistently in the direction of limiting the legality of exclusionary zoning practices to special circumstances." He drew on an array of statistics indicating the need for more housing and diversely-priced housing not only in New Castle but also in northern Westchester and the region. It was against this data that New Castle had been weighed and found wanting, he said.

Judge Trainor noted that New Castle had, since the suit was filed, adopted a zoning ordinance similar to those of other suburban communities that allowed multi-family housing in business districts. But he said that the measure would provide for a "n insignificant number of rental units" and that it was "wholly inadequate" in meeting either local housing needs or shouldering a fair share of the county's housing needs.

Today's ruling is similar to a 1975 ruling in a Mount Laurel, N.J., case in which the court is still awaiting an approved plan by the community to correct what the court called the unconstitutional effects of exclusionary zoning. Last January, the United States Supreme Court, in dealing with the specific question of alleged racial discrimination resulting from exclusionary zoning, ruled that ordinances that produced that effect were not "inherently" unconstitutional. An "intent" to bar minority groups must be shown, the Court ruled.

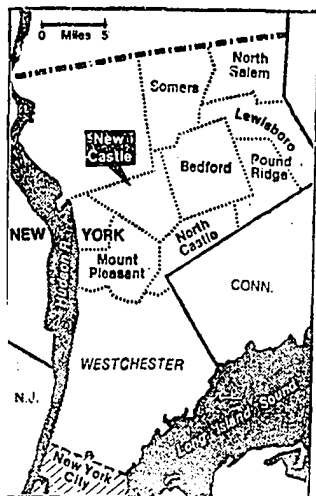
Observers noted that any final assessment of the overall effects of today's decision beyond New Castle, where the cost of homes ranges from \$80,000 to \$100,000, would have to wait. But others said the judge's measurement of the town's actions against the documented figures on housing needs at various levels opened a wedge for similar decisions in other cases.

For Westchester, the ruling compounded an already complicated situation in that it came just three days after the county's Board of Legislators killed a countywide program aimed at loosening local zoning ordinances.

Richard Burns, the Supervisor of the town, whose major residential center is the hamlet of Chappaqua, would not comment at length on the decision without studying it in detail. But he said it was "extremely broad" and added that he felt the evidence in the case did not support the ruling.

Paul Davidoff, the director of the Suburban Action Institute, which has mounted and aided a number of legal efforts challenging suburban zoning, called the decision "magnificent." He predicted that it would spur legal challenges in other parts of Westchester and the metropolitan area. Spokesmen for the National Association for the Advancement of Colored People and for the Urban League, which have also backed similar legal challenges, declined to comment until they had studied the decision.

While the case did not involve the con-



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struction of a public-subsidized low- and moderate-income housing complex, Mr. Davidoff said the new and reasonably priced housing in the area would help promote the turnover of all housing. A "filtration process" would develop, he said, as moderate-income families moved into new housing, making more and better housing available to low-income families.

Today's decision started with the 1974 attempt by Mitchell Berenson to have the 50 acres he owned in the town zoned for the construction of 200 condominium units, primarily for the elderly. When the project, which was to have been privately financed, was turned down by the town, Mr. Berenson began legal action.

Although the town argued that current economic conditions and government housing-subsidy policies doomed any effort by it to meet housing needs, Judge Trainor noted that nearby communities, such as Mount Kisco and Ossining, had recently completed multifamily projects.

He also said that New Castle's historical dependence on such communities to provide moderately-priced housing for its residents had become "theoretical and less related to real facts" as the communities became pressed to meet their own needs.