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THE POLITICS OF LAND USE
IN A SUBURBAN POLITICAL SYSTEM

by

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Joseph LaMay

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To My Father, Joseph Bernard LaMay

PREFACE

This study is an attempt to throw some light on a subject which few scholars have examined: the politics of land use in suburbia.

In 1964, I moved to suburbia and was able to observe some of the major land use issues now being fought in many American communities. Citizens of suburbia must consider questions such as: What shall be done with community land? Shall we have apartments, factories, stores, or single family homes? How many and where shall they be located? Little is known about how communities go about making these decisions.

The community I chose to study was Nutley, New Jersey, and I chose it because I found the land use issues there were typical of those in many suburban communities near New York City.

I wish to express my appreciation to the many citizens of Nutley who were interviewed during the course of this study. The cooperation of Nutley officials, members of the three boards, and the town clerk's office was extensive. This study would have been impossible without their assistance.

My intellectual obligation to Professor Stephen David, who served as my mentor for this research, is great. He has taught me most of what I know about urban politics and in the process, has given me new insights into research methodology and analysis.

Professors James Finlay, S. J., and Gerald Shattuck have reviewed this entire study and have made many helpful suggestions. I wish to express special thanks to Father Finlay who has been a constant source of encouragement to me while I was a graduate student at Fordham University.

...the community is viewed as a stage on which major issues and problems typical of the society are played out.¹

¹Arthur Visich and Joseph Bensman, Small Town in Mass Society, (Garden City, New York: Anchor Books, 1958), p. i.

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PART I

CHAPTER I

INTRODUCTION

The systematic observation of urban political systems by political scientists has only recently begun. In fact until the early fifties most scholars focused either on institutional descriptions or on the "what ought to be" of city government. They did not try to relate theory to empirical evidence or focus on the "what is." This general neglect of local governmental systems is now being partially alleviated by the growing number of scholars conducting research on American cities. Urban problems resulting from economic and social causes have forced scholars, society, government, and urban interest groups to focus their attention on the city. Political scientists have focused their attention on such questions as: who governs;¹ descriptions of participants in decision making; examining the process of decision

¹Robert Dahl, Who Governs?, (New Haven: Yale University Press, 1961); Roscoe C. Martin et al., Decisions in Syracuse, (Bloomington, Indiana University Press, 1961). See also (sociologist) Floyd Hunter's Community Power Structure, (Garden City, New York: Anchor Books, 1953).

making;¹ the role of interest groups² and bureaucracies³ in the political system. Suburbia, however, has not received the same attention. Relatively less attention has been given to those smaller political systems which ring our large metropolitan centers. Professor Wallace Sayre has pointed out this vacuum in the results of the research endeavors of political scientists.

Suburbia in the political process is a related but more neglected phenomenon. The numerous jurisdictional subsystems which flourish in the suburban counties have not been subjected to the kind of case analysis we now have for city political systems. As a consequence, knowledge about suburban politics is at best highly generalized, for the most part unabashedly impressionistic.

...more valid generalizations about suburbia and its politics will clearly have to wait upon studies in depth of a sufficient number of the several types of suburbs and their political systems.⁴

¹Edward Banfield, Political Influence, (New York: The Free Press, 1961).

²J. Clarence Davies, Neighborhood Groups and Urban Renewal, (New York: Columbia University Press), 1966.

³Harold Kaplan, Urban Renewal Politics, (New York: Columbia University Press, 1963).

⁴Wallace Sayre, "American Political Science and the Study of Urbanization," Philip Hauser (ed.), The Study of Urbanization, (New York: John Wiley and Sons, Inc., 1965), p. 144.

See also Robert Wood's article on "The Contributions of Political Science to Urban Form," Werner Z. Hirsch (ed.), Urban Life and Form, (New York: Holt, Rinehard and Winston, Inc., 1963), p. 99, for a summary of the research efforts of political scientists on urban and suburban political systems. He concludes that as a discipline "we do not know, . . . , very much about urban politics. Our generalizations are based on information drawn from a variety of sources, using postulates derived from quite different theories of what is

Professor William Dobriner also observes that "any generalizations about the suburban way of life will have to be" preceded "by a series of case studies in suburbs which are representative of different kinds - residential, working class, . . ." ¹

This study is a response to the need for more systematic knowledge about our suburban political process. It is an examination of one suburban political system - Nutley, New Jersey, in an attempt to develop some systematic knowledge about this system which may be compared with comparable data and findings on other similar suburban governments.

Three case studies on significant land use decisions in Nutley will be described in narrative fashion. ² In many ways these cases are typical of the genre of land use conflicts faced by Nutley and other similar towns in the New York Metropolitan area. All three cases occurred in 1965. An examination of northern New Jersey

relevant and irrelevant, and presuming to deal with phenomena which are assuredly widely different but which we treat in the same framework of analysis." pp. 99-100.

¹William Dobriner, Class in Suburbia, (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1963), p. 26.

²A case study may be defined as "a chronological narrative that portrays how one or more persons went about the business of making a governmental decision; or how they went about carrying out such a decision. They are based on interviews with the actors in the process being described and on a study of documentary material such as files, reports, letters, personal, legal, institutional, political, economic, and other factors that surrounded the process of decision. . . ." Dwight Waldo, "Five Perspectives on the Cases of the Inter-University

newspapers during the 1963-65 period indicated that similar types of land use conflict arise in many other suburban townships.¹ Here we are concerned with apartment house and subdivision issues. Other researchers can find ample data with which to validate or qualify our findings here.

These cases deal with land use because of its high importance to almost all suburban citizens and is usually viewed in a conflict situation. Such studies are an ideal vehicle to examine the nature of politics in suburbia. This issue involves a wide variety of governmental, economic, social, and ideological characteristics. Here then all these interests interact, seek points of contact and settle conflicts of goals and aspirations.²

Land use politics is a principal policy question in almost all suburban governments and historically goes back to the earliest days of the republic. Daily, suburban newspapers carry articles dealing with past, present, and future physical changes in the community. An examination of northern New Jersey newspapers during the sixties indicates that such controversies occupy a top position on the list of persistent community problems and concerns. Local

Case Program," Edwin Block (ed.), Essays on the Case Method in Public Administration, (International Institutes of Administrative Sciences), pp. 89, 25.

¹See The Paterson Evening News, The Herald News, The Newark News, Belleville Times, and The Nutley Sun, 1963-65.

²Stanislaw J. Makielski, The Politics of Zoning, (New York: Columbia University Press, 1966), p. 188.

elites spend a large part of their energies in resolving land use conflicts.

One of the objectives of this study is to illustrate the genre of land use decisions now being made by many communities as the availability of land around our large cities decreases.¹ How do communities go about the business of allocating the significant resources of valuable land whose ultimate use may have a sharp and dramatic impact on society? Perhaps the evidence and observations noted here may provide some answers as to why many communities develop the way they do.

To a great extent land use decisions are made in an atmosphere of tension, emotion, and stress. Conflict is inevitable when one group seeks to block the goals of another. Edward Banfield used conflict situations in studying Chicago because they empirically illustrated both governmental and non-governmental participants, their political stakes, the strategies adapted, and the structure of the allocating institutions. Furthermore they provide tools of understanding in any analysis on the distribution of influence.

There are of course limitations in the use of the case study method as there are limits to almost any method of inquiry into understanding human behavior. Critics of the case approach

¹The New York Regional Plan Association has predicted that by 1975 all vacant land in Essex County will have disappeared. The Nutley Sun, Dec. 9, 1954, p. 7.

argue that constructing principles of behavior from the many variables that influence human decision-making is difficult under the most uniform conditions. Furthermore, they argue that cases are selected primarily for their dramatic quality, their visibility and not according to their significance.

Professor Waldo has contended that cases are useful in building a science. They: (1) facilitate communication among scholars by illustrating general statements by specific examples, (2) sort out implausible hypotheses, (3) may encourage caution in abstract generalizations by illustrating the complexity of variables, (4) stimulate the formulation of hypotheses, (5) provide experience to orient hypotheses, and (6) are a procedure that is replicable by other investigators.¹ Therefore although the case method "is a tool with limitations, . . . , it is also one of demonstrated usefulness."²

It is also realized that three case studies from one political system in one issue-area may be far too few to draw generalizations on. Nevertheless, the additional knowledge of land-use conflicts in one political system may lend itself for verification and comparison with past and future studies on this particular issue and provide generalizations about the political process of suburbia.

¹Block, p. 77.

²Ibid., p. 63.

The case studies consist of:

1) a proposal to construct a new street from the main business area to a residential neighborhood in order to ease the flow of traffic from the heavily travelled main street.

2) a request for authorization of a subdivision request. The proposal is to subdivide the land surrounding a historic house into a development containing eight homes. This would involve destroying a house over 120 years old and considered by many citizens in the town to be a historical landmark.

3) a request to the Zoning Board for a variance to build an apartment project of 200 apartments. The site for this project had been part of the research laboratory facilities of Federal Laboratories (ITT). Adjacent to the site is a neighborhood of one family homes in the \$25,000-\$30,000 price range.¹

The main questions to be answered are:

1. Who are active in such issues. What individuals, community civic groups, public officials, local attorneys, etc.?
2. What strategies are used in achieving goals?
3. Who gains and who loses as a result of such governmental decisions?

¹See map no. 1 for location of the three sites. At this point the reader should take cognizance of the different zoned areas of the town. Their meaning will be explained later.

Map 1

Location of the Disputed Land Use Areas

- ~~-----~~ A - Hillside Street Proposal
- ~~-----~~ B - River Road Apartment Site
- C - The Feland House on the Enclosure

TOWN OF NUTLEY, N.J.

ZONE USE




REVISED ZONING MAP
TOWN OF NUTLEY
ESSEX COUNTY, N.J.

BOARD OF COMMISSIONERS
HARRY W. CHENOWETH, MAYOR
CARLA A. ORECHIO
WILLIAM J. JERNICK
JOHN H. LUCY
LEROY H. GUNDERSDORFF





THIS MAP IS A PART OF THE ZONING
ORDINANCE FOR THE TOWN OF
NUTLEY, NEW JERSEY.
ADOPTED AUGUST 15, 1961

ATTEST: *[Signature]* TOWN CLERK

RESIDENCE

-  R-1
-  R-2
-  R-3

BUSINESS

-  B-1
-  B-2
-  B-3
-  B-4

INDUSTRY

-  M

PARKS

- 



4. What political resources do both the governmental participants and the non-governmental participants have?

Research Orientation

Research techniques developed by political scientists such as Robert Dahl, Edward Banfield, and Wallace Sayre among others, lend themselves for application to the study of suburban politics. Banfield's use of "political influence" as demonstrated in a series of case studies; Robert Dahl's concept of "political resources" and Sayre's "rules of the game," are, at present, highly satisfactory tools of research in studying smaller political systems.

By "influence" Banfield means the "ability to get others to act, think, or feel as one intends."¹ Thus in Nutley we want to examine the degrees of success individuals or groups have in getting public officials to respond in accordance with their wishes. This is manifested not only by official decisions, but by attitudes, comments, and speeches by such officials. We want to know who has influence and who is subject to it. Banfield's case study approach of conflict issues in Chicago has shown the usefulness of this method in furthering our comprehension of how the political system works in resolving conflict and as to how influence is distributed. Thus, by

¹Banfield, Political Influence, p. 1.

following a step-by-step process in the resolution of a public issue the student gains greater insight into political roles, the distribution of influence, and how the political institutions operate in specific instances to resolve conflict. In studying Chicago Banfield focused on the actors, strategies, and the institutional framework of the political system in which the ultimate decision of the issue was worked out.

"Rules govern the behavior of the participants in the contest for the stakes"¹ of urban politics. Sayre writes that contestants generally seek the rewards of political action within the established political framework.² Rules can be statutes (formal) or traditional or custom (informal). They are accepted norms of political conduct which may tend to discourage the use of some strategies and encourage the use of others by various contestants. Therefore in studying suburbia we want to examine the rules which the contestants follow for settling political stakes.

A major of concern in any study of a political system is what political resources do the contestants for the stakes have. Dahl defines a resource as "anything that can be used to sway the specific choices or the strategies of another individual."³ His list of resour-

¹Wallace S. Sayre and Herbert Kaufman, Governing New York City, (New York: Russell Sage Foundation, 1960), p. 105.

²Ibid.

³Dahl, p. 226.

ces consists in part of such ones as: access to money, credit, and wealth; control over jobs, information, social standing, possession of charisma, legitimacy, legality, and popularity. It is apparent that in suburbia resources such as time, money and information, e. g., may be of crucial importance in determining the outcome over the contest for political stakes. All of these particular methods of analysis are helpful in studying any political system and we intend to apply them in this analysis.

Few studies of local politics have focused on the politics of land use. Makielski examined the development of a master zoning plan in New York City.¹ His approach was a historical one covering the time period between 1910-1958. He did not go into any specific conflict study with any depth but concentrated on the general process of decision making regarding overall zoning laws for the city. He never discussed any specific issue process through the various stages from origin of the issue to its resolution.

There is one study which is related to the scope and methodology of this work. A study on Syracuse Metropolitan politics, sponsored by the Ford foundation, although it focused on all major issues for 25 years in the greater Syracuse area, did include some case studies on land use.² The study was significantly

¹Stanislaw Makielski, The Politics of Zoning, (New York: Columbia University Press, 1966).

²Roscoe Martin et al., Decisions in Syracuse, p. 299.

different from this one in that:

1) the authors did not focus on any one community in depth but used cases at random from the greater metropolitan area. This approach may be adequate for obtaining data from different political systems for comparisons but one can ask how representative are the cases? The array of generations drawn from one particular case, described, in outline form, are at least, open to serious challenge. The study lacked significant detail and failed to indicate the representativeness of the few cases selected for the numerous generalizations derived.

2) most of the real estate issues were large developments such as: an industrial park; a shopping center and a large housing development. They were issues which effected many governing institutions, such as county departments, local community, and central city.

Thus, even with these initial studies our knowledge of land use politics in the suburbs is incomplete and fragmentary.

A central question for land use decisions is who participates in the decision making process? To what extent is the general citizenry active - the business community, neighborhood ad hoc groups, and community civic groups?

The view that small communities contain a large percentage of people who are active in politics is discussed at length by

Robert Wood in Suburbia,¹ a work which deals with many of the myths and attributed values of small Jeffersonian type governments. He writes that one of the main suburban values is that its citizens are more likely to care about local politics, such as zoning issues, in an especially intensive way. He wonders if this is true since many subjects discussed by town officials today are matters of legal and engineering complexity which are beyond the understanding of most citizens. Many issues have become the preserve of the professional city planner, the lawyer, town engineer, etc. This being the case only the expert with sufficient time and knowledge can follow much of the subject matter being discussed during commission or council meetings. Thus, the central questions remain: to what extent does the average citizen participate, how representative is his participation, and how significant are his political resources to effect meaningfully land use decisions?

Others assert that it is not the voters acting as a group as individuals or in organized groups or through their representatives who influence such decisions in the small community but a restricted group of local businessmen. Scott Greer implies that local business wields significant power in such areas as land use because of the potential for "lucrative deals."² Because of this businessmen would

¹Robert Wood, Suburbia, (Boston, Mass: Houghton Mifflin Co., 1958).

²Scott Greer, Metropolitics: A Study of Political Culture, (New York: John Wiley and Sons, Inc., 1962) p. 122.

never cede local authority to a metropolitan government because they would lose control of zoning and hence their ability to influence land use decisions. In a later book he observes that "most of the public affairs in "suburbia" ... are carried on by a self-selected faction of the population." ¹ He implied that businessmen constitute a significant part of this self-selected group.

Charles Adrian writes that until recently land use decisions were made by businessmen, realtors, bankers, and land developers. ² He feels that now the representation of decision-makers has broadened to include other elements of the community. No evidence is submitted to support this.

The extent and degree of organized participation by the citizenry must be considered. How active and how successful are ad hoc neighborhood groups and community civic groups? In a study on neighborhood groups in New York City Davies found that in two of three cases on urban renewal they were successful in opposing the plans of city agencies. ³ In Syracuse Burkehead found that organized neighborhood groups could defeat any development project

¹Scott Greer, The Emerging City, (The Free Press of Glencoe, 1962), p. 112.

²Charles Adrian, Governing Urban America, (New York: McGraw-Hill Book Co., Inc., 1961)

³Davies, Neighborhood Groups and Urban Renewal, 1961.

by mobilizing public opinion.¹

Another significant question suggested in the literature is to what extent do the actors who enter the political arena and the conflicts which cause such entrance reflect socio-economic divisions within the community? Some issues divide communities into distinct factions; such as the old residents versus the new ones, each having different interests and perhaps different values. Another division is between the commuters and the stay-at-homes whose economic stakes are found largely in the community. This view is found in the writings of Scott Greer and Robert Wood.² Greer has raised some interesting points which may effect the political influence of commuters. He notes that "local merchants have more of a stake than . . . home-owning residents,"³ and that local ties have become weaker for those whose occupation takes them out of the community. Thus the removal of the commuter from the neighborhood, the business district, for a good part of this week would tend to weaken "social interaction" and impede the "flow of communication"⁴ between commuters sharing similar values. The question

¹Martin, et al., p. 299.

²Scott Greer, Governing the Metropolis, (New York: John Wiley and Son, Inc., 1962).

Robert Wood, 1400 Governments, (Garden City: Anchor Books, 1961).

³Greer, The Emerging City, p. 98.

⁴Ibid, pp. 108-109.

then is are the interests of the commuter and non-commuter in conflict and if so does the more remote world of the commuter weaken his ability to influence community decisions?

Who gains and who loses is of course a major part of the whole issue. One work by a lawyer active in zoning issues suggests some answers based on his own experience and impressions.¹ Richard Babcock contends that the major losers are those builders and developers who seek legal authority to make changes in the status quo of land use which are unacceptable to the town fathers. Preliminary examination indicates that the answer is not quite that simple. Certainly some systematic ordering of evidence is necessary to validate Babcock's impressions.

The literature raises many questions and suggests hypotheses which can be tested with careful gathering of data and analysis. Some answers may be indicated in the results of this study. Is the average citizen excluded from participation in the political debate because of the technical nature of the subject at issue? Just how significant are the economic (business) notables in influencing land use matters? How successful are neighborhood groups? Davies and Burkehead found them successful. To what extent do land use conflicts reflect a visible manifestation of conflict among different factions of the community? Finally, is there any pattern as to who loses and who gains?

¹Richard Babcock, The Zoning Game, (Madison: University of Wisconsin Press, 1966).

Hypotheses to be Tested

The following hypotheses are to be tested by this study:

1. a) Land use decisions which affect a considerable portion of the community, directly or indirectly, result in a high degree of citizen interest and activity (particularly owners of single family homes). This may include participation at meetings of the town Commissioners, the Zoning Board of Adjustment, the Planning Board, letters to the town newspaper, letters and personal visits to public officials, or the organization of neighborhood groups whose members are adversely affected by a proposal to change the status quo of land use.

b) In spite of such interest and activity by such citizens many land use questions are removed from meaningful public comprehension because of their technical nature. This is indicated by an inability to raise critical questions on land use technicalities at public hearings or to fully comprehend complex points raised by opposing officials or lawyers.

c) Those individuals whose economic interests lie within the community take a consistently active role in those political decisions which effect, directly or indirectly, their economic stakes.

2. In view of the economic rewards and deprivations resulting from land use decisions, numerous interest groups such

as the Chamber of Commerce and representatives of the business community are active in such issues.

3. The fragmentation of legal authority in a suburban political system is overcome by a small group of community decision makers (such as lawyers, bankers, real estate brokers, heads of construction firms, public officials, insurance men, etc.,) through frequent personal contacts. This relationship and similarity of values enables a small group to exercise a high amount of influence over the outputs of land use issues.

4. Those decision makers who seek changes in land use in order to maximize their share of the resulting economic stakes possess resources in political skill, generally know their way around the political system and are generally successful in attaining their goals. This is illustrated by the success of activists who request exceptions to zoning regulations or approval of a suggested land use change.

5. Neighborhood groups are rarely able to prevent changes in the status quo unless they have some support from outside the immediate geographic area which they represent. If such assistance does not materialize they are only able to obtain a minor modification in the proposal to change the present pattern of land utilization.

6. Those who remain inactive in land use controversies may suffer deprivations of a material and non-material nature.

Such deprivations may result from changes in a neighborhood which may decrease the desirability of land, hence to a certain degree, its value. Those who participate usually gain some modification of adverse impact.

7. Land use conflicts are a visible manifestation of conflict between non-commuters, who usually gain sizable economic stakes from a change in land use, and commuters who generally fear both the social and economic impact of such changes such as more traffic, noise, more school children, higher taxes, and increased density of population.

CHAPTER II

BACKGROUND

Nutley is an older and relatively more stable suburban town in comparison to other similar towns in New Jersey or on Long Island. Its residential character has always been predominantly single family homes. In 1966 over 65% of the housing was one family while only 14% were two family homes and 21% were multiple dwellings containing three or more families.¹

Geographically, it is an extension of the city of Newark and is part of the suburban ring which adjoins the city on its northern and western boundaries. It is physically separated from the Newark line however by the neighboring town of Belleville which is comparable in size and population. Belleville eases the transition from urban core to heavily landscaped Nutley.

The growth of the town was directly related to the impact of transportation innovations which have closely tied in northern New Jersey and New York City to each other. Until 1902 the town was called Franklin and contained only a few mills and quarries in addition to its sparsely settled residential areas. In the 1890's the

¹The Nutley Sun, May 12, 1966, p. 22.

Erie railroad connected the town to the factory city of Paterson and to New York. This convenient means of transportation made the community a good location for the middle class branching out from New York. Real estate brokers such as James Jay started the area on its way as a suburban settlement for artists and New York businessmen.¹ Thus the availability of transportation, its proximity to New York and Newark soon made the town a natural haven for the professional and businessmen that quickly spread to the New Jersey suburbs after the first world war. The population went from 3,000 in 1899 to over 33,000 by the mid-sixties.

TABLE I

GROWTH OF POPULATION, NUTLEY, NEW JERSEY^a

1899	3,000
1910	6,000
1920	9,400
1930	20,600
1940	22,000
1950	27,000
1960	29,500
1967	33,000 (estimated)

^aU. S. Bureau of the Census, U. S. Census of Population Newark, N. J., 1960, p. 11.

Racially, the population had remained almost completely white even though Newark, with a large Negro population of 140,000,

¹The Nutley Sun, July 16, 1959, p. 9.

is only eight minutes away by car. In 1930 the non-white population was 484 out of 20,600 citizens; in 1960 the non-white population was 481, practically no change, while the white population increased to 29,500.

The first settlers, arriving in the middle of the eighteenth century, were mostly Dutch with a few English families. The name Nutley was taken from a 19th century 144 acre estate of the Satterthwaite family who came from England. Until the late 19th century the community was predominantly Anglo-Saxon, although Dutch names were not infrequently found among the leadership strata. As the great waves of immigrants arrived toward the late 19th century the ethnic composition of the town changed with the arrival of Irish, Italian, and Polish workers.

With this influx the dominant Protestant population began to decrease in percentage as the first wave of Catholics moved into the community. The construction of the Erie Railroad linking New York to such northern New Jersey towns as Passaic, Paterson, and Newark brought Irish tracklayers into the community. The development of woolen mills and quarries located along the Passaic River attracted Italian and Irish laborers and quarrymen. It was from these quarries that materials for many of the brownstones in New York City were provided.

The early leaders of the rapidly growing Catholic community were mostly converted English Protestants such as

Mrs. William Joyce, whose husband "owned the largest of the quarries."¹ The Joyce family gave land and building supplies for the first Catholic church. This church was opened in 1872 by the Rev. Hubert De Burch, a former Episcopalean minister.

The Catholic population increased rapidly until by the early forties they comprised a numerical majority of the population. Today the Catholic population is estimated to be about 65-70% of the total population while Protestants have declined in number to about 18%.²

The holders of government offices were almost entirely Protestant until the early forties. The most active and influential Protestant churches are reputed to have been the: Vincent Methodist, Franklin Reformed (Dutch), St. Paul's Congregational, First Baptist, and Grace Episcopal. An examination of the 1874 and 1902 rosters of public officials illustrates the politically active families. In 1874

¹St. Mary's Roman Catholic Church, Story of St. Mary's Roman Catholic Church, (Nutley: Nutley Sun Printing Co., March 29, 1952), p. 3.

²These population changes are not official but estimates based on the interviews conducted during this study. In particular, interviews with Father Joseph Golding, June 20, 1967, St. Mary's Catholic Church and Rev. Robert Sullivan, June 20, 1967, pastor, Grace Episcopal Church. Dobriner writes that "historically the New York Suburbs are Protestant upper and middle class. But with the rise of large numbers of Jews and Catholics into the middle class along with the suburbanization of blue collar groups, this characteristic is changing." In Nutley this is indeed the case. Dobriner, p. 67.

the township committee consisted of Messrs. Duncan, Smith, Van Winkle, Gargrant, and Underhill. Major contracts for road repair went to Joseph Kingsland, James Sargeant, and Jacob Kierstead.¹ In 1902 the councilmen were: Gilmore, De Vausney, Kierstead, Dittig, Vosseler, and Young.² The only Catholic to hold public office until the thirties was John Vernon Bouvier, Jr., grandfather of Mrs. John F. Kennedy. Bouvier, who served as a member of the Board of Education from 1901 until 1904, was "a well known trial lawyer in New York City," receiving his B. A. and LL. B. from Columbia University.³

In the thirties John Dolan, President, Nutley Savings and Loan Association, followed Bouvier to the Board of Education. According to present Commissioner John Lucy, who was a protege of Dolan and who eventually followed Dolan to the Board of Education, Dolan was nominated because he helped the Board secure a desirable piece of land for the school.⁴ However, it was not until after World

¹Report of the Township Committee of the Township of Franklin, (New York: Kennard and Hay Stationery Mfg. and Printing Co., 1875), p. 6)

²Nutley League of Women Voters, Know Your Town, Nutley, New Jersey, 1965, p. 10.

³Ann Troy. (Ed.), Nutley, Yesterday, Today, (Nutley, New Jersey: The Nutley Historical Society, 1961), pp. 202-203.

⁴Interview with Commissioner John Lucy, Sept. 16, 1967.

War II that the office holders in Nutley began to reflect the Catholic majority. In a short time, by the late fifties, all five town Commissioners were Catholic.

The Italians comprise the largest ethnic group in the community and are estimated to be about 50% of the population. The majority live in the southeast section of the town, called the Avondale section, and for the most part are non-commuters; that is they earn their livelihood within the immediate geographic area. Families such as the Orechio's, Viola's, Babarata's, Samara's, and Infusimo's are active in real estate, lumber supplies, housing and apartment construction, sanitation services, banking, insurance, and small businesses located in the main business district on Franklin Ave. These social and economic factors have enabled many representatives of the Italian community to become frequent actors in the political-economic issues that arise within the town.

Nutley is an older suburban community located in that inner ring surrounding New York City which Hoover and Vernon have characterized as "the locale of the sociologists suburbia."¹ It is a community where the single family house stands "triumphant everywhere."² This inner ring is where the middle class³ is most

¹Edgar Hoover and Raymond Vernon, Anatomy of a Metropolis, (Garden City: Anchor Books, 1959), p. 16.

²Ibid.

³The term "class" refers to the levels of social stratifi-

cation found in almost all political systems. "Persons can be placed in strata to the extent that they possess... critical differentiating factors." (Dobriner, p. 41) Here occupation is considered as the basic factor in listing different categories of class. Different occupational categories generally mean a particular style of living, i. e., immediate neighborhood, social clubs, interaction on community matters. (See Vicich and Bensmen, pp. 52-53.

Thus occupations in Nutley which sociologists would regard as middle class occupations can be categorized as follows:

I. Middle Class

1. Independent Entrepreneurs - community businessmen whose business and local investment activities constitute their sole source of income. The range of business activity includes retail stores, local newspaper, real estate, food stores, lumber supplies, home and business construction, insurance, and restaurants. This group will be referred to as the "economic notables."

2. Professionals - consisting of executives, architects, teachers, businessmen, engineers, lawyers, and salesmen whose main source of income is derived from a fixed annual salary and who are generally employed at locations outside the community. Almost all are college graduates.

II. Lower Middle Class

Includes skilled industrial workers and white collar employees with a high school education. Almost all are employed at nearby industrial plants and corporate headquarters sites.

See Dobriner, pp. 29-60; W. Lloyd Warner, Social Class in America (New York: Harper and Row, 1949); Nelson Polsby, Community Power and Political Theory, (New Haven: Yale University Press, 1963), pp. 3-13; and Vidich and Bensman, pp. 50-79, for a detailed examination on the problems and pitfalls of defining the meaning of class levels and the application of such categories to different societies. Both Jencks and Riesman also use occupation for social class designation. In their view the "economic and occupational hierarchies reinforce each other," thus they merge "economic and occupational class in a single concept," which they call social class. When they refer to the upper-middle class they mean "families headed by someone with a professional or managerial job, usually making at least twice as much as the average American family. When we speak of the lower middle class we ... mean families headed by clerical or sales workers or small businessmen. When we speak of the working class we ... mean families headed by a blue collar worker." Christopher Jencks and David Riesman, "Class in America," The Public Interest, (Winter, No. 10, 1968), p. 66.

represented; where the living areas are older, greener, protected by zoning, and for the most part well cared for. Generally, Nutley fits in with many of Hoover and Vernon's observations, but as William Dobriner observed, there are many different types of suburbs: working class, middle class, and older ones which have a more heterogeneous population than the new ones. He writes that "one of the most persistent mistakes in the flood of literature about suburbia is the tendency to lump together, under the label of suburban, all sorts of communities caught within the cultural and economic shadows of great cities. But in fact there is an enormous difference between an all new suburb like a Levittown and an established village."¹ The former has to create its political institutions and its neighborhood civic groups almost over night. The older community has, in many instances, a small significant business community and an established pattern of political interaction between the members of the political strata to which the newcomer may very well have to adjust himself to.

The fact that Nutley is an older suburb means that it went into the hectic 1920-1960 period of housing expansion with an already established ongoing political system and by its very nature is quite different from the Park Forests, Levittowns and Drexelbrooks which "were all brand new when they were first depicted as

¹Dobriner, p. 127.

the home of the new Common Man."¹ It is not a "suburb created out of the cornfields by a big business builder..." nor is it "an established rural village overrun by hordes of suburbanites."² The political institutions have had a long and evolving history of middle class control and direction.

Suburbia in both the literature and scholarly works of social scientists is at best a hazy concept which has been subjected to an array of oversimplified generalizations. It can be as Greer writes:

The outer edges, the residential spillover of the city, the little bedroom community, the home of the organization man, the upper class municipality, or the dead level of American middle society.³

Boskoff sees them as "...those urbanized nuclei located outside of central cities (but within accessible range) that are politically independent but economically and psychologically linked with services and facilities provided by the metropolis."⁴ According to Dobriner this definition must be qualified since many suburbs have become viable economic entities in their own right.⁵ Nutley, having

¹Dobriner, p. 14.

²Ibid., p. 12.

³Scott Greer, "Socio-Political Structure of Suburbia," American Sociological Review, (August, 1960, vol. 25), p. 243.

⁴Dobriner, p. 26.

⁵Ibid.

several large corporations within its confines and viable local businesses and stores, must be put in the context of Dobriner's qualification of the definition. Thus, it is a community with economic diversity. The business enterprises consist in part of electrical contractors, lumber companies, construction firms, three banks, numerous insurance firms and real estate companies. The two large corporations are: Federal Laboratories (ITT), an extensive facility of electronic factories, offices, and research facilities, and Hoffmann LaRoche, a major pharmaceutical company. In 1966 local retail stores listed their yearly sales as \$36, 117, 000.¹ The variety of occupational groups represented include: merchants, lawyers, doctors, dentists, engineers, salesmen, corporation executives, bankers, construction men and some skilled blue collar workers.

In light of the occupational representation and above average income of \$11, 180 per family² and having over one thousand students in college out of an estimated total population of thirty-three thousand, Nutley must be considered as a sample of a particular model of middle class suburbia.

In summary, it is a well-landscaped single family home community within the inner ring of suburban communities surrounding New York City. It is an older community that has had a long established political and governmental system. The economic

¹The Nutley Sun, August 31, 1967, p. 18.

²Ibid.

interests of the citizenry are diverse: some are local businessmen; some are employed by large and small local businesses and two large corporations; while others commute to professional positions in Newark and New York City.

CHAPTER III

GOVERNMENTAL STRUCTURE

The Commission form of government was adopted on March 26, 1912 by vote of 412-287. There were three commissioners until 1930 when their number increased to five because of population increases.¹

The second major change in the 1912 vote was to institute an at-large selection procedure for choosing a town commissioner. Thus the former system of selecting commissioners by a geographic ward basis was discarded. No longer was each Commissioner to be identified with a specific neighborhood area.² One effect of this change was to preclude the selection of any representatives from the Irish and Italian areas which at that time were located in the southwest part of the township. Today, Nutley still elects its Commissioners at large. Attempts to change the Commission system have met with no success.

¹Under the Walsh act of 1911 communities could option for the Commission form of government under the guidelines passed by the New Jersey legislature. In cities of more than ten thousand there were to be five commissioners; less than ten thousand there would be three commissioners. The census of 1920 was 600 short of a five-man commission. It wasn't until after the 1930 census when the population reached 20,572 that Nutley had its five-man commission.

²The Nutley Sun, July 23, p. 22.

Each of the five Commissioners possesses both legislative and executive authority. As a legislative body they pass town ordinances, approve public expenditures, review the legality of subdivision appeals from the Planning Board, and hear appeals from both the Planning and Zoning Boards. In most instances board decisions may be either appealed to the courts or to the Commissioners. Decisions on variances must be appealed to the courts. "Most ordinances are adopted by a majority vote, but ordinances approving bond issues require a two-thirds vote (4 Commissioners)."¹ A tie vote means defeat for a bonding ordinance.

Each Commissioner, like cabinet officials, heads a department. He has complete executive powers over his assigned department. Mayor Harry Chenoweth heads the police and fire departments; he appoints members of the Planning and Board of Adjustment (Zoning). (Henceforth to be referred to as the Zoning Board.) Until 1967 this important appointment power of the Mayor was shared with the other Commissioners as he followed the unwritten tradition of asking each Commissioner in turn to recommend a person to fill any board or committee vacancy. In 1967 the Mayor decided not to continue this procedure of sharing his appointment power.

Commissioner William Jernick, a former Mayor ('46-'52) watches over the Department of Revenue and Finance. John Lucy,

¹Know Your Town, Nutley, N. J., 1965, p. 14.

the only full-time politician, heads the Department of Public Works. Henry Gundersdorff oversees the Health and Welfare functions in the Department of Public Affairs while Carl Orechio heads the Department of Parks and Public Property.

The Mayor is viewed by many single family home owners as representing their preservation values, i. e., fearful of the consequences of commercial and business expansion into the residential environment of the town.¹ Jernick is regarded as the fiscal watchdog of the public purse and runs his department of Revenue and Finance with careful administration over all appropriations.² He is considered to represent the fiscally conservative interests of the community. Carl Orechio, a businessman with many financial interests in real estate and insurance, represents the considerably large Italian community centered in the south and southwest parts of town. He also articulates views of many local businessmen. Gundersdorff, a Newark-based insurance executive, has been active with Lucy in the Democratic party and generally votes with Lucy, although not always.³ He was the personal choice of Lucy to fill a rare commissioner vacancy in 1958.⁴

¹Noted in personal interviews conducted for this study.

²The Nutley Sun, January 26, 1967, p. 6, April 6, 1967, p. 1.

³The Nutley Sun, April 26, 1962, p. 4. Also personal observation at Commission public hearings.

⁴Herald News, June 4, 1958, p. 18. The Herald is a daily published in the nearby town of Passaic.

The Commissioners are elected on a non-partisan basis and very few of this generally Republican community realize that three of the present Commissioners are Democrats -- Mayor Chenoweth, Commissioners Lucy and Gundersdorff. Both Orechio and Jernick are Republicans. All five are members of St. Mary's Catholic Church. The Commissioner with the largest electoral vote is always selected by the Commissioners to be Mayor. In 1964, Carl Orechio came in a very close second to Chenoweth and is considered a strong candidate for Mayor in 1968.

Most Nutleyites are satisfied with the policies and administration of the five Commissioners. "The towns around us in Essex County are poorly run with scandals concerning zoning." Here they enforce the zoning ordinance."¹ This comment by a Catholic priest with many years on the Nutley scene is quite typical of the general feeling of most citizens. Most feel that the Commissioners are exceptionally honest and support for the town government appears high. This general feeling of satisfaction was fairly consistent in most of the interviews conducted during the course of this study. Citizenry usually express confidence in town officials and are generally pleased with the efficiency of public services.²

¹Interview, Father Golding.

²Based on the author's contacts during the two years he lived in the community. All of those interviewed indicated similar attitudes.

The pastor of Grace Episcopal Church, Father R. Sullivan, thought that most of his parishioners were "well pleased with the honesty and fairness of town government."¹ Father Sullivan, a recent arrival to the town, is well educated (M. A.) and very articulate. He is well informed about social issues in the community and had spent a considerable part of his first three months in the parish sounding out his parishioners on local social and political matters. He expressed surprise to find a town of this size so well administered coupled with the fact that most of the officials were Catholic. (He had just moved from Maine.)

The school system is reputed to be one of the best in northern New Jersey. At least 80% of its high school graduates move on to college. Many professional men and corporation executives are attracted to the area because of good living conditions, its school system, and the reputation of its government.

Most observers would agree that Nutley is an attractive town amid the suburban inner ring of New York City. The two issues that raise considerable tension and conflict are the persistent questions of taxes and land use.

Land use is one issue that can generate considerable conflict in the community. It is through the study of conflict issues

¹Interview, Rev. Sullivan.

such as this that one can observe the political decision-making process of a governing system. Edward Banfield sees such examples of political disagreement as healthy to the body politic. He writes that:

To repress it (conflict), . . . , is to discourage or prevent some people from asserting their needs, wants, and interests. One can imagine a political system in which there is no struggle because the people in disagreement know that their efforts to exercise influence would have no effect upon events. In such a case politics is absent, but so also are the conditions of progress.¹

In Nutley the conflicting forces in land use are the business elites, mainly local, but occasionally from outside the town, and the single family home owners whose interests are frequently quite different. In New York City Davies found "a more or less permanent rift . . . between the business interests in the community and the civic associations."² There, civic associations led the fight against major expansion or change in their neighborhoods. However, in Nutley, the competing forces to the business elites are not the established civic groups but are generally individuals from threatened residential areas who are not formally organized but who become politically active only on certain land use issues. The institutions which resolve these disputes are three boards found within the governing structure.

¹Edward Banfield and James Wilson, City Politics, (Cambridge: Harvard University Press, 1963), p. 21.

²Davies, p. 35.

Nutley Zoning: Policy Formulation and Administration

In Nutley three boards, the Board of Commissioners, the Planning Board and the (Zoning) Board of Adjustment, formulate and administer town zoning policy. As in such instances when authority is divided as well as responsibility, those wishing to influence government policy are provided with different points of access within the governing structure. In order to comprehend the complex process of decision-making resulting from this tripartite structure it is necessary to examine the function and authority of each board.

The Board of Commissioners are the only elected officials of the three boards. The Mayor recommends all nominees to the Commissioners for filling vacancies on the Zoning and Planning Boards. Until 1967 the Mayor has followed the traditional practice of permitting each Commissioner to recommend in turn, a nominee for any vacancy. These appointed officials render decisions which have a major impact on the physical development of the community.

The elected Commissioners have delegated part of their legal authority over zoning matters to the two appointed boards. This sharing of decision-making responsibility is not entirely a disagreeable arrangement with the Commissioners since "it takes the heat off them..." on particularly controversial issues.¹ If a lower

¹Interview with Joseph Addio, Chairman, Nutley Zoning Board, July 6, 1967.

board decision is appealed to them, they have time to judge the intensity and extent of opposition. The Commissioners will frequently state that their judgment is limited to the legality of lower board actions in hearing appeals on controversial issues.

Theory of Zoning

Before examining the particular authority of each board, a few words about the purpose and theory of zoning are in order. Its purpose is to control community development by stating in the town ordinance what kind of structures can be built in different sections of the community. Thus by requiring a minimum size for lots and requiring certain conditions for home construction, the town officials can determine what economic groups will be permitted to enter the community. A few years after the first zoning laws were passed in New York City in 1916 the town fathers in Nutley started to draw up their own. Nutley was one of the first New Jersey communities to pass zoning ordinances.

Most authorities on land use view it as a means to preserve the status quo of land use or to upgrade its present use.¹ The stated objective is to preserve the character of the community "whether the community is composed of single family homes in the

¹See appendix A for historical background on the theory of zoning.

\$15,000, \$30,000, \$60,000 ranges or semi-rural with extensive wooded land and meadows."¹ It is, in essence, a political and legal defense by the community to

defend (itself) against demands upon its resources and to accommodate the forces of the urban revolution. Whether the community is one of large luxurious homes with extensive areas of open space, or semi-rural, with residential "farms" and extensive wooded land meadows devoted to grazing, the effort is to preserve its character.²

The method of zoning is to group similar land uses in one geographic area. Thus, one and two family homes are permitted in certain mapped sectors; apartments in areas where there are no exclusions such as in one family home, R-1, areas.³

Nutley has what is called cumulative zoning. There are eight classes of zones: R-1, R-2, R-3, B-1, B-2, B-3, B-4, and M, zoned for industry and all other uses. R-1 zones are for one family homes; R-2 is more permissive, restricted to one and two family homes and garden apartments. What is permitted in a higher zone is also permitted in a lower zone until the last class, M, permits all uses found in the other classes. The result is to maximize the construction possibilities (and conflict situations) in the lower graded classes. Those in the town who want to strengthen the zoning law have tried to limit the use in each class, that is to end cumulative zoning and to freeze zone classes to certain limited uses.

¹Charles M. Haar (ed.), Law and Land: Anglo-American Planning Practice (Cambridge, Mass., Harvard University Press, 1964), p. 153.

²Ibid., p. 134.

³See Appendix B for construction uses permitted in each zone and Map 1 for location of the zoned areas of Nutley.

Because there are many suburban towns preoccupied with keeping housing standards (and costs) high through the application of strict zoning laws, many scholars have referred to zoning as an integral part of middle class America. As a legal code it does require some technical understanding of the problems and technicalities "of general concepts of land use, of a sense of classification ..."¹

One of the model areas of zoning is Westchester County, New York, which contains many towns that could be cited as classic examples of middle class suburbia.

...the county's political leadership has devoted most of its energies to public policies which support the pattern of low densities which topography originally encouraged.²

These efforts have become reflected in the county's municipal zoning laws. In fact in "... , none of the other New York counties has Westchester's zoning record been approached."³ Zoning to control land use has become the most popular method in the New York region. In the late fifties the

Regional Plan Association reported that zoning laws were in

¹Gladys M. Kammerer (ed.), The Urban Political Community, (Boston, Mass., Houghton Mifflin, 1963), p. 204.

²Robert Wood, 1400 Governments, p. 102.

³Ibid., p. 104

effect in 465 municipalities within the region. Within the five boroughs of New York City and the four counties of Bergen, Essex, Nassau and Westchester, all land use was at least technically governed by zoning regulations.¹

The Planning Board

The strongest supporter for zoning among the three boards is the Nutley Planning Board. Its main functions are:

1. (Policy Formulation) to plan for orderly development of the town under the New Jersey Municipal Planning Enabling Act. This means the Board recommends to the Commissioners revisions or additions to the Nutley Zoning ordinance (Ordinance No. 1468). The Commissioners must vote approval before any recommendations become law.
2. (Policy Formulation) to make recommendations to the Commissioners on any proposed public improvement such as a new street or parking lot.
3. (Decision-Making) to approve or reject applications for subdivisions, e. g., permission to divide one acre into eight lots. Decisions on subdivisions can be appealed to the Commissioners or to the courts.

The Commissioners, however, can only consider

¹Ibid., p. 83.

the legality of the Planners' decision, that is to say, whether the Planners acted within their authority and followed standard procedure in deciding upon a subdivision request.

The history of planning and zoning has been a long one in Nutley. One of the first zoning laws in the country (after New York City) was passed there in 1923. This law resulted in a law suit in which the court invalidated all zoning laws in New Jersey until 1928 when an amendment was passed to the state constitution.¹ After a period of rapid growth in home construction during building booms in the twenties and late thirties many Planners felt that the old ordinance was in need of substantial revision. The Planning Board started to study the necessary revisions in 1942 and by the late forties began to send recommendations to the Commissioners. Their proposals met with a cool response from some of the Commissioners who viewed them as too restrictive, particularly with regard to limitations on the business district.² Finally in 1958 a new revised zoning law was passed.

¹Ignaciumas v. Town of Nutley, 99 N. J. L. 389, 125A 121 (1924). The court declared that there was no lawful reason why a store should be excluded from a residential district. For many years the courts referred to this case which prevented use of zoning. See Edward Bassett, Zoning, the Laws, Administration and Court Decisions During the First Twenty Years (New York: Russell Sage Foundation, 1940), p. 54.

²The Nutley Sun, June 9, 1954, p. 1.

Since its beginning the Planning Board has attracted to its membership some of the strongest advocates of tight zoning, i. e., keeping the town restricted to one family homes. One Planner who most strongly reflected protective values was Edgar Sargeant, a member of Grace Episcopal Church. He was considered as the Dean of Planning in Nutley, and served for many years as Chairman of the Planning Board. Most Board members have felt strongly about preserving the tree-lined, quiet, traffic-free environment. Such values have been far from congruent with those espoused by community bankers, insurancemen, real estate brokers, and home builders, to name a few.

When the Board sent its 1958 revised zoning code to the Commissioners, Charles Stoddard, Board Chairman, declared that "we have no assurance that the Commission will not return the ordinance to us as they have done so many times in the past. This law represents 16 years of delay and frustration."¹ In 1955 the Commissioners had returned the law as "too complex." Prior to the fall meetings in 1958 August Brauer, Board Vice Chairman, angry at the slow response of the Commissioners, stated that "if the Commission had the intestinal fortitude to go ahead with the ordinance and withstand political interests which would be restricted by the ordinance the Commission would be doing a great thing for

¹Ibid., March 20, 1958, p. 1.

the town."¹ This was in reference to the concern of main street merchants about the law being too restrictive on land use in the business district.² This ordinance was passed but modified to satisfy these complaints.

The Planners have had their goals partially blocked by both the Commissioners and also the Zoning Board. The Commissioners have the final say on any zoning law and can easily force the Planning Board to bargain and make concessions. This may be due to the fact that the Commissioners must respond to two major conflicting interests: the protective residents and the economic notables of the community. The "protective residents" being those single family home owners whose income is earned outside the community and who are fearful of any attempts to change the status-quo of land use. The "economic notables" are those community businessmen whose income is earned from local investment activities such as real estate, businesses, etc. At times their stakes are shared by outside investors. In this instance such outside investors who become community actors should also be classified as "notables."³

The second major area of frustration has been the willingness of the Zoning Board to grant exceptions to the requirements of

¹Ibid., November 13, 1958, p. 41.

²Ibid., November 24, 1959, p. 16.

³See, Supra, footnote No. 1, page 27.

the Zoning law. As the Planners have been the main source of policy inputs to the Commissioners, the Zoning Board of Adjustment has significant discretion over the policy outputs -- i. e., the administration of zoning laws. The Zoning Board grants exceptions from the law and these exceptions denote in a major way the ultimate shape of the policy decisions.

The Zoning Board of Adjustment

The discretion of the Zoning Board is a very significant part of the policy formulation and administration process. There are several differences between both boards in its membership composition. While the Planning Board has two Commissioners among its nine voting members the Zoners do not have any among their five members. The Commissioners are not formally linked to the Zoners. The Zoners are less in number and have additional cohesion in that two of their five members are local builders.

The Zoning Board can "vary the application of the local ordinance."¹ The five members are appointed by the Mayor for unsalaried terms of three years. Reappointment is automatic as long as a member is willing to serve. In granting exceptions to the ordinance the Board must find that:

¹Haar, p. 134.

the location and physical characteristics of the building and the land intended to be used, and the traffic, fire and other hazards incident to the proposed use, and the public health, safety, morals, convenience and general welfare of the town, that the proposed use of the property or the erection, alteration or maintenance of the proposed building or structure, (a) will not result in substantial detriment to the public health, safety, morals, or general welfare of the town, (b) will not substantially impair the intent and purpose of the zone plan and zoning ordinance, and (c) will not result in inconvenience to the public or want of adequate facilities in the locality.¹

One New Jersey attorney feels that the statute is standard, and, as such, is subject to varying interpretations in its application due to the generality and ambiguity of the wording. The authority to grant such exceptions means that the Zoning Board exercises extensive choice in the application of the law. A noted example, which will be discussed later, is the limit on apartment house density. The ordinance limits apartments to 22 units per acre. The Zoning Board has consistently granted exception to this ceiling by as much as 300%.

Both Boards are also restricted in their ability to disapprove of proposed land use changes by the state courts. For example, even the strongest status-quo Planning Board member realizes that their discretion is limited by appeals to the courts. "Frequently the right to approve of a subdivision is so well fixed that the courts will enforce the right and compel approval where local public agencies

¹Town of Nutley Zoning Ordinance, Ordinance No. 1468, adopted Dec. 16, 1958, p. 28.

fail or refuse to sanction plans that meet all the statutory requirements."¹

The Zoning Officer

The day-to-day administration of zoning laws and building codes is in the hands of the Building Inspector or Zoning Officer. He enforces the zoning law by issuing building permits needed prior to any construction. He cannot issue a permit until making a determination that the proposed development complies with municipal regulations.

If he denies a permit to an applicant, then the standard process for the applicant is to submit an appeal of the zoning officer's decision to the Zoning Board of Adjustment.

Thus the zoning officer has some significant authority since he makes the initial determinations as to what shall be allowed. He, in effect, interprets the ordinance. He has discretion. For example, in 1959, he issued a permit for a 42-unit apartment building when the plans called for 32 units.² Once construction has started there is little that the town can do.

¹E. C. Yokey, The Law of Subdivision (Charlottesville, The Michie Co., 1963), pp. 51, 4, 122.

²The Nutley Sun, August 6, 1959, p. 14.

The Board of Commissioners

The Governing Body, the five Commissioners, exercise control over land use through the following actions:

- a. appointment of members to the Boards.
- b. approval of all zoning laws recommended by the Planning Board.
- c. hear appeals from subdivision approvals of the Planning Board.
- d. make final decision on all recommendations from the Zoning Board on decisions concerning a different permitted use in a zoned area, such as construction of an apartment house in a residential area.

In rendering such decisions or in acting upon the decisions taken by the other two boards, the Commissioners are also limited both by law and the courts. The law of subdivisions, for example, limits the discretion of the Commissioners to acting only on the legality of the Planning Board in rendering its decision to approval or disapproval.

The Commissioners usually assert that they are limited as to what they can do (usually to block land use changes) by the probability of reversal by the state court. In 1962 the Commissioners reversed an apartment house variance granted by the Zoners.

The builder then turned to the court which reversed the Commissioners. The judge found the Commissioners "arbitrary, unreasonable and capricious..."¹ Decisions by both state and federal courts have "imposed restraints upon zoning efforts..."² One critic of the courts' role observed that since they responded to legal values, they:

have little chance to acquire an appreciation of relevant attitudes in the communities affected by the cases they decide, . . . , or to comprehend that broad social questions may be lurking in a routine zoning case.³

In practice, however, few cases reach the courts but many officials will very frequently cite previous court decisions as the reason for not disapproving a land use change which they may personally disagree with.

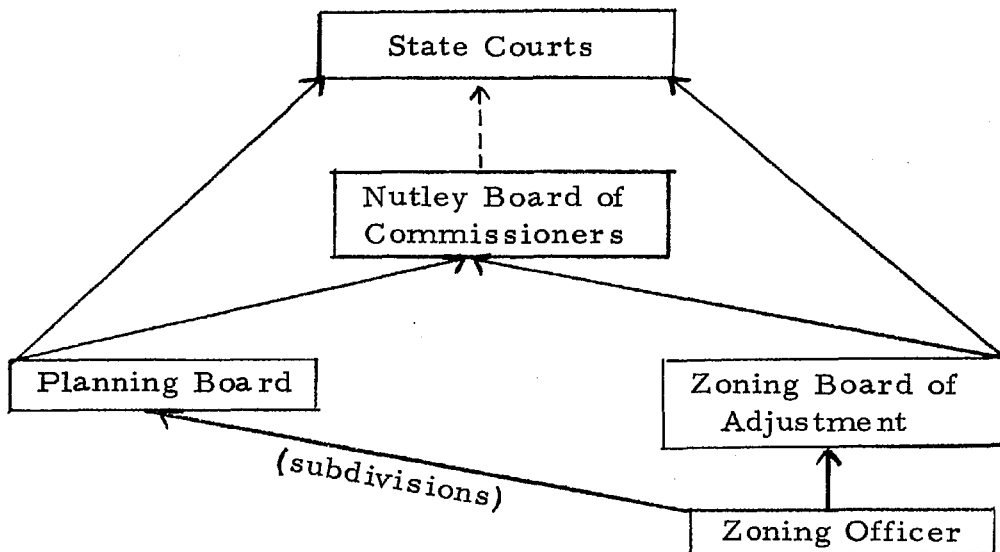


Chart 1. Decision Makers for Land Use Policy

¹The Nutley Sun, April 26, 1962, June 15, 1961.

²Sidney Wilhelm, Urban Zoning and Land Use Theory (Glencoe: The Free Press, 1962), p. 60

³Haar, p. 135.

Throughout American history the courts have been the final arbiter of property matters. Private real property law in the United States began with British common law and statutes whose interpretation was greatly shaped by Blackstone.¹ American judges have developed, added to, and applied British common law to land use issues in each of the states. In this study the courts do not directly appear since no appeal was filed. Very few cases ever reach the courts on appeals from the rulings by local government bodies. Nevertheless their role is significant since local bodies accept judicial guidelines and can always be overruled by them. Generally, American judges tend to "be impatient with rules that restricted the individual's dominion over his land."² The advocates of protective zoning in Nutley are always concerned that the court will strike down what it may view as arbitrary restrictions on the owner's rights. Suffice to say that the majority of land use disputes never reach a court room but are resolved by local governing bodies.

The interlocking of authority and decision-making among these three institutions means that in many controversial cases at least two of them may be turned to for favorable action. It also means that those wishing to influence public policy are provided with several points of access to different decision-making bodies.

¹William Weismantel, "A New Vision in Law: The City as an Artifact," Urban Life and Form, Werner Z. Hirsch (ed.) (New York: Holt, Rinehart and Winston, Inc., 1963), p. 48, p. 45.

²Ibid., p. 48.

All of these officials serve on a part-time basis and attend meetings and public hearings in the evening. A glance at Table Two shows that their full-time occupations are in business fields having a direct or indirect concern over land use policy.

Table II

Occupations and Related Interests of Nutley OfficialsBoard of Commissioners

- | | | |
|----|-----------------------|--|
| 1. | Mayor Harry Chenoweth | Lawyer, Newark Insurance Co. |
| 2. | William Jernick | Insurance Agent, Newark;
associated with son in Nutley
insurance agency. |
| 3. | John Lucy | Office Manager, Essex County
Sewer Commission |
| 4. | Carl Orechio | Operates Nutley real estate
agency; insurance broker |
| 5. | Henry Gundersdorff | Agent, Equitable Life
Insurance Agency, Newark |

Zoning Board of Adjustment

- | | | |
|----|------------------------|--|
| 1. | John Rooney | Retired insurance agent,
Newark firm. Former mem-
ber Newark Board of Adjust-
ment (1938-53), Director,
Hayes Savings and Loan Asso-
ciation, Newark. Moved to
Nutley in 1963. |
| 2. | Joseph Addio, Chairman | Retired, Salesman, Office
Machines, Newark |
| 3. | Gerard C. Biondi | Leading builder in Nutley;
Very active in Nutley real
estate |
| 4. | Armen Maurillo | Builder and lumber yard
owner. Active in Nutley
real estate. |
| 5. | John Gorman | Car salesman, Montclair. |

Planning Board

- | | |
|---------------------------------|--|
| 1. Mayor Harry Chenoweth | see above |
| 2. Commissioner H. Gundersdorff | " " |
| 3. William J. Carew, Chairman | Vice President, Passaic Savings and Loan Association |
| 4. Augie Brauer | Employed by Sun Chemical Co., Nutley (retired) |
| 5. Alfred Crockett | Administrative Assistant, Market Planning, Westinghouse, Montclair |
| 6. George Harris | Owner, Nutley Oil Co. |
| 7. Ralph Epolito | Owner, Aluminum Production Co., Nutley |
| 8. John Griffith | Local store, Shade Shop, Nutley |
| 9. Carl Anlas | Municipal Engineer |

*Town Attorney

- | | |
|------------------------|--|
| Robert J. Citrino, Jr. | Partner, private law firm, Nutley, Counsel to Nutley Savings and Loan Association. |
|------------------------|--|

*legal adviser to Commissioners

PART II

THREE CASES OF LAND USE CONFLICT

CHAPTER IV

THE HILLSIDE STREET PROPOSAL

Since 1946, there have been proposals to join Hillside Avenue with Franklin Avenue at a point opposite Adams Street. Franklin Avenue is the main street, the business district of Nutley. Franklin Avenue has, however, several business districts strung out along a two-mile stretch. Most of the business district is at the intersection of Franklin and Vreeland Avenues.¹ The new street was to cut in at a secondary built-up business area of Franklin Avenue -- an area which had been developing rapidly with new stores -- particularly with the addition of the Shop-Rite supermarket seven years ago.²

Commissioner John Lucy has, since 1946, advocated the proposal without success. Twice this proposal came to a vote ~~and~~ was rejected by the commissioners. In 1959 the Hillside Street residents signed a petition to protest against the idea as articulated by Lucy and supported by many businessmen in the area. Many nearby residents had hoped then that the idea was dead. Lucy,

¹See Map 1

²See Map 2 and figures 1, 2, and 3.

primary
business
district

Chestnut St.

Bank of
Nutley

Parking
Lot

Post
Office

Real Estate
Office

Adams St.

Franklin Ave.

← Drug Store

← Vacant
Clothing
Store

← Hair Dressers

← Gift Store
Law & real estate
offices

Site of future home
of Nutley Savings and
Loan Association

← Dentist Office,
& Doctor's Office

← Cleaners

← Oil Co.

Hillside Ave.

Samara
Stationary
Store

Nutley Sun

Proposed New Street

Travel Agency

← Donohue and Nonohue
Law office

← Auto racing
store

← sport shop

← Beauty shop

← Candy store

← Music store

Lloyd St.

Bell
Co. Tell

Franklin Ave.

← old Shop Rite
Market

← New Shop Rite

One Family Homes

Vreeland St.

Map 2. Area of the Hillside
Street Proposal

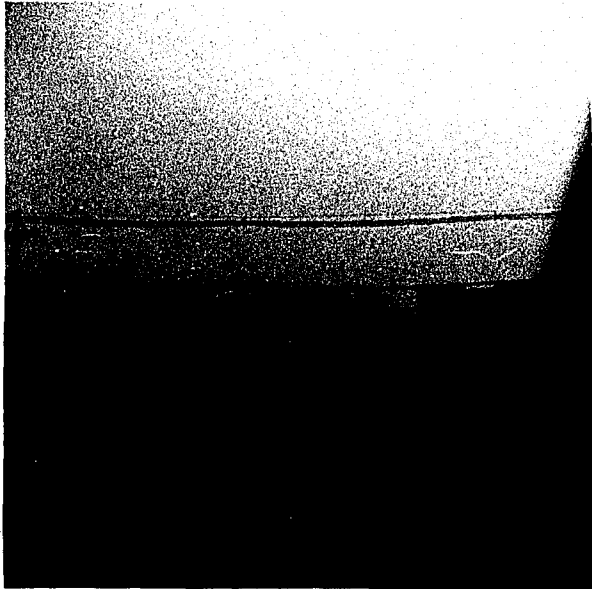


Fig. 1. Entrance to the New Street. Opposite the office of the Nutley Sun and the Samara Stationary Store.



Fig. 2. Parking Area Behind Stores fronting on Franklin Ave.



Fig. 3. View of Franklin Ave. from the Bank of Nutley. Entrance to the new street is marked in red.

however, was determined that in 1965 the new street would become a reality.

The reason for the new street was to alleviate the increased traffic on Franklin Avenue resulting from the growth of business in that particular part of Franklin Avenue. Lucy felt that the increased traffic, the future expansion of stores, professional offices, necessitated the street.

Lucy, once he makes up his mind, will push through any of his proposals with determination and a tenacity that seems to increase with the development of criticism and the appearance of antagonists.¹ He realized that there would be some opposition from the Hillside residents just as there was in 1959 and in 1946. How much opposition he wasn't quite sure.²

The Hillside residents had been through this shortly before in 1959 and knew what was at stake regarding the effect on their street. Primarily, the new street would bring in additional through traffic on Hillside Avenue, causing noise, danger to children, and general inconvenience. As the Hillside home owners saw it, their comfort and safety was to give way for a more efficient flow of traffic to and from the business district. The residents had

¹Based on personal observations of the author and on cited interviews with the five Commissioners.

²Interview with Commissioner John Lucy, September 16, 1967.

articulate spokesmen and numbers; furthermore, Mayor Chenoweth was a long-time resident of Hillside Avenue. Many knew him personally.

In 1959 the residents had argued before the Commissioners that:

1. they do not want traffic from a commercial zone dumped into Hillside Avenue;
2. An increase in traffic constitutes an additional hazard to their children;
3. None of those requesting the new street are residents of the area and thus will not be exposed to the increased hazards.¹

Nevertheless the proponents of the new street were a significant part of the business community, and, in 1965, there was no town official who was publicly against the street. The businessmen supporting the street included one of the town's major banks, the Nutley Sun, the only local newspaper, Shop-Rite supermarket, a dentist who owns significant real estate in the area, and one of the major law firms, Donahue and Donahue. The estimated business gross for businesses in this one-block area was over six million dollars.²

¹Passaic Herald, July 23, 1959.

²The Nutley Sun, August 17, 1967, p. 9.

Prior to reactivating this endless controversy, Commissioner Lucy had worked out an agreement with local businessmen over the vacant land adjacent to the new street which they owned. It was to cover not only a new street but also a new municipal parking lot. They were to transfer their property to the town on a 99-year lease. The town would then pave, landscape, light, and maintain the grounds. Thus, the new proposal would result in not only a new street but a new municipal parking lot. During the months that followed this agreement never became public.¹

Three years earlier Lucy had told the Chamber of Commerce, during a meeting of the Board of Commissioners, that if their members wanted more parking space they should provide it themselves. At that time he was criticizing a Chamber of Commerce report which called for the town to provide parking space in the rear of Franklin Avenue businesses. Lucy argued that securing the land and maintaining it was too expensive.² Nevertheless by 1965 public parking lots in the Franklin and Vreeland Avenue area had been set up. Now, Lucy, who was Director of the Department of Public Works with jurisdiction over parking problems, was moving to meet the demands and needs of businessmen in another section of Franklin Avenue. Lucy felt that the cost would be reduced by having the businessmen turn over their property for development and maintenance

¹Interview, Commissioner John Lucy.

²The Nutley Sun, April 5, 1962.

by the town.

The street proposal was formally brought up in February, 1965, when the town Commissioners were working on the budget. At this time Lucy proposed that money for such capital improvements as this new street be set aside in the budget. All five Commissioners voted that sufficient money be set aside for capital improvements. The vote, however, did not limit the funds to any specific project. The amount of \$72,000 to be raised by a bond ordinance was set aside. First, the Commissioners would request recommendations from the Planning Board and, after receiving their recommendations, would vote on the bond proposal.

Commissioner Lucy is considered by many in Nutley to be a self-made man who loves politics. It is somewhat strange to find an Irish Catholic Democrat consistently winning elections in a heavily Republican middle class community. He came to Nutley in 1928 and was a protege of John Dolan, President, Nutley Savings and Loan Association. (See page 26). He attended high school in Poughkeepsie, New York, and went to Eastman College where he majored in business administration. Beginning in 1928 he worked for a leather goods company in Newark for twenty years doing general administrative work and bookkeeping.

Lucy feels that he was in politics since he was 14 years old when he saw Franklin D. Roosevelt in his hometown during a

state campaign. In Newark he became quite active in Democratic party politics, serving as a district leader in Essex County. During the war he was appointed to the State Justice Department as a special investigator for the county prosecutor's office. In 1938-39 he picked up experience in real estate when he was appointed Chief, Real Estate Section, in a state agency in Newark. He was given assignments concerning the liquidation of loans and buildings acquired by the state during the Depression. In addition to his job as Commissioner, which is part-time, he is now working for the Essex County Sewage Commission -- a public agency which serves the local communities, including Nutley, on contract. Joseph Donohue, a local attorney, said that if it was anyone else there might be a question of conflict of interest since the town signs contracts with the Commission.¹ Lucy's Nutley Department has contracts with this Commission.

After the Commissioners voted for the item to be included in the capital budget it was sent to the Planning Board for their recommendations. Since one of the Board's advisory functions is to make recommendations to the Commissioners on possible public improvements, the Board would consider it first, then the Commissioners

¹Interview, Joseph Donohue, December 21, 1965. In 1957, Lucy proposed that member towns have some representation in making Commission policy. The Essex County Commissioners were political appointees of the Governor. Nutley's sewage bill is about \$150,000 per year. -- Nutley Sun, Feb. 14, 1957, p. 4.

would vote, and as with all bond issues, the vote would have to be 4-1 in favor, as a two-thirds vote is necessary.

The fact that no one objected to the proposal at this time did not mean that the Commissioners would all vote approval when they would formally vote on it after holding open hearings. They realized that first there would be hearings and a study by the Planning Board before they had to consider it. However, Commissioner Orechio stated that all the Commissioners had agreed informally on the street and he assumed that the Planning Board would send a favorable recommendation back to them for voting on the necessary bond issue.¹

¹Interview with Commissioner Carl Orechio, July 23, 1965.

The Planning Board Holds Hearings

The Planning Board is composed of the Mayor (Chenoweth), a Commissioner appointed by the Board of Commissioners (Orechio), the town engineer, and six lay citizens appointed by the Mayor.

At a March 4, 1965 meeting of the Planning Board,¹ the new street proposal was presented by Mr. Carl Anlas, town engineer, who is under Commissioner Lucy's authority in the Department of Public Works. The estimated cost was \$72,000. Two houses were to be demolished for the new street and the land and property would cost \$51,000 of the requested amount. Both properties, homes on Hillside Avenue, where the new street would exit, were owned by local businessmen. William Carew, who was serving as Vice Chairman, set a date for a public hearing.

Many Board members realized that the proposal could not be viewed simply as a new street. It was clear from the maps that on both sides of the proposed street, which was to be 400 feet long, there were large parking areas now only partially used by customers of the nearby businesses on the main street. The new street would give all the stores and offices with vacant land behind

¹Minutes, Nutley Planning Board, March 4, 1965.

their buildings, new accesses to their parking areas. In addition, it was conceivable that new stores could be constructed on the land fronting this new street. Thus, it would not only speed traffic in and out of the area but would provide an opening for a large parking lot in this part of the business district and for the construction of new stores.

Another possible consequence of the new street would be to open some of the land on Franklin Avenue, now used for parking, into land which could be utilized for building additions. Mayor Chenoweth pointed out that Commissioner Lucy wanted the area to be considered only as a street project to alleviate the traffic problem. Another member observed that "as soon as someone's property is opened up, it presents a different problem." His meaning was that once you put a street through and open up a parking lot the narrow alleys now used for parking on the main street would no longer be necessary. Thus the owners could build on this extra space. Anlas, municipal engineer, urged the Board to move fast since the work should be started before the cold weather sets in this fall.¹ The issue was then referred to a committee to study this question and submit a report at the March 18 meeting.

Carew, an expert in real estate, now vice president and home appraiser for the Passaic Savings and Loan Association, (Vice-Chairman of Planning Board), became curious concerning the

¹Minutes, Ibid.

ownership of some of the lots fronting the new street. He found in the real estate reports of Essex County a list of recent property sales which contained the names of the leading property owners in the area who had recently purchased some of the small lots on the proposed street which they did not already own.¹

The Planning Board Committee presented a favorable report on the proposal at the March 18 meeting which was generally met with approval by the members. In essence, the report declared that parking facilities in the area were heavily used and that the new street would relieve traffic. There appeared to be some general uneasiness on the precise effect the new street would have on the area -- for example, how much traffic would be diverted? Would a new traffic light be required? What would businessmen do with the extra land available? With the construction of a public parking lot they could, as had been suggested, close off their driveways on Franklin Avenue and build on that space and have parking facilities adjacent to the new street.

On April 1, the Board met again and again the major topic of discussion was the new street. Now the proposal took on a new shape. Mr. Garling, a consultant to the Board from the Passaic Valley Citizens Planning Association, presented a traffic study requested by the Planning Board. He recommended that the new

¹Interview, Carew.

street be tied to a parking lot project.¹ There were extensive areas of parking behind all the area merchants' buildings and the new street would cut through the middle. The PVCPA study concluded that the parking lot and new street would serve the function of relieving traffic congestion on Franklin Avenue. Traffic would be speeded up since cars would not have to block traffic in parking on the main street. "This parking area would have a 25 foot landscape buffer zone between it and the Hillside Avenue homes."² If a parking area was tied in with the street, including a landscape zone, "the Hillside Avenue people might not be so upset." (Italics mine.) Brauer, Board Chairman, felt that "it would be difficult to sell the street as a street only. You have to give the public more than just the street." The discussion then focused on what basis the plan could best be defended.

Commissioner Orechio emphasized that the Board should consider the overall impact on the whole town and not just its impact on the objecting home owners on Hillside Avenue.

The Board then proposed to have a public hearing on April 17. From the public hearing the Board could then judge the degree of opposition and its intensity from the Hillside residents. At this point there was no opposition by any town official. Surprisingly it looked as if the Board which had usually responded to resi-

¹Garling is a professional planner with the Association. See p. 224 for the role of the association in apartment house construction.

²Minutes, p. 9.

dent claims would not do so in this case.

Three days prior to the hearing, Lucy wrote a letter to the Planning Board which contained some of the history of the proposed street since 1946. Lucy inferred that there would be little opposition as in former years. He asked "where are the objectors of yesteryear?" and indicated most of them have either moved away or passed on to their eternal reward.¹ He was assuring the planners that many of the long time opponents no longer were concerned about the proposal.

¹Minutes, Planning Board, Sept. 7, 1965, p. 12.

Public Hearing before the Planning Board¹

April 17, 1965

The hearing room in the Commissioner's chambers was quite crowded with many of the residents and business representatives from the area.

The first to speak for the proposal was Mr. Edgar Donohue, of Donohue and Donohue, an attorney who represented the businessmen and property owners in the area. All of the stores in the vicinity were very profitable enterprises who depended on a steady flow of customers. Donohue himself was one of the largest property owners in the area; his law office and his parking area fronted the new street.

Mr. Donohue argued that the area is part of the main business section of the town. He noted that people were staying away from shopping because of the traffic congestion. Later his brother Joseph Donohue would argue that the traffic congestion was substantial, since gross income of the area businesses had increased almost ten times over in the last eight years. He concluded his remarks by commenting that the Nutley Savings and Loan Association

¹Unless otherwise stated all references are from the official minutes of the Planning Board, dated April 17, 1965.

has planned to build in the area but has not due to the traffic problem.

The first hostile speaker was a property owner on Hillside Avenue whose property fronted with Donohue's back lot. He criticized Donohue's maintenance of his parking area which touched his backyard property. Several others testified that the added traffic would change the character of the immediate area. All were from Hillside and Mountainview Avenue, the other street that would probably be affected by the diverted traffic. Comments such as "It will change the character of the neighborhood; I do not feel that the advantages would be worth it,"¹ were frequently heard.

After some heated protests by the residents on the overall proposal, Donohue again went to the lectern used by witnesses before the Board to deny that anyone was making a profit on the proposal. In reply one speaker complained that the businessmen kept their parking areas which fronted their land in a semi-garbage condition. "Leave the area alone and everyone will be happy."²

One resident asked the Board about a model of the street and parking lot which was placed on exhibit in the Nutley Savings and Loan Association located on the corner of Adams Street and Franklin Avenue. The model showed how the area would look with extensive landscaping to act as a barrier between the parking lot

¹Minutes, April 17, 1965, p. 8.

²Ibid., p. 13.

and the Hillside homes; it also showed a paved, lighted, parking area with parking spaces laid out. Brauer replied that "our consultant worked up the model on his own with the thought that it might make a difference in having the public understand what we are trying to do."¹

The Passaic Valley Citizens Planning Association has been active in performing many studies for most of the communities in Essex and Bergen Counties.

Here, however, the Passaic Valley Citizens Planning Association was going beyond its advisory role by indirectly assisting the proponents of the street in selling the plan to the immediate public. The model showed what the street could look like if enough money was spent -- considerably more than the \$72,000 bond issue of concern here, since the bond issue applied to the street only. The Association's consultant role to the planners was not clear. For example, why did they draw up a model of what could be and display it in the bank?

The PVCPA had submitted a report to the Board which estimated that the new street would relieve Franklin Avenue of up to 2,000 cars a day. Traffic was estimated at 8,000 cars a day. They concluded that:

1. it will relieve traffic;

¹Ibid., p. 11.

2. new parking places will be available in a better-arranged area;
3. the landscaped buffer area and walks will make an attractive parking area.

The concluding paragraphs were a complete endorsement for the complete project -- including both parking lot and street.

The new street and parking lot with attractive landscaping should attract new businesses and customers into a business area which is roughly in the geographic center of Nutley. This area will be safer, less congested and more attractive which, we feel, can only benefit the entire community. We do not feel that the proposed street in itself will provide such amenities to the town as can be provided through the proposed combination of the previously mentioned items. Here, we feel, is the basis for a new large Nutley shopping area for the whole community.¹

In bringing the hearing to a close, Brauer, Board Chairman, concluded by stating that the Board has to consider if the street is good for the town and should the town have it if it causes inconvenience to people on Hillside Avenue. As to the parking lot, he thought the merchants would take care of this without town aid.

Many officials, particularly Planning Board Vice-chairman Carew and Commissioner Lucy, were surprised at the amount and intensity of neighborhood opposition. Although they did not formally organize, the residents had shown a high amount of interest and opposition. Over sixty residents had attended the meeting and approxi-

¹Traffic report, Franklin Avenue, P.V.C.P.A., p. 12.

mately 20 of these spoke out against the project by presenting their views to the Board from the witness stand. This is a large response since it takes a considerable amount of determination for a citizen to stand up, identify himself and take a public position before a large audience. Only one businessman, Donohue, presented the case for the new street.

There was no indication by any of the Planning Board members that they were influenced by the views of the irate citizens, although this meeting of the Board had the largest attendance for any issue that year. The Mayor, Carew and Brauer had indicated that they were opposed to the parking lot being added to the street. Generally, though, the Board seemed to feel that the street idea was basically sound.

Mayor Chenoweth was clearly responsive to the Hillside residents. Although he did not take a public position he said later that during the Board hearings he realized that:

1. the street could not be an issue separate from the parking lot;
2. the impact on the whole town would have to be considered in view of the erosion effect on the community's residential atmosphere;
3. that the huge expense of the street would be borne by the town as a general capital improvement expense, and not the usual street building procedure of asses-

ing the property owners.¹

The Board decided to continue to study the matter and agreed to hear further witnesses on May 20. On April 20, three days later, Dr. Harold Wolf -- who owns property on the corner adjoining the new street, opposite Donohue and Donohue -- wrote a letter to the Planning Board in which he declared that:

We now know that the Hillside people are opposed to the street for many reasons. They do want to retain the status quo of their enclosed estate and close their eyes to the needs and problems of the area.²

Wolf felt that "cost is nothing compared to the benefits." He pointed out that the two businessmen, who owned the two houses that would be torn down for the new street, had agreed to sell them to the town at their assessed price. (about 60% of market value).

The owners have been holding this property and paying plenty of taxes the past three years for absolutely nothing while waiting ... for action. Now they are good enough to sell for their original purchase price. This is a cooperation beyond the call of duty.³

He bitterly noted that the Hillside people would not pay ten cents for progress but would go all out to oppose. Furthermore, the needs of the town must be taken account of and not the desires of Franklin or Hillside. As a property owner Wolf was particularly concerned.

¹ Interview, Mayor Chenoweth, December 22, 1965.

² Unnamed source.

³ Ibid.

Prior to the next meeting there were several informal meetings between members of the Planning Board and the area businessmen.¹

May 20 Hearings

On May 20 the Board met again to hear witnesses. The Hillside residents were ably represented. One resident again raised the question as to the implication of the model in the bank. Is the street going to look like this? he asked.² Wasn't this proposal for a street only? Why does the model show both the street and the parking lots? One Board member replied that the "model shows the plan prepared by our consultants. It is not an exact model. There will be many changes."³ It simply shows how the area could look if all projected plans were carried out and the merchants agreed to spend their own money on improving and landscaping the lot. The project before us is for the street only.

The town engineer, Garling the PVCPA consultant, and the Police Chief, all agreed that as many as 8,000 cars a day passed at this intersection.

Another irate resident again remarked that nobody will

¹Interview, Planning Board members, Crockett, Carew and Chenoweth.

²Minutes, May 20 hearing, p. 14.

³Ibid., p. 16.

benefit from this street. The traffic would disturb the restfulness of the area. Its completion will mean that "I will have to sell my house and get out and will use any legal means to stop you."¹ (sic)

Some one asked the Board who originated this proposal. Anlas indicated that many had talked about it for a long time and the town parking Committee approved it. Commissioner Lucy then picked up the street proposal and placed it before the Commissioners who then set aside money in the budget for capital improvements which could or would not necessarily be limited to this project.

The discussion among the Board then centered around technical aspects of the new street, such as traffic flow, an additional traffic light, street lights, etc.

After all witnesses were heard the Board decided to go into closed session. One Planning Board member wanted to know if they would have to listen to the residents again or could they go ahead and vote. Mayor Chenoweth commented that the issue appeared to be confused; the residents of the area are against it and the businessmen are for it. Furthermore "we have heard nothing from any other place."²

Some were disturbed about the parking lot. How could they get the merchants to improve the parking facilities so as to

¹Ibid., p. 22.

²Interview, Mayor Chenoweth.

make the street proposal more appealing to the residents? At this point some members felt that they could not recommend the street unless there were some assurance that the merchants would promise to pave and landscape the surrounding facilities. Anlas estimated it would take \$60,000 for the lots to be fixed up. Brauer saw no need for the street unless the parking area was fixed up, and if just the street was to be voted on he would vote against it. He saw the project as an opportunity to have a decent parking lot, but only through the assistance of the merchants who would benefit from it. If they want the street they should be held responsible for maintaining and paving the parking area. Chenoweth thought the merchants were out to get the town to make a parking lot.

The Board then decided to hold off a vote on the recommendation until June 3.

The Planning Board Votes
June 3, 1965

On June 3 a motion was made to approve the new street but the recommendation contained a stipulation to the effect that the merchants of the area must build, pave, maintain, landscape and light the parking areas behind their buildings at their own expense. The merchants had done little to improve the vacant lots behind their buildings. The area was to have a landscaped buffer area behind the lot to shield the Hillside residents. The motion was seconded. The vote was 5-1 for approval with only the Mayor

voting against the recommendation.

The stipulation was a severe blow to the merchants and was the idea of Bill Carew, vice chairman. In addition to the above conditions the merchants of the area must:

- a) refrain from constructing new buildings which fronted on the new street and reduced the available parking area, unless the construction comes under a specific zoning provision for improvement of existing structures;
- b) reduce the present links between the parking lots and Franklin Avenue to a bare minimum to protect pedestrians and traffic along Franklin Avenue;
- c) continue the present practice of permitting customers to use any of the available parking spaces, regardless of whether the spot is owned by the merchant providing the service;
- d) incorporate all these provisions into future leases or deeds affecting the above mentioned Franklin Avenue properties.¹

Carew, who had carefully searched for the new owners of some of these lots, was well aware of the increase in land value that would occur if they (back-yard lots) were turned into street-fronting property. He admitted that the merchants "were mad as hell when I tacked on those requirements."²

The only opposition to both the street and its stipulations was the Mayor. He said that even the merchants have that they would not want it if it was not good for the town, and that

¹Minutes, June 3, 1965, p. 3.

²Interview, Carew.

he had examined the engineering reports for the street and was just not convinced. Furthermore, "I have not found anyone in favor of it elsewhere in town."¹ He felt that the issue was now compounded by the Board tying the parking lot to the street. He stated publicly that "It is not in the best interests of this town as a whole."²

The strategy of the protectionists on the Board was now clear. Under Carew's direction they hoped that these stipulations would make the project distasteful to the business notables as well as the residents. . Thus the Board recommended the street with stipulations. The next and final decision would be made by the Commissioners who would vote on this recommendation on September 7.

¹Minutes, p. 19.

²The Nutley Sun, June 10, 1965, p. 1.

The Interim Prior to the Commissioner's Decision

The Nutley Sun was upset over the Planning Board's recommendation and its news story and editorial page were pessimistic whether the new street would be approved. Editor and publisher, Frank Orechio, brother of Commissioner Carl Orechio, was one of the nearby property owners who would stand to benefit from the new street. Orechio was listed as one of the recent purchasers of lots on the new street, according to Carew. Furthermore, the Sun had consistently been critical of the Mayor and now it had another reason to be more so.

The news article in the June 10 issue was titled "Plan for New Street Dimmed."¹ It was unlikely that the new street would be approved, at least in its present form. Four of the five Commissioners would have to approve the proposal since it was for a bond issue and already one Commissioner was opposed. Frank Orechio's editorial said, in part:

The Planning Board . . . recommended the establishment of a street but imposed outlandish conditions upon property owners in the immediate area on the westerly side of Franklin Avenue.

The Planning Board failed to recognize the only request made to it by Commissioner John Lucy was --

¹The Nutley Sun, June 10, 1965, p. 1.

do we or don't we need a new street? This question was not to be encumbered with ... problems of inadequate parking. The proposed street was suggested to help solve the problem of traffic congestion. It never was intended to cope with the problem of parking. The Planning Board oversteps its authority when it requires taxpayers to construct a public parking lot in exchange for a new street.

Orechio warned that if this kind of action by the Planning Board continued, the community's purchasing power would be drained from the community as its citizens shop out of town. "Should our people find it more convenient to travel out of town to perform the family purchasing, Nutley's future as a first class community is seriously threatened."

Both Lucy and area merchants were unhappy. Lucy stated he was "upset and unhappy because the Planning Board tacked on to this proposal \$60,000 worth of tin cans."¹ Some merchants felt the stipulations were ridiculous. One owner told the Sun reporter that "that is an awful lot of money to ask these few businessmen to raise. I also have doubt these stipulations have any legal basis."² So did others and in a short time the town attorney was asked for his legal opinion.

The town attorney was Robert Citrino, a graduate of Georgetown University law school. Citrino was a close friend of the Orechio brothers. In 1967 he formed a partnership with other local attorneys that included Robert Crochelt, attorney for Frank

¹Ibid., p. 1.

²Ibid.,

Samara.¹ In his private law practice he serves as counsel for the Nutley Savings and Loan Association.

During town commission meetings his comments generally display little sympathy for dissenting residents. The expected neutrality of town counsel is to say the least, somewhat thinly veiled. For example, several times he advised protesters that the only way they could stop something they don't like would be to come to the Town Hall during public hearings and yell.² On one occasion when his explanation of a legal point failed to clarify a question he offered the questioner the use of his law books for further research.

Thus, the proponents for the street received encouragement when, early in July, Citrino ruled that the Planning Board acted illegally in demanding that in order for the street to be constructed, the merchants should make \$60,000 worth of improvements.³ Lucy had formally asked Citrino for a ruling.

Frank Orechio, owner and publisher of the Nutley Sun, and brother of Commissioner Carl Orechio, had a high interest in the street since his office was directly opposite its south end. Mr. Orechio had been a consistent critic of the Mayor over the

¹Announcement, Partnership of Citrino, Carella, Balsam, and Crochelt, dated July 1, 1967. Samara is one of the central actors in the second case study (chapter V).

²Observed by the author during Commission hearings in 1965 and 1967.

³Nutley Sun, July 10, 1965, p. 1.

years because on several occasions the Mayor had disagreed with Franklin Avenue merchants over the question of town parking lots.

For many years he has been a very active force in town politics and in the Essex County Republican party, although he never has been successful in winning elective office.¹ The former owner and editor of the Sun, Ralph Heinzen, sold the paper to him in 1959. Heinzen had been a constant critic of Carl Orechio when he was a Commissioner from 1956-1960,² much to the annoyance of the Orechio family. Many people feel that Frank Orechio is preparing his brother Carl for the Mayoralty in 1968. Hence, his constant criticism of Chenoweth who has always been the chief vote-getter among the five Commissioners. By tradition (informal rule) the Commissioner with the most votes is selected Mayor by the other four. Carl Orechio was a very close second in 1964.

It seemed apparent that both Orechio brothers would support the street. Both were active spokesmen for the business community. Carl was a very successful insuranceman and real estate agent. His success has made him one of the more significant members of the business community. A very warm and personable

¹ Frank Orechio has held two appointed positions: In 1966 he was named by Governor Richard Hughes to the New Jersey District Water Survey Commission. For a brief time he served on the Nutley Zoning Board but resigned.

² Carl Orechio lost in 1960 in a very close race -- he came in sixth. He was overwhelmingly elected in 1964 -- the second highest vote among the five commissioners.

individual, he was very popular among many groups in the community. Many found him a pleasant contrast to his overly aggressive brother.

Lucy, who had carried the proposal into the political battlefield for over twenty years, was the most vehement Commissioner in support of the street. Lucy has a reputation for sincerity and honesty. Some point out that he has had very little income from all of his political jobs and had no business interests whatever.

Privately, Carl said that he favored the proposal right from the beginning and would vote for it. He also thought that the Mayor might change his vote in the Board of Commissioners since his mind was still open to persuasion.

Most thought that Henry Gundersdorff would vote for the street since he usually supported Lucy. Gundersdorff was a life insurance agent in Newark and was active in the Democratic party. He was the personal candidate of Lucy to fill the vacant position of the deceased Commissioner Edgar Wright in 1958. In 1952 he was Lucy's campaign manager. Like Lucy he had served a term on the Nutley Board of Education.¹

The main question was, who, in addition to the Mayor, might vote against the street? If the Mayor did not change, the decision seemed to rest on Commissioner Jernick. Jernick was a former Mayor (1946-52). A retired businessman, he indicated that

¹Herald News, June 4, 1958. (a daily which circulated mostly in the adjoining towns of Clifton and Passaic.)

he serves mainly because many of his friends tell him it's his duty. He is regarded as the dominant force in keeping the town's fiscal policy on a "pay as you go" basis in his position as Director of Revenue and Taxation. His hesitation to give employees in his department higher salaries has always been a sensitive one with town employees and with other Commissioners. Carl Orechio felt that "he just hates to spend money."¹ Jernick along with Orechio are the two Republican Commissioners. In Jernick's office hangs a picture of himself presenting a Youth Report from the Elks Clubs of America to President Eisenhower.

A few weeks before the Board of Commissioners hearings, Jernick received an invitation from some of the area businessmen. During this interim they took each Commissioner to lunch. "I went to lunch with them but they realize I am not easily influenced by any pressures. In fact, to show my independence I even picked up their lunch bill." During lunch they asked Jernick if he would support the street. "I told them frankly that I just hadn't decided."²

Although Jernick was the probable key vote not one of the residents contacted him as to how he would vote. Talbot, one of the leaders of the Hillside opponents, admitted that they didn't know which way Jernick was leaning. "He just sat on the fence as to

¹Interview with Commissioner Carl Orechio, August 22, 1967.

²Interview with Commissioner William Jernick, November 18, 1965.

which way he was going to vote."¹ Commissioner Orechio was somewhat optimistic since Jernick has many business friends and "they should have some influence."²

On August 26, Frank Orechio printed an editorial titled "The Status Quo," in which he sharply attacked the Mayor and the Hillside residents. The Sun declared its complete support for the street as a vital need to provide new access points to existing merchant parking facilities. Those residents who resist this contemplated improvement were simply being selfish. Hillside Avenue is a public street, not a private land. "Other streets have had increased traffic, too. It is a sign of progress. When traffic in the business center increases, the streets must be improved to meet it. The logical place to send some of it is to the next street..." Mayor Chenoweth was accused of being not progressive and lacking good judgment. "After all, we select officers and pay taxes so that they make decisions and spend our money for the needs of our community."³ This was the first time that the Sun had taken a decided public stand for the street after six months of discussion and debate.

Although the residents failed to communicate with Jernick, they did talk to the Mayor for he was the only one on record as taking a decided position against it. Chenoweth indicated that

¹Interview with Mr. William Talbot, Dec. 20, 1965.

²Interview with Commissioner Carl Orechio.

³Nutley Sun, August 26, p. 4.

individuals, mostly residents, called him, some wrote letters, others talked to him on the street concerning their opposition. Thus he received contacts from both sides -- merchants and residents. "I was the only Commissioner on record against it. The pressure was on me since they knew where I stood."¹ He urged the residents to continue to speak out.

It seemed strange that the Mayor, who had held his position since 1952, would oppose a project that many of the most influential leaders of the business community wanted. In his sampling of opinion, he had the impression that the businessmen who give it strong support were "mostly from that section of the main street."²

The intense opposition at the hearing by the residents seemed to influence the Mayor. "Some of the citizens raised good questions concerning traffic and the difficulty of putting in water mains was not even considered by the Board."

Many of the Mayor's critics and supporters feel he is always influenced by dissident and articulate citizens at hearings. Attorney Donohue thought he was always trying to respond to the largest bloc of voters.³ Orechio saw the Mayor as always responding to the audience which very well might be unrepresentative of the

¹ Interview with Mayor Chenoweth.

² Ibid.

³ Interview with Donohue.

community feeling. Carew also believes that the Mayor is easily influenced by irate citizens.

I remember that in the 1958 zoning ordinance a drunken fireman spoke out against stratified zoning saying he purchased his lot in an industrial area for \$1,000. Stratified zoning would have stopped him from building a home. He had the place in an uproar but I know that the Mayor was convinced about the potential harm to the small lot owner.¹

Certainly the Mayor identified with the protesting residents. "I saw it as another attempt to destroy the residential character of the town."² He wondered why the town should pay for an improvement that would favor the merchants only.

Some thought that the Sun's editorial might have hardened his opposition. Why did the paper criticize the Mayor so severely on this one issue? Chenoweth saw the criticism as much more than the merits of this particular issue. "It's no secret they (the Orechio brothers) are out to get me politically."

Their interests are not always mine. In addition to the Sun Frank owns two other newspapers in two adjoining towns. I know that he had destroyed several other elected officials by his intense criticisms causing them to at least stop running for office. For myself, I am used to it -- I have never had the newspaper with me. It's nothing new.³

He also thought that Frank had large holdings of land throughout the

¹Interview, Carew.

²Interview, Chenoweth.

³Ibid.

community. He has had consistent disagreements with him and his brother over the strengthening of zoning laws and apartment variances.

This was not the first time that the Mayor had locked horns with the business community. Over the years the Chamber of Commerce, and other commercial interests had seen some of their best proposals scuttled by the Mayor. Over the years there had been friction over one of the very issues in this particular issue -- the question of parking. For example, in 1960 the Chamber criticized the Commissioners for moving too slowly on parking facilities. Here again the Commissioners were balancing the interests of the merchants against the home owners adjoining the lots. In response to a critical editorial in the Chamber of Commerce bulletin the Mayor replied at a town meeting that:

The Chamber of Commerce would be the first to deny how difficult it is to assemble any usable space, as witness its original effort to spearhead a plan for the cooperative establishment of a lot by the owners themselves.

We resent the implication that interested neighbors, business and home owners should be brushed aside and not respectfully considered. After all it is their properties and their homes that are involved ...¹

In this case, the Chamber never gave it public support. The reason as Joseph Donohue saw it was that if the Chamber supported it the Mayor would have immediately opposed it. "He would have voted against it to spite them, they have very little influence

¹Nutley Sun, January 7, 1960, p. 1.

on the Mayor."¹

How does the Mayor keep winning elections if he takes such an anti-business position?

Well, he works hard at being a politician every day of the year. He told me that he attends about 300 wakes a year. He also works hard at every church function (St. Mary's R. C.). His reputation for honesty is well known and people trust him completely. I would say he has support from all groups. However, he is just not progressive; nor does he have an understanding of modern needs.

I have known him for over 50 years and I could not think more highly of any person, but I oppose him on this issue and I told him what I thought of his unprogressive position.²

Donohue saw the Sun's criticism as consistent with the immediate long-range interests of the Orechios. "It's no secret that the Orechio brothers are after the Mayor's job and this is just preparing the way. I know that Frank is intensely interested in the parking lot for his newspaper." Donohue agreed with editor Orechio that the Mayor wants to "keep the status quo -- keep the town a residential area; but you can't hold back progress."³ He thought the Mayor misjudged the number of voters who are concerned about the street.

Commissioner Jernick, who had been consistently uncommitted as to his vote, thought that the pressures had been building up

¹Interview, Donohue.

²Ibid.

³Ibid.

on the Mayor and that originally Chenoweth was neutral. He saw Chenoweth as too easily influenced by the Hillside residents. "Unlike the Mayor, I am not influenced by pressures."¹ Carl Orechio, after the lack of response by Jernick to the merchants, became increasingly concerned that Jernick would not support them. "He is always changing his position up to the last minute. Also he is against anything new." Donohue reflected Orechio's growing feeling of defeat by noting that Jernick "opposes anything that costs him money." As Commissioner of Revenue and Finance he "tries to get the most out of every public dollar."²

Right up to the final vote, Jernick did not receive any contact from the residents. Furthermore he "had no contact with Planning Board members."³ He received only two letters from opponents. No phone calls came in. "The other Commissioners tell me they receive calls all the time, but I get very little. They know I am not swayed by pressure."⁴ The day before the hearing Commissioner Lucy asked him point-blank if he would vote yes. "I told him I didn't know so he said O.K., as long as you have an open mind."

¹Interview, Jernick.

²Interview, Orechio.

³Interview, Jernick.

⁴Ibid.

Jernick also viewed the Sun's editorial policy with distaste.

Frank is always trying to run the town. What bothers me is that if there is a hostile citizen at the hearings against the Mayor or myself, his newspaper usually lifts the critical remarks out of context. For example, there is one mentally unstable person that Orechio quotes in his newspaper. He strikes out hard against those who don't give him his way. Remember he has the only newspaper in town and the public has no way of knowing what really happens at open meetings.¹

Unlike Mayor Chenoweth, who is relatively optimistic about citizen interest, Jernick feels there is too much apathy. He keeps a running count of attendance at public meetings and, outside of controversial issues such as this one, the average turnout was 6-24 people. Chenoweth feels that "most people have families and can't always make it, but rest assured they are watching when it concerns them or the town."²

Unlike the Feland issue³ and, as in most land use controversies in Nutley, no formal organized group was involved. Almost all of the opposition came from individual area residents. Some contact, however, was made with those residents who were opposing the destruction of the Feland house. There was some agreement to give moral support to each other during the September

¹Ibid.

²Ibid.

³The Feland house issue is the second case in this study, (Chapter V).

7th hearing of the Commissioners when both cases would be on the agenda.

Although Lucy was surprised at the number of residents who were opposed, Orechio was not. In the three hearings before the Planning Board, over thirty spoke out against it. Carl Orechio was not impressed at the number. "Attendance and vocal opposition at public hearings means little to me in measuring public response and feeling. You can always tell what part of town the proposal is affecting because you will have people from that section."¹ How did he gauge public opinion? "I talk to a lot of people in the town and get a sounding of views."

One of the leading opponents was William Talbot, who lived on Mountainview Avenue which would be a funnel for traffic from and to Hillside Avenue for the new street. What bothered him was the speed by which the project was rushed through the Planning Board. He was somewhat pessimistic -- he felt that they were fighting a losing battle. If the merchants lost now, he felt they would try again as they have over the past two decades, probably when the residents were either worn out or away on vacation when resistance would be minimal. "It's no secret to us that the business interests would be the only beneficiaries."²

¹Interview, Orechio.

²Interview, William Talbot.

He was deeply resentful of the criticisms directed at the opposing residents by Donohue during the Planning Board hearings. "He intimated that we were uninformed on traffic conditions and did not know what really was important since we were simply bedroom citizens of the town who worked elsewhere." Talbot commuted to New York and had no business interests in town.

In the long run he saw the merchants winning because:

It is hard to get enough citizens interested in this issue each time. Eventually the old-timers who want to keep this as the old quiet shady residential town it is will die or move away. I know many who told me that they were moving to Florida and wanted to get as much as possible for their property so they say why not sell to apartment builders and the real estate people who may subdivide?

If they don't succeed at one level of government such as the Planning Board, they try at another such as the Board of Commissioners.¹

Talbot talked only to the Mayor. He knew the Mayor was at first noncommittal but as the Sun blasted him in their editorials, "he gradually moved to oppose it. He told me he wanted to examine the issue at all angles to see if it would benefit the town. The Mayor was noncommittal, but encouraged me to speak out at the hearings to let the others know of my views."

One month prior to the Commissioners' hearing the Sun announced that the year's most controversial issues -- the Feland subdivision and the Hillside Street extension -- would be considered.

¹Ibid.

On August 3, 1965, the bond ordinance was introduced for a public hearing by Commissioner Lucy. Chenoweth abstained from voting on consideration of the bond issue. The Sun reporter hinted that the street was in trouble.

Speculation is that the proposal will have a difficult time in winning final approval. Four affirmative votes are needed.¹

Letters to the Mayor

During August five letters were received by Chenoweth. Of the five only Joseph Donohue favored the street. His brother Edgar Donohue had pleaded before the Planning Board; some thought Joseph Donohue would be more effective before the Commissioners and he was asked to make the final presentation. "I was led to believe the Mayor was open to argument and had not formed a final judgment."²

He wrote that the well-being of the community depends on a good business area. "Shops, banks, doctors, etc. are necessary to the citizenry. A rejection means a rejection of the community welfare."

In essence he argued that the welfare of the Hillside residents is not necessarily the welfare of the community. "The

¹The Nutley Sun, August 5, 1965, p. 1.

²Interview, Joseph Donohue.

streets are public and not owned just by the Hillside residents. When you yield to the pressure of those who ask you to keep traffic away from them, but to crowd it on someone else, you yield to an improper influence."¹ They have no standing if they oppose a change which benefits the whole community.

The new street would speed the flow of traffic through the business section and "facilitate the use of the merchant's parking lots in the area."² Not to take action would mean increased traffic problems; reducing business and the result may very well be a second-rate business area which reflects poor town administration.

The critical letter writers were concerned about the effect of the increased traffic on school children and pedestrian safety.³

George Grownell was irritated by the Nutley Sun calling opponents of the ordinance selfish people" ... who do not care about the future of the town."⁴ He noted that in New York City property owners pay the cost of such improvements -- here the town was expected to pay the costs. In view of the fact that the traffic is created "by a profit-making business, and desirable as such business

¹Minutes, Nutley Board of Commissioners, Sept. 7, 1965, p. 16.

²Ibid.

³Ibid., pp. 18-19.

⁴Ibid.

is, it should rectify the situation without inconveniencing residents who purchased homes expecting to enjoy them on quiet residential streets."¹

Mrs. Hugh Davis and Mr. Donovan Ellis were concerned about pedestrian safety. In addition Mrs. Davis thought that "the money for this project could be put to better use for the entire town, not for a few establishments on Franklin."²

The summer months were active with bargaining between the protagonists which only seemed to increase the determination by both sides to achieve their goals. Mayor Chenoweth was trying, behind the scenes, to work out a compromise but this failed to materialize. His proposal was a public parking lot in lieu of the street. The Mayor decided not to make the proposal public at this point.

Thus the informal and formal struggles were now to give way to a decision either for or against on September 9th.

¹Ibid.

²Ibid.

The Commissioners Decide - September 9, 1965

On the second Tuesday night of September over two hundred persons attended what was a long and agitated session of the Board of Commissioners in deciding both the Hillside street proposal and the Feland subdivision.¹ The street was to be considered first, then the Feland issue. Residents from both neighborhoods filled the Commissioners meeting chamber.

After Mayor Chenoweth asked if anyone wished to be heard on the bond issue, Joseph Donohue, legal counsel for the merchants, stepped forward. He was followed by Howard Sargeant, Vice President, Nutley Savings and Loan Association, and Thomas Infusino, owner of the Shop-Rite supermarket. Members of the Chamber of Commerce were in attendance but they did not speak nor did the Chamber take a public position prior to the vote.

Sargeant, who spoke first, hinted that if the street was built, his bank would build in the area, thus helping the town with more credit facilities. "Our expansion is necessary to the growth of the town ... for the best interests of the town."² The bank could not build in this area until more adequate traffic

¹The Nutley Sun, September 9, 1965, p. 1.

²Minutes, p. 6.

patterns were developed. Traffic has increased all over town -- why should Hillside be protected from it? "We are very important to the people of this community."¹ Sargeant closed with a comment that those who stand in the way of the wheels of progress are "liable to be run over."

The next speaker was Thomas Infusino of the supermarket who was also Chairman of the Board of Directors of the Chamber of Commerce. He argued that Shop-Rite doesn't cause traffic congestion -- "it is the people of Nutley."² If this problem isn't alleviated people will do their shopping away from Nutley and if this happens the "town and the business district will deteriorate together." Anyone who opposes this proposal is not acting in the best interests of the community.

Mr. Donohue, prior to presenting his argument, stated that he expected Mr. Barbata, President of the Bank of Nutley, but he was delayed and would not make this hearing. He also linked the prosperity of the town with the growth of the business area -- "the better the business area, the more money will be spent and the greater will be our prosperity and the ... growth of the town."³

¹Ibid.

²Ibid., p. 6-7.

³Ibid.

The Residents Speak Out

Among the dozen witnesses opposing the street there were a variety of arguments and analyses of the consequences that covered the dissident views from almost every viewpoint. Their testimony came to almost thirty pages so only some of the more significant arguments can be noted. Their comments are insightful because they provide some indication of the level of citizen perception in some of the basic issues at stake in land use.

Stephen Danotos -- 122 Hillside Avenue -- questioned the total cost and the consequences of a precedence -- "The \$72,000 does not include the interest we will have to pay." He estimated the interest at \$30,000. "What about Food Fair, A & P, Acme -- Will these areas want equivalent traffic relief? You have a precedent established of which I don't know what the cost may be."¹

Hermann Bergstein -- 56 Hillside Avenue -- concluded that the new street could not help the traffic problem since the Chief of Police had stated that most of the traffic -- 7600 cars per day -- consists of employees of industrial plants or business places and Franklin Avenue is used as a direct route to other towns and cities. "How will the street alleviate that?"²

William Talbot, 70 Mountainview Avenue, one of the

¹Ibid., pp. 8-9.

²Ibid., p. 9.

leaders of the residents, read an extensive written statement which was a summary of almost all criticisms previously mentioned by the residents. Talbon resented the charge implicit in Donohue's insinuation that the residents were selfish outsiders since they have businesses and professional interests outside the town.

We were charged with placing our own property values above the public interest . . . Further, we resent the implication that operation of a business enterprise within the town confers a special class of citizenship, with privilege to dictate.¹

The evidence cited by the Passaic Valley study just didn't prove the need for a street. They gave us the number of vehicles per day -- they didn't say the traffic burden was intolerable or the proposal would lighten it.

There was no comparison with the traffic burden on other streets . . . There was no comparison with the traffic burden in other towns or cities. We were . . . expected to accept a cold and unrelated figure and to jump immediately to the conclusion that Franklin Avenue traffic is intolerable and overcrowded.

The proposal just doesn't solve the imaginary traffic problems.

Even the town engineer, when we questioned him about the projected traffic to be diverted onto Hillside, could not come up with a figure over 200 vehicles a day . . . How can we afford to maintain this steep little nuisance for 200 vehicles a day?

Who would benefit? Who was at the Planning Board sessions? "A small, highly vocal group, with their professional spokesman to

¹Ibid., pp. 10-11.

plead their case."¹ Talbot asked where are the citizens from other parts of town who are for this? "This measure lacks the support of all this town save a vocal few who stand to gain."²

Evans Rapsomanikis of Hillside Avenue repeated similar comments and complained that this is the third or fourth time he has taken the time to come down and complain against the project.

Robert Patterson -- 62 Mountain Avenue -- argued that the more streets you create, the more traffic you have. Secondly, to increase the parking exits means you enhance the value of property. "I fail to see why we should spend \$72,000 to increase the property values of the people in this area."³

Ivor Watts, 446 Prospect Street, observed that the official map of the street was somewhat vague. During the hearings he asked Anlas about driveways on the street. They would be added later when the property owners requested ramps for parking lots. Thus, the model presented by the PVCPA and the official map did not give a clear picture of what will really happen with this area if the street is approved.⁴

Nutley cannot support a Bergen Mall shopping center on Franklin Avenue. Much of its charm and character

¹Ibid., p. 11.

²Ibid.

³Ibid., p. 12.

⁴Ibid.

are related to its unusual topographic features and its lack of planned development.

Donohue requested time for rebuttal. He declared that there was six million dollars more retail business done in this area in 1964 as in 1954.

That takes traffic. That means expansion. This means better facilities for the people in the town . . . who shop, who buy what they need, who visit their doctors and lawyers in the area.¹

Donohue made constant references to the report by the Passaic Valley Citizens Planning Association. After all the planners believe the new street will speed the traffic flow. "I don't see that the charm and character will be destroyed . . . by a street that will help to regulate the flow of traffic. The traffic belongs to the whole town."²

Mr. Honan asked what is to prevent them building on the proposed street right up to the Hillside line? "Is there anything in the ordinance to prevent them from doing that?"³ There wasn't.

The Commissioners Discuss the Issue

After all were heard, Mayor Chenoweth asked that if Frank Orechio is in the audience he would be pleased to have him read his editorial criticizing opposition by the Mayor. He was not.

¹Ibid., p. 11.

²Ibid.

³Ibid., p. 15.

The Mayor read the editorial himself referring to the comments that the Mayor is "not progressive."

Chenoweth said that the dispute has placed him in the middle. He had friends on both sides of the issue. He asked if he was "responsible for the deterioration of a shopping area that has grown to six million dollars."¹

Commissioner Lucy spoke amid a number of quite critical comments from the audience. He admitted that he had first proposed the issue in 1946 and it had cost him some support but he believed that the economic facts necessitated the proposal.

We have businessmen who have put their hard cash into these buildings, to make their living out of them. It is good for the town that they should. It is from such sources as this that we get the money to support our schools, our public services and various other things that go into the town. Without this money coming in here, the schools, the government officials, and many others would be at a loss in meeting their financial needs.²

Therefore, putting in the street would bring in more money "which is in the best interests of the town."³

In his view, the Hillside residents do not represent the 30,000 people of this town. He hinted that they were coerced by their neighbors to turn out for the hearing.

¹Ibid., p. 19.

²Ibid., pp. 20-21.

³Ibid., p. 21.

Gundersdorff, a close friend of Lucy and Igor Watts, declared that he had listened to both sides but Commissioner Lucy must be doing something right to get elected five times in twenty years. "I think he is right tonight."¹

Orechio said he was familiar with the traffic problem from his service with the Chamber of Commerce. He thought we must keep people in Nutley to shop. "It would also help in getting fire and police equipment into the Northwest area of the town."²

All eyes turned to Jernick as the vote was now apparently 3-1 for. A minute before he had said, "I am ready to vote, Mr. Mayor." He now added that he was ready to vote since he had studied the minutes of the Planning Board. Donohue later said: "Jernick baffled me; he never asked me a question, just let's vote."³

The clerk then called the roll. Orechio, Gundersdorff, and Lucy voted yes, the Mayor no. A great sound of astonishment came from the audience as Jernick voted no with the Mayor, thus defeating the bond ordinance which needed four votes. Later Jernick said, "I just did not know until the hearing -- my mind was open."⁴

¹Ibid., p. 22

²Ibid., p. 22

³Interview, Donohue.

⁴Interview, Jernick.

Thus, the street was defeated, after seven months from the time it was proposed. Would it stay defeated? Commissioner Orechio felt that "as far as this administration goes, it is dead."¹ The implication is that it will, in the near future, once again become an issue. Talbot said many of his neighbors feel that next time they may not get the opposition they mustered this time and the street would become a reality.

Some think that the amount of neighborhood opposition is irrelevant. If the Mayor retires and the Board of Commissioners changes the new Board may feel quite differently and a change of one is all that is needed.

Thus, in 1965, the Hillside Street proposal was over, at least for the time being. Its action coincided with the Feland Subdivision, the second case of this study.

Conclusions

The Hillside case illustrates a more common area of conflict between business notables in the downtown areas and nearby residents. One group wants to expand the business district into adjoining single family home areas; the other wants to preserve the status-quo of land use and generally fights such intrusions. The businessmen in this rapidly expanding area of Franklin Avenue

¹Interview, Orechio.

wanted to speed up traffic, open up more parking facilities, to attract more customers. Another incentive was the potential real estate opportunities in the area that could result from the new street.

The visibility of the notables was high since the economic stakes of this government decision was readily apparent. Here economic actors appeared publicly during hearings.

Local economic notables were significant actors in originating the proposals for a land use change and in the consequential political decision-making process that resulted. The opponents were local residents with no support from any economic actors.

CHAPTER V

A PROPOSAL TO SUBDIVIDE THE FARIS R. FELAND HOME
IN THE ENCLOSURE

On February 13, 1965 the Nutley Sun announced that the Faris Feland home located in the prosperous Enclosure Street had been sold to Frank Samara, a Nutley businessman who owned the Peerless Stationery Store on Franklin Ave.¹ The Feland home was similar to other large old homes in Nutley. Usually these older homes are restored or modernized by their new owners at considerable expense. However a trend had been gaining impetus in the last ten years which was causing anxiety to many Nutley home owners. Local builders were purchasing these older homes, tearing them down, and then subdividing the land into anywhere from five to ten new plots.

The soaring price of land in all suburban communities means that considerable profits could be made by subdividing these older plots which were usually of considerable size. The Feland land itself consisting of 1.5 acres could possibly be divided into seven or eight plots.

¹The Nutley Sun, February 13, 1965, p. 1.

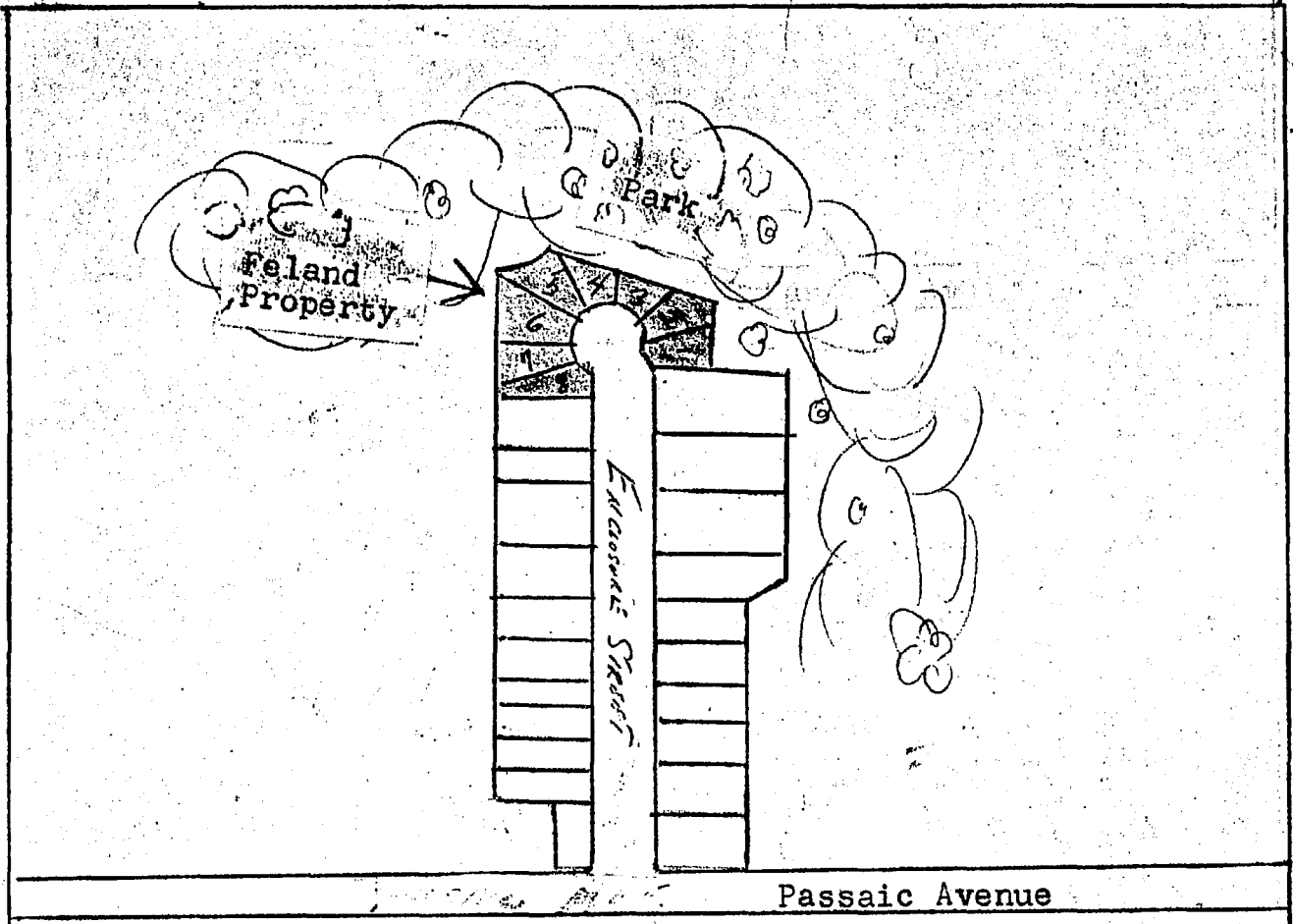
The Feland estate was, however, different in two major ways from other older homes on large acreage: first it was a home of historical interest to the community; secondly, it was situated on the end of the Enclosure Street which was a wooded, secluded dead end street.¹

The Enclosure Street consists of old restored homes with some new additions on the entrance end of the street added in the last twenty years. It is an unusual street, being almost semi-private; a tree-lined heavily wooded area located about a half mile from the Nutley business district. It is apparent to any observer that considerable energy and money have been spent by the residents in restoring their homes and preserving the area. During the early part of this century it was the home of many artists. One elderly citizen wrote that the Enclosure in 1892 was already well settled and then "as now, one looked down a tree-lined roadway to the lovely old house at the western end, now the home of Faris Feland, and just beyond the stone house, now the home of the Walter Schaffers."²

The Feland home had been a landmark in Nutley since 1840 when it was built by Henry Mariet. Architecturally, it was a

¹See Map 3 and Figures number 4 and 5.

²Mrs. Henry W. Goodrich, "Early Days Along the Passaic," Nutley, Yesterday and Today, ed. Ann A. Troy (Nutley, N.J.: The Nutley Historical Society, 1961), p. 139.



Map 3. The Enclosure Street



Fig. 4. Entrance to the Enclosure Street.
The Feland Estate is at the far end.



Fig. 5. Entrance to the Feland Estate
on the Enclosure Street.

replica of the French Restoration. Since that time many noted Nutley families such as the Joralemons, Vreelands, Speers, and the Hays, had lived there. The Joralemons and Vreelands had streets named after them. In 1922 it was purchased by Faris Feland who lived there until his death. After Mrs. Feland died in 1964 the family decided to sell the estate to Frank Samara. Up until the early fifties Mrs. Feland gave a yearly party for the annual meeting of the Nutley League of Women Voters. A history of the League notes that "the home of Mrs. Faris Feland, in the Enclosure, with its beautiful showplace gardens, was the scene of the (League) garden party for many years and it was there in 1949 that the first President, Mrs. Russell Philips and the charter members, Mrs. Edwin Sharp, Mrs. Feland and Mrs. Olive Sanford were feted."¹

The major concern among the Enclosure residents was just what would happen to the estate. Would the new owner, Samara, live in it himself or would he build additional homes on the estate land. If additional homes were built this would mean changes in the style and patterns of living enjoyed by the residents. More homes on this dead end street meant more people, cars, children, and frequent service deliveries by deliverymen.

¹Mrs. Robert Young, "League of Women Voters," Ibid., p. 227.

A resident whose property adjoined the estate, Mrs. Susan McIntosch, felt less anxious when the lawyer for the Feland family, John Bartlett, told her that Samara had known the Feland family since he was a boy when his father had worked on the estate as a gardner, and therefore he would keep the home intact.¹ It was due to this belief that Samara was able to purchase the home for around \$50,000. Some developers who wanted the home were reported to be willing to pay between \$60 - \$70,000 for it.

Statements by Samara brought some relief to the worried neighbors. He denied rumors that the area would be used for a housing development at this time. "We want to preserve the beauty of the neighborhood, you can be sure of that."² He had become attracted to the old home by his father Louis, who had been a gardener for the Felands until the fifties. He spoke reassuringly by stating that "it is truly a beautiful home in a beautiful setting ... it is one of the liveliest spots we have in Nutley."³ There was one unsettling note in this statement when Samara indicated that the future plans for the home and property are not certain. Did this mean that he would resell the house on the open market to the highest bidder? It was no secret among real estate activists that a

¹Interview with Mrs. Susan McIntosch, Enclosure St., June 22, 1967.

²The Nutley Sun, February 13, 1965, p. 1.

³Ibid.

number of builders wanted the property for subdivision purposes.¹ Nevertheless, on the whole, his public statement at this time provided some assurance to the neighbors that the Feland home and property would remain intact.

Three months later in May the Enclosure residents were shocked to find out that an application had been submitted to the Nutley Planning Board for approval of an eight home subdivision to be built on the estate. This meant removal and destruction of the house.

Subdivision decisions are made by the Planning Board which can approve, disapprove, or modify such requests. The losers in such decisions may either appeal to the courts or to the Commissioners.

Upon hearing of the subdivision plans, Mrs. McIntosch, one of the two adjoining residents, rushed down to the town engineer's office to look at the plans. The assistant engineer showed her the plans and in anticipation of an outcry by Enclosure residents who are noted for their zeal in safeguarding their neighborhood, remarked - "Who do those people in the Enclosure think they are? They are not half as good as they think."² This attitude of visible annoyance with complaining citizens was observed in some inter-

¹ Interview with William Carew, July 3, 1967 and Walter Glomb, Enclosure St., June 11, 1967.

² Interview, McIntosch.

views with town officials. The Enclosure along with several other streets in Nutley, such as North street, Highfield Lane, Satterthwaite Avenue, was considered a prestige street by Nutley citizens.

On May 7, 1965 a letter criticizing the application appeared in the Sun. It was the first public notification that a subdivision was planned. Up to that time the paper had carried no news on the Feland house. The letter from Mr. Walter Schaefer, whose home was near the estate, read in part:

It can't be true that they are thinking of tearing down Nutley's most beautiful house. That's like tearing down the Washington House at Mt. Vernon. But if they are thinking of tearing it down there is only one thing they are after. That is to utilize the land by building a great many small houses on it.

But I for one, have complete confidence that our Planning Board will not approve of any redevelopment project that would result in destroying our beautiful Enclosure as an area of larger dignified houses on very ample plots.¹

Mr. Schaefer lived in one of the oldest homes in Nutley, of eighteenth century construction, located adjacent to the Enclosure St. He had spent over forty years in painstakingly restoring the Georgian house in which he lived. Over the years he had searched for and purchased furnishings such as wallpaper, doors, etc., from all over the eastern seaboard from Maine to Virginia.² Only a few years ago he and Mrs. Feland had hired a local lawyer, Charles Goldberg, to defeat

¹The Nutley Sun, May 27, 1965, p. 4.

²Interview with Mr. Walter Schaefer, June 22, 1967.

a builders plan to construct an apartment house between his home and the park.¹ The builder was from outside the community. Now only a few years later the Enclosure was to be threatened again. Schaefer complained that builders were always trying to build on every piece of land in the area.

It was certainly apparent to Samara that to the residents of the area the issue would be one of high emotional feeling. Even so, he was to be surprised at the amount of opposition that developed. Enclosure neighbors feared the disruption of the streets' rustic nature and the effect on their privacy with the influx of more people and cars. This fear was complimented and reinforced by the probable loss of a house which had become holy because of its history. Sidney Wilhelm, a Harvard sociologist, found when sites become sacred through tradition there will be strong resistance to suggestions of change in land use. The power necessary to overcome conservation values "must be perceived as overwhelming to assure success."² And once changes do occur:

... , it is most devastating to the sacred social values formerly responsible for sustaining sacredness. This is so because, as Durkheim notes, man's value orientations toward space do not perpetuate for long in the absence of external objects that symbolize the sacred meaning attached to sites.³

Thus, homes which have become a historical symbol to

¹The Nutley Sun, June 23, 1960, p. 7.

²Wilhelm, p. 45.

³Ibid.

the community will not be altered or destroyed by its owners without opposition from the nearby citizenry. Neighborhood civic groups, comprised of people who place a high value on sites of historical significance, will react strongly against any changes which may lessen the historical nature of the neighborhood.¹ Perhaps the lose of a prestigious landmark may be perceived as a lessening in the desirability of one's own home which is in close proximity to the historical site.

The Nutley Sun took no clear position on the issue at this time. Publisher Frank Orechio remarked in an editorial footnote to Schaefer's letter that he too wondered what the Planning Board would do on this application, complaining that "we have been getting the run-around from the Planning Board."² This reference was most likely to deliberations on the new street in which he had a personal interest.

Although the Planning Board had scheduled June 3 as the hearing date for the application, Schaefer's letter was the only item in the Sun on the house. The hearing, however, was not held on June 3 because someone on the Board forgot to place the legal notification in the paper for the required two weeks before the

¹One of the most successful of such neighborhood groups is the Beacon Hill Association in Boston described in: Walter Firey, Land Use in Central Boston, (Cambridge: Harvard University Press, 1947).

²The Nutley Sun, May 17, 1965, p. 4.

hearing date.¹ It was inserted in the June 3 edition as required by law and the hearing date was set for June 17.

The subdivision plans went on public view in the June 3rd issue when the Sun announced in a front page article that the "Feland Home Would go for 8 Lot Subdivision." The reporter wrote that "none of the lots would violate Nutley's ordinances since "... all are oversized, some 8,000 sq. ft. and the smallest just under 6,000 sq. ft."² The opposing citizens now had only two weeks to organize and prepare their case for the Planning Board hearings. Many residents did not expect the hearings to be that soon and they were still in the process of gathering material for their case.

The required legal notices are printed in very small type and as a result, few people read them. The Samara subdivision notice was printed on page 17 of the paper, buried among fifteen other similar notices. It ended with the statement that "all interested parties shall be offered an opportunity to be heard." Unless the paper gives a public notice a front page story, the level of citizen awareness of an issue may not be widespread.

Why had Samara decided to build a subdivision after implying after purchase that the home would remain intact? He asserted that upon closer inspection after purchase he found the

¹The Nutley Sun, June 3, p. 1.

²Ibid.

costs of modernizing the home too high. Upon making this discovery he declared that he placed an advertisement offering the house for sale. No advertisement was found during the course of this research. Furthermore, he stated that all interested buyers declined after he insisted on placing a restrictive clause in the deed preventing destruction of the house.¹ His only alternative at that point was this proposed subdivision.

The eight new homes were to be constructed by Herman Endres, a local contractor and would be in the \$35,000 price range. Three of the new homes would be occupied by Samara and two of his sons.

The Response of the Enclosure Residents

On June 17, the day of the hearings, the Sun printed an article titled "Fight to Save Feland Home Looms Tonight."² It indicated that the home owners believed that they have had an uphill fight and have organized, hired a lawyer, and made an appeal for town wide support. An organization called the Nutley Community Civic Association had been set up by the irate neighbors to challenge the subdivision application. In addition, Leonard Reilly (40 Enclosure St.) and others of this new group had already met with Mr. Samara

¹The Nutley Sun, July 22, 1965, p. 3.

²Ibid., June 17, 1965, p. 17.

to request a delay on the subdivision proposal.

For the first time the paper had taken cognizance of the fact that the neighbors of the Enclosure had organized into a formal group to oppose the subdivision. Walter J. Glomb (48 Enclosure St.) had been named President and Charles Goldberg had been hired as an attorney to represent the group. Shortly afterwards, Glomb wrote a letter to the Sun in which he claimed there were over forty members in his organization.¹

Prior to the hearing a letter was prepared by Miss Margaret Gerdinick, a high school teacher who lived towards the end of the Enclosure. She asked Lady Bird Johnson for her support to save the home. The reply was in line with consensus politics as it pleased both sides. The Herald News, a daily printed in nearby Passaic, said that the "President's wife expressed support for the move to preserve the home."² The Sun stressed a different part of the letter and titled its article "Lady Bird Hedges on Feland Home."³ The reporter emphasized the statement that "we cannot afford to preserve very old structures," and then noted the "however, if it is possible ..."

Though a large portion of the area residents near the

¹The Nutley Sun, June 24, 1965, p. 4.

²Herald News, July 16, 1967, p. 19, and interview with Miss Margaret Gerdinick, May 25, 1967.

³Sun, June 24, 1965, p. 4.

Feland home were active in attending meetings and writing letters, there are four people who stand out at this stage of the issue.

Mrs. Susan McIntosch who lived next to the Feland house was one of the early opponents who started organized opposition. "I organized the first meetings to oppose Samara - they were held at my house. After all you can see how we were being affected, the property is right next to me."¹ In addition she wrote two letters, one to the Mayor which he acknowledged, the other to Commissioner Gundersdorff, "a personal friend of mine." She had known Gundersdorff, a Democrat, from her activity as a committeewoman in the party.

She was no newcomer to politics. A graduate of the University of West Virginia, she came from a family who were always active in Democratic politics. However, she was more interested in national politics and although she knew many Democratic officials such as the Mayor and Gundersdorff, she had little awareness of local politics. It was she who had signed the letter to the President's wife. "They asked me to sign the letter since I have been active in the Democratic party. I also sent a letter to Senator Harrison Williams to find out if my other letter to the White House had been received. This he did and within 24 hours I received a telegram from the White House."

¹Interview, McIntosch.

The designated leader of the irate residents was Walter Glomb, who directs over one hundred engineers and technicians at Federal Laboratories (ITT). He is highly articulate with an impressive engineering background (three years of graduate work at Columbia University). In many ways he was an ideal person to comprehend the complexities of building plans and zoning regulations. He took part in early discussions as to what could be done to stop the subdivision at Mrs. McIntosch's home. Most residents thought he was a good choice to lead the opposition. "We selected him because of his personal characteristics, aggressiveness, well spoken. He and his wife had put a lot of effort into remodeling their house - also their children played a lot in the woods near the house (Feland)."¹

Prior to the hearings several attempts were made to change Samara's mind. Leonard Reilly, Glomb's neighbor found himself in the middle as he was a personal friend of Samara. Reilly set up two meetings at his home, bringing both sides together. "Samara talked to them in a nice way explaining his problem ... that the house was not worth saving."² He took them on a tour of the house and showed them "... the house was in a complete state of disrepair. He asked them who was going to pay the taxes?"

¹Interview with Mrs. Rosemary McCormack, June 14, 1967.

²Interview with Leonard Reilly, June 20, 1967.

During the meeting the neighbors appeared to be highly emotional against Samara's plans and attitude. Glomb said he tried hard to keep tempers cool. However, Reilly, a friend of Samara, remembered the meetings as being very friendly and casual. The residents argued that most of their homes were in the same condition but that they remodeled them, preserving the historic nature of the neighborhood.¹

Reilly did not feel the same way about the historical value of the Feland house. Also he was a boyhood friend of Samara and was sympathetic to his financial problem. Although he lived in one of the most historic homes in the Enclosure formerly occupied by several well-known artists, he did not, like other Enclosure residents, feel any strong emotional attachment to such homes.

I liked the Enclosure, although there is nothing special about it. I know a famous artist lived in my house and this living room was his studio. We covered up the sky light with drapes. History does not mean so much to me. I like to hang around the garage like some men do at the country club.²

The residents were informed by Goldberg, the attorney recommended by Walter Schaefer, that legally they had a weak case and the best strategy was to try to work out some agreement with Samara which would reduce the number of homes from eight to six. Goldberg didn't see how they could prevent destruction of the home.

¹Interview, Glomb.

²Interview, Reilly.

Schaefer, who wanted to preserve the home intact, could not accept the compromise strategy of Goldberg and decided to work out something with Samara on his own. Schaefer, an insurance man in nearby Bloomfield, was reputed to be one of the wealthiest men in town. Some thought he could buy the home on his own if he wanted to. Schaefer met with Samara on his own to save the Feland house. His proposal was that he would get a historical architectural society to purchase the home leaving Samara free to subdivide the remaining land. Samara refused this proposal.

The organization of the Nutley Civic Association continued under Glomb's direction. Money was collected for Goldberg who would speak for the residents at the hearing. Mr. and Mrs. McCormack, Enclosure residents, were appointed treasurer and secretary. Mr. McCormack was a state bank examiner. Although the McCormacks were tapped for service they wanted to remain in the background since they were recent arrivals. Mrs. McCormack, a graduate of a Catholic college, got the job of taking the minutes. They were personal friends of Commissioner Gundersdorff. Their home was at the end of the Enclosure near the entrance at Passaic Ave. Thus they were located about two hundred yards from the home.

Glomb was assisted by John Burns, a New York architect, and a nearby resident. The two of them surveyed the property prior to the hearing. They drew up a map which showed the proposed eight homes on the property to demonstrate how cramped they would

be. Yet even with such professional skill their drawings were not legally acceptable since, according to the town engineer all drawings offered in evidence must be drawn by a state licenses engineer.

Glomb admitted that they "didn't have time to make all exact measurements."¹ They then decided on three major arguments:

- 1) the historical value of the house to the community.
- 2) the proposed cul-de-sac (i. e., houses at the end of a dead-end street) would be a menace to health and safety since there would be limited room for fire equipment.
- 3) the set-back of the homes was to be a major objection.

Under the town ordinance the setback could be set to 50'. If this stipulation was added to the subdivision approval the number of homes could be reduced to possibly four.

During this hectic period of organizing and planning Glomb approached some builders, merchants, and other town notables in the civic associations he belonged to, such as the Rotary Club, and Kiwanis, for their advice and hopefully their support.

"They said that I did not know what I was doing and shouldn't rock the boat."² He received no support and no encouragement.

At this point the Enclosure people did not have any out-

¹Interview, Glomb.

²Interview, Glomb.

side support. Some members of the League of Women Voters wanted to fight to preserve the Feland house, including its president, Mrs. Van Steen, but "we had already disbanded for the summer and it's impossible to get anything done during the hot summer months since most of the membership had gone on vacation"¹

The two contending forces now turned to the Planning Board for the next stage in deciding the fate of the house. The residents were unsure as to how the members would respond to their case. The hearings would provide clues and the vote answers. Informal bargaining at this stage had failed; in fact, it seemed to harden both sides in their determination: Samara, to subdivide the estate with eight homes and the residents to stop him or at least force him to reduce the number of houses to be built.

The June 17 Hearings before the Planning Board²

On June 17 six members of the nine member board met to consider the application of Frank Samara. Present were Carew, Vice Chairman, Anlas, Brooks, Gundersdorff, Epolito, and Harris.

¹Interview, Mrs. Van Steen, President, League of Women Voters, Nutley, June 20, 1967.

²A large part of the factual information on this hearing were taken from the official minutes of the Planning Board, dated June 17, 1965, Minutes, on file in the town clerk's office, Town Hall, with the written permission of William Carew, now Board Chairman. They are not open to the general public.

The Chairman, A. Brauer, Mayor Chenoweth, and J. Griffith were absent. The Mayor's absence was unusual since he rarely misses a meeting. He was "attending a Flag Day ceremony at the Elks Hall" and missed the hearing. Both Brauer and Griffith were away on business trips.¹ In the audience were over one hundred people, an unusually high attendance for a public meeting in the Commissioner's public meeting room. Both parties were represented by attorneys. Robert Crochelt, a local attorney quite active in zoning cases, represented Frank Samara. The residents were of course represented by Charles Goldberg.

Samara spoke first. He stated that his original purpose was "to live in it with one or two of his family." After purchase he went through the house "with contractors, architects and friends. They led me to see where it would not be economical to repair the residence for decent type of living." Therefore, the only economical alternative was to subdivide.

Goldberg spoke next. He said he represented one hundred people and handed to the Board a petition signed by sixty residents of the Enclosure Street. He argued that the proposed eight homes would create a traffic problem and destroy a house of great historic value. These additional homes would interfere with "the health, general welfare of the community." More people would

¹The Nutley Sun, June 24, 1965, p. 4.

mean an increase in noise and traffic and their children would increase the load on the school system. Goldberg spoke very impressively for the residents. He also presented data that "showed that most major subdivisions are a result of the owner's desire to make financial gain."

Glomb, designated leader of the residents, then submitted sketches put together by Burns and himself during the last seven days. They showed how the property would look if there were three, four, five or eight homes placed on this irregular plot.

Crochelt, objected to the sketches. "They weren't prepared by an engineer or an expert. They are not competent evidence." Glomb explained that he only had a week to put them together and admitted they were approximations.

Anlas, the town engineer, was visibly hostile to the opponents. He commented that "I just want to caution you - any map unless it is prepared by a licenses engineer, if you offer it in evidence, you are subject to a fine by the state." Some residents were annoyed at his apparent hostility to them. Glomb defended his presentation on both legal and engineering points by stating he spoke "not as an expert but as an interested citizen."¹

It is interesting to note that the Sun article stressed this particular point in its front page article. It stressed this minor

¹Interview, Glomb.

technicality rather than other obvious options of describing the hearing. By doing so it treated the issue as a legal question over engineering technicalities rather than one of neighbors versus real estate investor, or as a threat to a historic home. The selected option possibly reduced potential opposition. Probably its choice reflected a commitment to goals of the notables. The paper printed a picture of Goldberg, Glomb, and Crochelt under the headline "Lawyers Cite Opposing Legalities in Plan to Subdivide Feland Estate." The caption under the picture referred to the debate about Glomb's charts which "attempted to show how the street would look if the 8 lot subdivision is approved." The argument was over the accuracy of the charts. They are not "drawn to scale and Glomb is not a professional engineer."²

The discussion at the hearing then turned to the Board's concern over the proposed homes meeting all requirements of the zoning ordinance.

Carew: That is for the Board of Adjustment. Our Board has nothing to say about the houses to be built on the property, but has power only on the subdivision of land.

Crochelt:

... the Board is limited in its scope in that it must if the subdivision meets all the requirements, approve it because the discretion of the Board is subject to the law.

¹The Nutley Sun, June 24, 1965, p. 1.

²Ibid.

One witness who articulated the kind of values held by many residents was Walter Schaefer who told the Planners that

... Nutley has a character that is really quite different from any other town in Essex county with few exceptions in the state of New Jersey. I love Nutley and the things we love are beauty, trees, some old houses with ample grounds around them, the beautiful parks and the Passaic River. We want to try to preserve it and not completely destroy that beauty.

Another argument was the historic nature of the home and what it symbolized. Robert Burns, New York Architect and member of the Society of Historical Architects then asked the Board members if they were aware the "Feland House was one of the houses selected by the historical building survey of the federal government ... and it is listed as of national historical interest. The director of our society sent the Mayor a telegram concerning their interest." After Burns, Miss Ann Troy of the Nutley Historical Society (its founder and a past president) read a letter favoring preservation of the house.¹

Carew then asked Glomb if he lived within 200 feet of the Feland House. This factor was of some importance to many Nutley officials in forming an opinion of dissenting witnesses. This point was also evident in the Paul apartment case to be discussed later. Many officials feel that if you live further than 200 feet from

¹No copy of the letter was in the minutes, nor was there any reference to the letter in the Sun. The society was never a visible ally of the residents - although this was a natural issue for it to be concerned about. Miss Troy, editor of a history of Nutley book,

the site then you have no legal interest in the issue. This feeling develops from the legal requirements that only residents located within that distance have to be formally notified by the Town Clerk that a hearing is to be held. This legal notification requirement has been considered then by some as meaning that if you live further away you have no vital concern. Carew said later that he did this to inform his fellow board members that Glomb lived within the distance and had a vital stake in the decision. It was a helpful gesture on his part.

After all witnesses were heard the Board went into executive closed session at 10 p.m. After the session Carew announced that there would be no decision that night as the matter needed more study and discussion. He further noted that the law requires a decision within a 45 day period, otherwise the application is automatically approved. The Board had until July 17 to decide.

During the executive session Carew had asked the members to think about applying both greater setbacks and street size. This of course would mean fewer homes if the stipulated setbacks were greater than the minimum of 25 feet.

Anlas thought that a cul-de-sac¹ is good for drainage,

has received according to a reliable source, financial aid from Samara in getting the book published.

¹Defined as a passage open only at one end. A term applied to homes sited at the end of a dead end street.

police and fire department services and garbage collection. In fact, Anlas himself lived in a similar cul-de-sac composed of homes on minimum acreage put up by a local builder. He was familiar then with the technical problems of such a dead end street.

One question that had to be decided prior to a decision was the voting eligibility of the three absent members who did not attend this first hearing. The Board was to meet again on July 8.

In an editorial entitled "Who Can Vote on Subdivision at Enclosure?" the Sun indicated its concern about the eligibility of Chenoweth, Brauer, and Griffin. Carew had stated that "there is no policy regarding votes of members who miss a public hearing. We more or less make up the rules on these matters as we go along."¹ The Sun pursued the matter more diligently. The paper talked to attorneys and officials in Essex County and in Trenton, who noted that in a previous case (Highpoint Inc. v. Bloomfield Planning Board, 1963) the court ruled that a transcript of a hearing is not a legal substitute for a member's absence. Mayor Chenoweth declared that a decision on his eligibility would "rest with the town attorney."²

During this interim two letters from area residents were printed in the paper. Walter Schaefer's letter was an example of an attempt to minimize the degree of personal hostility between the

¹The Nutley Sun, June 24, 1965, p. 3.

²Ibid.

residents and Samara. In a letter to the editor Schaefer wrote an apology to Samara for stating that he was only after "a fast buck." He ended the letter with a plea to preserve our past. After all "if the people of Italy had not venerated the Roman Forum..."

Another letter by Glomb was an attempt to mobilize additional support from Nutley residents. He wrote that "we are urgently seeking responses from all citizens of Nutley."¹

July 8 Meeting of the Planning Board

Prior to the meeting the town attorney, Robert Citrino, Jr., wrote his opinion to the Board that the three absentees were ineligible to vote. This opinion was a blow to the residents, since the Mayor and Brauer were usually unsympathetic to such changes of increased home density as contemplated here.

Chairman Brauer in fact did not like the subdivision and made some attempts to get Samara to reduce the number of plots or at least enter into some bargaining with the board for some reduction. At the beginning of the July 8 meeting he referred to a state court case which held that a Planning Board does not have to rubber-stamp "its approval on a subdivision merely because it conforms to local ordinances."² As Brauer saw it they must view the application

¹Ibid.

²Herald News, July 9, 1965.

on its general effect on the neighborhood and not strictly on its legal merits. Unfortunately for the residents Brauer could not vote.

After Brauer, Carew made a motion for rejection of the subdivision because of:

- a) traffic safety, the entrance to the plots was smaller than the street width.
- b) the setbacks of the homes were not the same as other homes in the Enclosure.
- c) the fact that "four of the lots have an irregular width at the street line of 32.17 feet."
- d) the court ruling mentioned by Brauer that the Board does not have to rubberstamp a subdivision which is crowded with too many lots.

To the dismay of the residents there was no second and the motion failed.

Crochelt argued that the plans were wholly within the requirements of the town zoning ordinance. That all the lots were in excess of the required 5,000 sq. ft.¹ Samara said all he wanted was approval of a subdivision which was within the legal requirements. "I ask what is due me legally."

It was apparent that the question of setbacks was of

¹Minutes, Planning Board, July 8, 1965.
Herald News, July 9, 1965.

The minimum size of lots in Nutley is 50' x 100' or 5,000 sq. ft. Thus, if one had a plot 200' x 200' it could be subdivided into 8 lots.

prime importance in determining how many homes could be approved. If the setback footage was greater than the proposed necessary minimum of 25 feet this meant fewer homes and perhaps the whole proposal would be withdrawn. Brooks said the Board should secure legal advice on the ambiguity of the zoning law on setbacks. After a motion to get such counsel was approved the Board set July 15 as the day for deciding.

The Board Seeks Advice

The zoning law on setbacks was not directly applicable to this particular case because this subdivision was at the end of a dead end street. The Board was uncertain as to what could be required. A former Nutley Zoning Board attorney, J. Gorman, was contacted by Brauer for an interpretation of the town ordinance. Gorman declined saying the case was too controversial.

Brauer then contacted Mr. M. Stickel, a Cedar Grove attorney, who specializes in municipal planning affairs, and he agreed to give an opinion on the ordinance. In a letter to the Board, Stickel, who maintains a law office in Newark, gave his views. He stated that in his opinion the Planning Board could not require a larger size plot than the minimum of 5,000 sq. ft. There was no reasonable safety factor to justify a higher than usual lot size. He admitted that the ordinance is unclear about setbacks on a cul-de-sac such as this one. The legal minimum of 25' setbacks can be increased only if the other

nearby homes have greater setbacks, if so, they can be increased up to 50'. However, the setback requirement formula for deciding on an average setback is based on regular intersecting streets. That is to say that the ordinance refers only to those areas between two intersecting streets and no reference is made to a cul-de-sac. Only those lots within 200 feet are to be included "on each side of the lot ... in determining the average depth of a front yard."¹ How can you compute average setbacks of homes on both sides of the proposed houses if such house is on a cul-de-sac? For some unknown reason the law was never clarified to apply to dead-end streets.

It appeared that the Planners could use several different methods of deciding on a setback. Nevertheless Stickel felt that in this case a 25' setback for the developer is proper.²

Prior to the July 15 meeting Brauer met with Stickel for several hours over his interpretation. Again he indicated that the ordinance was not clear but felt that his interpretation was the only reasonable one.

During the debate prior to the July 15 meeting the Sun assumed a modified pro-subdivision position. In a July 1 editorial Frank Orechio wrote that the Planning Board cannot stop what the law permits and suggested that the way to stop them was to pass

¹Nutley Zoning Ordinance, p. 19.

²Minutes, July 15, 1965.

legislation doing so. The editorial read in part:

from the current controversy in town over the desire of the Feland land proprietor to subdivide the property to construct 8 homes, it is clear that the community consensus is that subdivisions of residential property are against the best interests of the community. However, we must live with the facts of life. The present laws permit such subdivision. It matters not what the motive is of the purchaser of such a piece of land.

A person may purchase a large tract of land to rehabilitate a rundown house or he can purchase a plot of land, subdivide it and make a profit. Our community laws permit such a course.

As citizens of this community we either submit to government by law or seek a state of anarchy.

It is not enough that neighbors should enter vigorous dissent against proposals to subdivide large plots. In most cases the Planning Board is unable to respect the wishes of neighbors, without running afoul of the law. What the law permits no planning board may stop.

The rights of any citizen - whether they are civil rights, property rights, or rights to make a legitimate dollar cannot be taken away from him because some people disagree with either the motive or the objective. (Italics mine)¹

The Planning Board Votes - July 15, 1965

The cause of the residents was greatly weakened by the loss of Mayor Chenoweth and Chairman Brauer's votes. Brauer, who worked for a chemical company in Nutley, had worked with the Mayor since the early forties in fighting for protective legislation in zoning. He had played a large role in the 1958 ordinance.

¹The Nutley Sun, July 1, 1965, p. 4.

William Carew was the main opponent of the subdivision on the Board. Carew, a college graduate with a degree in civil engineering, turned to real estate during the depression. During the land boom in the early forties he was a broker for one of the builders in Nutley. The home he has always lived in was one of the two-story single family homes that he helped sell. He had been on the Board since the early fifties. His full time position is Vice President of the Passaic Savings and Loan Association, where he is employed as an appraiser of homes and other properties in the Essex-Passaic County areas. Carew has been one of the more effective actors for drafting and pushing through protective zoning laws. Extremely articulate and knowledgeable on zoning laws, he was an excellent person to lead the fight inside the board.

Carl Anlas was considered very favorable to the subdivision. A graduate of the Newark College of Engineering, he had worked for the Department of Public Works when he was a student. Appointed by Commissioner Lucy to his present position, he reflects very similar views, i. e., a diverse mixture of housing; apartments, businesses, and one family homes. He indicated that he is rarely contacted by interested citizens on Board matters and even then he never states his position "until the meeting."¹

The Sun indicated that Ralph Epolito, a recent appointee

¹Interview, Carl Anlas, June 14, 1967.

to the Board would probably vote approval. Epolito was nominated to the Board by Commissioner Orechio. Epolito, a graduate of Nutley schools, was owner and operator of an aluminum production company in Nutley.¹

H. Louis Brooks, a soon to retire Newark businessman, had indicated that he might oppose if the subdivision violated the setback law.

Commissioner Gundersdorff (both the Mayor and one Commissioner are ex officio members) and Harris were uncommitted. Harris owned a local oil company and was, like Reilly, in the middle. He had customers on the street and Samara was a personal friend of his. They had worked together in local civic and business groups.

About 50 residents attended this important meeting. This smaller turnout reflected the difficulty of getting people out for each public meeting during the vacation period.

Brauer started the meeting by reading Stickel's opinions on the setback requirement, that is, that the setback could not be longer than 25'.

One resident then asked the Mayor if the town would buy the land for a park. The Mayor replied no, because the "town had no legal right to preserve such an area - it must be done by private arrangements through historical associations."

¹The Nutley Sun, March 25, 1965.

Before going into closed session the Mayor said he was hoping that "we could come up with a smaller number of lots which I thought would be more in keeping with the area around the Enclosure."¹ The Mayor made one final public try - he asked attorney Crochelt if six lots would be acceptable. It wasn't. It was "... unacceptable to my client."²

After all were heard the members filed out to decide. The parties waited over one hour before a decision was reached. The Sun observed that although there conflicting viewpoints when they went into session, "when they returned, there was unanimity."³

What had they agreed on? Brooks made a motion for seven lots to be approved instead of the eight; the setback was to be 30 feet. The motion was approved unanimously, 6-0. Thus round one went to Samara. The fight, however, was not over for the residents. They were determined to appeal either to the courts or to the Commissioners.

The Next Step - ?

The residents were dismayed at the approval vote. After the decision, Goldberg announced that he was going to appeal the decision to the courts. It seemed that both sides had anticipated the

¹The Nutley Sun, July 22, 1965, p. 1.

²Ibid.

³Ibid.

Planners' decision. Samara produced plans and drawings to the Board during the final hearing which showed seven homes on the land. It appeared that the seven home compromise was known to Samara beforehand along with the 30' setback. After the vote Samara signed the plans, thus agreeing to the Board's stipulations.¹

The residents were determined to make an appeal, finding no difference between eight or seven homes. In the days that followed there was some uncertainty as to what option the residents would choose: appeal to the courts or to the Commissioners - Mayor Chenoweth told his fellow Commissioners that if there were an appeal, it would go to the courts.² However to the dismay of the Commissioners they were informed by Goldberg on July 20 that the appeal would be made to them.

A Sun reporter, Philip White, seemed annoyed that the residents had decided to continue the controversy. White thought that the issue had gone on long enough. "The new hearing is Tuesday night, and if both sides are really determined to bring the subdivision before a higher court there is nothing the Board of Commissioners can do next week to prevent this extension of hostilities. The Enclosure, for better or worse seems destined to remain in a position of prominence in the news columns of the Sun for some

¹Herald News, July 9, 1965, p. 17.

²The Nutley Sun, July 22, 1965, p. 1.

time to come."¹

Bargaining Continues

Ever since Samara filed subdivision plans there had been constant behind the scenes efforts by the residents to persuade Samara to agree to some sort of compromise that would leave the Feland home intact. The individual efforts of Walter Schaefer were mentioned. The Nutley Civic Association under Walter Glomb was also active, particularly during the meetings with Samara at Reilly's home. They proposed to Samara that the Feland home be preserved and four lots be set up. This was the plan submitted to the Planning Board by Glomb during the first meeting. The residents also offered to find a buyer to take the home off Samara's hands so that he would not lose his investment. This proposal was received "... with less than enthusiastic response by the owner."²

Why wouldn't Samara compromise? The answer from almost all the participants was money. Reilly said "after all, he is a businessman and the one or two extra plots was worth considerable money." (About \$9,000 per lot.)

The last alternative was to subdivide the land into six

¹Nutley Sun, July 29, 1965, p. 4.

²Walter Glomb, Pres., Nutley Community Civic Association, letter of reply to Frank Samara's letter of July 22, 1965, The Nutley Sun, July 29, 1965.

lots. This was the proposal that Glomb mentioned to Chenoweth who then raised the proposal unsuccessfully, at a last-ditch compromise meeting before the Planning Board.

Glomb, in an open letter to Samara in the Sun, wrote that "the preservation of the Feland Home is not a legal issue, but one that can be resolved only by the owner's civic conscience."¹ At this point the leaders of the opposition realized that legally their case was weak.

On July 22 Samara wrote a response which was printed. He indicated that he was being subjected to pressures by the Civic Association; that he had offered \$500 to a fund for moving the house to another location so it could be preserved as a landmark. He noted that there were few willing to save the house.² The only suggestions he received "called for economic sacrifices on my part."

Although Goldberg thought the case was weak there were many who hoped that the Commissioners would either save the house or further reduce the number of plots. Apparently, most did not realize that the Commissioners could only decide on the legality of the Planning Boards action. If they found that the Board had acted in accordance with their authority and standard process they could not change the decision in any way.

¹The Nutley Sun, July 29, 1965, p. 2.

²Ibid.

The residents tried once again, several days before the August 3 meeting of the Commissioners, to get more support from other parts of the community. To activate such support they distributed a flyer which urged everyone to turn out at the hearings otherwise the house would be destroyed. (See figure 6).

As Samara noted he was undergoing some personal pressure from the community. Some talked of boycotting his stationery store. Samara replied to some Enclosure residents that they opposed him simply because he was Italian. Some opponents expressed a feeling that four or five Italian families, such as Orechio's, Samara's, Viola's, Infusimo's, Biondi, and Barbutta's, exercised a great deal of power in the town. These references, however, were always vague and uncertain. Glomb, Mrs. McIntosh, and Mrs. McCormack played down any ethnic conflict, pointing out that there were Italians in the association although admitting there was some anti-Italian feeling among a few residents.

Before the hearing town attorney Robert J. Cirtino declared that the Commission "would be able to hear only testimony and evidence confined to the record as given the Planning Board."¹ No new evidence could be considered. Also, although the Planning Board has the authority to modify a subdivision proposal, such as reducing the number of lots to seven, such discretion is not extended

¹The Nutley Sun, July 22, 1965, p. 1.

Do You

WANT THIS?

DEMOLITION
of FELAND
HOUSE + GARDEN



FOR THIS?

MASS
HOUSING



NOW THE COMMISSIONERS WILL DECIDE!

ARE THE WISHES OF NUTLEY CITIZENS TO BE CONSIDERED?

DO YOU WANT EVERY NEW HOUSE IN NUTLEY TO BE SQUEEZED INTO A MINIMUM SIZE LOT?

WE MUST PRESS FOR ZONING CHANGES!

MAKE YOUR PRESENCE FELT!

SHOW THEM YOU CARE!

COME TO THE COMMISSIONERS' MEETING AT THE TOWN HALL ON TUESDAY, AUGUST 3rd at 8 P.M.

LET'S JOIN FORCES TO SAVE OUR TOWN!

NUTLEY COMMUNITY CIVIC ASSOCIATION

to the Commissioners. Thus, they can only confirm or reject the Planning Board's decision. In Citrino's opinion the Commission could not modify the proposal by reducing the lots to six as the Mayor wanted to do.

The options open to the Commissioners were further discussed in a July 29 issue of the Sun by Philip White. Essentially he repeated what Citrino had stated the week before, namely that under New Jersey law the Planning Board does have final authority to approve a subdivision. And most significantly, that the "... purpose of next Tuesday's hearing is not to pass upon a recommendation from the planners, but to review the legal record of events which transpired before the Planning Board."¹ The yes or no options appeared to have ruled out several possible areas of compromise, and limited the role of the Commission.

The date of August 3 was a poor one for the Nutley Civic Association. As always the prime vacation months of July and August are poor times for getting the citizenry to attend hearings in force. The President of the League of Women Voters wanted to give organizational support but the members had disbanded for the summer and it was impossible to get agreement by the members. Mrs. McCormack who was association secretary, commented that "the hearing was held at a bad time since many people were away and could only

¹Ibid., July 29, 1965, p. 1.

attend association meetings and public hearings with great difficulty."¹

This factor was reflected in the attendance on August 3. The residents and supporters were about one hundred in number. Considering all the effort and work to inform the Nutley citizenry, the turnout was not overly impressive, although the usual turnout for many Commission meetings ranges from six to twenty four.²

Appeal to the Board of Commissioners - August 3, 1965

The residents' attorney spoke first to the four Commissioners, Orechio, Lucy, Gundersdorff, and Chenoweth. Jernick was absent. He first said that the objectors are neighboring property owners and have a vital stake in the "application."³ This property

is one of the most beautiful, rustic, private, and charming areas in the County... The homes in the area are lovely. They are set back far from the street. They are cared for. They are large - gracious in feeling and appearance. They are ornamented with beautiful trees of ancient vintage; surrounded by shrubs, gardens, and flowers. The street gives one the feeling of being in the countryside. At the end of the Enclosure stands a dwelling which is a heritage of the Town - the old Feland home, with its gardens and grounds; an example of lovely architecture; a building of national recognition.

¹Interview, Mrs. McCormack.

²Interview, Commissioner Jernick.

³Minutes, Nutley Board of Commissioners, August 3, 1965. On file with the Nutley Library and the Town Clerk, Nutley Town Hall. Unless otherwise stated all references for this meeting will be from the official minutes.

He argued that if the application was approved there would be a traffic problem with seven new homes averaging two cars per home. "You will have at least fifty people living there." Another danger would be the increased hazards to the children. They now "feel free to walk with complete confidence around the entire area."

Has this action been considered in the Master Plan? he asked. "Have you planned for this heretofore? ... Is it the intention of the Board to enhance the town as a residential community or to permit it to be destroyed by the construction of one house adjacent to another so that one property owner's living room is against his neighbor's lavatory?"

Goldberg then suggested to the Commissioners that they had a third choice besides approving or rejecting - they could "send it back for further consideration." Here Goldberg was arguing that the Commissioners could send it back to the Planning Board for reconsideration. The town attorney stated that the Commissioners could only consider the legality of what the Planners had done. Therefore, only if the Planners had acted illegally could the decision be changed. The law was unclear as to whether the Commissioners could reverse or modify the Planners action on other grounds. It was unclear and as with most zoning legal questions, ambiguous. Goldberg argued that in *Kotlarich v. Ramsey*, 51 N. J. Superior Courts, Judge Stanto said that the governing body, the Commis-

sioners, could act in a quasi-judicial capacity on an administrative appeal. This interpretation would mean that the Commissioners could overrule the Planners on the basis of the fulfillment of planning purposes or the public interest. No one, except Goldberg, disputed Citrino's opinion which was just that - his legal opinion.

Another factor was that the Planning Board had made its decision without a detailed map showing the exact dimensions of each house including the distance between each house, space between driveways and sidewalks. There was no plan showing sidewalks or curbs. "It did not have anything before it to show how a 60 foot street was to be narrowed to a 50 foot street. Most likely the applicant would be back before the Zoning Board asking for a variance." Here Goldberg was referring to the fact that in almost every new building being constructed a variance is needed because the builders wish to make maximum economic utilization of the land.

The argument on setbacks was raised next.

The neighboring territory to this property in question consists of homes with very large setback, the average setback being around 50 or 60 feet. The Planning Board is ready to contenance something like 30 feet here. This is not in keeping with the surrounding territory and we feel it is totally invalid and illegal.

A final point was that Samara had not submitted accurate drawings of each lot. According to the residents they had seen only a rough sketch to indicate "what was contemplated."

Robert Crochelt then presented his client's case, which

was essentially that the application had met all municipal laws concerning: width of street - 50 foot minimum, and, as to density, "under Article IV ... an R-1 zone is defined as residential family, to a maximum net density of approximately eight families per acre. We propose seven for one and a half acres. We more than comply with this requirement, which is standard for the whole town." The Planning Board extracted two conditions; reduction of the homes from eight to seven and 30 foot setback. "My client agreed with these conditions."

Crochelt then referred to a significant landmark case in zoning which appeared to block the Commissioners from disapproving or modifying the subdivision. This was *Mansfield and Swett v. Town of West Orange*, 198 Atlantic Reporter, p. 225. Here the Planning Board and the governing body denied an application for a subdivision on the following reasons:

1. that the proposed development is not in accordance with the character of the neighborhood and would so decrease the ratables of surrounding properties as to entail financial loss to the municipality.

2. that such an increase in population would create traffic hazards for children and for police and fire departments.

3. that the proposal is contrary to the unanimous wish of practically all the property owners... and is an innovation not deemed beneficial to the municipality or to the neighborhood.

4. that approval of the plan would interfere with safety, health, and the general welfare of the community.

This application for ten lots was turned down by both the

Planning Board and the governing body; nevertheless the court struck down this action. The court said that:

The standard is not the advantage or determinant to particular neighboring landowners, but rather the effect upon the entire community as a social, economic, political unit. That which makes for the exclusive and preferential benefit of such a particular landowner, with no relation to the community as a whole, is not a valid exercise of this sovereign power. That authority may not be exerted to bar the ordinary use of property because it becomes repugnant to the sentiment or desires of a particular class residing in the immediate neighborhood thereof; it may be interposed only in the event that the use is detrimental to the interests of the public at large. The neighboring owners do not possess the right to impose, for their own special benefit, restrictions upon the lawful use of the tract in question.

According to this ruling once the developer meets the minimum standards of the zoning code the dissenters have no legal basis to challenge the proposal.

Crochelt's final point was that the new tax yield would be \$6,400 as opposed to the present \$1300 per year.

After Crochelt the residents had their turn. The first action was the reading of a petition from the Nutley Community Civic Association, containing 274 signatures. The petition read in part:

We... do hereby appeal to the Commissioners to refuse permission for the demolition of the Feland home stead to make room for a subdivision of eight individual homes, to be built on lots of a size considered minimal for any in town.

The Town of Nutley is rapidly changing - not in its size - but in character and more and more we are

losing its beauty and dignity to the so-called signs of progress. We have few remaining landmarks like the Feland Estate and the small amount of increased revenue that additional houses bring our Town will be off-set by increased costs in our school budget and other municipal services.

The Feland Estate represents a symbol of the many beautiful estates in our town. If this subdivision is permitted it will be only a matter of time - before your board will be faced with other similar requests. If a precedent is set now and this lovely home and garden are permitted to become just a memory our town will suffer a wound that can never be healed.

We fully realize that your Board has a responsibility to the petitioner but also believe that you have a responsibility to the rest of the citizens of Nutley who are trying to pass on to future generations some heritage of civic pride.

Chenoweth noted, after some prompting from Citrino, documents the Commission had: a plan showing the seven lots; also a plan from the appellee approved by the Planning Board. He then read a letter from Citrino:

The municipality had, in effect, given to the Planning Board all the power which it, itself, had by virtue of the enabling statute and it only retains the quasi-judicial power of hearing an appeal from the Planning Board, by a person aggrieved.

The Mayor then stated the role of the Commissioners that evening:

"So that tonight this particular Board has in front of it a decision made by the Planning Board, and one which we are called upon either to affirm or reverse."

Walter Glomb then spoke to the Commissioners. He pointed out that seven lots raised questions concerning safety. "We

have never had the opportunity to review the plan covering the seven lots. Yet, as you know we do have qualified architects, capable of making an intelligent review. We can only conjecture what the situation would be. I believe there would still be insufficient parking area on the wedge-shaped lots." Here he was referring to the pie shaped lots in the subdivision. There were also questions concerning frontage, the amount of parking space, ability of emergency vehicles to enter, turn around, etc.

He then questioned the setting of 30 foot setbacks. Why 30 feet? Why not 25 feet, 35 feet, 45 feet? As he saw it the consultant had left the door wide open by interpreting the zoning law as ambiguous. "There was no mention of a formula for setbacks on a cul-de-sac such as this one." The residents didn't understand "why the number of lots were reduced from eight to seven. Why wasn't a reduction made from eight to four, or eight to six, with a 50 foot setback."

Another speaker, Mr. Ralph Winters, suggested that the Town buy the land possibly through green acre funds for inclusion in the Nutley town park system. The Mayor then read an opinion from Citrino which stated that he could not find any laws authorizing the town to acquire and preserve historic buildings. He did find laws allowing the county to do so. "Since there is no authority for a

municipality to acquire historical buildings, the municipality does not have the power. All such authority must be derived from the state."¹

Only the county could acquire the house. Could the town acquire the land? Yes, the town could acquire the land for park purposes.

"However, it is up to the Board of Commissioners to move whether they want to acquire land."² And in this instance they had no intention of moving in this direction.

Another aroused citizen reflected the irritation and confusion over the legalistic and technical appearances the question of the subdivision had taken. Mr. Taylor, from Nutley Avenue, said that although he did live in the Enclosure the question was bothering him.

When I see a town which is full, with no new lots available, so any expansion that comes about is the breaking up of larger places and turning the town into a housing development, it disturbs me...

He described the Nutley home owners as dividing into three groups - those who live in large places who oppose the town being broken up; those who live close together, "who just don't care," and a third group; "they are the people who want to make money out of it. Someone wants to break property up to make money on it."³

When we allow these places to be torn apart and packaged

¹Minutes, p. 13.

²Ibid.

³Ibid.

in, it is not doing the town any good... it doesn't help the community to make the property any more valuable; the little you get extra for taxes is offset by schooling costs for the children these people have.

If we have laws which allow our community to be taken away from us, we need to stop and think whether we want to stop this or allow it to continue.

The residents now were beginning to realize that the supposedly tight town zoning regulations were in fact not as protective as they thought. The subdivision decision had dramatized that point very clearly. One resident asked Citrino how they could plug up the loopholes in the law? Citrino replied that you should "talk to the gentlemen who can amend it."¹ (the zoning ordinance).

Mayor Chenoweth then made some interesting suggestions as to what could be done. He was clearly sympathetic to the residents and felt very strongly about the question of large estates being broken up. Chenoweth noted that there were only 150 empty lots left in the town, and that the subdivision question will be a continuing one. They, the citizens, would have to push the Planning Board. "That would be the first step I would recommend that you take - through your organization, or you yourself individually - contact the Planning Board and present some sort of thought you have concerning larger plots."² This was good advice for the residents. It was the Planning Board that recommends zoning laws to the Com-

¹Ibid., p. 14.

²Ibid.

missioners for their approval. Unless pressure was first applied to the Planners and then the Commissioners the loopholes would remain. Politically, the Mayor needed additional resident support to help him in preserving the domination of the single family home.

In the Mayor's experience the history of tightening the zoning laws had been a long one and, in addition to other opposing forces in the town, the courts had loomed large in land use policy implementation. In the 1958 ordinance the law was tightened. "We upgraded the town about 50% at that time. We increased the size of the lots. We recently passed an ordinance with reference to some of the things you are speaking about in the larger areas - setbacks." The Mayor justifies the Commissioners inability to always satisfy objecting residents by noting that the courts have overturned the town on several rulings on land use, and that the Commissioners decisions were always subject to the courts. This line of reasoning was an indication to the residents that the Commission had no choice in this issue. The courts have "ruled for the owner in some cases, claiming that we have been too restrictive in the requirements we have put on certain areas."¹

Another disturbed citizen asked, "can any piece of property be divided up into minimum size lots without a hearing? If so, what assurance do property owners have that neighboring property will not be divided with subsequent loss in value of their own property?"

¹Ibid. p. 15.

What legal protection do they have?"¹ Citrino answered as follows:

No major subdivision can be granted without a hearing, and then the building inspector recommends to the Planning Board. I can't tell you what guarantees you are going to get, except for a group such as this to come up in arms whenever you feel your rights are being infringed upon. (Italics mine)

After all were heard the Mayor declared a recess so that the Commissioners could confer with the town attorney. Tension grew among the spectators as the Commissioners discussed a solution in private executive session.

The Commissioners reappeared at 10:15 p.m., thirty five minutes later. Mayor Chenoweth then made an announcement which the residents enthusiastically applauded - that the hearing would be adjourned to the September 6th meeting. This was necessary since the minutes of the Planning Board approving the subdivision had not been officially approved. The Planners had not met since the July 15th meeting and thus had not approved the official minutes of that meeting. This meant additional time for tempers to sharpen or perhaps cool since the controversy would now go on for another month.

A Boycott of Samara?

In private talks and in a letter to the Sun, some residents suggested that Samara's stationery store be boycotted. In reply to

¹Ibid.

the boycott suggestion the Sun printed a letter from a Mrs. T. Noone which opposed any such action. She wrote that "any boycott of merchants is no solution to such subdivision problems - the only way is for Nutleyites to turn out at public meetings, and oppose such changes.¹ The boycott idea was never to get beyond the confines of a very few residents in the Enclosure.

The Commissioners Decide - September 6, 1965²

Almost eight months after the Sun announced the sale of the house the Commissioners met to render what was to be the final decision on the dispute. On September 6 the Commissioners held their usual meeting in their third floor chambers to consider the two issues: the Feland house and the Hillside street extension. Thus the chambers were packed with irate neighbors from two different neighborhoods.

After two hours of discussion on the new street the Mayor then turned to the Feland house subdivision and first announced that the Planning Board had now approved the minutes and the Commissioners could go ahead and render a decision.

Unfortunately for the residents their attorney, Goldberg, was absent because of illness. The Mayor asked Glomb if he wished

¹The Nutley Sun, August 12, 1965, p. 4. Interview, Mrs. T. Noone, August 26, 1967.

²Minutes, Board of Commissioner's, September 6, 1965.

to add any additional information. Glomb raised two points: first, the curb length for parking cars on the cul-de-sac was too small - two cars per home would leave one of the cars partially in the driveway. The second point was that the law on setbacks was too vague. The Planning Board had required that

the setback be moved from 25 to 30 feet, they apparently felt that some modification was in order, and therefore, perhaps the setback could be moved from 25 to 50 feet and in this instance would result in some element of conformance that would be acceptable.¹

After Glomb, attorney Crochelt made his way to the witness podium. He simply stated that the question of parking is of no importance since a cul-de-sac is beneficial to safety for dead end streets, particularly for traffic problems. He agreed that the law on setbacks for this dead end street situation was not perfectly clear. "However, we have to deal with the law as we find it, and we submit that our application and our plan complies with every single regulation of the town -- every municipal law, and we rest on that."

Thus the last word had been spoken by the two contending sides. It was now 11:20 as the Commissioners filed out into the private session room. The crowd of spectators had been thinning out because of the hour and because the Hillside street residents had left after their case was decided. Prior to this meeting both groups promised to support each other. However, few from Hill-

¹Ibid., p. 27.

side remained to give the Enclosure people their moral support.

After only ten minutes the Commissioners came back. Apparently the decision had been informally decided before the meeting since the Mayor had a complete resolution in hand as he and his colleagues came back into the public chambers. First the Mayor announced that the Commission was only acting as an appellant board, "reviewing whether or not the decision of the Planning Board was within the framework of the law, local and state."

Chenoweth then read the resolution which declared that the Board of Commissioners had approved the decision of the Planning Board to permit the subdivision by a 4-0 vote. Although Commissioner Jernick was present that night he was ineligible because he had missed the August 3 hearings. Thus, the residents had lost the battle; the Feland home would come down in a very short time to make way for the seven new homes.

The reasons for approval were:

1. The Planning Board's decision was in accordance with the zoning ordinance.
2. There was no evidence to indicate that the Planning Board had violated the requirements of the zoning law.
3. The Planning Board acted within the scope of its authority. The Mayor, Orechio, Lucy, and Gundersdorff, voted for the resolution. Chenoweth then pointed out to the residents that they could appeal the decision to the courts if they wish to do so.

The Aftermath

Within ten days after the final decision, demolition crews dismantled the Feland home. If the residents were going to appeal to the courts, they had to make up their minds quickly. The destruction of the home now closed off that option. However two years later, after the approval, construction of the homes had not yet begun. Some residents thought that Samara needed a number of variances from the Zoning Board to fit the seven homes in.

The day after the decision, Commissioner Gundersdorff, who had personal friends on the Enclosure, made a visit to Mrs. McIntosch in order to explain why he had to vote for approval. As he explained it to her, there was no legal choice; the law left him no alternative.¹

It was apparent that by early September the residents were somewhat prepared for the inevitable. The turnout at the last meeting was much smaller than at the previous meetings. Some cooperation had been worked out with the Hillside residents but this did not amount to much, except for some psychological support at the final meeting. "Many of them left the hearing after their case."²

Charles Goldberg, had told the residents they did not

¹Interview, McIntosch.

²Interview, McCormick.

have much of a legal case. " I told them they had no choice." But only because of personal pleas did he take the case in the first place. In fact, he had a great deal of sympathy for Samara. "I asked them - Do you want to pay his taxes? Pay for the upkeep of the house? No, they didn't want to pay any of their money. What did they want him to do? It was his property - his land."¹

Still some wanted to appeal to the courts. The major question was, as some saw it, money. Goldberg advised against any appeal. "There was no grounds. I didn't want to take their money."² His fee so far had been \$350.

Most people felt that Goldberg had earned his money. In fact his presentation before the Zoning and Planning Boards were so impressive that in 1967 he was appointed legal counsel to the Zoning Board and thus would no longer be available to represent dissenting neighborhood groups.³

The treasurers of the Civic Association, Mr. and Mrs. McCormack, thought that money was a problem, but there were people who were willing to put up \$400 for the appeal. But even these opponents finally concluded that "at best we could only hold him up for a few months."⁴

¹Interview, Goldberg.

²Ibid.

³Ibid.

⁴Interview, Mrs. McCormack.

Glomb said the appeal costs might end up costing over \$1,000 and "we didn't have that kind of money."¹ While the association had over 100 members, only about 30 made any financial contribution toward paying the attorney.²

Most of the officials who were sympathetic toward the idea of saving the house felt that under the ordinance and prior court decisions there was no alternative. Crockett, who at that time was on the advisory committee of the Planning Board, and is one of the stronger proponents of the status quo on land use, thought "that was the only thing we could do under the circumstances."³ The Mayor also felt there was no other reasonable course of action.

The end of the Feland Home also marked the end of the Nutley Community Civic Association. It was one of the few ad hoc groups created in Nutley over the years to fight changes in land use. Its first and last president had hoped that the association would continue in order to oppose similar land use changes. He stated that "other properties will be divided; variances will be asked to permit crowding of house on house, and to grant zoning changes."⁴ When this happens the association will object. This never happened as

¹Interview, Glomb.

²Ibid.

³Interview, Alfred Crockett, Planning Board member, July 7, 1965.

⁴The Nutley Sun, July 29, 1965, p. 2.

the group disbanded after September 1965. Many residents still talk about what Samara is doing to the Enclosure and have not forgotten, but as a group which seeks to influence public decisions it is no more.

A final point of irritation to the Enclosure residents was the Sun account of the decision. The article, titled "Feland Home Not Big Issue with Residents."¹ indicated that opposition to the subdivision had considerably lessened at this last public meeting. Needless to say few residents felt that this was the situation.

Conclusions

This subdivision was a very clear example of the two contending values, economic and protectionist, which from time to time engage in limited warfare. Samara, an owner of a very successful stationery store has been a not infrequent actor in Nutley real estate. He was also one of the businessmen who favored the Hillside street proposal.

A local economic notable such as Samara could expect and did get sympathetic coverage in the Sun. There was no criticism by editor Orechio of the economic goals. There was no objection to the removal of a historical house in the community.

The economic stakes were noted to be significant to the purchaser and also to local builders and suppliers. The economic

¹The Nutley Sun, September 9, 1965, p. 1.

incentive for the local economic actors was indeed very visible in this controversy.

CHAPTER VI
THE DEBATE OVER APARTMENTS
1948-1965

All of the suburban areas adjacent to New York City are faced with major decisions concerning the physical development of their community. Citizenry must decide if their community is to remain one of single family homes or will mixed uses-apartments, homes, and perhaps industry be permitted? With the growth of population and the continued middle class exodus from New York City there is a high demand for homes and apartments in those attractive, stable, and less populated communities. High demand and high land prices have led builders to construct many apartment houses in what was formerly one family home areas. The economic incentive to build apartment complexes in suburbia is great. The result has presented serious problems to those communities which have had a less dense population and are predominantly one family home communities. Such communities are deciding to what extent apartments should be allowed to develop. Some have been liberal with their construction; others very restrictive; and some, like Nutley, have tried to follow a path of cautious growth, permitting their construction but carefully considering the impact of each

apartment house on the immediate neighborhood and community.

Conflict in suburbia between those who favor their construction, economic notables and those who prefer the status-quo of land use, owners of single family homes, becomes visible in almost every apartment house proposal. The reconciling of these diverse interests is the task of the governing body. It is the Zoning Board of the community, usually appointed by the town council, that renders the significant decisions whether they should be permitted. Developers almost always must go before a local governing body and seek its approval on a variance request, since in most cases apartment house complexes are outside the limits of the zoning ordinance. A variance permits the builder to avoid a literal compliance with the zoning ordinance.¹ Thus, the conflict between the opposing sides over apartments is usually manifested in the decision making process of the Zoning Board to grant a variance.

It is apparent that increasing affluence and population will result in an increase in conflict over the physical development of suburbia. A recent article in the New York Times noted that:

Important battles over zoning are being fought in New York's suburbs. The outcome will determine the physical environment of the communities and, to a large extent, their quality of life.

It will determine whether residents will be able to live in seclusion by preventing the construction of

¹ Home Title Guaranty Co., Pitfalls of Zoning, A Guide

apartment houses near their homes, whether others will be able to lighten their tax load by inviting industries into their towns, whether the people and businesses seeking the advantage of the suburbs will be allowed to go there, or be forced to hunt space elsewhere.¹

The Times reporter expressed concern over the fact that the population of the 17 suburban counties, now at nine million, will increase to fourteen million within two decades. How is this additional population to be housed? More particularly how will the suburbs respond to these problems of population growth? The Planning Commissioner of Westchester County, felt that "the suburbs are in a lull before the storm."²

Owners of single family homes oppose apartment houses because their presence means increased population, more government services, and possibly more taxes. Many feel that they ruin the rustic style of living; their intrusion between single family homes means the shutting off of light and sky.³

Some communities such as Southhampton, Long Island have been very successful in excluding apartment house construction altogether. Early in 1966 a builder wanted to construct a 14 building

for Attorney's, (New York: Home Guaranty Company, 1959) p. 12.

¹The New York Times, May 29, 1967, p. 1.

²Ibid.

³In Village of Euclid v. Ambler Realty Co., 272 U. S. 365, the U. S. Supreme Court upheld the control of land use by zoning. In this land mark case the reasoning of Justice Sutherland is illustrative of the problems raised by the construction of apartments in

complex with 11.9 living units per acre. Intense opposition by many home owners resulted in an ordinance that limited density to 4 units per acre which substantially reduced the economic incentive to build apartments on Southhampton acreage.¹ Southhampton, however, is an unusual community since it is composed mainly of wealthy estates and has no influential business sector.

Many suburban areas have not however closed the door to the apartment builder. Such towns as West Orange, New Jersey, have virtually changed overnight into apartment communities. Apartments do bring problems to these fast growing communities since more people mean more school children, new sewer facilities, improved transportation facilities, etc.

Officials in Rockland County, New York, have permitted a massive apartment house construction program in their formerly rural county and the influx of additional citizens, the poor site locations, have resulted in a great deal of criticism at county officials. In Orangetown, (Rockland County) residents were trying hard to keep out any more apartments since in their view, they mean more residential areas. See Appendix C.

¹The New York Times, March 6, 1966, p. 17. The fear of changes which may result from a possible mass invasion by New York City residents is an ever present preoccupation of many suburbanites. During the public meeting in Southhampton one speaker pointed in the direction of New York City and cried out that "there are ten million people there and make no mistake about it, they are on the way here." Another speaker thought that "apartments would increase the summertime problem of visitors' littering lawns with beer cans and wine bottles."

children and higher school costs.¹

The County Planning Board has defended apartment house construction and contends that "much of suburban opposition to apartments arises from the fact that poorly designed and overcrowded apartment developments depreciate the value of single family homes."² Thus apartments are not bad per se. The fault lies with those villages who permit poorly built apartments to be constructed.³

In summary, apartment houses, their location, their density, and the degree to which they should be permitted to enter the community is a major question for each suburban town. The conflict between those who favor them and those who oppose reflects one of differing values and interests. It is generally the home owners versus the business notables.

Nutley has been faced with the apartment question since World War II. The conflicts and debates in Nutley are very similar to those raging in other suburban communities. The opposing forces in Nutley, home owners against developers and other business interests are similar to other communities. Of course only additional studies will validate the uniformities of behavior or illustrate what is unique to Nutley. It is an older suburb and hasn't been hit with

¹The New York Times, May 29, 1967.

²Ibid., March 20, 1966, section 8, p. 1.

³Ibid., November 21, 1965, section 8, p. 1.

major population and governmental changes in the same tempo as Rockland County. Thus, its experiences with apartments are more related to communities who are at similar states of development and marked with substantial continuity and stability.

Apartment houses did not appear in any significant degree in Nutley until after World War II. In 1948 the first of the town's garden apartments were constructed. They consisted of 343 units and accounted for 59% of the total construction cost (\$3,323,000) in 1948. Relatively, few units were constructed until the early fifties. By 1950 the town was 75% built up. In 1960 the vacant space was reduced to 10%, and by 1967 it was estimated to be around 1.2%. It was apparent that the remaining land was far too valuable for utilization by single family homes and, as a result, numerous apartment complexes have been proposed by builders within the last decade.

This new use of suburban land was viewed with distaste and intense opposition by many of the home owners, particularly by those living near proposed sites. Socially and economically the town had been undergoing changes in its business and political leadership. As noted in Chapter II, the Italian Catholic population had been expanding rapidly in what had been, at least up to World War II, a community dominated by Protestant elites. It wasn't long before the Nutley Bank, building and construction interests, businesses along Franklin Street, the sole town paper, were no longer largely

run by the old generation of Anglo-Saxons. They now shared the economic life of the community with the descendents of Italian immigrants.¹ These more recent business activists became increasingly more active in maximizing their economic stakes within the community, particularly in land use development.

The town Planning Board, generally staffed by Protestant elites until the sixties has always been oriented toward a nicely landscaped residential community while the Zoning Board reflects the attitudes of those business interests who favor apartment house development and governmental improvements which assist the business district. In 1954 the Planners drew the hostility of the Chamber of Commerce when it proposed to the Commissioners a zoning revision which would limit apartments to four stories and cut back on the areas zoned for business use. It wasn't until four years later, after a total of 12 years of work on a revised zoning ordinance, that the differences between the Planners and the business interests were resolved.²

As the amount of vacant land decreased the question of the desirability of multi-dwellings was further crystallized in a 1957 proposal by Commissioner John Lucy. Lucy recommended that the town sell some of its underdeveloped park land so that garden apart-

¹Observations based on The Nutley Sun, 1948-1967.

²The Herald News, February 20, 1957, p. 9.

ments could be constructed. He contended that 198 units could be built on nine acres.¹ This he argued, would mean an increase of \$75,000 in town ratables - additional tax sources from presently unused land. Commissioner Carl Orechio supported Lucy's proposal.

The plan was greeted with intense opposition from a citizen's committee which took a position opposing any sale of park land. In a letter to Lucy the committee stated it did not want "any change in the community character of Nutley as a one family town."² The committee cited statistics that showed such apartments would result in a \$200,000 annual deficit "due to increased school, police, sewage and garbage removal service."

Mayor Harry Chenoweth "cautiously came out" against the venture. He too wanted only one family homes and at a February 20, 1957 meeting he proposed a compromise solution to his fellow commissioners. His idea was to sell the land but for use of one family homes. The Mayor had conducted his own survey and found that apartments provided only \$255 in revenue per unit while homes provided over \$500 each in taxes.³

On March 21, 1957 the Nutley League of Women Voters took one of its rare public stands on a local issue and, in a letter to

¹The Nutley Sun, March 21, 1957, p. 3, Jan. 24, 1957, p. 1.

²The Nutley Sun, December 31, 1957, p. 1.

³Ibid.

the Chairman of the Planning Board, stated that "they wanted Nutley preserved as a predominantly one family residential town."¹ In January, Donald Stoddard, Planning Board Chairman, declared "that the Planners, primarily, had to take positive measures to protect Nutley's residential character, even to the exclusion of more industry."²

The Sun under editor and publisher Ralph Heinzen, viewed by many as a political conservative, took a position favoring the Lucy plan. In an editorial titled "Untruths" Heinzen argued that "the Planning Board should not be allowed to hold up progress" and "... stop the Lucy Plan." He asked why should the town spend large sums on park land which isn't needed. "Park land should be built by the county, not the town."

Not to use this property means Nutley's taxes will go up. If, however, the town sells the acres at today's high land values and builders plant garden apartments on the hillside we can add a million dollars or more of ratables. And we can collect taxes on those ratables every year from here on.⁴

Heinzen repeated his preference for apartments in a July 10, 1958 editorial. At that time another decision on an apartment house was under discussion. He noted that a delegation of

¹Ibid., March 21, 1957, p. 1.

²Ibid., January 24, 1957, p. 1.

³The Nutley Sun, December 31, 1957, p. 1.

⁴Ibid.

neighbors planned to oppose its construction because they wanted Nutley to adhere to the tradition of single detached homes. "This is a personal and sentimental appeal. The town's future, . . . , is a problem more practical than sentimental and the Commission must weigh such problems as school population, increased traffic, parking, police and fire protection as balanced by possible augmented town tax income."¹

The Zoning Board apparently felt the same way since they became more liberal in granting variances to the density limitation. The number of apartments began slowly to increase. In 1961 the Sun was to report that "for a town in which there is considerable sentiment against apartment houses . . . the numbers are increasing."²

The ordinance limits the number of family units to 22 per acre. Thus, a builder who wants to build a 24 unit apartment house on one acre of land must obtain a variance, an exception, to the legal limitation. Since the limitation rule went into effect in 1958 almost all apartments constructed have received variances from the Zoners. The chart lists the unit density per acre of all apartment projects built since 1958. This means that the Zoners had to give their approval in every case.

¹Ibid., July 10, 1958, p. 4.

²Ibid., August 3, 1961, p. 1. See map 6 on p. 208 for location of most of Nutley apartments.

Chart II

UNIT DENSITY PER ACRE FOR NUTLEY APARTMENTS - 1958-1965¹

62.5	35.3	26.6
27.3	41.8	34.9
27.6	23.5	32.2
28.3	50.0	32.3
32.7	26.1	26.8
25.8	31.2	32.0
		29.4

¹Passaic Valley Citizens Planning Association, Apartments in Nutley, March 1966, Appendix, p. 2.

The West Bank Apartments on River Road

In July 1962 the Zoning Board approved a variance permitting the construction of 105 units at River Road near Park Ave., adjacent to the Italian Avondale section. This was the largest apartment complex ever approved. (See Figure 7).

This project however was to be a thorn in the side of builders who have tried to put up similar units since. Fights, thefts, narcotic and booze parties have kept Nutley's police department on their toes. Soon every member of the police force was familiar with 181 River Road. Zoner Addio had to admit that more town services and police calls are required at the West Bank Apartments than all other apartments in Nutley. ¹

After their construction in 1962 these apartments

¹The Nutley Sun, January 19, 1967, p. 4.

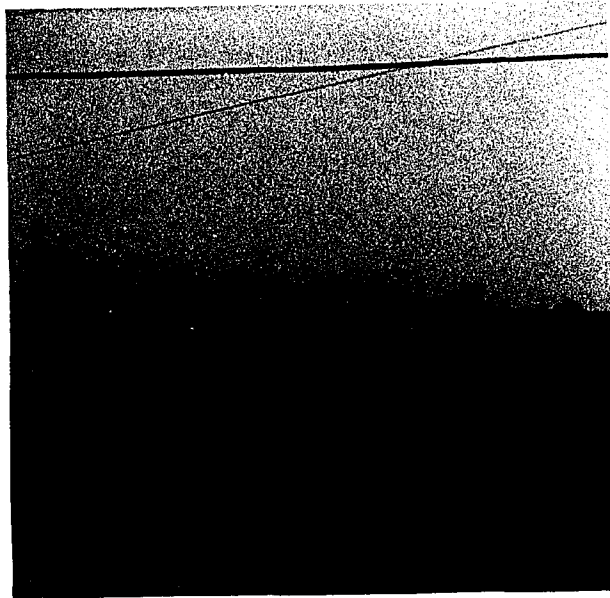


Fig. 7. The West Bank Apartments
on River Road.

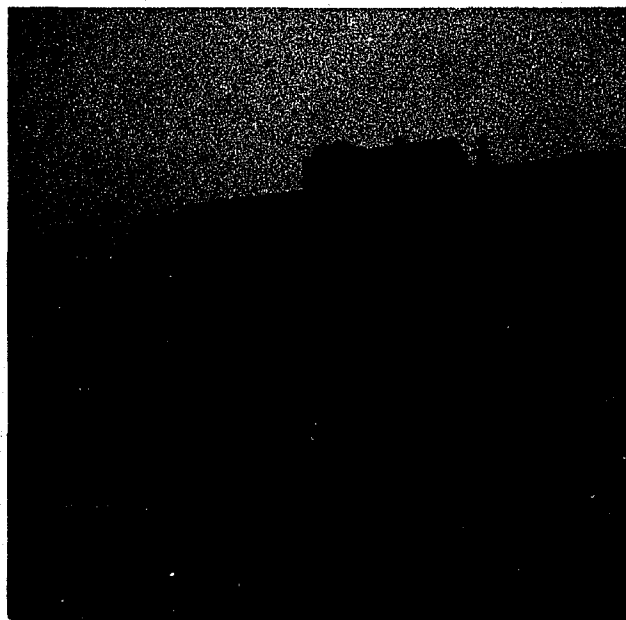


Fig. 8. The Country Club Towers,
High Rise Apartments in nearby
Clifton, New Jersey

became ever-present in the minds of home owners. In addition to police problems the apartments were poorly constructed and, when seen at a distance, are not too different from public housing projects in nearby Newark. Also there is the fear that Negroes may move into such apartment houses. One official was worried that not only this particular apartment complex but also parts of the Avondale section, the less desirable part of town, might become open to Negroes. The West Bank Apartments were symbolic to many of what could happen if similar apartments were permitted.

The 1961 Report of the Apartment Committee

In 1961 the Planning Board, unhappy with the liberality of the Zoning Board in granting variances, set up an apartment committee to study the problem and to come up with any needed changes in the ordinance. This was necessary because:

- 1) the number of requests to build apartments in Nutley had increased in the last few years.
- 2) a predominant portion of the apartments recently constructed in Nutley have been granted as variances from the Zoning Board of Adjustment.¹

The report completed by the committee apparently was an attempt to bargain with the economic notables in the community

¹Apartment Committee, Nutley Planning Board, Apartment Study, p. 8.

in an effort to get some restrictive legislation on apartment spread. It noted that since apartments were here to stay we must permit them buy only in carefully defined zoned areas.

The main recommendations were to raise the density ratio from 22 to 36 units per acre and to further restrict areas open for multi-dwellings. Apartments were to be built only in R-2 and R-3 areas and any other district which might be created specifically for apartments.

The report also focused on the effect of apartments on public services. The committee found that additional apartments would have no adverse impact on town streets, sewers, storm drainage and water.

The policing of apartment buildings would be less troublesome than other developed areas. For example, our regular patrol cars would be required to cover less mileage in apartment zones than in R-1 or R-2 zones. In addition, all apartments are supervised by an employed superintendent with quarters in the building. All disturbances in the building would be brought to his attention and if police action were required, they would be notified.¹

This conclusion was premature in light of the police problems arising from the West Bank Apartments.

The committee also thought that their construction in the proper areas would not necessarily mean a severe influx of children on the school system. The Board of Education recently

¹Ibid.

found that out of 879 apartments surveyed there were 99 children in public school or a rate of one child per 8.8 apartment units. The rate for non-apartment units was one child per 1.7 units.

The committee concluded that:

the present demand for apartment sites will continue in the future and may very likely increase. Apartments will fill a need for housing newly married couples without sufficient capital to purchase a home, older persons whose children are married and who no longer desire home ownership, plus persons who simply prefer apartments to home ownership.

Realizing that a demand for apartments will continue into the future it is the opinion of the committee that garden apartments and apartment buildings up to four stories should be permitted . . . and that if these garden apartments . . . are well located and well designed they will not be detrimental to the town.¹ (italics mine.)

At the same time the committee was critical of the actions by the Zoners, specifically the almost routine procedure by which apartment developers, "after being turned down by the build-inspector appeal to the Board of Adjustment for a variance to construct apartments at a density higher than the present maximum."² Such variances are infrequently disapproved. The Planners were greatly disturbed at the shambles the Zoners had made of the 22 unit per acre density limitation stipulated in the town ordinance. The apartment committee declared that:

It is the function of the governing body (Commissioners)

¹Ibid.

²Ibid., p. 8.

to decide policy and to legislate this policy. The Board of Adjustment should change this policy only if practical difficulties or undue hardship exists in connection with the land.¹

In 1966 the Passaic Valley Citizens Planning Association provided statistical evidence of the liberality of the Zoners in granting variances:

Since 1958 there have been 19 new apartment developments constructed in Nutley ranging from 6 unit garden apartments to the 108 unit West Bank on River Road. These apartments have all been constructed by virtue of variances at higher densities than are presently permitted. These densities range from 23.5 to 62.4 units per acre with the average 30.3 units per acre.²

The Planning Board's recommendations for tighter laws were not formally considered until 1967. It wasn't until after the David Paul apartment proposal in 1965 that the Planners were spurred to action and submitted new revisions for the Commissioners to consider. Since they could not get the Commissioners to pass laws excluding apartments their strategy was to get the 1958 ordinance tightened in order to close the loopholes.

Thus, the Paul apartment proposal in 1965, the most ambitious one ever submitted, was to become the latest in a long series of apartment house conflicts in Nutley.

¹Ibid., p. 9.

²Passaic Valley Citizens Planning Association, Apartments in Nutley, A Cost-Revenue Analysis, (March 1966), p. 1.

CHAPTER VII

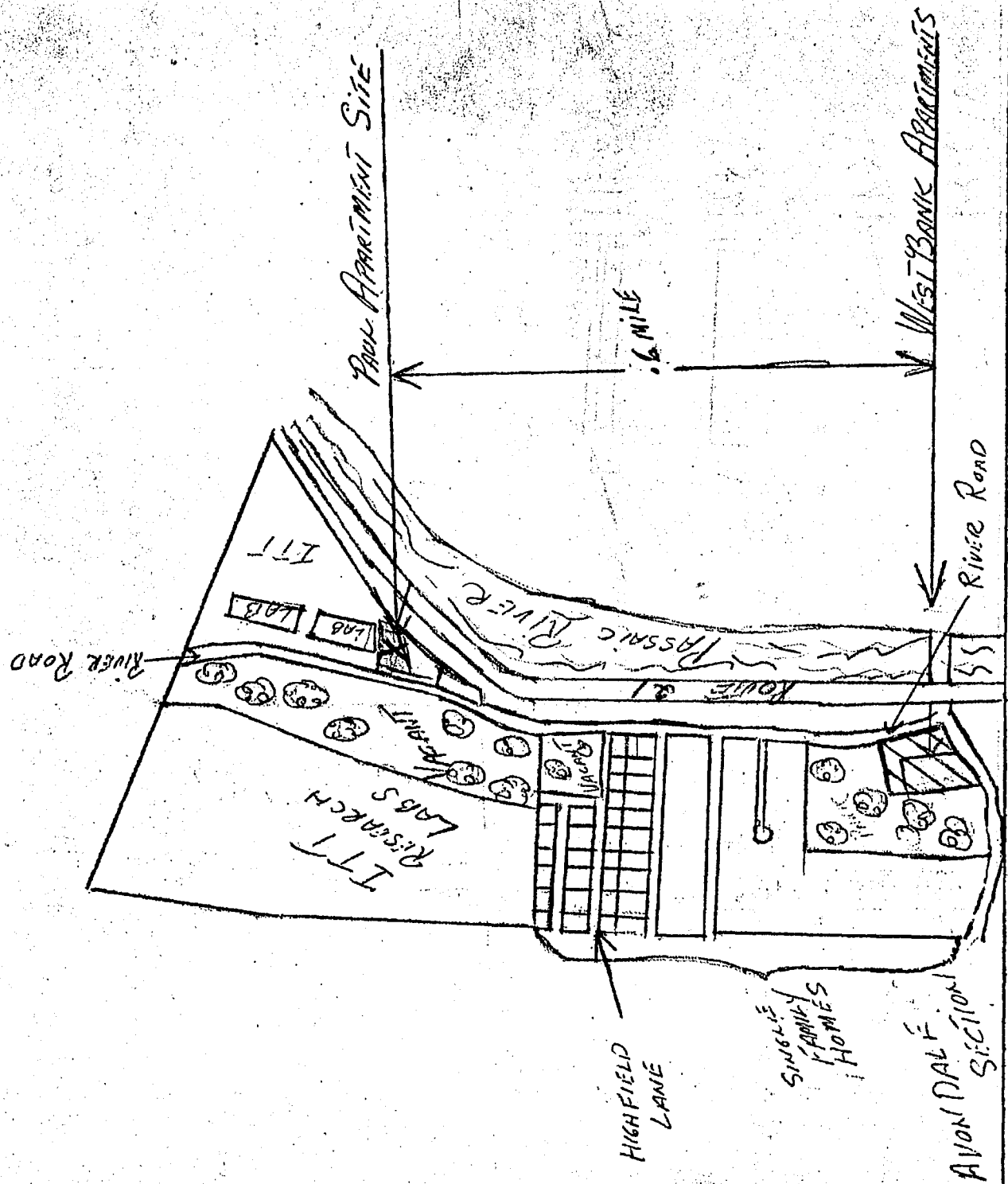
THE RIVER ROAD APARTMENT PROPOSAL

The major apartment house controversy for Nutleyites during 1965 started on August 12 when the Sun carried an article on page one on a new apartment proposal consisting of 126 units. The summer of 1965 was to have a third major land use controversy. Again, it was one that had long roots of conflict in the town. A developer had submitted plans to build the "largest apartment complex yet for Nutley."¹

What came as a surprise to many citizens, including public officials, was that the proposed site was on land owned by Federal Laboratories (ITT) zoned for industrial use. ITT owned extensive acreage in the Northeast section of town, occupied by research laboratories and electronic factories which were scattered among the well-landscaped grounds of what had been up to World War II the Nutley Country Club and golf course.² No announcement had been made of the sale of any of the much sought-after acreage owned by ITT. In fact, ITT, which prides itself on its good gem-

¹The Nutley Sun, August 12, 1965, p. 1 and August 19, 1965, p. 1.

²See Maps 4 and 5 for location of apartment site and figures 9 and 10.



Map 4. Location of Paul Apartment Site

TOWN OF NUTLEY, N.J. ZONE USE

Map 5

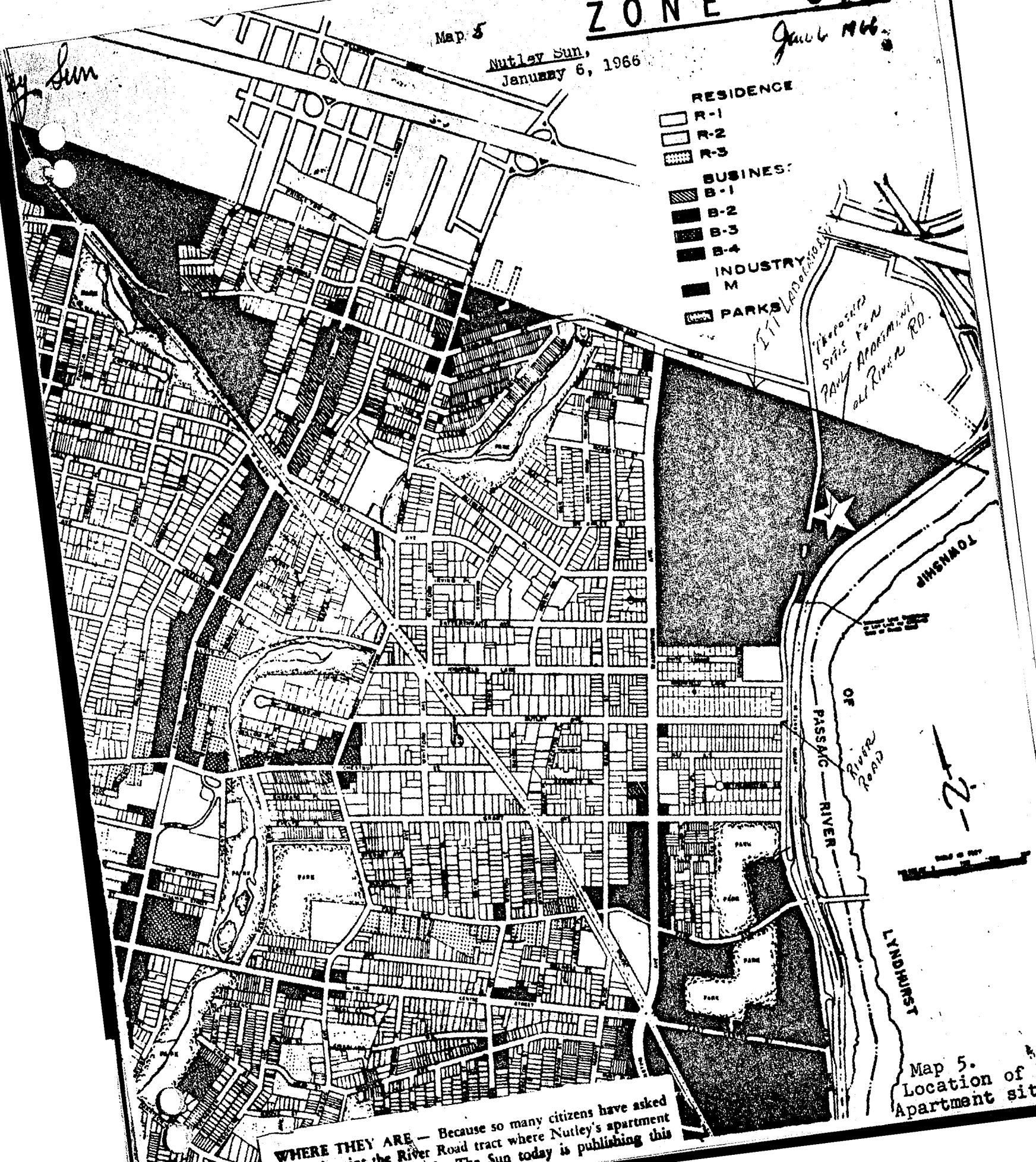
Nutley Sun,
January 6, 1966

Jan 6 1966

- RESIDENCE
- R-1
- R-2
- R-3
- BUSINESS
- B-1
- B-2
- B-3
- B-4
- INDUSTRY
- M
- PARKS

The Sun

Proposed
Site for
Paul Apartments
off River Rd.



WHERE THEY ARE — Because so many citizens have asked us to pinpoint the River Road tract where Nutley's apartment proposals are being made, The Sun today is publishing this

Map 5.
Location of Paul
Apartment site



Fig. 9 Highfield Lane



Fig. 10 River Road. The site for the Paul Apartments is located in the upper right hand corner.

munity relations, "did not even inform the Mayor nor the Planning Board."¹ The site sold was composed of 3.5 acres and was physically isolated from the town by ITT, River Road and Route 21. It was flat vacant land adjacent to one of the electronic factories.

The opportunities with land zoned for industrial use are many. Under cumulative zoning, what is permitted in a higher zoned area is permitted in a zone classified below. Thus, just about anything could be built in an M-zoned area -- industrial plants, one family homes, apartments, etc.² However, builders always had to seek a variance, particularly on density, in order to maximize profits by placing as many units on the land as possible. Most builders see the Nutley density requirement as ridiculously low, 22 apartments per acre.

The site had much to recommend it for an apartment project. The fact that it was not adjacent to a single family home neighborhood would mean less intense opposition than that normally expected. The industrial zoning gave the builder the legal right to build either apartments, a factory or one family homes. He had a rare variety of options.

Nevertheless opposition was expected in view of the acute sensitivity Nutleyites were developing over the years to increased

¹Interview, William Carew, Chairman, Nutley Planning Board, July 1, 1967.

²See Appendix B for a description of what is permitted in each area.

apartment construction. The closest residences were on Highfield Land and residents from this street would probably oppose.¹ Statements such as those uttered in 1958 on the zoning ordinance that 'Nutley is at another of these traditional turning points and at Thursday's town meeting the Board of Commissioners faces the need of deciding whether Nutley will adhere to the tradition of single detached homes or become an apartment town "² appeared. Clearly the 1958 Ordinance provided no clear-cut decision; perhaps the strongest piece of control was the density requirement, but its application by the Zoning Board in granting exceptions to the required 22 units rendered this control stipulation almost useless.

The site was not far from the West Bank Apartments on River Road. These apartments had generated much annoyance to the residents after they were completed. In 1962 the Board granted a variance to construct the now infamous West Bank Apartments. This site was also isolated from the nearby settled areas, but was closest to the Italian area (.3 mile) called the Avondale section which formed a significant part of Commissioner Orechio's support. Orechio, who always tries to protect the Avondale section, stated that none of his supporters opposed the apartments. In fact he was the rental agent for the project. Throughout the Italian areas of

¹See Map 4.

²The Nutley Sun, July 10, 1958, p. 4.

town one can see, interspersed among the 1-2 family homes, garden apartments. There appears to be little concern or opposition by the Italian community to apartment construction. Although there was public opposition at the hearing by six speakers, Orechio referred to them as "probably political opponents of mine." In fact he couldn't remember any opposition at all.¹

The Zoning Board voted unanimously 5-0 to grant the variance for the West Bank Apartments. The Board believed that the "building would put the land to its best possible use."² Joseph Addio, Board Chairman, declared that the Board believed that if the variance was denied, then "a hamburger or hot dog stand would be constructed on the site."³ In his view, the apartment house "is certainly more desirable and of greater benefit to the town than a hamburger stand."⁴ At that time, the Board had considered a mixed development containing both commercial stores and apartments, but decided on an apartment house only.

The West Bank Apartments and the proposed Paul Apartments were about .6 mile apart on River Road, which contained a great deal of the vacant land still left in Nutley. Residents of Highfield Lane feared that soon all of River Road would be filled with

¹Interview with Carl Orechio, August 22, 1967.

²The Nutley Sun, February 21, 1963, p. 4.

³Ibid.

⁴Ibid.

apartments. First West Bank, now Green View Hills, Inc., a North Bergen, New Jersey, developer was proposing the largest apartment project in Nutley on a site less than a mile from the West Bank apartments. A spokesman for Green View Hills stressed the fact that "most of the apartments would have one bedroom which would not present a hardship on the school system."¹

The proposal was scheduled to come before the Zoning Board on August 16, 1965, at 7:30 p.m., Monday night, only four days after the announcement in the Nutley Sun. Since the Sun came out on Thursday, this meant opponents had only the weekend to organize and plan strategy.

A variance was needed because the proposed project:

1. did not meet the minimum footage on front and rear setbacks and sidewalks.
2. 126 units would mean a density of 34 units per acre -- 12 above the maximum.

The Variance Request Is Withdrawn and Resubmitted

Strangely, before the Zoning Board could consider the request, the application was withdrawn. Addio said that "he had no further information concerning the issue."²

¹Ibid., August 12, 1965, p. 1.

²The Nutley Sun, August 19, 1965, p. 1.

Apparently no one seemed to know who owned the property and who withdrew the application. The Sun reporter found that tax records indicated that this River Road property was in the name of ITT Federal Laboratories. However, a check with the ITT public relations officer revealed that the property was sold six months ago to Thomas D'Ambola of Nutley, and Gabriel De Rose of Montclair. D'Ambola is listed in the New Jersey industrial index as an electrical contractor in Nutley. He is also active in town social clubs such as the Amvets and Elks. One knowledgeable public official who is also in real estate said that D'Ambola and De Rosa were simply "representing a combination of business interests in town" including such business notables as Babata, Viola Brothers, Samara, etc.¹

Both De Rosa and D'Ambola stated that they had already sold the property to a new owner. D'Ambola added that "... the party we sold the property to had already sold the property to a new owner."² He refused to say who the new owner was. The Sun reporter failed to contact the Hackensack, New Jersey, lawyer, Joseph Toscano, who handled the deed transaction, since the latter was on vacation. Further checking was unrewarding since both Gerard Biondi, the Zoning Board secretary and Ernest Piro, the Zoning officer, were also on vacation.

¹Unnamed source.

²The Nutley Sun, August 19, 1965, p. 1.

When Addio announced on the Monday night Board meeting that the application for the variance request had been withdrawn, many irate citizens, mostly from Highfield Lane, left the hearing room.

The confusion on this real estate transaction was not unusual. A choice piece of property such as this will, in many cases, pass through several parties prior to ownership by the actual builder. In this instance the builder who would finally pick up the option to purchase for development was David Paul. Paul referred to the Green View Hills firm as realtors "who were land speculators. I bought the land from them. They usually sell a package -- the land and a variance for building. I usually buy a half package, just the land. Every time we build I go before a Zoning Board and get the variance. In fact we have never bought a complete package."¹ He is willing then to purchase land which may not be exactly zoned for his building purposes and then takes his chances before a local Zoning Board. Probably, a purchase from a real estate investor, who had previously secured a variance, say for apartment house construction, would cost far more in any sale to a builder.

David Paul, of Paul Properties, Inc., a New York family firm which builds and manages apartment projects throughout the New York City region, particularly New Jersey, was to be the developer who would take the variance request before the Zoning Board.

¹Interview with David Paul, New York-New Jersey builder, July 16, 1967.

for an ultimate decision.

Thus a new application for a new variance was submitted by Paul Properties, the successors of Green View Hills. The plans for the new apartment were of a design never seen before in this area -- twin circular towers of stories were the outstanding features. It was a first for Nutley -- "high rise apartments." Four days before the hearing, the Sun carried an article on the new plans which featured an artist's sketch of the apartments on page one. The variance request was scheduled to be heard at a public hearing on September 20, 1965. This was the usual procedure after the Zoning Officer, Ernest Piro, had found the submitted plans to violate the zoning ordinance. The apartment was to be five stories, one above the legal maximum. As expected, the request for a building permit was denied and the appellant then took his appeal for a variance to the Zoning Board of Adjustment.

The Participants

The major participants in the coming hearing were the five members of the Zoning Board, David Paul, the builder, and Samuel Girgus, the leading opponent representing the neighbors at Highfield Lane, the nearest residential street to the project.

Of the major participants, the Zoning Board was and still is composed of Joseph Addio, the Chairman, Gerald Biondi, Armen Maurillo, John Gorman, and John Rooney. The Board, like

other governing bodies of Nutley, has remarkable continuity and stability. Addio and Biondi have been on the Board for over fifteen years, although each member must have his appointment reconfirmed by the Commissioners every three years. Addio pointed out that members are not always renominated. However, he could not name anyone who was denied renomination.

Joseph Addio is considered by some as the strongest personality on the Board. He was appointed to the Board by Commissioner Jernick, who was Mayor at that time, in 1948. Jernick lived several houses away from Addio at that time. Addio came into public view when he spoke out at a Zoning Board hearing against a contractor's appeal for a variance on a house that was being constructed on an odd-shaped piece of property. The below minimum setback requested would have affected both Jernick's and Addio's properties. Jernick felt that he couldn't speak out against the variance because of his public position. Apparently he was impressed with Addio's testimony before the Board and shortly thereafter he asked Addio if he would like to serve on the Board. "I asked for time to think it over and after realizing what was involved time-wise decided to accept."¹

Four years later in 1948 he was appointed Chairman. Recently he retired from his business machine sales operation

¹Interview, Addio.

which he directed in nearby Newark. Addio is articulate and loves to talk at length during hearings on Zoning Law details, statistics on density, square footage, etc. He attended Cornell for two years and then N.Y.U., finally leaving college because of financial trouble.

His main principle in deciding cases, is, in his words, "the best use of the land." He feels strongly that "the owner has a right to do what he wants with his property as long as it is an improvement."¹

Addio's position on apartments is a positive one. Apartments upgrade the land and the surrounding properties. Located between the business area and the single family homes they serve as a buffer zone. He feels that apartments are also needed to prevent sharp rise in taxes to pay increasing school costs. "Do you realize it costs over \$600 a year to educate one child?" Thus, he argues that one family homes with a child consume more than they give in taxes, while apartments with one bedroom show a smaller percentage of children.

Alfred Crockett, Vice Chairman of the Planning Board, sees Addio as the most influential force among the five zoners. "He carries the others along with him." Crockett, like other members of the Planning Board, is highly upset over the decisions

¹Ibid.

of the Zoning Board.

Gerard C. Biondi is one of the more puzzling appointments to the Board. He is one of the largest builders in the Nutley area, and is president of a third generation building firm. There is the question of conflict of interest when one of the largest builders participates in decisions which may have either a direct or indirect relationship to his own personal business ventures. Since the thirties Biondi has been a prime actor in many Nutley real estate transactions such as building one family homes, garden apartments, and buying and selling older homes and properties. Reaping the rewards of a building boon in the late thirties he is reputed to have made a large fortune. It is reasonable to assume that his services on the Zoning Board to which he was appointed in 1955 have enabled him to acquire general and particular information on town real estate. For example, several years ago, he started to build an apartment on an irregularly shaped lot, discovered it was in violation of the zoning ordinance and, consequently, sold it to an out-of-town builder who ran into countless difficulties with the Zoning officer.¹ In 1957 he requested a variance from the Zoning Board in order to erect a garden apartment of 34 units costing \$250,000.² Previously, he had purchased the land from the town at public auction for \$25,000.

He has also played a role in policy formulation. While

¹The Nutley Sun, April 12, 1962, p. 1.

²Ibid., Dec. 12, 1957 and Dec. 31, 1957.

on the Planning Board (he is the only official to have served on both Planning and Zoning Boards) he participated in drawing up the apartment report referred to in the previous chapter.

Why he has remained on both boards for over ten years is another unanswered question. He was appointed to the Planning Board in 1953 by Commissioner John Lucy who admitted in 1965 that he was upset by Biondi serving on two boards. At that time Lucy refused to reappoint him to the Zoning Board unless he resigned from one of the boards. Presented with such an option after all these years Biondi decided to remain on the Zoning Board. Legally one could serve on both boards.

The conflict of interest question never became visible until 1961 when the Sun printed an account, without comment, which noted that an irate resident had written a letter to the Board of Commissioners which read in part that Biondi is:

a builder who is in the position of passing on variance requests and then securing the construction jobs which he might approve as a member of the Board ...¹

Addio said that he could "tell just by listening to the letter being read (to the town Commissioners) that the statements weren't true."² He had found Biondi "to be an honorable and spirited member of the Board."³ The criticisms he felt were based on inaccuracies. No

¹Ibid., September 2, 1961, p. 17.

²Ibid.

³The Nutley Sun, July 9, 1964, p. 13.

further criticism was heard until July, 1964. In a petition to the Commissioners, thirty home owners requested a review of town zoning provisions which permitted large plots of land to be divided up into smaller plots; and the sale of homes to land speculators. The petitioners then raised the question of Biondi serving on both boards. Mayor Chenoweth replied that the law permitted such dual appointments. Even protectionist Vice Chairman Carew felt that this was all right since Biondi "provided a good means of coordination between the two boards."¹

A short time later the Sun printed a partially verbatim description of a Planning Board hearing during which Biondi sat in on a discussion on a subdivision request in which he had an interest.² It was right after this that Lucy asked Biondi to step down from one of the two Boards. Why the Sun printed this account after all those years remains unexplained unless, as one source indicated, there was, at that time, conflict between Orechio and Biondi.

Nevertheless, what is significant here is that no public criticism occurred in the Sun until after 12 years of activity on both Boards. No criticism has been printed since. Also, the paper has never criticized Maurillo, the other builder on the Zoning Board. Never was the conflict of interest question regarding these two

¹Interview, Carew.

²The Nutley Sun, July 30, 1964, p. 6.

members ever raised by the Commissioners themselves at any public meeting.

John Gorman, the third member of the Zoning Board, was nominated in 1962 by Commissioner Jernick. Gorman, a third generation Nutleyite, earns his living as a Dodge auto salesman in Montclair, New Jersey. He is a long-time member of the Elks, in fact serving as President several years ago. It is through his Elk activities that he became a close friend of Jernick, who is a "Grand Exalted Ruler" and a past president also. Over the years they have worked together on Elk activities and gone to Elk conventions together. The Elks Club, located diagonally across from Town Hall, counts many of the town officials among its members.

Gorman sees himself as one who sympathizes with the small home owners, the "guy who wants to connect the front porch to the living room and wants to enlarge the entranceway or knock down a wall."¹ During hearings he directs his concern on how the building is going to affect the nearby homes. "Will it detract from the surrounding homes?" Thus landscaping, aesthetic design, proper screening from the neighbors, good off-street parking are his major interests. "Each member of the Board specializes in one aspect of the proposed construction."² He indicated that Maurillo and Biondi,

¹Interview, John Gorman, Member, Nutley Zoning Board, July 15, 1967.

²Ibid.

since they are builders, are mainly concerned with type of construction -- materials used, etc. Rooney, who sat on the Zoning Board of Newark, is usually concerned with the effect on county roads, sewer lines, other municipalities.

Gorman had no experience nor interest in Nutley government until Commissioner Jernick asked him if he wanted to serve. He indicated that it was a compliment to himself, "a sort of vote of confidence," and was pleased to be asked. He felt that many decisions on the Board's part require a lot of care since "you always hurt somebody no matter what you do."¹

Like Biondi, Armen Maurillo is deeply involved in Nutley construction and real estate. He is President of Maurillo Brothers, a lumber business located at the southern end of Franklin Avenue.² The Maurillo family also runs a junk yard. He appears to be less well known than the other members. After he lost a zoning case in 1958 on an extension to his lumber yard, he turned to the courts which overruled both the Zoning Board and the Board of Commissioners. The Court found the town's refusal to permit Maurillo to construct a small wooden office building for his lumber company a discriminatory action. Judge Colie ruled the town Commission acted in haste in banning lumber yards from Franklin Avenue.³

¹Ibid.

²Industrial Buyers Index, Northern New Jersey (Jersey City, N.J.: Directory Publishing Corp., 1967)

³The Nutley Sun, July 2, 1958, p. 18.

It was after this rejection by the Zoning Board that Maurillo decided to get on the Board himself. This he finally did.¹ The question of conflict of interest has been raised about Biondi and Maurillo, but not answered. Why does the community permit two zoning board members to decide on matters where they may have a direct or indirect concern? Commissioner Lucy stated he was unhappy about both Biondi and Maurillo. "They shouldn't be serving on any boards."² One town official, knowledgeable about Nutley real estate, thought that if anyone is open to criticism it "is Maurillo. He owns considerable property in Nutley."³

John B. Rooney, a retired Newark insuranceman, had worked on the Zoning Board in Newark. He also served there as a Director of a Savings and Loan Association. He was the only one of the Board members who lived close to the proposed building site. A Highfield Lane resident, it was realistic to assume that he would be under pressure from his neighbors.

A graduate of Columbia Law School, David Paul had considerable experience before zoning boards. He is now the main force behind Paul Properties, a family firm specializing in apartment construction and management. During 1957 the firm had over \$2,000,000 in construction underway at once.

¹How this was done remains a mystery.

²Interview, Lucy.

³Interview, unidentified source.

Before appearing in Nutley, Paul had directed several large apartment projects in nearby Clifton. It was in Clifton that he helped put up the first high rise apartments in the area (14 stories).¹

Paul is probably one of the most articulate and knowledgeable builders in the business. His knowledge of zoning laws comes from law school and his own research and experience would almost qualify him as an expert on the topic. Usually he argues his own appeal, dispensing with an attorney.

Samuel Girgus, of 63 Highfield Lane, was to be one of the main spokesmen for the Highfield Lane residents. An ITT engineer, Girgus traveled considerably but was nevertheless able to provide some leadership to the opposing forces.

The Variance Request is Resubmitted

Thus, David Paul Properties submitted a new, architecturally different project that contained 210 units, 84 more units than the first plan.² The Sun, in announcing the new plans on September 16, discussed the high density rate for the new apartments. Two hundred one units meant about 52 units per acre -- 30 above the maximum. The Sun noted that "Zoning Board members set precedent when they approved 108 families for 1 1/2 acres where the

¹See figure 8, p. 181.

²The Nutley Sun, September 16, 1965, p. 1.

West Bank Apartments now stand on River Road."

The September 20th Hearing¹

On September 20 the Zoning Board held public hearings prior to voting on the apartment variance. Like all hearings of the Board, the meeting was held on Monday night in the large public meeting room of the Commissioners. Chairman Addio swore in the first witness, Attorney Saul Cohen of Werkman, Saffron, and Cohen, Esq., Clifton, New Jersey, who represented the appellant, Paul Properties.²

Cohen argued that this building "will preserve the openness and feeling of space." It will "provide the town with tax ratables. This type of luxury housing appeals to high-paid executives." Cohen contended that the variance for a high rise, high density apartment was desirable in this area because:

1. the plot was cut off from industrial development.
2. it would be a hardship for the owners to build anything else.
3. the apartment would make an attractive setting for the area.

¹Unless otherwise noted all quotations on the September 20, 1965 hearing are from the official minutes of the Zoning Board, files of the town clerk.

²Cohen has over the years appeared many times before the Nutley Zoning Board, almost always representing builders.

4. the plot is of such an unusual size that an apartment is the only sound use.

The ample resources of money and expert advisors utilized by the builders is impressive here. In Paul's presentation for a variance, he was assisted by an experienced lawyer and architect. After his opening statements Cohen had Mr. Henry Iggena, an architect from Butler, New Jersey, sworn in. He testified that "we have 300 parking units and have supplied these without sacrificing the open park-like atmosphere." Cohen closed as follows:

It will be worthwhile to this community and is designed with taste and skill for the purpose of bringing in housing that will attract executives. If there ever was a hardship, we have it here. The shape of the lot makes it unusable for anything but small manufacturing.

David Paul then appeared before the witness lectern and was sworn in.

Paul: There is one building like this one. (near Philadelphia.) This is the first apartment of its kind in the East.

Addio: It is quite obvious you haven't an economic hardship as to what point you should stop building. You have arrived at five stories, did you consider four at any time?

Paul: Because of the economics here the Company did not wish to build garden-type apartments and we thought on this site it would pay to have more expensive apartments. If we had requested two, three, or even four floors, it would result in a garden apartment, but when you get five stories, you get into the high risers, and only they can call for more expensive rentals.

Addio: Then you could not economically build a four-story apartment and have it profitable to you? Because of this you request a 200 unit to make it economically sound to you? (Addio's coaching is not unusual. For example, at a meeting in June, 1967, Addio put an attorney's argument for a variance into a quite different summary which greatly simplified the attorney's case so that he wouldn't even have to appear before the Board. On returning to his seat, the attorney still didn't understand Addio's point. Goldberg, legal counsel for the Board, replied, "He was trying to help you." "Oh?")¹

Paul: Yes.

The philosophy of the Board is to grant a variance when the appellant can prove economic hardship, even though the zoning ordinance does not indicate such criterion. The reasons for a variance listed in the ordinance are that the structure will not result in:

- 1) a use that is not detrimental to the public health, safety, moral or general welfare of the town, (2) a use against the zoning plan, and (3) will not be a public inconvenience for lack of such facilities.²

In applying these standards the Board adds the factor of economic hardship to the property owner if the variance is denied. On this basis alone the Board justifies many of its variance approvals. Thus, Addio's comments above was an assist to Paul in presenting his case.

¹Observed by the author during the June 2, 1967 public hearing before the Board.

²Town of Nutley, Nutley Zoning Ordinance, No. 1468, adopted December 16, 1958, p. 28.

Actually Paul's efforts to prove economic hardship were not very convincing. After all, he could build 80 units without a variance. Would the construction of 80 units instead of 201 result in a poor return on the investment? Would Paul lose money if restricted to the legal limitation? Certainly the more units, the more income, but nevertheless no statistical evidence is ever cited by builders which would show that building within the limits means an economic loss. The Board doesn't seem to press any builder for hard data to justify this contention. Paul would have to show the Board that a denial would result in a economic loss on the property. That is to say that since he was legally committed to purchase the property, a denial of his intended use would hurt financially.

At this point the Board members noted that two building plans of the proposed apartment complex had been submitted by Paul: the one officially submitted to the Board in requesting the Boards review and one submitted to the Board during the hearing. Why this was done is not readily apparent. It may be that the second plan had more landscaping than the first. Suffice to say they were different and Cohen then proceeded to find out which one the Board preferred.

Apparently Cohen was trying to test the Board's reaction to two different designs. One with more landscaping, the other with more parking spaces, etc. Cohen was asking the Board, indirectly,

which one they preferred. "If the Board feels we must make a choice over one plan to another, we will do so."

The plans may also have differed over the amount of land the complex covered. Addio noted that the first plan showed the units as covering 27% of the land site while the ordinance set maximum coverage at 21%.

Addio then suggested that some of the space allocated for cars be used for landscaping.

Addio: The zoning law requires 300 parking spaces -- 1 1/2 spaces for each unit. Very rarely is this full amount used. (Addio then referred to the West Bank Apartments which didn't use all its parking spaces.) You could use this space for landscaping and green area.

The Board then turned to the major question of who holds title to the land and if Paul does, to what extent would denial constitute a financial hardship.

Rooney: You definitely plan to purchase the land and go ahead if approved?

Paul: There has been a contract made with the record title holders, D'Ambola to Green View Homes. We had this contract assigned to us so that the equity ownership is with Paul Properties. Only if Mr. D'Ambola could not convey a clear title to us, we would not take the title.

Rooney: Would there be hardship to you then?

Paul: Yes, the contract is without condition.

Here he was referring to a contract in which he agreed to purchase the land at some defined future date.

An attorney with experience in land transaction voiced serious doubt that Paul Properties was bound legally until a variance request was secured. It would be difficult to assume that a multi-million dollar firm would be in a legal position of acquiring title on property which did not have a variance approval. If the Board decided against the request it would be highly improbable that they would have been legally bound to take title to the property. In no hearings that have been observed by the author had the Board ever asked a builder for any legal document certifying that he would take legal title on a certain date.

Rooney: We had a sad experience, namely, with the other apartment on this road. We gave out a variance, then it was peddled out from one to another and finally it was built. We would not want this to happen again.

Paul: I have been connected with a series of buildings, the closest to Nutley being the Country Club towers in Clifton. I helped finish construction on that. For the past six or eight months I have been working on my own. My family has been in construction for many years, so that I am not really new to the work. We have holdings in Trenton and Pequannock and Rockaway. We will retain ownership indefinitely.

In response to a question on the kind of tenants Paul anticipated, he replied "we would prefer ~~ma~~ married couples -- they are more substantial than single residents."

Cohen then had a representative from C. Mayne Associates sworn in to testify for Paul Properties. This firm served as consultants on planning to the township of Parsippany-Troy Hills,

situated about five miles west of Nutley. He testified that:

Regionally, this area is ideally suited for apartments There would be no special demands made. It would not require extensive police service or extensive sewerage and the garbage disposal would be no problem. When you take all things into consideration, there will be no greater demand on the community facilities.

There is a great need for apartment housing and especially high risers. Vacant land is now at a premium here and the only way you will satisfy the housing needs of the future is with high rise apartments on smaller plots of land.

Addio then asked about the effect on the school system. Paul cited the Clifton Country Club Towers as statistical proof that there are few children in such luxury apartments. "Out of 320 units there are only 18 school children." It is not surprising that statistics on the only nearby high rise apartments in Clifton were prepared for the hearing. After all, Paul himself had managed the building and had kept extensive data on occupancy use for himself.¹

After examining the second plan Addio thought that it was preferable. Paul of course was quite willing to accept either one. If the zoners wanted more landscaping, he was willing to give it to them.

Cohen: There is great logic in that We would go along on that.

Rooney then made a statement objecting to the buildings because of the traffic problem such increased density would bring.

¹Interview, Paul.

After Cohen and Paul were finished Addio then asked for anyone who wished to be heard. Now the opposing forces would present their arguments against the project. The residents of the Highfield Lane area were not organized.

They had not hired a lawyer. In fact, they had only four days to prepare for the Monday night meeting. Some had not read the Sun but were informed of the hearing by their neighbors.¹

Mr. Samuel Girgus (63 Highfield Lane) spoke first:

Girgus: You are thinking of changing the entire town, and you will be doing just that if you accept these high rise apartments

He has claimed hardship but I don't see where he has a hardship.

Girgus then referred to the infamous West Bank Apartments down the road.

Addio: . . . The other apartments (West Bank) had other facts connected with it, that corner also had a gas station, a cattle farm, and a diner located there. Many things could have been permitted there legally . . . This seemed like the least hazard.

Here Addio was justifying the Zoners' approval of the nearby apartments which, as noted earlier, alarmed many residents. Paul Redyke (48 Highfield Lane) then read a statement in which he expressed:

1. Fear of the effect of the additional population on the

¹Interview, Redyke.

surrounding neighborhood.

2. The high cost to the town from the influx of school children. "An apartment project of this dimension would produce 40 to 50 school children which would mean a school cost of approximately \$30,000 to the town."
3. The experience with the West Bank Apartments may be repeated in this project.
4. A plea for the continued industrial use only for this property.¹

Addio said that he was glad Redyke was anxious about his neighborhood. "However, changes do happen and things do not stand still. After all, I got used to buses on my block although my neighbors and I tried to stop it." Addio agreed that a mistake was made with West Bank Apartments. "But these things will happen in the very best of homes."

Mr. W. P. Hess (30 Highfield Lane) asserted that the apartments would mean more school costs and bring in undesirable people to the community, resulting in the "deterioration and erosion of this community." Regarding school costs, he noted that the distance to the nearby elementary school was below the legal limit where bus transportation has to be provided but "it wouldn't be long

¹The Nutley Sun, September 23, 1965, p. 18.

before the School Board would be asking for buses for the apartment children."

Later, the Sun was to write that "residents were not impressed that the \$2,000,000 project would bring in about \$100,000 in tax ratables, but were concerned that children from the apartments would have to walk more than a mile along busy River Road to the Washington School."¹

Hess: ...if we hold back, restraining this erosion, maybe it will go slower, and we will all benefit.

J. Gorman: I contacted Zabriski, Board of Education, and he assured me there is no problem on school transportation -- that all the schools are within walking distance.

Girgus: He says that because they are not his children.

Addio then criticized a letter by Mr. Hess which cited the low taxes from apartments. Addio contended that apartments provide a revenue surplus over the public services provided.

... the return (from apartments) is greater than the expense involved. If you had 25 one-family homes here, each raising 2 1/2 children you would have 60 children and your tax return would come nowhere near the amount invested.

Girgus: On what basis would you reject?

Addio: That he did not project a hardship, financial or otherwise. Here, we have to consider what is the best use of the area. If he puts up a good apartment then it might be the proper thing for the area. ... In every town, you have the

¹Ibid.

teachers' raises and policemen's raises which cannot be denied. Where is a town to go to get the extra revenue, if not from projects such as this?

If you had seen the condition of the land where the other apartments now stand, you would be tickled to death to see what is there now.

Girgus: If you hit me with a chain and then with a 2 by 4, I am supposed to be grateful? Will the final decision rest with you five?

Addio: It can be appealed to the courts. There will be no further meeting here.

Rooney then raised the question that the Highfield Lane residents were not informed of the application.

Girgus: I agree with Mr. Rooney. I only found out last night about this. If my neighbor hadn't told me, I would have known nothing about it. And he only saw it in the Nutley Sun a few days ago.

Paul indicated that although he appreciated the Sun coverage on his project, he would have wished for much less of a story.

The Sun published pictures of the architect's plans. Why? "Brought out too much opposition."¹

Addio: Mr. Paul did what was required. He notified every property owner within 200 feet.

Girgus: There is no one within 200 feet. (He was wrong -- ITT was -- and was notified by the Town Clerk.)

Addio: The law requires every property owner within 200 feet be notified by written letter and those owners living out of town by registered mail. Also publication is made for 2 weeks in the local newspaper. He has complied with these

¹Interview, Paul.

rules, even if he did not go directly to anyone. He was not required to do so.

Girgus: There is the letter of the law and also the spirit of the law. He met only the letter of the law. This is a pretty big enough problem for me to ask you to deny this, as we are changing the complete characteristics of Nutley.

Addio: Let me tell you where your remedy is. Now, if you feel that this town should not have any more apartment houses, put the pressure on the town officials. They in turn will take it to the Planning Board.

Mr. George Rhine, 47 Highfield Lane, Nutley:

Rhine: Did he say he originally planned on 80 units and now has 200?

Addio: No, it was stated the ordinance allowed 80 units, but they could be 2, 3 or even 4 bedroom units, and could be up to 50 feet. He has 159,000 sq. feet and the coverage is 27%.

Hess: Besides my letter, I would like to make a point. He has made statements such as he will provide full time supervision, and that he will never sell the property, either prior or after. What do you expect him to say?

Addio: This is sworn testimony, and that fact is known by the appellant. Further, there could be stipulations in the variance covering any items agreed upon, which would have to be upheld as part of the variance.

Hess: Can't he change his mind?

Addio: Yes. Let me state that a variance is not granted to a man, it is granted to a property. If he holds to his prerogative to sell, he may do so. Here, however, is a man who is putting in two million dollars in a project, and most likely, will want to get his money out of it. I am sure he will run this with the utmost efficiency. The better the apartment, the better off he will be.

(A man from the audience):

I want to ask a question about Church Street. That used to be an R-1 zone. This Board gave permission for that to be changed since apartments went up there. It was an R-1 zone, wasn't it?

Addio: It was an R-1 zone. We don't live through these cases without remembering. I can tell you exactly what happened. The lots were about 80 feet wide -- two of them. The houses on them were tumbling down, actually falling apart. This Board granted a variance to put seven apartments there, by only recommending it to the Board of Commissioners. The town board voted it down. It went to the courts and the apartment went up. Now, I can see nothing wrong in what is there now. It is certainly better than what was there before, a distinct improvement.

The Chairman then ended the hearing and the Board went into closed session to make their decision.

Soon the Board filed out and voted on the variance requests:

Addio	Yes
Maurillo	Yes
Rooney	No
Gorman	No
Biondi	No

Thus, by a 3-2 vote Paul's request for a variance was denied. The vote was a surprise in view of the Board's past performance. The technical reason for denial was that the applicant had failed to prove a hardship since he did not own the land. The Sun hinted that the dissenters were somewhat concerned that approval of this project might result in a string of high rise apartments

stretching along River Road to the Clifton border.

The rejection was unusual in view of the fact that the zoners had consistently favored and approved many apartment unit variances without hesitation. Addio has always contended that they upgrade the use of the land. It was strange that the dissenters did not follow past patterns of decision-making by giving approval to an apartment site that, after all, was physically cut off from the residential heartland of the town.

Would the vote have been different if D'Ambola, a Nutley businessman, had requested the variance? A negative answer could also have been the result for this apartment plan. Possibly a high rise apartment dominating Nutley might increase community-wide hostility to such future ventures. It could activate opposition which heretofore had remained inactive and unorganized.

The day after the rejection, Paul visited the offices of the Nutley Sun. He told Frank Orechio that he had high hopes of getting approval of a soon-to-be-resubmitted apartment plan. If this failed he hinted that he might build a glue factory which he could do under the present classification of land which was industrially zoned.¹ At this point the apartment proposal was far from being permanently blocked.

Another question regarding Paul's proposal was that it

¹The Nutley Sun, September 23, 1965, p. 1.

planned 201 apartment units while the original application was for 126 units. Why did Paul decide on high rise apartments after he secured the option from the original owners -- the Green View Hill Realty Company? Was there some expectation that, based on past performance, the Nutley Board would approve the larger figure?

Round Three: Resubmission

Within weeks after denial of the variance the Sun announced that Paul Properties of New York City would be back before the Zoning Board on November 16. The reporter noted that "many town officials have encouraged the developer to resubmit his plans."¹ An unnamed official told the reporter that "these apartments would bring Nutley \$100,000 in tax ratables every year."²

To be eligible for resubmission, the builder must submit new plans which are substantially different. The town attorney, Robert Citrino, Jr., stated that members of the Zoning Board have the right to determine if the original plans have been changed sufficiently, so that new evidence is being introduced.³ If the identical plan is resubmitted, the applicant must wait for six months before the Board will reconsider its decision.

¹The Nutley Sun, November 11, 1965, p. 1.

²Ibid.

³Ibid.

Biondi told the town paper that he was concerned about the density requirement. "If we want to provide for increased densities, I think such a key issue should involve not only the Zoning Board, but the Planning Board and the Board of Commissioners as well."¹ It was an unusual statement for anyone on the Board to make since the Board had consistently approved density rates far above the legal limit on grounds not related to the zoning law. This was the first time that Biondi had ever made any public comment on his concern for the density limits on apartments. It was a concern that has not been repeated. No other such concern was found in any of the minutes of the Board during the sixties. Biondi added that "if we are to alter Nutley's future course, such a decision should not be left up to the few men serving on the Zoning Board."

On November 15, 1965, eight weeks after the variance rejection, the Zoning Board met to consider Paul's resubmission. After Addio opened the meeting Paul requested a postponement since both his lawyer and architect were absent because of illness. Paul's request for a delay was understandable since the cost for a new submission was about \$2500 because of extensive architectural plans and designs, lawyer's fees, his time and the time of his associates, and the filing fee.² Nevertheless Addio denied the request

¹Ibid., p. 4.

²Interview, Paul.

since it was up to the Board at this hearing to make only a technical determination on the question: "Is there sufficient evidence to justify a rehearing?"¹

An examination of the plans showed no significant difference from the previously rejected plans. The figures listed below compare the two plans.

TABLE 3. DIFFERENCES BETWEEN PAUL APARTMENT PLANS

	<u>Rejected Plans</u>	<u>New Plans</u>
Parking Spaces	300	302
Number of Stories	5	5
Lot Coverage	27%	25%
Apartment Units	201	201
	<u>Types of Apartment Units</u>	
Two Bedroom Units	60	40
Efficiencies	20	5
One Bedroom Units	120	155
Penthouse	1	1
	—	—
Total Units	201	201

The main difference in the new plans was a reduction of the number

¹Minutes, Nutley Board of Adjustment, November 15, 1965, p. 2.

of two bedroom units. "This cuts down the density of population and makes no greater burden on the town because of added population and because of high rents we will not attract the larger family."¹

After noting that the new plans did not comply with density limits, percentage of land coverage requirements and the height of building, Addio asked Paul if he now had a contract for the land, that is, if he was firmly obligated to buy the land on a specified day.

Paul: I never expected to have to talk about this, but I can say I have a contract.... Right now we have an equity ownership, and there is no question that there will be an economic hardship on our part if we are forced to build only 70 or 80 units. The cost of this land to us would not economically pay.

I think our building will rate much higher in terms of tax ratables, the town will realize much more return with a development of this kind.

Addio: You can of course build a building in conformity with zoning ordinances except that it would not be economically possible to your corporation because of the cost of the land. (Italics mine.)

Paul: I will have to get as much as I can out of this land. This property was bought from ITT by two gentlemen that I have never met. One was D'Ambola² and the other De Rosa. A broker by the name of Maser is handling this title transfer.

Rooney: But the property is still registered in the names of D'Ambola and De Rosa?

¹Minutes, p. 9.

²D'Ambola is a Nutley electrical contractor who is a close friend of the Orechio family. Carmen Orechio and D'Ambola were active in the AmVets in Nutley.

Paul: The contract I have is unconditional. Come February, this will change in our name. I don't have all the details, or why they wanted to keep it for six months . . . something to do with capital gain. This is not my business.

My family builds for investment and we certainly are not buying and selling property. We build for investment.

. . . if variances have been pedaled around in this town, we don't know anything about it. (a reference to the River Road apartments which have continued to haunt the Board.) They probably have been, but that is not our concern. We don't want this variance and then turn around and sell it.

Paul then stated that he tried to buy more land from ITT but they told him emphatically there was no more land for sale. "I even had another gentleman call and he was told the same thing."¹

After Paul's testimony Addio and other board members ruled that there was not sufficient evidence to warrant a rehearing. He could appeal in six months from September 20 with these plans or any other plans.

Thus once again Paul has lost out in his bid for approval for the largest apartment complex ever proposed for Nutley. Was the Board finally reversing its liberal apartment policy?

The Apartment House Survey

The Paul project dropped from public visibility while the

¹Interview, Paul.

debate over apartments took on a wider scope. The property would remain in the hands of the Nutley businessmen until the end of the year and through February 1966. On December 16, 1965, associate editor Phil White of the Sun wrote in a special article on apartments that Paul was "only waiting for the calendar to turn before trying again to gain the variances needed to begin work on the 201 unit structure."¹

On December 15, the Board of Commissioners and the Planning Board met in a joint session to consider possible revisions in the 1958 zoning ordinance, particularly on the section regulating multiple dwellings. The special and unusual session was called by the Planning Board which had become more and more dismayed over the liberalism of the Zoning Board in opening up the door to more apartment house construction. Some members of the Zoning Board attended on their own as private citizens. Undoubtedly the Paul proposal was a factor in setting up such a meeting at this time. In announcing the meeting Mayor Harry Chenoweth indicated that the question of apartment house density was a dominant one. "... the matter of apartment house development has many facets for study which involve not only density requirements but whether or not apartment houses are a liability or an asset to our ratables."² The Mayor

¹Philip White, "Will Nutley Become an Apartment Town?" a special report, The Nutley Sun, December 16, 1965, p. 3.

²The Nutley Sun, December 22, 1965, p. 6.

has never agreed with Addio's position that apartments are a tax asset.

The main result of the meeting was a decision to fund a study in order to determine if apartments are a financial asset to the community. The Mayor felt they should await the results of the study before coming to any conclusions concerning the financial benefits of apartments. Thus, the Planners voted 7-0 to fund a survey costing \$826.00. This was a small sum considering the statistical research that was needed and the potential implications of the results for the future development of the community.

The survey was to be carried out by the Passaic Valley Citizens Planning Association. Over the years the PVCPA has carried out many studies for the Planning Board but not always to the complete satisfaction of Commissioners Orechio and Lucy. The study was to be done by Edwin V. Garling who had a masters degree in city planning.

During the fifties they had recommended strong zoning laws to the Planning Board. The zoning ordinance submitted to the Commissioners in 1954 and 1958 reflected their views. At that time Commissioners Orechio and Lucy were unhappy with the PVCPA. This time the goals of both were congruent. Orechio objected to permitting the PVCPA doing the study because he wasn't sure that it is "in the appraising business and can adequately study this problem and give me the necessary information that we desire to intelligently

make a decision as to where Nutley is going apartment-wise."¹ He did not want the anti-apartment forces to gain an "independent study" which could be used to fight for more restrictive laws.

The PVCPA describes itself as "a non-profit organization devoted to the sound development of communities in and around the Passaic Valley area."² It was founded in 1948 by a group of businessmen and industrialists who "recognized that the proper planning ... of the Passaic-Essex-Bergen county area was absolutely essential if the area was to maintain its economic position in competition with other areas."³ The Association is governed by a Board of Directors comprising 48 representatives of the key business firms in the region. There are eight on the staff including three professional planners, two of whom have M. A.'s in planning from Berkley and Columbia.⁴ The Association feels that "citizen groups alone cannot prepare plans without professional assistance ..."⁵

Some of the members of the Association include: Bank of Nutley, the Bank of Passaic and Clifton, Bergen Engineering

¹The Nutley Sun, December 22, 1965, p. 3.

²A brochure, Passaic Valley Citizens Planning Assoc.

³Ibid.

⁴Interview with Mrs. R. Kelly, August 19, 1967, Staff Director, PVCPA, 1128 Main Avenue, Clifton, New Jersey.

⁵Membership list, Passaic Valley Citizens Planning Association, April 1967.

Company, Judge Celentano, Dundee Water Power and Land Company, Garfield Realty Company, Hoffman-LaRoche, ITT Federal Laboratories, Kordys & Puzio, Architects, Kramer Lumber and Supply, Mahony Troast Construction Company, South Bergen News, Unkion Building and Construction Corp., and over one hundred other area firms and individuals.¹

The Association's professional staff had conducted such studies as: a garden apartment study for Bloomingdale, N. J.; a Master plan for Clifton, Rutherford and Passaic; and a community renewals report for Passaic.

The results of one cost revenue study on Clifton, New Jersey, is illustrative of the kind of conclusions that the professional planners not infrequently arrived at:

Industrial uses, commercial uses, high rise apartments and homes costing over \$40,000 are assets to the city as well as the new garden apartment developments. All other uses represent a tax liability to the city because of the existing tax structure in Clifton. In another town, however, where there is very little business and industry even \$25,000 homes with one school child per unit will pay for themselves because of the high tax rate.

The high cost of land in Clifton almost prohibits homes from being built under \$30,000 at this time.²

The dominant value in the PVCPA reports appears to be use which maximize the economic value of the land. This economic

¹Publication list, Ibid.

²Passaic Valley Citizens Planning Assoc., Clifton Master Plan, Report No. 4, A Cost-Revenue Study, Dec. 1965, p. 13.

focus has resulted in the association indirectly aiding the protectionists and the economic notables. Up until the apartment controversies in the mid-sixties the PVCPA had provided assistance to the Planning Board in promoting a somewhat restrictive zoning ordinance. Certainly in order to maximize the economic attractiveness of a community like Nutley an orderly pattern of land use development is needed. The investment potential is large. However the zoning laws cannot be too restrictive by shutting off the potential areas of investment. Thus it was apparent that in lesser, more localized interests of the protectionists, the association would come to different conclusions in applying its economic yardstick. The professional planners were not being inconsistent in helping the Planning Board get its zoning ordinance and the merchants their street and the apartment house builders their variance.

Citizens who spoke out during the joint meeting were, for the great majority, against apartments under any conditions. One person who spoke for their construction was Mrs. William Steele of the League of Women Voters. She spoke on her own cognizance. While she was not completely for apartments she "saw the need for adequate housing for the people already in the town who needed it,"¹ such as newly married couples and retired senior citizens who could not afford or maintain a one family home. Represent-

¹Interview, Mrs. William Steele, August 7, 1967.

ing the League in the Regional Plan Association she had become convinced of the need to plan on a regional, not community, basis. Communities such as Nutley must think in terms of what the housing needs are for the region and not just what is acceptable to the particular community. However, her position on accepting apartments in Nutley for a balanced community with mixed housing was unique among home owners.¹

The objections were numerous. Typical was the comment that apartment dwellers were non-civic-minded and would have a "detrimental effect on the suburban, residential character of the town."²

The Mayor again felt that the "effort should be made to preserve the one family character of the town as best we can."³ Jernick was not so sure of Orechio's contention that apartments bring in more money, thus permitting the tax to be lowered or maintained with no increase. Furthermore he was not aware that the people had been raising violent objections to their taxes. Therefore the need for new ratables was not as pressing as previously stated. Orechio saw apartments as inevitable and the town should determine what type it wants and what sites should be used.

¹Ibid.

²The Herald News, December 18, 1965, p. 17.

³Ibid.

There seemed to be some consensus among the Commissioners that they should be limited and could be a source of additional revenue. Nevertheless some major current questions were not resolved. What kind of apartment should be permitted? Perhaps the survey might help on that question. The thorny question of location has never been resolved to the satisfaction of many home owners. The liberalism of the 1958 zoning law which among other things permitted apartment construction in industrial areas kept some home owners in a state of anxiety as to what would be built near their homes in the future.

Special Report by the Sun

On the very day of the joint Commissioners-Planning Board meeting the Nutley Sun printed a special report on the question of apartments. Although the paper's position was not clearly pro apartment, one thing was apparent and that was the paper's historical record of never opposing their construction. The former Ralph Heinzen always saw them as additional sources of revenue for the town. Editor White was pessimistic about any successful attempt to stop them. "... the past year has heard even the most outspoken critic conclude his remarks by expressing doubt that apartments can be kept from towering above Nutley."¹ He concluded by noting that "the days of 1965 are numbered, and as it seems are the days

¹The Nutley Sun, December 16, 1965, p. 3.

that Nutley can continue to keep out high rise developments."¹ Furthermore, at that moment, several apartment projects were already on drawing boards for various sites in Nutley. Many local officials "are convinced that apartments are the solution to Nutley's need for tax ratables; indeed they hope for more developers to step forward."²

Round Four: A Final Decision

On January 6, 1966 Highfield Lane residents found out in the Sun that Paul Properties would once again file for a variance before the Zoning Board. This time the complex was to consist of 138 apartments instead of 201.

According to formal procedure the building inspector (the zoning officer) Ernie Piro had to first review the developer's plans and then either approve or reject them if they violated the zoning code. He found that, unlike "former applications, this latest one requires a variance for only one reason: violation of the family unit density maximum."³ (Italics mine.) The law permitted only 72 units for the three and one half acre site. Thus Paul was asking for about 17 units above the number permitted per acre. The other major change in this new design was a reduction of height from five

¹Ibid.

²Ibid.

³The Nutley Sun, January 6, 1966, p. 1.

to three stories.

Again the Highfield Lane residents had notification problems. Under town law only those residents who are within 200 feet of a site must be officially notified of a proposed land use change. The Sun was again the only source of information to alert the residents. In its article on the apartments the Sun reporter expected Highfield Lane residents "to attend the January 17 meeting in mass."¹

Paul again visited the Sun's offices and expressed optimism that the garden apartments would this time be approved by the Board. "These new plans have solved the three major obstacles we had before..."² But had he? Biondi had cited the density factor as a major reason for rejection and it was Biondi who cast one of the three negative votes in defeating the apartments in the 3-2 vote of last year.

Another factor was that in the earlier rejection the Board found no economic hardship and this criteria was a major reason for granting a variance of this nature.³ As of January Paul was still not the owner of the property. Thomas D'Ambola and Gabriel DeRosa were still the legal owners. Paul had simply stated that he had signed a contract to purchase the property at some later date. It seems inconceivable that the agreement to buy would have not included an

¹Ibid.

²Ibid.

³Ibid.

escape clause permitting nullification if the zoning board turned down the variance request. Thus, the variance could still be rejected for the same reason.

The Herald News of Passaic, the adjoining community to the north of Nutley, carried an article which presented some other aspects regarding the optimism of Paul concerning probable approval of his request.¹ He admitted that while his plans exceeded by 72% the maximum density permitted by the town code, the Nutley Zoning Board had approved a few years ago a 212% violation in density at the infamous West Bank Apartments located about a mile from his site. He also noted that he could build 72 family homes, all with three bedrooms. "Imagine the school problem which would be created if this were done." In his present plans there were no three bedroom apartments, thus insuring that Nutley's educational costs would not rise because of any additional children from the project.

On January 6 Frank Orechio wrote an unusual editorial which contained a proposal for a "new super-residential zone."² Such a zone would limit the vacant land to single family homes with a minimum of 10,000 square feet. This would upgrade the neighborhood and taxpayers would have assurance that "their immediate neighborhoods will not be convulsively changed." The editorial was

¹The Herald News, January 6, 1966, p. 10.

²The Nutley Sun, January 6, 1966, p. 4.

a thinly veiled attack on Mayor Chenoweth and the Planning Board. Orechio felt that the "time had long since passed when public officials can indulge themselves in the luxury of talking about upgrading our subdivision planning requirements. . . . when public officials, appointive and elective, bandy about the question of whether or not apartments are good for Nutley and where they should be located."¹ This criticism was related to the Feland subdivision issue, i. e., the slowness of the Planners and the Commissioners in giving the subdivision the green light and the general hostility of the Planners to apartment house expansion.

Did this mean that the Sun publisher was anxious about subdivisions and apartment increases? Not necessarily, since the paper had never publicly supported the Planners' proposals for stricter zoning laws and the probability of the Commissioners agreeing with such a proposal was indeed small. Also this recommendation applied only to residential areas. It left the major question of industrially zoned land untouched and this was the major problem demonstrated by Paul's application. Two years later Paul indicated that the proposal was not serious and never was directed against him -- only land already zoned for single family homes.

It soon was clear that Orechio had no such intention of opposing apartments. In fact one week later he came out in an

¹Ibid.

editorial of unusual length most strongly for apartment houses -- particularly Paul's apartments. He observed that they are the best possible use for the land. "On this site apartments are of far superior use than factories."¹ He then indicated that he felt this way all along. Last August the Zoning Board had made a serious mistake. "Monday night it has an opportunity to correct its mistakes. It doesn't often get this chance." Furthermore, since the site was zoned for industrial use, it could be used for bottling plants, warehouses, storage facilities for crude oil and about seventy other obnoxious uses were listed in detail. He incorrectly stated that the proposal gives less population in the apartments than the maximum permitted by law. Paul himself admitted that the new plans exceeded the density ceiling by 72%. The Sun publisher then listed an array of statistics in support of approval. Since now only forty two-bedroom apartments were to be available for adults with families, the number of school children that would be a burden on the community would be far less than could be expected. The array of statistics sounded like similar arguments expounded by Chairman Addio who delights in such figures as how many thousand square feet per unit, density ratios, etc.

¹Ibid., January 13, 1966, p. 4.

The Zoning Board Decides¹

On January 17 Edgar Donohue who was also active in the Hillside street case, represented Paul before the Board, although Paul was a graduate of Columbia law school. Paul did however, do most of the presentation himself.

After a long hearing which repeated many of the comments articulated in previous hearings by both the Highfield Lane residents and David Paul, the Board went into executive session. Finally at 3:30 a.m. a final vote was taken. The decision was by only four members since John Rooney was away on vacation. This was unfortunate for the residents since he had voted against the proposal before

¹All efforts to secure a copy of the Board's minutes for this meeting were unsuccessful. Chairman Addio referred a request for them to the town clerk. The official record on file consisted of one page which indicated only that a meeting had taken place and that the Board voted to adopt the resolution. (See appendix D) A notation on the minutes indicated that a complete copy of the minutes could be obtained from Winard & Winard, public stenographers, in Newark. A call to Winard revealed that if one wished such a copy he must put the request in writing stating time, place, etc. This procedure was necessary because the original minutes would have to be transcribed from shorthand.

Why weren't the minutes in their usual complete form typed out by the Zoning Board stenographer? The town clerk thought that the appellant probably requested a private stenographer in order to have a complete and accurate copy for himself. Thus, he paid for this personal service saving the town the usual steno costs.

A request to David Paul for his copy was quickly turned down since he had only one copy and needed it for his own use, although this request was made 16 months after the hearing. Interviews: Mr. R. Winard, July 19, 1967; Mrs. Florence Rutan, Town Clerk, June 21, July 18, 1967; and David Paul.

and was the only Zoner to live in the Highfield Lane area.¹ Thus, the four decision-makers now deciding had split 2-2, in the previous decision; Biondi and Gorman against, and Addio and Maurillo for the variance.

After the closed session the members filed back into the hearing room and Addio announced that the Board had voted approval by a 3-1 vote, with only Gorman casting a negative vote. The key switch was Biondi who now gave his support for the apartments. He later told the Sun reporter that the reduction of the much discussed density figures accounted for his change of mind.² Perhaps the original Paul proposal of 201 units was far too bold in view of the current controversies on apartments in the town for Biondi to have cast an affirmative vote last August and maintain the historical consistency of the Board.

The 3-1 vote was certainly preferable to a possible 3-2 vote to Chairman Addio who dislikes dissenting minorities in any board decision. "You see if we vote 3-2 in private the two dissenters go along on the public vote. This shows our critics that we are of one mind; it discourages challenges to our decisions in the courts."³

¹Rooney, who took a vacation at the most inopportune time for his fellow neighbors, was the only Nutley official who refused categorically to be interviewed.

²The Nutley Sun, January 20, 1966, p. 5.

³Interview, Addio.

Only Gorman, a car salesmen in Montclair, voted against the variance. His comments and questions during hearings indicates a strong sympathy for the "little guy"¹ the small property owner.

At this final hearing only a small number of the large delegation of residents spoke out against the apartments. The two main dissenters were Samuel Girgus and Morris Resner who was from Brookfield Ave., a different section of Nutley. Again, the residents had no formal organization and no attorney to represent them.

Resner, who was an unusual opponent since he was not from the affected area, prepared a speech which he presented. "Although there were many from Highfield Lane I was the only one who spoke out in addition to Girgus."² He told the Board that he would be willing to pay \$100 more in yearly taxes than have more apartments in the town. Resner, a buyer in a New York department store with several years of education at City College, became active only in this particular case. This was the first time he appeared before a public body. He was fearful that the town would soon look like New York City. "What is happening in Nutley effects me sooner or later."³

After the approval both Resner and Girgus declared that

¹Interview, Gorman.

²Interview with Morris Resner, July 11, 1967.

³Ibid.

they would hire a lawyer to make a legal appeal to the courts. They had forty five days to do so. They never did. "We were told that the cost would be about \$500 and that in the end we would lose anyhow."¹

In getting the variance Paul had to agree to several stipulations in the building plans such as additional space for play areas, provisions for a resident superintendent, caretakers, and landscaping. The Sun noted there were 58 more stipulations than the zoning code permits. Most however, appeared to be standard stipulations that the Board usually requires to help make the decision more acceptable to the residents.

Thus, as with most such requests it was eventually approved. Actual construction did not begin until the spring of 1967, 14 months later (see figure 11).

Paul felt that the West Bank Apartments led to the initial rejection of his 201 unit complex. "No question about it those apartments killed our chances for high rise apartments. It killed it for the rest of us."²

Although the decision took about five and one half months from start to finish Paul considered this a relatively routine process. As a lawyer and builder he had submitted and argued many such

¹Interview with Samuel Girgus, July 14, 1967.

²Interview, Paul.



Fig. 11 The David Paul Apartments
on River Road.

cases before numerous zoning boards and the time span is usually six to eight months. He was far from disappointment at the initial rejection. "That is a high probability in all of these variances."¹

¹Ibid.

Conclusions

The visability of Nutley economic notables is less apparent here than in other cases but nevertheless they participated in and supported the allocation of resources which resulted from the granted variance for this high density apartment complex. It is clear that the ITT vacant land was worth much less to the corporation being vacant and not needed for future expansion plans. The controversy was brought into existence by ITT, one of the two large corporations in the town, and by the intermediate owners DeRosa and D'Ambola, two local businessmen. Moreover, they were reputed to be representing other local businessmen although there is no conclusive evidence to support this.

Nutley businessmen gained substantially from this public decision. It is realistic to assume that the profit from this land transaction for the Nutley notables would have been far less if the apartment variance was not forthcoming. The selling price to Paul was certainly based on the high probability that he would get the necessary variance to construct an above maximum density apartment complex.

The decision to build and to sell the land was one made exclusively by local notables. That is to say that the controlling factors in the necessary decisions were all subject to the influence of individual economic actors or of those who espoused economic

values. Paul could not have gotten the land unless there was a willing seller. He then needed the continued support of local businessmen to carry the agreement to fruition. Throughout the whole process he had to bargain and negotiate with them. The Zoning Board and the local paper gave necessary and highly valuable support. Sun comments were very positive and free of any criticism. It is fairly evident that such support from the only local source of public information was a factor in minimizing opposition and in keeping the affected interests relatively unorganized. To what extent it is difficult to say with any precision. The Zoning Board's action of forcing the builder to negotiate and agree to a less visible complex could be considered in a way as assistance to the builder in achieving his long range objective with a minimum of opposition. The decision was one that would not seem to seriously damage similar future economic goals.

Therefore, the support of local economic and political notables was of prime importance in this case. Even though an outside builder was the developer, local elites were viable actors who utilized their resources for economic stakes.

CHAPTER VIII

AFTERMATH OF PAUL CONTROVERSY

The Apartment House Survey by the Passaic Valley

Citizens Planning Association

Early in March 1966 the survey on apartments was released by the Passaic Valley Citizens Planning Association. It was in December of '65 that the PVCPA was given a contract by the Planning Board to determine whether apartments in Nutley were paying their own way. It was apparent that the argument had taken an economic genre. The answer on apartments was to be construed in economic terms -- tax surplus after public services.

The report had something in it for everyone. The survey found that "apartments ... appear to be an asset according to one method of calculation and a liability according to another method."¹ Most apartments were a liability, including the West Bank Apartments, Nutley's latest apartments. What apartments then were assets? It appears only the Country Club Towers, high rise apartments of 12 and 18 stories. But these apartments were in Clifton,

¹The Passaic Valley Citizens Planning Association, Apartments in Nutley, A Cost-Revenue Analysis (Clifton, N. J.: Passaic Valley Citizens Planning Association, March 1966), p. 23.

not Nutley. Why were they included? According to the report, "because Nutley does not have any high rise apartments."¹ Map No. 6 shows all the apartment sites in the study. The tallest apartments in Nutley contain only five stories; the Country Club Towers contain 12 and 18 stories. Thus, these apartments threw the whole study off. The study was including not only apartments in Nutley but what could be built in Nutley. (Italics mine.) In the future the Planners of PVCPA saw the towers as apartments "which would be a desirable high-rise apartment for Nutley."²

The study used two methods of calculating whether apartments paid more in taxes than services utilized. Table Two of the study showed, in part:

TABLE 4 REVENUE COMPARISONS

	Total Revenue Gain or Loss	
	Method #1	Method #2
\$30,000 Single Family Unit	\$2,626.64	\$2,057.68
	per acre	per acre
West Bank Apartments	928.54	- 3,517.32
Country Club Towers	10,823.70	6,564.80

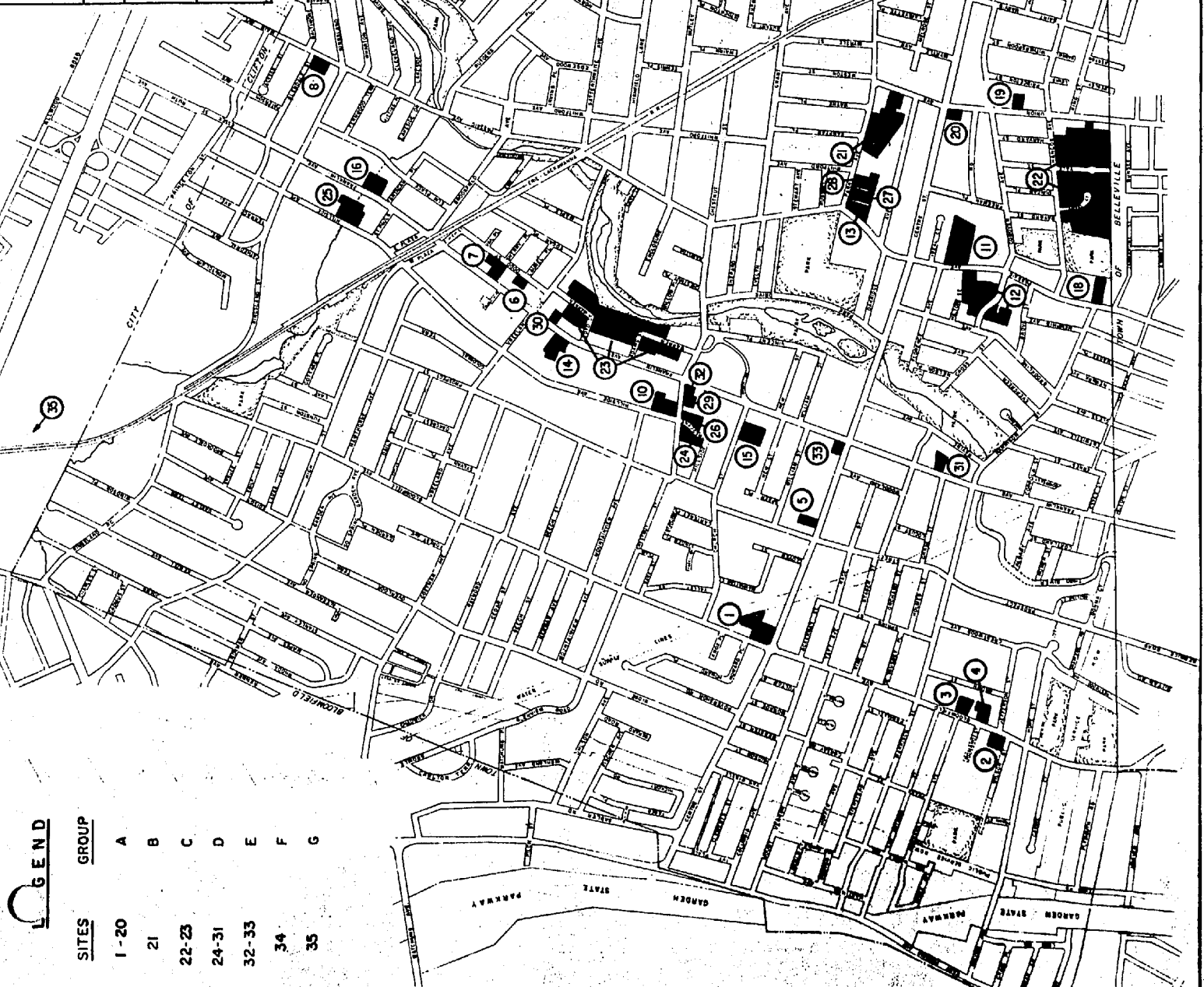
¹Ibid., p. 3. Another factor was that much of this cost data on these high apartments in Clifton probably came from builder David Paul, who hinted this to be the case in an interview. He had been both builder and manager for these apartments and, as such, stated he had acquired a large amount of cost data on their operation. See Figure 8 on p. 179.

²Ibid., p. 6.

TOWN OF NUTLEY
ESSEX COUNTY, NEW JERSEY
APARTMENT COST-REVENUE STUDY
APARTMENT SITES

PREPARED FOR THE TOWN PLANNING BOARD
 BY THE
 PASSAIC VALLEY CITIZENS PLANNING ASSOCIATION, CONSULTANTS

MARCH 1966



LEGEND

SITES	GROUP
1-20	A
21	B
22-23	C
24-31	D
32-33	E
34	F
35	G

FIGURE 1

Several facts emerge from the study. First, almost all apartments, including the newest West Bank ones, are generally a liability in tax terms or at best provide little revenue. "Every group was a liability with the exception of group G Clifton's Country Club Towers."¹ Thus the writer concluded that by looking at either method of computation, method #1 which showed most apartments, 69%, were asset producing buildings, that is to say they paid more in taxes than cost of services provided by the town, or method #2 which showed 31%. Country Club Towers "... located in Nutley would be the greatest asset per unit of any apartment by any method of cost assessment."

Prior to applying these two methods of analyzing apartments the Planners practically admitted that the study was based on educated guesses and personal judgments. They wrote that most estimates on town services are difficult to compute with any degree of exactness because "municipal costs are the most difficult to assess properly."²

The main point is that it is difficult for the professional planners and builders to argue for increasing apartment house construction on the basis that such dwellings will lessen the tax burden by paying far more taxes than their cost of town services. The best figures are only approximations of what could be. For example,

¹Ibid., p. 14.

²Ibid., p. 8.

how accurate can one figure the potential police, fire, snow plowing, library services, park, and welfare costs? What city planner could have projected with any accuracy the cost of police services for handling problems in the West Bank Apartments? The PVCPA planners admitted these particular apartments were a problem but noted that the Nutley Chief of Police said "that the average apartment in Nutley is no more of a problem than other residential use."¹ But clearly the Chief's statement must be qualified to include potential West Bank dwellings. The PVCPA planners admitted that just who benefits most from municipal services has been debated for many years. Outside of school costs and county assessments for roads, hospitals, parks, and sewage, the other projected calculations are based on theory, not on fact.²

The conclusions and evaluations in the report appear to reduce this "independent study" to a polemic for high rise apartments. One major result of the planners reports is to channel the public debate into economic terms exclusively, which of course is not the prime concern to the single family home owners. In fact the insertion of such data into the debate may greatly weaken the residents case since they cannot get access to or compile such data to rebut the economic expertise of the planners.

¹Ibid., p. 19.

²Ibid., p. 8.

The findings of the PVCPA read in part:

If the Town of Nutley wishes to have apartments in the future the most desirable types financially are high rise luxury units and small garden apartments. There is now and there will be a market for high rise apartments in Nutley. Our study shows that luxury high rise apartments are the greatest asset per acre of any residential use now in Nutley. Garden apartments, if properly controlled, and of the more expensive variety (\$45-50 per room rentals) can also be a great asset to Nutley financially.

Single family homes are also an asset in Nutley due to a high tax rate. The increasing value of land forces builders to build more expensive homes on any given site. The new homes are worth \$25,000 or more. Such homes are a financial asset to Nutley according to our cost-revenue information. Abandoning apartments would not hurt Nutley financially according to this study, however.

A. Economic Demands -- The high land values, swelling populations, proximity of Nutley to Newark and New York and access thereto via car, bus and rail transit dictates that apartments will continue to come into Nutley. It is our feeling that Nutley should prepare for these apartments rather than try to restrict their growth. (Italics mine.) Even if a majority of the Town wishes to keep apartments out of Nutley they may still filter in. It is unrealistic to think otherwise, unless the Board of Commissioners, Planning Board and Board of Adjustment all feel the same on this subject and wish to keep apartments out of Nutley.¹

In certain areas of Nutley, primarily around the southern section, apartments would be a very desirable use of the land. They would be desirable to the Town in that they would bolster land values, rid the Town of deteriorating structures which are a tremendous liability to Nutley, financially as well as esthetically, and would improve these areas and provide greater purchasing power which is a direct benefit to existing merchants and future merchants. New business would come into Nutley and they would pay their way without question.² (Italics mine.)

The report was received with high approval by publisher Frank Orechio. In fact he recommended that the PVCPA be given a

¹It is very clear that they do not all feel the same way about "restricting their growth."

²Ibid., pp. 23-24.

'bonus of \$1000 for the \$800 report. The community had more than gotten its money's worth. "It was cheap at any price. In fact a \$1000 bonus to this nonprofit organization would be perfectly proper and in order."¹

The paper, however, gave short coverage to a public meeting held by the Commissioners and Planners to discuss the report. The lead caption of a relatively short article was titled "Apartments Here Generally Are Paying Their Own Way, New Survey Reports."² The article indicated that high rise apartments, located near the Paul apartment sites, were looked upon with favor by the Commissioners.

The Planning Association's report states that high-rise units are the most profitable for Nutley. Some local officials, including Carew, feel high-rise structures have no place in Nutley. The majority of the Board members at Thursday's session, however, appeared inclined to go along with high-rise construction but only if limited to the remote area of town near Route 3 and the Passaic River.³

Thus, the economic report on the future effect of apartments in Nutley was submitted and received with approval by the proponents of such projects. After all, they had received an "objective study" by a nonprofit organization which could be utilized to support future proposals. Nutley Planning Board protectionists such as Bill

¹The Nutley Sun, May 12, 1966, p. 4.

²Ibid., p. 3.

³Ibid.

Carew, Alfred Crockett, and Mayor Chenoweth were not very pleased and, in fact, became more determined to present stricter zoning amendments to the Commissioners in order that apartments could be more restricted and controlled. Their efforts bore fruit in 1967 when the Planning Board submitted a series of zoning amendments to the Board of Commissioners for their approval.

The 1967 Proposed Zoning Amendment

During the summer of 1967 the Planning Board submitted to the Commissioners a number of revised amendments to the Zoning law. The new proposed ordinance had two major significant provisions: to prevent future Feland House subdivisions and apartment construction on land in an industrial zone. Apartments were to be restricted to R-2 and R-3 residential areas. Industrialized zoned areas such as the Paul apartment site would be for industry only. Secondly, an involved formulae was worked out which would restrict the subdividing of larger homes in Nutley. Carew, Crockett, and the Mayor were the leading members of the Board who had worked out the new ordinance over a 22-month period. The ordinance was to be discussed on the 16th of June, 1967 meeting but it was put off until July 18.

Orechio was clearly to be the main opponent to the amendment. He alone had voted against it when the amendment was placed on the Commissioner's calendar for consideration. He said that he would not support it on the grounds it discriminated against apartment

owners who wish to build in industrial areas where they are legally permitted under terms of the present ordinance.¹

The turnout of citizens at the hearing was somewhat small -- surprisingly, since this amendment was one of the most significant pieces of land use control since the 1958 revised zoning law. Why? Many Nutleyites were on vacation during July. Also Glomb and Girgus were out of town on business that night. In addition, there was no announcement in the Sun that the bill was to be considered; just the fine printed legal announcement two weeks previously which apparently no one reads but the town clerk.

Mayor Chenoweth had the bill read by the town clerk and then made some comments on the importance of the legislation. "We are now at the breaking-off point where the town is going on apartments at this time. We are now 72% single family homes, but as the percentage of apartments catches up you come to a breaking-off point -- the town becomes like East Orange or Montclair. Are we to surrender the concept of single family homes?"²

Carew, who was in the audience, was then asked by the Mayor to explain the bill. After going over the details Carew said that in his view "apartments have their place but not the right to change the character of the town." He felt that the town should "not

¹The Herald News, July 19, 1967, p. 18.

²All quotations and comments based on personal observation at the July 18, 1967 meeting of the Board of Commissioners.

be victimized by land speculators who build apartments, sell them and then move into other areas." After such builders leave, the town is left with the tenants who then ask us "how could you permit the builder to put up such a building on that site?" He noted that industry was harder to get than apartment builders. "It is easier to market land for the speculative builder."

Orechio savagely attacked the bill. The exchange between the Mayor and Orechio was one of the sharpest exchanges observed by the author in any Commission meeting. The essence of his argument was that generally he was against restricting apartments. "Garden apartments are much sought after ratables." You can't cut down on the possible uses of the present zoned areas. The land is too valuable. "This ordinance is too restrictive and is not in the best interests of the taxpayers."

Again and again Orechio was pressed by the Mayor to explain in particular just what he objected to. "Can't you be more specific -- you haven't said anything yet -- just you don't like it." Exasperated by the Mayor's persistence he replied, "What do I object to? The complete package is unacceptable to me. Now we have apartments in seven zones -- you want to reduce it to two." Orechio saw no value in restricting apartments from being built in industrial zones. There was nothing wrong with people living on industrially-zoned land.

While Orechio attacked the apartment provision, Lucy attacked both provisions, particularly the one restricting the subdividing of large estates. He objected to such restrictions on owners of large estates who might want to subdivide. "Why should somebody be hurt for the sake of the majority?" Lucy also objected to all the provisions being considered in one package. Why couldn't the ordinance be broken up and voted for separately? "Let's vote on it as several packages. Besides we need more time, after all the Planning Board has worked on it for 8 months -- we have only had it for one month. Let's table it."

The Mayor refused to take the hint and table it, commenting that the Commissioner had this ordinance for at least six weeks, and "we have discussed its provisions over the months and you never objected to it then."

Lucy felt that the Planning Board was too strongly oriented toward one-family homes. "You upgrade and you do the town an injustice. We must conserve the land for ratables. The Planning Board should set aside land for high-rise, as long as builders meet our high standards."

The President of the League of Women Voters then read a short statement to the Commissioners which endorsed the amendment which excluded all apartments from industrially zoned areas. Two other members of the League were present. In the statement the League noted that "mixed areas are the first to decline." It also

noted that apartment dwellers in industrial zones are subjected to excess noise, odors, and traffic. The League statement reflected generally the views of LWV President Mrs. Van Steen and Mrs. Steele. This was the first time since 1958 that the LWV had taken a formal stand on zoning. One or two LWV members had spoken out at public meetings on their own behalf, but that was all.

Thus, Chenoweth, Lucy, and Orechio had stated their positions. Gundersdorf, who had just left a sick bed to attend the meeting, did not participate in the debate. Jernick was attending an Elks convention in Atlantic City. With Orechio and Lucy taking a negative stand prior to the meeting the Mayor could at best expect a 2-2 vote. Nevertheless, the Mayor refused to put the vote off or permit the ordinance to be considered separately. After a short recess the Commissioners voted 2-2, with the Mayor and Gundersdorf voting yes, defeating the ordinance. Half-way through the debate four members of the Zoning Board, including Chairman Addio, slipped in the back of the hearing room as spectators. Thus, all three boards were there.

Why did the Mayor call for a vote when he could see it would be defeated? Some thought to get the Commissioners on record and then bring up the bill again when Jernick was present. Again no one knew which way Jernick would vote. Jernick usually is guided by fiscal considerations and might hesitate to be more restrictive on possible tax ratables. He is attracted to proposals which increase

town revenue and help meet rising costs.

The voting of the Mayor, Lucy and Orechio was no surprise. Here Mayor Chenoweth was articulating the fears of many single family home owners while Lucy's and Orechio's positions were reflected of the interests and values of those economic notables in Nutley who would be adversely affected by the new amendments. The response of the three Commissioners to these two different groups was never more visible and precisely defined than during this debate. Gundersdorff, who had been very ill during 1967, was a pleasant surprise to the protectionists since he usually votes with Lucy. Perhaps his tenure on the Planning Board with the Mayor had influenced him to support the bill.

Although the toughened zoning revisions went down to defeat, the Mayor and Carew plan to resubmit them at a more strategic time. Thus, the tension and conflict between those espousing protectionist values and those espousing economic values continue.

Although three papers (Newark News, Herald News, and Nutley Sun) covered this meeting, the three resulting newspaper items were quite varied in the factual reporting. Strangely, only the two out-of-town papers gave sufficient information on the zoning revisions. In fact, the Sun's coverage on this significant vote was brief and confined to the bottom page of the second section. LWV President, Mrs. Van Steen, who had talked to Sun reporter Philip White after the meeting, commented that "he had to write it the way

Frank Orechio wanted it."¹

¹Interview with Mrs. Van Steen, President, Nutley League of Women Voters, July 21, 1967.

PART III

ANALYSIS AND CONCLUSIONS

CHAPTER IX

GOVERNMENTAL STRUCTURE

The Board of Commissioners

The Commission form of government appears to have provided representation to both of the major contending interests in Nutley's land use decisions. Both economic notables and residents have viable representation within the Commission. Mayor Harry Chenoweth identifies strongly with the residents while Lucy and Orechio bargain for the economic notables. As for the other two commissioners, while Jernick, a fiscal conservative who usually reacts negatively to proposals costing money, will lean toward the Mayor, Gundersdorff generally supports Commissioner Lucy.

This is not to say that the business elites are a highly consistent cohesive group, although in terms of shared interests and objectives they appear so in comparison with the residents. Within all groups there are competing claims. Elites do compete with other groups. The data here does indicate that there is sufficient unity among notables and their representatives to block ordinances not in their interests and to gain approval of many, but not all, of their land use goals.

These two factions reflect the two main dominant social and economic values held by most residents and merchants. The Mayor symbolizes the protective values of the homeowners. Living all his life on Hillside Avenue and with no economic interests in the town he feels very strongly about "preserving the residential nature of the town." On the other hand, Lucy and Orechio are models of what Sidney Willhelm and Walter Firey refer to as those decision-makers possessing an economic value orientation; that is to say "they maintain that the best use of property is realized under conditions that promote the highest investment returns,"¹ Firey in his research on Boston found social values to be predominant in many land use decisions. In Nutley we find both groups have significant power and access to decision-makers.

The Mayoralty is structurally a weak executive since he is "unus inter pares," one among equals and not first among equals. This, even though he is Mayor, because he has received the largest number of popular votes, his vote is only one of five. In most Commission and Planning Board decisions his vote is equal and as such has no veto power. However, in bond issues such as Hillside, his one vote takes on greater weight since a two-thirds vote is necessary; that is, a 4-1 vote is needed and the Mayor just needs one Commissioner's support to block a bond issue.

¹Sidney Willhelm, p. 95.

Each Commissioner has in effect an independent base of power since he is the head of a department of government and is not subject to any supervisory control by a strong Mayor. In Commission meetings they each have one vote in a governing group which contains no strong dominant political personality among its members. The fact that each Commissioner specializes in one or several policy areas (revenue, parks, public works, etc.) enables him to be dominant in those areas since he is the one who handles daily decisional matters and interacts with affected and interested citizens, county and state officials, local suppliers, builders, etc. Perhaps one reason why a kind of political pluralism has developed is the lack of visible major party support in this non-partisan political system. The Commissioners must develop their own supporters among the different groups in the community. There appears to be sufficient pluralism in the town to prevent one group from having complete domination of all office holders.

One could conclude that because of the number of business notables active in making authoritative decisions binding on the community (Orechio, Addio, Rooney, Harris, etc.,) and because of the evidence manifested in the history of zoning laws, that portions of the business community exercise significant influence in Nutley politics. However, we have noted that in most such interests there is some competition such as expressed between Jernick, who represents fiscally conservative business interests, and Orchio, who

argues for town support to business needs in order to increase the profits of local businesses. Also it may be beneficial to have a mayor who reflects resident values yet doesn't have the political skill or support to block the notables completely. A business-oriented mayor is not necessary and might in fact stimulate dissenting residents into a cohesive group, even to the formation of a political reform group. Regardless of the reason, the Commission does contain representatives of both town interests -- residents and notables.

The different power bases of the Commissioners means that no single group or person has sufficient power to bring about a decision without some bargaining, without some public visibility and debate. Thus the outputs generally reflect compromises from both factions. The system is far from a unitary one with a pyramid structure. Unless there is some give-and-take among the five, governing would be more difficult.

Perhaps the Mayor is the only one individual who has the prestige and popularity to give unity to the structure, but his power is checked by the commission form of government, the lack of a veto, and the institutional framework of three separate policy-making and policy-implementing bodies.

The Mayor's personal approach is to persuade, to bargain (Feland & Hillside) and to work within the formal legal structure by patiently pushing revised, stronger zoning laws. The last efforts

have to date been defeated by the Lucy-Orechio coalition. His de jure position on the Planning Board has enabled him to exert some influence on the Planners, particularly with the support of Carew and Crocket.

Mayor Chenoweth's prestige and popularity could probably be converted into significant political power but he is viewed as a "nice guy" who hesitates to use his power. Lucy and others have observed that he hates to hurt any one. A lawyer by training and profession, he is a cautious and deliberate person who seems to realize that he must live and work with those he strongly disagrees with. He has never made the land use question, which he feels very strongly about, an issue in his campaigns; he has never presented a direct challenge to the notables nor tried to mobilize public support against them. The Mayor has significant resources which he has not utilized. For almost two decades he has been the top vote-getter among the Commissioners -- his support among the residents is very strong.

His chief means of exercising influence is through his vote and his appointment power.¹ Until 1966 the Mayor had followed a traditional policy of rotation nominations² which allowed each Commissioner, in turn, to make an appointment to the two boards. He

¹Herbert Kaufman points out that of the six million state and local officials, over 90% are appointed to office.

²This tradition was established prior to his winning office.

didn't have to permit such diffusion of his power, yet he did. The result was many appointees who were economically motivated actors and thus the Mayor's power and influence over land use decisions was significantly limited. The probability is that appointees such as Esposito, Harris, Biondi, Maurillo, and Rooney, to name a few, would not have been the Mayor's choice if he had had an entirely free hand in the appointment process. Thus this strong resource was circumscribed by concessions to the other four Commissioners.¹

It was not until the dust had settled from the land use battles of 1965 that the Mayor had realized that the loss of the appointment power means the loss of a considerable part of his influence over issues which he viewed with a high priority. In 1967 he announced that he would no longer follow this practice, but in light of the high stability in tenure of board members with no frequent turn-overs the Mayor's resumption of his appointment power may be too late. Addio and Biondi, for example, have almost twenty and twelve years respectively on the Zoning Board.

Apparently those who sit on the boards have some influence over who shall be admitted to the group. For example Joseph Cotter, a former Planning Board advisor, observed that some residents who wanted to serve on the Zoning Board are discouraged from doing so by Zoners who tell them that it takes many years of experience

¹Kaufman maintains that rarely do appointing officers have significant power to make their own free choice. State and Local Government, p. 93.

before they can possess the technical competence to sit as a regular member.¹ Few interested citizens, particularly those who earn their living outside the community possess the stamina or have the time to serve a long apprenticeship which may not even result in an appointment.

The whole question of who gets appointed to what board is unclear. It is true that appointees generally have reflected the values of the nominating Commissioner. But why has the Mayor permitted the Zoning Board to be dominated by those espousing business notable values? Another question is why has the Planning Board reflected different values? The whole appointment process requires systematic study. Historically, since its creation the Planning Board has been chaired by protective residents who have attracted members with similar views.

Adequate answers as to why both boards reflect different values are not clear. The history of both boards indicates that the dominant values possessed by members appear to have a long line of continuity. It is conceivable that the members of both groups have some say over whom the commissioners appoint. William Gamson writes that organizations "reduce their control problems ... by attracting as members those who will fit well and will offer

¹Interview with Joseph Cotter, Advisor, Nutley Planning Board, January 14, 1965, March 17, 1966.

few control problems."¹ Selective entry to both boards is in evidence and appointees who are at variance with the ongoing members are indeed not sharply visible. Certainly as appointee to the Zoning Board who possesses protective values would present major control problems to the other members. The sizable economic stakes riding on almost all Zoning Board decisions are the likely incentives for economic actors to either seek membership on this Board or at least to exercise some say over the nominees.

Over the years Commissioner Lucy has been the most consistent representative of the business community and reflects the economic values held by many businessmen. His battles over the street extension to Hillside is one major example. In 1967 he led the debate (with Orechio) against the Mayor's proposed new zoning amendments recommended by the Planning Board. In the late fifties he sponsored a proposal to sell off park land adjacent to the Passaic River for apartments.

Commissioner Gundersdorff, who was proposed by Lucy in 1958 to fill a vacant commission seat resulting from the death of Commissioner Edgar Wright, has generally reflected Lucy's values, although not always. Both democrats, Gundersdorff was Lucy's

¹William Gamson, Power and Discontent, (Homewood, Illinois: The Dorsey Press, 1968), p. 118. He notes that "not all social organizations can control who is let in but many exercise considerable selectivity. The absence of selectivity makes the control problems more severe than those encountered by an organization that can control entry." p. 118.

campaign manager in 1952 and they were "close personal friends."¹ How Lucy brought about Gundersdorff's election is a mystery since the names of ten other candidates, all Republicans, were considered more likely, up until the night that the Commission voted on the replacement.² Gundersdorff and Jernick have served as swing votes between the Mayor and the Lucy-Orechio coalition. Jernick is more likely to oppose Orechio than support the Mayor since he and Orechio have clashed repeatedly over the years on the expenditure of town money for park improvements, town swimming pool, general improvements, etc. Orechio views Jernick as a major contender for Mayor in 1968 if Mayor Chenoweth decides not to run.

The Commission is in a kind of equilibrium each side achieving some victories and suffering some defeats. Each of the two contending forces, economic and protective, are not sufficiently strong to carry out a policy by themselves - each is forced to make concessions to the other - necessitating a bargaining and compromising process: an apartment house is blocked; proposed protective zoning laws are modified to minimize any economic deprivations to affected small owners of property or economic notables; and apartment house projects are modified, as in Paul's case, to accommodate protesting residents.

¹The Herald News, June 4, 1958, p. 19.

²Ibid.

The fragmentation of legal power found in the Commission is furthered in land use policy decisions because of the tri-partite division of authority found among three distinct boards. The different values (economic and protective) found among the Commissioners are further and perhaps more sharply amplified in the Zoning and Planning Board.

The Commissioners are not unduly worried over the fact that the boards handle some of the most controversial issues facing town government. They realize that there are political costs in making these decisions regardless of the final outcome and the extent of accomodation. In most such decisions the alternatives are such that regardless of the outcome there are discontented citizenry. The Commissioners would much prefer to have any discontent channeled away from the elected officials to the citizen boards. If the Commissioners were to make all land use decisions it is very probable that citizen discontent would be wholly directed against the five Commissioners and such a high degree of visible responsibility for odious decisions would be registered at the ballot box. It may even provoke a reform group to try to win office.

The public hearings before the two boards enable the Commissioners to evaluate the intensity and degree of opposition to a proposal and take their positions accordingly if they are forced to render a decision in addition to the appointed boards action. The hearing process for a hotly contested proposal such as the Feland

estate usually takes place over a four to five month time span thus enabling the Commissioners to plan their strategy accordingly.

The Mayor encourages dissident citizens to speak out at public hearings. In the Hillside case he conceivably needed public support if he was to cast the crucial negative vote. Without public support his public position would be weak and the Sun's criticism more damaging to his position, particularly with the business community. Thus he usually wants opinion to crystalize before he takes a public position.

Jernick, on the other hand, prefers to keep in the background by taking no public position until he is forced to go on record. This strategy enables him to receive a minimum of criticism during the life span of the controversy since he is "undecided." Businessmen and those residents who do contact him find him unresponsive and somewhat aloof.

Both the Mayor and Commissioner Jernick do not want to take a negative position until they have to. After all why take a premature no position leaving themselves open to prolonged pressure from the economic notables. The generally lengthy decision-making process means a protective oriented Mayor would be subject to continued pressure from the notables and almost certain criticism from the weekly issues of the Sun. The Mayor would probably agree that "to be negative when one doesn't have to be is bad politics."¹ The fact

¹Banfield, pp. 252-253.

that the paper is hostile to the Mayor means that he is more dependent on articulated resident support for his anti-notable positions. If this is not forthcoming he may be quite right in exercising caution in arriving at a defined public position.

Both factions have representation on the Commission as well as reasonable access to government officials on a frequent basis. The Mayor can be reached by phone, letters, and in chance meetings in the community. Both groups are motivated to act, to expect responsive outcomes from town officials. "When every interest has a real chance of affecting an outcome by asserting itself vigorously, incitement to controversy is strong."¹ The fact that there were sympathetic decision makers such as Carew, Bauer, Mayor Chenoweth, certainly encouraged the residents. They knew there was a chance to block the proposal or at least force tolerable concessions. Perhaps the very fact that the residents always had someone who could be influenced by their views minimized their frustration and, over the long run, reduced their tension, and made the final outcome more acceptable.

The style of politics evident in Nutley can be described as "middle Class." Scholars such as Wood, Dahl, and Greer, refer to this middle class style of politics as typical of almost all suburban political systems. A style which emphasizes discussion, persuasion,

¹Ibid., p. 258.

bargaining, and an external form of self control in dealing with ones protagonist. Many of the participants felt very strongly about limits on the degree and intensity of hostility; after all, they all live in the same community and interact with each other on a personal basis. They all have a stake in keeping personal conflict to a minimum. Even in a heated issue such as Feland the resident leadership tried to keep the dissent within certain limits.

Another factor which provides a common ground for a reasonably good working relationship between the officials is their common working experience and similar value structure. The commissioners are members of large corporations or businessmen. The Mayor, a lawyer, works as a claims adjustor for a Newark insurance company; Jernick and Gundersdorff are both insurancemen for large insurance companies; while Orechio is active both as an insurance agent and real estate broker for the Nutley area. Lucy, however, although he was employed by a leather goods firm in Newark for a decade, has been in politics for most of his adult life. All of them have spent considerable time in the business world. The connection between the world of business and the smaller world of suburban politics is linked in that the actors acquire a certain frame of reference for bargaining and resolving disputes in the business world which is most likely transmitted to their political behavior patterns in settling political issues as a group. Perhaps this explains why the Mayor will not publicly attack the economic notables, but seems to

prefer low visability politics.

The Planning Board

Since its conception the Board has attracted the protectionists members of the community. Of the three boards it has attempted to take the leadership in obtaining tighter policy and administration on land use. It took the Board many years to get the Commissioners to pass the modified 1958 zoning law. In the sixties it tried again and failed to close loopholes in the ordinance.

It is true that in the Feland issue the Board took action against the residents and that some board members such as Anlas, Harris, and Epolito (the latter two town businessmen) did not reflect sympathy for the residents but a majority of the Board did, including the Mayor, Chairman (Bauer) and Vice Chairman (Carew). The Feland subdivision approval was reluctantly given because even the strongest opponents such as Carew realized that under the law of subdivisions and relevent court decisions there was no alternative. Their strategy was delay in the hope that some bargaining could reduce the eight homes to six.

Apparently both the Mayor and Chairman Bauer saw that there was no alternative but eventual approval since on the night of the first public hearing they were absent. Consequently the town attorney conveniently ruled that this made them both ineligible to vote when the Board made their decision. Carew noted that the Mayor

will frequently absent himself when he realizes that he may have to vote for a proposal which he disagrees with. By doing so he escapes the hostility of the residents and also the notables by not being excessively negative in regard to their policy goals.

In the Hillside issue the Board approved it but within the strategy of attaching conditions which would require merchant contributions thus in effect negating the incentive for the street.

The Board's activity in consistently presenting more restrictive zoning laws, its use of the Passaic Valley Citizens Planning Association, and its attempt to get Commission action on new laws indicate that it is not a passive group.

The Board's efforts have been partially blocked due to the distribution of influence among the five Commissioners. In addition, the administration of laws by the Zoning Board has further blocked the planner's goals.

The (Zoning) Board of Adjustment

The Zoning Board, as the Planning Board, is very much involved in making land use policy. They transmit the ordinance to its ultimate application. One attorney declared that:

all zoning decisions are, in a sense, legislative. They entail social choices as well as technical ones. Ideally, an agency making such decisions should apprehend the mores and the purposes of the community and should be qualified both to respond to them and to guide their

development.¹

However, in practice, this ideal is a difficult goal to achieve, particularly if the social and economic goals are conflicting. Although they are appointed officials the members are major policy makers. The Zoners consistent willingness to grant density variances to apartment developers has resulted in reducing the 22 unit limitation to a shambles. The result has been growing tension between the two boards. The tension is not highly visible. Only in extended conversations is there any sign that the Planning Board members are angry at the liberal interpretation by those who administer the laws for which they have fought.

Because of the economic stakes resulting from the Board's decisions, it matters a great deal to the economic notables in the community who will sit as a member. Certainly a board member who would reflect the protective values of the Planners would threaten a severe deprivation of economic rewards. In New Haven Robert Dahl found that "appointments to the Board of Zoning Appeals were among the most coveted political prizes in the city, since the capacity to grant or refuse variances to zoning regulations could be used to induce payoffs of various kinds."²

¹Charles M. Haar (ed.) Law and Land: Anglo-American Planning Practice, (Cambridge: Harvard University Press, 1964), p. 134.

²Dahl, p. 190.

Dahl's implication in the term "payoff" is that zoning control means substantial control over the distribution of the economic stakes resulting from such public-private decisions. That is to say that firms and businesses must bargain and perhaps reciprocate in kind with the economic actors on the board. Suffice to say that Dahl means that zoning board positions can lead to legal and possibly illegal economic stakes for the member.

Supervision over the Board by elected officials is lodged mainly in the appointment process. There are no periodic administrative controls. Once the zoners are appointed they appear to be on their own. The controls here are even less than those in New Haven where Dahl found "... no dominant center of influence over the" zoning board "only the Mayor and the corporation counsel."¹ Even though appointments are made for three years there was no evidence found which indicated a member had trouble in continuing to serve if he so wished. Not even the Planning Board has the institutional autonomy of the Zoners since two Commissioners always sit, ex officio, as Board members. The isolation of the zoners from the electorate and even from the elected office holders (granted to a lesser extent) raises significant questions for democratic theory and practice which are outside the scope of this study.

Other urban scholars have found that many members of

¹Ibid.

zoning boards are in occupations and businesses which are generally effected by the economic decisions which such boards make. For example, on one board there was an architect and an owner of a local lumber company,¹ while another had three plumbers and two electrical contractors considering requests on high rise apartments.² In the light of such examples appointees such as Biondi and Maurillo are not unusual. Both are major builders and land speculators in the community; they have not infrequently received variances from the board.³

The advantages of serving on the board are numerous to such economic actors. Primarily, the knowledge of zoning laws, awareness of personal attitudes of fellow officials of what matters are more likely to receive the stamp of legitimacy, and the experience gained in working with other town officials on land use matters, all enable the land entrepreneur to work successfully through the maze of regulations and procedures. Anyone active in real estate, an agent, or a lawyer "... must negotiate continuously with public officials. Real estate development has a semi-public, semi-private character."⁴ Certainly the knowledge and experience gained by

¹Gladys M. Kammerer et al., Profiles in Town Politics, (Boston: Houghton Mifflin Co., 1963), p. 149.

²Ibid., p. 64.

³The Nutley Sun, April 19, 1958; October 24, 1957; December 31, 1957.

⁴Ibid.

Maurillo and Biondi have eased this process of negotiation with other public officials. One could raise the question as to what their degree of success would be with a board where they were not members.

Addio was observed prompting Maurillo's attorney concerning the best legal strategy to use to get a variance during a public hearing.

The advantages of serving on the Board are obvious.

Those who are not members may be denied access to positions that control resources. "They may be prevented from acquiring sufficient skill and knowledge . . ." ¹ As Carew indicated officials become aware of possible land deals, that is to say they acquire knowledge which permits those who know in time to make good investments in real estate without violating any particular law or trust. "You just become aware of certain possibilities." ² Experience on the Board certainly must have enabled such notables as Maurillo and Biondi to negotiate more easily with their fellow board members concerning their variance requests. After all anyone active in real estate development whether he is a builder, real estate agent, or lawyer must "... negotiate continuously with public officials. Real estate development has a semi-public, semi-private character." ³

It is clear that who sits on a board is of considerable

¹Gamson, p. 119.

²Interview, Carew.

³Martin et al, pp. 240-241.

importance to the kind of discretion rendered in the outputs of decision-making. As noted elsewhere, the nomination process is unclear. Why a protectionist Mayor has permitted such limitations on his nomination power is unclear. This limitation is further demonstrated by the appointment of two alternates to the Zoning Board in 1967. On that occasion, two active real estate notables, James Sposato and John McGrave were appointed without any public criticism, even though McGrave is one of the largest real estate dealers in the county. In announcing the selection Mayor Chenoweth stated that "both men are involved in real estate and I believe their knowledge will prove valuable to the board."¹ Thus the continued dominance of economic values is assured with these two additions. John Gorman is the only member that casts negative votes with any frequency, as he did in the Paul apartment vote. A close friend of Jernick, whom he has known for a long time through association in the Elks, and a car salesman in nearby Montclair, he seems not to have any direct economic interest in community land use decisions.

Many of the citizenry interviewed feel that Nutley officials are honest including the members of the Zoning Board. David Paul admitted that it is one of the few towns where you can't buy a variance. Addio stated that only on two occasions were any personal contacts made with him to fix a variance. One of these was a bribe for fifty

¹The Nutley Sun, July 20, 1967, p. 14.

dollars per member, by a local real estate activist; the other, a personal plea for favorable consideration on a pending case by a former Commissioner who was acting as an attorney for the appellant. There is no reason to doubt the validity of these statements. Perhaps such methods are not necessary and even dangerous. After all, the loopholes in the ordinance and the Board's willingness to apply its own liberal values in exercising discretion on a variance request has reduced the need for such potentially dangerous techniques. Wilhelm observed in his study on the Austin, Texas, Zoning Board, that after four years of research, he found "the influence of sub rosa activity is definitely a minor factor and plays a very small role in most decisions."¹ The conclusion concerning the Nutley Zoning Board, however, was based on limited evidence (Interviews and observations).

The methods and means by which the Board controls the administrative outputs are: (a) the use and reference too of economic statistical data to shape the content of the discussion; (b) little advance warning to effected residents of public hearings; (c) unanimity in Board votes, particularly in controversial cases; (d) the overall cohesion of the Board in dealing with the public; and (e) the inherent lengthy decision making process which tires out many protesting residents.

¹Wilhelm, p. 129.

The five members show more unanimity and cohesion than the Commissioners and the Planners. The original 3-2 vote against the apartments was eventually reversed by a 3-1 vote. Generally the vote is 5-0. This is no accident but is due, in part, to the strong leadership role exercised by Addio.¹

The Board usually votes unanimously, like tonight's 4-0 vote. They don't want anyone in town stirring up trouble with a split vote. So even when they disagree in closed sessions, usually the one or two dissenters go along.²

The Zoners appear to realize that a dissenting minority can keep tensions high and perhaps encourage the residents to continue the fight in court since they have on record dissenting arguments which the court could consider in the adjudicating process.

The apartment case is an example of this unanimity. The final vote, 3-1, occurred due to a switch in one vote, Biondi. The other original negative vote by Rooney was lost because he chose that week in January to go on vacation, even though he was the only member of the Board who lived on Highfield Lane, rather than taking a dissenting position.

One strategy that had high visibility was the argument that apartments are a net asset to the town since they "upgrade the

¹Interview, Crockett.

²Interview, Addio.

use of the property."¹ Addio feels very strongly that economics should determine the ultimate use of the property. He tells protesting residents that they should be more appreciative of what is being proposed since much more offensive structures could be built in the area such as a hot dog stand, glue factory, etc.

The economic benefits of apartments are also stressed by Lucy and Orechio. Are they profitable? Do they pay the town more in taxes than they consume in services? Even in economic terms there is no clear cut answer since in every case the estimated number of school children from apartments is underestimated; and the costs of municipal services is only a rough calculation. These values espoused by Zoners and some Commissioners are based on a different view of the public interest.

Look, it costs \$600 to educate one child. A one family home with children consumes more in services than it gives. Apartments with one bedroom have a small number of children, if any, thus they pay more in taxes. The number of children is very important.²

Using such economic arguments the residents are forced to deal with the issue in these terms which are at odds with their own non-economic values.

¹Ibid., Addio's views coincide with fundamental principles of the classic American theory of land use which is that each parcel of land is to be used for its highest and best use - "that is, for the most intense activity and the most profit that such a location . . . could command." William Wismantel, "A New Vision in Law: The City as an Artifact," Urban Life and Form, Werner Hirsch, (ed.), (New York: Hold, Rinehard and Winston, Inc., 1963), p. 50.

²Interview, Addio.

Why did the zoners reject Paul's application? Actually the five month time span was considered normal by Paul who said that he never had any doubts that the variance would be granted. Apparently the high visibility of this high rise proposal, in the context of the River Road apartments, plus the liberal actions of the zoners, were all factors which conceivably made the board slow down in its pro-economic notable decision policy. Paul was forced to bargain with the board to get his apartments. His original high rise apartment proposal gave the issue a new visibility that the economic notables did not want at this time.

Other Participants

In addition to the role of appointed officials there are advisory officials and local attorney's who are significant political actors.

Charles Goldberg, who was attorney for the Enclosure residents advised them that to prolong the issue by appealing to the courts was a waste of money. During an interview he consistently expressed the view that the owner of a piece of property should have the right to do what he wishes, particularly if the proposed use is to protect his investment. In 1967 Goldberg was appointed as legal advisor to the Zoning Board.

Anlas, the town engineer, showed very little concern for the residents in the Enclosure. During the hearings he was

visibly hostile toward the residents in his questions. His job is municipal engineer and as a voting member on the Planning Board enables him to exercise an influence that is more than advisory. He played an active role in both the Hillside and Feland cases. In Hillside he encouraged the Commissioners to give quick approval so that work could be started prior to the cold weather.

Citrino, town attorney, was a major figure in two of the cases. In his advisory capacity he:

a) wrote an opinion that concluded that the stipulations added to the street and parking lot by the Planners were illegal.

b) displayed a somewhat hostile attitude to protesting residents during hearings before the Board of Commissioners, particularly in answering legal questions raised by dissident citizens.

c) reminded the Commissioners prior to the Feland subdivision decision that they could only rule on the legality of the Planning Board's actions.

His professional and personal stakes are not separate nor independent from other town economic notables. In 1967 he formed a law partnership which included three other local attorney's including Robert Crochelt who represented Samara in the Feland case. As a town lawyer Citrino represents one of the largest banks in Nutley (Nutley Savings and Loan Association). His family owns property in the community and in 1968 requested a variance from

the zoning board to build a four story office and apartment building.¹

Thus, although such actors do not exercise a crucial role in the final decision making process they do exert influence in shaping the debate, both at open and closed official meetings, and are a part of the communications network of the political activists. Their function cannot be overlooked.

¹The Nutley Sun, April 25, 1968, p. 7.

CHAPTER X

THE ECONOMIC STAKES

The analytical concept of the incentive of economic stakes developed by Sayre and Kaufman is highly relevant to Nutley in comprehending the political behavior of the main actors in the pursuit of their respective goals. In understanding the behavior of local activists, one cannot exclude the political and economic prizes they achieve when they resort to political action.

It is hardly possible to delve into all the complex and hidden psychological forces within each individual, but it is within our grasp to identify and categorize the kinds of objectives to which participants address themselves and the types of rewards they actually obtain, whatever obscure and intricate factors may motivate them.¹

This concept of analysis, relating political behavior to objectives and rewards, is highly relevant in formulating generalizations about observed and classified political behavior of local elites.

The economic stakes in Nutley's land use decisions are large enough to attract the attention of many of the community's leading businessmen. The business community must turn to local government for favorable decisions. Most of the major decisions

¹Kaufman, p. 66. See also W. Sayre and H. Kaufman, Governing New York City (New York: Russell Sage Foundation, 1960), Chapter II.

in the land use areas -- the decisions to build, to subdivide, to sell, to alter the use of land and buildings -- are really joint private-public decisions. The private sector cannot pursue a certain course of physical change unless the public sector concurs. Therefore, the decision-makers, their values and attitudes, are of vital importance to the business sector.¹ The control of government policy on land use has stimulated the economic notables to seek political office or to support and nominate those who are sympathetic to their views.

Influence in policy formulation and application means control over the distribution of the economic stakes. Business interests could ignore local government but the costs would be high. A strong 1958 zoning law would have precluded any extensive economic stakes in land use development such as was achieved in the River Road apartment and the Feland subdivision controversies. A failure by businessmen to seek public office on all three governing boards would result in severe economic deprivations. Both Maurillo and Biondi have not remained on the Zoning Board for the past decade because of a particular concern over orderly community growth. Carew admits that "just because you are in office you see so many things from the inside that you would not have seen otherwise You do get information and just because you act on it does not mean

¹ Kaufman, p. 75.

you are dishonest."¹ Thus one advantage of public service is access to information on land use changes.

The economic notables are reasonably assured that the distribution of the economic stakes will not be detrimental to their own interests to any major extent since many of the office holders are either notables themselves or possess values and attitudes which are similar to the notables.

If town officials were not responsive to the business elements, a group which possesses more resources (cohesion, time, skill, etc.) than many others, it is conceivable that the notables would support someone else for office who would do so. One could argue that high discontent over governmental outputs in Nutley by business elites would mean that some officials would not be able to follow a basic principle of politics-survival.

Town contracts for goods and services are significant economic stakes that few businesses are not attracted to. Lucy commented that the Board of Education was run by Protestant elites because this meant control over who was to get what in terms of school contracts for construction, supplies, repairs, fuel, etc. In 1956 Viola and Sons, a Nutley firm, was awarded a five-year contract for town garbage collection costing \$725,000.² Viola was

¹Interview, Carew.

²The Nutley Sun, December 14, 1956, p. 17.

the low bidder for the seventh time and has had the contract since the early twenties. Viola is the father-in-law of Carl Orechio. This is not to imply dishonesty but that participation in the political process may mean information, access to decision-makers and a sympathetic response.

All three cases illustrate the economic outputs from favorable governmental action. The Feland house was purchased at an estimated \$50,000. The land when subdivided into eight sections would be worth \$90,000. The construction of eight \$35,000 homes would easily result in total sales of over \$280,000.¹ The demand for homes in an area such as the Enclosure guarantees a quick sale at almost any reasonable price.

Graphs 1 and 2 illustrate the number and dollar value of apartment and single family homes in Nutley since 1956. The trend is clearly from homes to apartment units as the availability of land decreases. The trend in apartment investment is evident in Table V. Thus as the land in the suburbs becomes scarce, the economic incentives to construct high density apartment units are enormous.

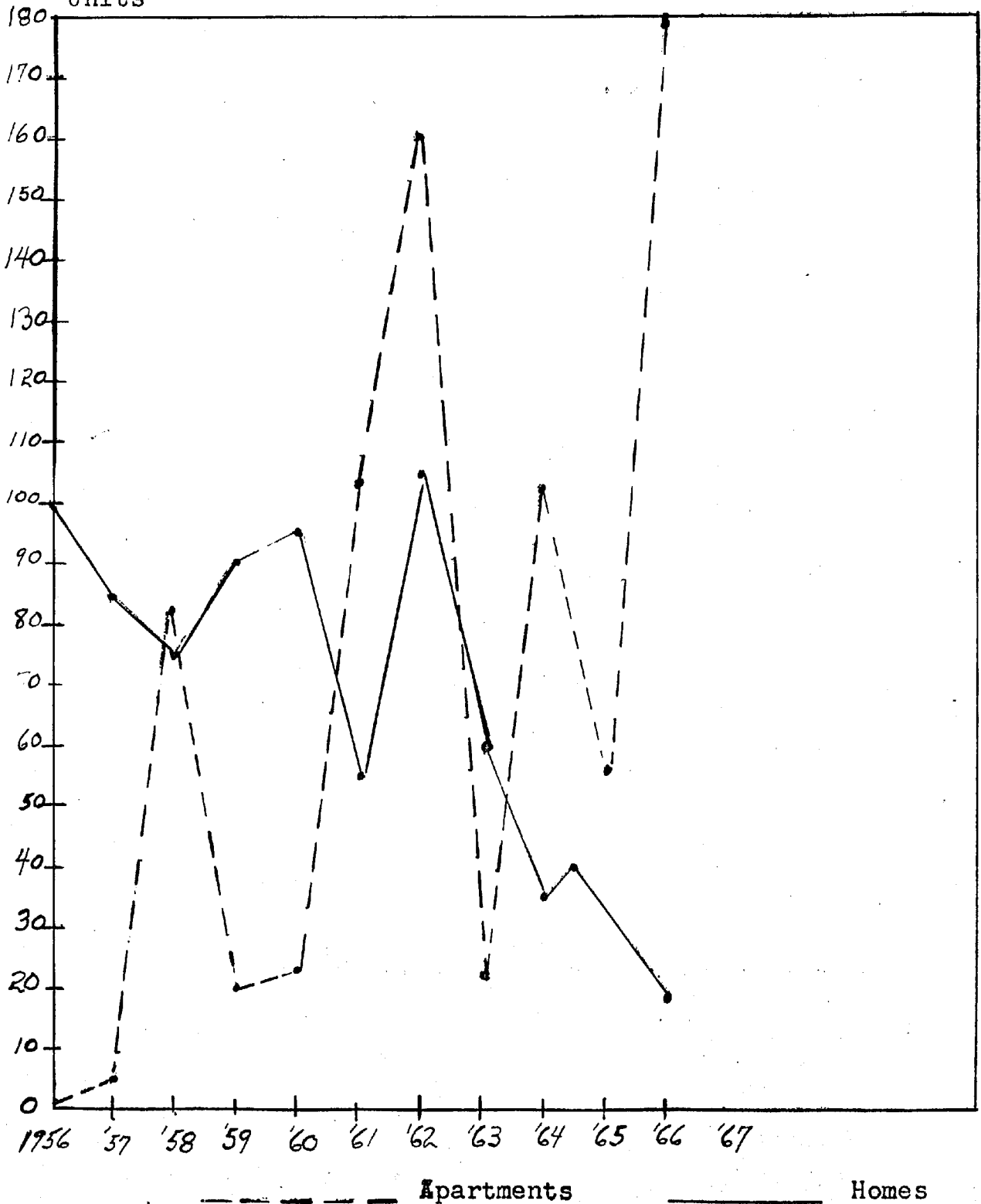
The Paul apartments are an example of the stakes involved. An acre of land worth \$70,000 for single family homes can increase in value by 300% if it were to be utilized for apartment construction.

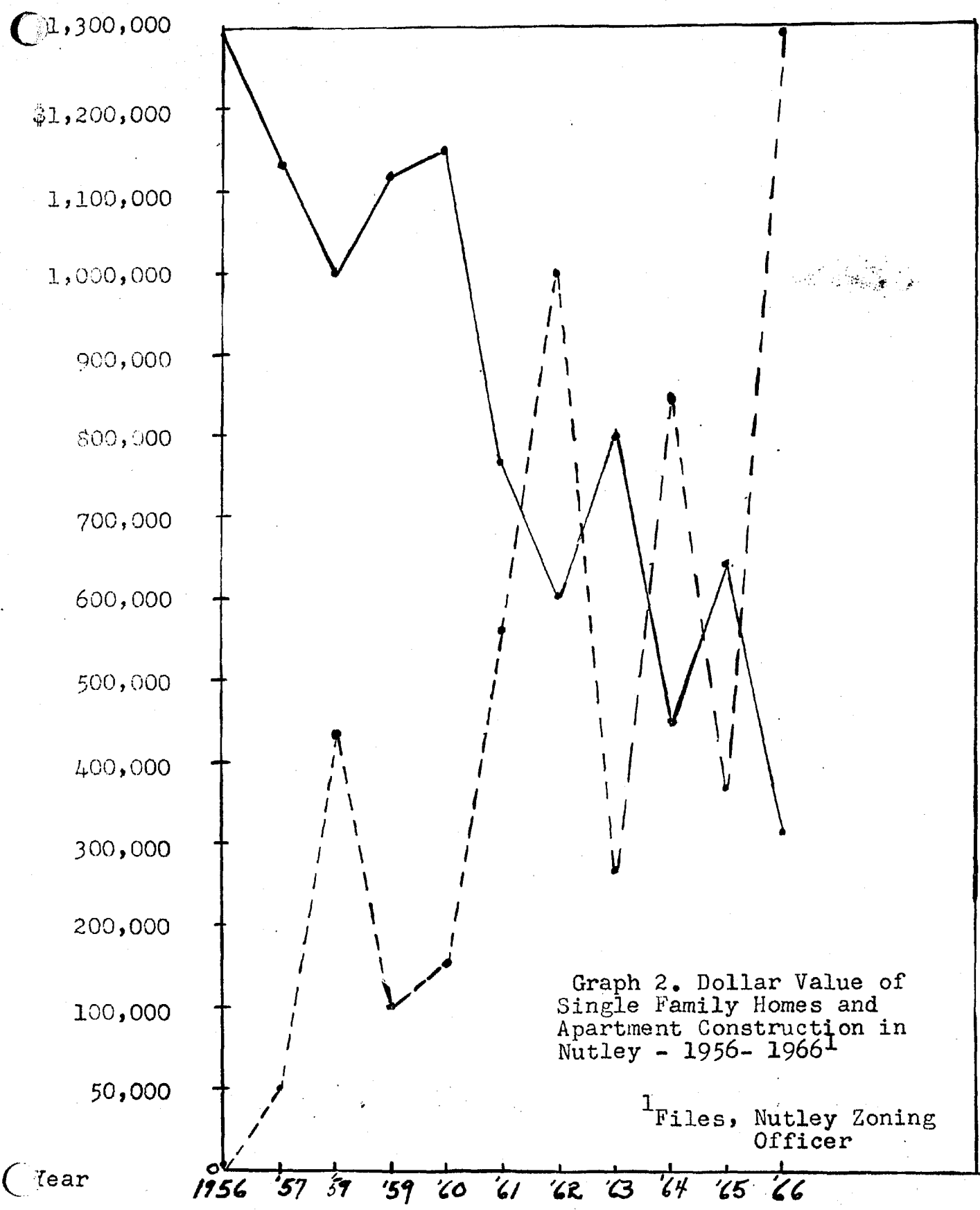
¹These figures are only rough estimates of the values in the cases. Nevertheless they are sufficiently close to the real values for the reader to comprehend the degree of economic stakes.

Graph 1. Number of Housing Units Constructed in Nutley-
1956-1966¹

Number of
One Family
Units

¹Files, Nutley Zoning Officer





Graph 2. Dollar Value of Single Family Homes and Apartment Construction in Nutley - 1956- 1966¹

¹Files, Nutley Zoning Officer

———— Single Family Homes - - - - - Apartments

Table V

Construction in Nutley¹

1956-66

<u>Number of Units</u>	<u>Unit Type</u>	<u>Estimated Construction Cost</u>
	<u>1956</u>	
100	one family dwellings	1,331,913
<u>34</u>	other	<u>435,750</u>
134		\$1,767,663
	<u>1957</u>	
83	one family dwellings	1,149,500
2	apartments	78,550
<u>31</u>	other*	<u>220,083</u>
116		\$1,448,133
	<u>1958</u>	
77	one family dwellings	1,068,600
3	apartments	477,000
<u>8</u>	other*	<u>1,369,100</u>
88		\$2,914,700
	<u>1959</u>	
86	one family dwellings	1,131,900
1	apartment	100,000
<u>33</u>	other*	<u>321,338</u>
120		\$1,553,238
	<u>1960</u>	
82	one family dwellings	1,184,670
3	apartments	184,000
<u>49</u>	other*	<u>568,530</u>
134		\$1,937,200

* laboratories, garages, stores, factories, offices, warehouses, etc.

¹Data secured from the files of Ernest Piro, Nutley Building Inspector, Town Hall, Nutley, New Jersey. See letter from Piro to Richard Quigley, Town Treasurer, Town of Nutley, dated May 25, 1967.

Table V Construction in Nutley

<u>Number of Units</u>	<u>Unit Type</u>	<u>Estimated Construction Cost</u>
	<u>1961</u>	
53	one family dwellings	776,425
3	apartments	590,000
<u>13</u>	other*	<u>201,550</u>
69		\$1,567,975
	<u>1962</u>	
38	one family dwellings	601,450
5	apartments	1,024,000
<u>37</u>	other*	<u>583,145</u>
80		\$2,208,595
	<u>1963</u>	
50	one family dwellings	793,525
4	apartments	275,000
<u>39</u>	other*	<u>7,482,335</u>
93		\$8,550,860
	<u>1964</u>	
27	one family dwellings	467,375
6	apartments	867,800
<u>27</u>	other*	<u>578,175</u>
60		\$1,913,350
	<u>1965</u>	
34	one family dwellings	640,693
4	apartments	394,600
<u>17</u>	other*	<u>196,995</u>
55		\$1,232,288
	<u>1966</u>	
16	one family dwellings	324,305
5	apartments	1,393,900
<u>14</u>	other*	<u>2,352,078</u>
35		\$4,070,283

* laboratories, garages, stores, factories, offices, warehouses, etc.

This is particularly true if the density ratio is forty or more units to the acre as opposed to 22 units of single family homes. Conceivably, the Paul site would have been worth 30% of the sale to an apartment developer if its use was limited to single family homes.

The decision to extend Adams Street to Hillside would have been considerably profitable to the area merchants. A favorable decision meant:

(a) a public parking lot paved and maintained by the town at little cost to the merchants;

(b) a parking lot meant that nearby driveways by the stores would be less necessary and store owners could expand their buildings over this extra footage;

(c) a possible speedup of traffic would mean more customers might be attracted to shop in the area.

An attempt by the Planning Board to make the merchants pay the parking lot costs was negated by a ruling of the town attorney.

The increase in the value of land in this type of suburban community has attracted the interest and investments of many economic notables from both within the community and, in Paul's case, from outside the community. Paul admitted that many builders were aware of the potential profits from building in Nutley.

Economic returns or best economic use of the land has become the dominant principle of the Zoning Board much to the dismay of the Planners. In defending the Board against the charge that

it is lax in granting exceptions to the density limitations Chairman Addio strongly felt that "we have to be governed by economics, not people."¹ He noted that Board members are "well aware that there is a lot of money riding on their decisions. In some cases, millions of dollars."²

The Chamber of Commerce has, over the years, consistently pushed the Mayor for more parking lots on Franklin Avenue in order to attract more customers into the downtown area. The Mayor is pressed at the same time by the home owners to stop further efforts at tearing down homes adjacent to the business district for parking lots. The residents see parking lot extensions as ruining the peace and safety of their neighborhood.

Thus, the stakes are of sufficient measure to draw such economic notables as Orechio, Biondi, and Maurillo, to seek public office. The opportunity to decide on future policy, to implement previously agreed upon policy, and to gain access to information are considerable economic incentives. In 1958, for example, Biondi was able to purchase \$28,000 worth of town land, and, after securing a variance, sold the complete package to another builder for construction of a 34 unit, \$250,000 apartment house. Both Biondi and Maurillo have not infrequently disqualified themselves from considering a

¹Interview, Joseph Addio, June 16, 1966.

²Ibid.

request for personal reasons -- i. e., they had an economic interest in the decision. During one board meeting both were observed to disqualify themselves because they were the petitioners. Their requests were considered at 11:30 p.m., after most of the citizenry departed. The Sun did not mention this fact in its coverage.

It is clear that Zoning Board decisions are carefully considered by builders, bankers, insurancemen, etc. The opportunity to gain financially acts as a stimulant to a variety of interests.

... a family seeking to put up a neighborhood store, or an alliance of builders and merchants who want to construct apartments and shopping facilities. Because these people stand to gain they are charged with energy: they scheme, plan, negotiate, haggle, bring pressure, make illicit payments, and otherwise use their influence to get what they want. Sometimes they encounter only light resistance because everyone else is apathetic or indifferent. At other times there is sharp skirmishing with other small, unified, hostile groups. In these short, tense battles the side less well-organized, less numerous, less resourceful, less affluent or otherwise less effective gets defeated.¹

Another important element in controlling land use policy for businessmen is the ability to restrict the business district to its traditional locations. Thus, the Zoning Board ruled out any new business centers in approving new apartment house construction, particularly those constructed on the outskirts of the town boundaries. Plans for new business centers never get beyond the application stage. One principle frequently articulated by the Sun is build up Franklin

¹Robert Dahl, Who Governs?, p. 201.

²H. Kaufman, p. 74.

Avenue only! Kaufman writes that opening up a new business area in a residential section may bring rich returns to the businessmen, but this will confront those already established with strong competition.¹

Any change in the zoning laws means a change in the rules of the real estate game and can either limit or extend economic opportunities. Attempts to restrict land zoned for industrial use to only that particular use has met with strong and effective resistance.

"A change of policy may hurt the chances for one group to win or hold office, or another group to obtain or retain economic advantages which they had hoped for . . ."² This pertains not only to policy formulation but also to the vital joint process of policy implementation. If the Zoning Board had adopted a policy of exceptions to the density requirement only after a rigid application of the stipulated guidelines of economic hardship, the tangible benefits lost to the economic notables would be considerable.

The proposals by Commissioner John Lucy further illustrate the kinds of economic stakes involved. In the late fifties he proposed selling Nutley park land for development by builders into apartment houses. The economic outputs from such a proposal are clear. His attempts to put the Hillside Street extension through was indeed a response to the input demands of Franklin Avenue business

¹H. Kaufman, p. 74.

²Ibid., p. 75.

notables. A parking lot funded by government was one of several attractive economic incentives that led the notables to persist in their request.

In summary then, the economic stakes resulting from governmental decisions are sufficient to cause many Nutley business notables to seek favorable action from office holders. In order to maximize their share of the economic stakes they either run for office, or support other notables for office who share their views, thus insuring a high degree of access and careful consideration of their requests.

CHAPTER XI

THE ECONOMIC NOTABLES

One of the primary questions that this study sought answers for is just who are the chief activists in shaping the physical environment of an older suburban political system. Not surprisingly the activists are those with the "most substantial economic stake in the community."¹ All of the major land use issues originated from the economic notables -- builders, bankers, local businessmen such as Samara, Infusimo, D'ambola, Orechio, etc. Those builders from outside the community must by necessity deal with such local influentials in purchasing the land and in bargaining for the ultimate economic stakes.

Thus the economic notables are local businessmen who propose to change the status-quo of land use for the economic rewards coming from the realization of their proposals. There are similarities to what Banfield found in Chicago that civic controversies arise "out of the maintenance and enhancement needs of large formal organizations."² Large builders such as Biondi and Paul are relevant

¹Martin et al., p. 316

²Banfield, p. 263.

examples.

Most of the issues seem to originate from the enhancement needs of local business and not those of large companies such as ITT Laboratories and Hoffmann LaRoche. Both of these companies have large facilities in the town but generally they only become involved in variances for their own expansion needs on their plant and laboratory sites. An exception was ITT's sale of land to apartment speculators in the apartment house controversy. However, there are indications that ITT may be a more frequent actor and sell off more of its unused industrially zoned land.

The extent of involvement in Nutley land use issues by both of these large corporations is not apparent in the scope of this study. It would appear however, that outside of their own land use questions they are not frequent actors. In the 1967-68 Hoffmann LaRoche was active in seeking variances for buildings to be constructed on land which the company owned and on which laboratories and offices were situated.

Lawyers also play a major role in the political-legal conflict resolving processes of these issues. They serve not only as intermediaries for the businessmen and, in some cases, the residents, but also as influentials in their own right, such as Donohue and Donohue. Their ties with the business community are very strong. After all most of their work comes from the local economic notables. Even Goldberg who had his law office in Newark

showed strong sympathy for the plight of Samara in getting a return on his investment. His advice, not to appeal to the courts, illustrates the role that attorneys play in resolving land use issues. Citrino's tie with the Nutley Savings and Loan Association and his behavior as town attorney have already been discussed.¹

The significant role that lawyers play in keeping down community tensions are apparent in this study. George Munger in observing their role in Syracuse issues maintained that those conflicts involving

economic interests in particular are rarely fought out between the principals, but are handled by their legal representatives, and since it is the legal counsel who tells the principal what is possible and what is not, the latter's vision of political reality is shaped accordingly. In the process the lawyers, though brokers for power wield substantial power themselves. And because the hostilities are conducted through intermediaries, community conflicts rarely erupt as open warfare but simmer along as protected negotiations.² (Italics mine.)

Lawyers for the most part are more detached from the outcome of an issue than the active participants, i. e., the contesting parties, and present their client's views through a standard legal process and in an experienced professional manner. Their role limits the

¹Citrino has been consistent in his negative attitude toward protesting residents. In November 1968 he told residents who were opposing an A and P store and apartment house complex package that they would be wasting their time if they presented a petition signed by the citizenry against the project. "You can get all the petitions in the world at this point and there still would be nothing this Commission can do." When one resident asked that the Commissioners be informally polled as to their opinion on the project Citrino ruled that such a polling would be illegal. Sun, November 7, 1968, p. 18.

¹Martin et al., p. 317.

direct involvement of the principals. This intermediary role then, limits the extent of personal confrontation at hearings.

In summary, attorneys interact with and are dependent on the economic notables of a community. For the most part, those who act for the business community are oriented to the business community.¹

Charles Adrian suggests that the decision-makers of land use are becoming broader in their representation to include not only elements of the business community but also home owners.

In typical American fashion, land use decisions were, until recently, made by private businessmen, the realtors, land developers, and bankers in particular. Characteristically 19th century Americans did not believe that a greater community interest stood above that of the profit motives of these men.² Bankers decided who would buy and they would "determine when deteriorating areas were to be permitted to switch from single family dwellings to multifamily apartments ..."³

To a modified degree Adrian's generalization is still relevant but must be greatly qualified, at least with Nutley. Here the Planning Board has had varied representation and they have blocked the goals of the economic notables with some success. However, it would be difficult to prove that the historical dominance referred to by Adrian has been seriously altered. Nutley is viewed as a tightly

¹Vidich and Bensman, p. 279.

²Adrian, pp. 457-458.

³Ibid.

zoned town but the zoning law is flexible enough to permit a wide variety of options for the notables to secure economic stakes. It appears from this study that the economic notables exercise a disproportionate amount of power over land-use policy. True they must bargain with the residents and work within an agreed upon set of limitations but nevertheless their power is a major factor.

On the basis of the evidence found in the events of this study it appears that local businessmen are the dominant group in land use politics. This is not to say that they have a monopoly of power but they do seem to have a high degree of success in gaining the economic goals they seek through land use changes. Therefore, on the basis of the cases presented, on an examination of who holds public office, and on a review of who benefits from government decisions within the last ten years, one could reasonably conclude that they are more dominant than the residents. It is true that the notables have met with defeats on occasion as with Hillside street but in Feland the loss was one house out of eight. Moreover the Paul apartments are now being built on land secured through local businessmen as intermediaries. The best that the residents can hope for is the maintenance of the status-quo. The cases illustrate that although both factions have resources, their distribution is not equal.

Over the years the real estate activists have achieved their goals within the broad but defined limits placed on them by the

Planning Board and protesting residents. Since 1958 twenty new apartment houses, all above the legal density limits, have been built in Nutley.

If the businessmen and realtors are frequent and generally successful actors in Nutley's land use policies what can be said regarding the role and influence of local bankers? Adrian is quite right in referring to them as major influentials in land use policy. Yet this study has not sharply focused on their involvement. This is due, in part, to the fact that banking institutions are not highly visible in most of the issues of conflict in land use.

The role of Nutley's two banks; The Bank of Nutley and the Nutley Savings and Loan Association, must be considered as one of major importance in land use decisions since they are responsible for providing the necessary funds for most land transactions.¹ They, above all of the local political actors and institutions, have the most vital economic stake in maximizing building development in accordance with the most economic use of the land. Most banking institutions in Essex and Passaic county were contributors to the Passaic Valley Citizens Planning Association.

The banks were visible as contestants only in the Hillside street case. But here their goals of a new street and a nearby parking

¹Apparently they do not exercise a monopoly on land financing in the community since there are at least two real estate agents in the town who steer their buyers to banks outside the community for the necessary mortgage services.

lot were blocked. Howard Sargent, a director of the Nutley Savings and Loan Association, testified that his bank wanted to build right near the new street. Attorney Donohue stated that Mr. Barbata, President of the Bank of Nutley, also wanted the new street. Barbata is reputed to be highly active in local land transactions. Another visible actor was town attorney, Robert Citrino, counsel for the Nutley Savings and Loan.

One could reasonably deduce that the cooperation of banks is absolutely necessary to most notables. Banking institutions may not be particularly visible participants but they certainly are significant since they must give financial approval to other notable goals. However it is important to realize that such institutions must invest a substantial part of their capital in income producing ventures. Thus, to a large extent, they need and are dependent on, the judgment, energy, and skill of business notables who seek ways and means to maximize economic returns from the use of community land. It is apparent that bankers must approve of what the business notables want to do although they themselves are not the major initiators of land use changes.

We cannot answer the question of just how influential these two banking institutions are within the scope of this limited study. This very significant question requires a far more extensive amount of research. The research problem is difficult because of the low visibility of bankers in the political issues of land use decision-making.

Notable goals have been achieved because of discrete use of political resources possessed by them. What are these resources? Political representatives, money, personal contacts, knowledge of a similarity of interest with other economic activists, the local newspaper, time, daily contact with other decision-makers, political skill and judgment.

The securing of public office by Commissioners Orechio and Lucy, Town Attorney Citrino, Zoners Biondi, Maurillo, and in 1967, McGrane, enables the notables and their representatives to exercise a high degree of control and influence over major policy decisions. This is illustrated by their ability to shape the rules of the game such as the 1958 zoning law (more precisely the change and exceptions made in the law by the Commissioners before permitting passage), the blocking of a stronger law in 1967 and the granting of zoning variances by the Zoning Board. Thus, those who are the decision-makers determine what, ultimately, the ground rules will be and how they will be applied to whom.

The factor of wealth is of immense importance. The decisional outputs involve considerable sums of money -- values which most Americans are sensitive to -- decisions which affect, during the course of a year, millions of dollars. Zoning Board members consistently mentioned the fact that huge sums of money ride on their decisions. The highest economic use of the land is not necessarily a principle limited to those having a direct economic

stake in the outcome. Wealth means the ability to hire intermediaries such as an attorney, an architect, an engineer, and to support planning groups such as the Passaic Valley Citizens Planning Association. It means the ability to buy and sell land and homes when opportunities develop such as upon the death of Mrs. Faris Feland.

The contacts within the business community, within social organizations such as the Elks Club, among public officials, and town notables provides them with access to other influentials, and insights and knowledge as to what can be done within the general rules of consensus agreed to by the business community. Contacts provide information, and valuable assistance in securing favorable decisions.

Knowledge comes from these wide arrays of community contacts and from the conduct of business activities within the community. Being active in government provides awareness of profitable deals. Inside experience enables one to act with knowledge and proper timing on land use investments. It enables one to make reasonable judgments on the practicality of his goals.

The know how and experience of the real estate activists in dealing with the technicalities of zoning are of vital importance in any analysis of the distribution of resources. The builders are well versed in the zoning laws and the operating philosophy of the zoning boards. They know what is acceptable and what is not. Paul stated that in many communities he would research local laws very carefully and during hearings would know more of the law than the

officials. The fact that Paul presented a high rise apartment design before the board was some indication that he thought the time was ripe for a project of this magnitude.

A similarity of interest with other economic interests means a relatively cohesive business community, and the opportunity to enlist sympathetic supporters. David Paul found support from the editor of the Sun, from Addio, and according to Sun articles, from many officials at town hall whom the paper did not identify. The Zoners realized the problems faced by Paul and were aware of the economic stakes of the local notables who sold him the land. Any attempt to strengthen the zoning laws always prompts such questions from Lucy and Orechio as "just how will this affect the property holders and businessmen in that area if they want to bring about further development of their property?"

The Sun is certainly a valuable resource whose importance in shaping community reactions must be of some significance. Just how significant it is, however, remains outside the scope of this paper. The role of the town's only newspaper will be discussed in a later chapter.

The resource of time is important, at least from the evidence provided by these three cases. Those possessing the resources of knowledge, time, money, contacts, etc., can plan and prepare for land use changes months prior to any public awareness of the proposal. They can wait for potential opportunities to develop. Time is available

for daily consultation with banking officials, town officials, other merchants and attorneys.

The year-to-year experience resulting from conducting business within the community enables some economic notables to develop adequate political skill and judgment. The Orechio brothers have demonstrated an awareness of the political world in Nutley, possessed by few other economic or political actors.

Makielski wrote that in a city where the business leaders dominates the political system "in all probability they would also dominate in zoning policy making."¹ In Nutley, they appear to dominate zoning policy but only additional research would reveal whether there is any substantial spill-over into other policy areas.

One could hypothesize that the goal oriented behavior of the economic notables is subject to less psychological stress than the residents since they are not influenced by a deep seated emotional attachment to a piece of property. A notable can plan his strategic use of resources in a less emotional manner. After all, he "will not have to move or change his habits if his property is condemned."²

Some of the notables' strategies are evident in the cases. For example, residents generally have little advance warning when a hearing on a land use change will be held. They most always react

¹Makielski, p. 189.

²Davies, p. 157.

immediately or the opportunity to influence the proposal will have passed them by. Economic actors always shape the discussion process by arguing the proposal in terms of the economic benefits of the proposed change. Addio discusses the apartment house issue in terms of the best and highest economic use of the land. The non-economic criteria espoused by many residents is practically ignored. When the residents are highly organized and articulate the strategy of a very lengthy decision-making process appears to lessen the intensity of opposition. It appears that the newspaper and the hearings provide clues to the residents that in time they will lose although they have had their say.

The notables do try to articulate their goals in terms of the commonwealth. They "seek legitimacy for their decisions in notions of the general welfare."¹ The new street is viewed as "progressive" and will make Nutley into "a first class town." Paul's apartments will be good for the community since the "new ratables" will keep taxes down.

Notables do not necessarily realize that they may have a bias as to what is the public good. They "ignore the allocative aspects of decisions by treating the issue as technical problems" that have logical and precise solutions.² William Gamson notes that it

¹Wilhelm, p. 118.

²Gamson, p. 53.

is a widely and sincerely held belief of many small town merchants that what is good for Main Street is good for their town. Indeed, it is undeniable that business interests are generally complementary with such collective goals as the town's economic growth and the broadening of its tax base. The suggestion that private aims are being justified or masked in the pursuit of such public goals would be met with genuine indignation because the distinction is not seen by those involved in such "civic efforts."¹

The goals and aims of the notables may seem to many participants as "selfish" but the notables may not see their activity in this light but may rationalize their goals in terms of benefits for the community.

They also seem to decide very skillfully on goals which do not shock the whole community or are not overly threatening or visible. When they do, as in Paul's case, they make the necessary adjustments. A condition then, which may account for success in influencing community decisions, is "the ability to choose goals that do not strain the compliance of others in the system."² To choose goals which are overly dramatic, threatening, or sharply out of line with community values may be of sufficient disturbance to stimulate the formation of opposing associations of a long term duration. The reasons for the lack of such groups must be considered in connection with the goal strategy of the notables.

In addition, the notables are willing to adjust their goals in response to articulated resident dissent. If necessary they are

¹Ibid., pp. 53-54.

²Sayre and Polsby, "The Study of Urbanization," p. 133.

willing to settle for less than the original position (Feland and Paul).

Gamson writes that

..., outcome modification may be a way of undercutting the mobilization of a partisan group which is in the process of converting dissatisfaction into a force for influence. By giving a little at the right time, authorities may prevent later, more important outcome modifications.¹

The selection of goals which don't produce an excessive strain on resident values and the willingness to modify such goals are certainly factors which may account for notable success.

The adherence to certain defined rules of the game certainly enables the residents to accept the deprivations of the decision. Rules such as the right to be heard at public hearings, keeping the arguments in essentially legal terms, e. g., "I just want what the law allows," or "What the law permits, no Planning Board may stop," are adhered to and accepted by participants. This adherence enables the officials to manage conflict with high success.

Another strategy is to minimize the impact of the proposed change in land use. Thus, the model in the bank showed the street and parking lot with attractive landscaping; how the area would be physically improved; the printing by the Sun of the architect's model of Paul's original high rise apartments which showed the complex in a very impressive picture. (A strategy which Paul thought backfired since the project became too visible and resulted, in his view, in more neighborhood opposition). It is not unusual for a Zoning Board member to ask the developer if he will plant a protective landscape

¹Gamson, p. 114.

screen on the property line adjoining the neighboring property owners, in order to make the project more palatable to the dissenting residents.¹

The use of the intermediary organization must be viewed as a strategy by the economic notables. Non-profit, expertise types of organizations such as the Passaic Valley Citizens Planning Association are used as intermediaries which are accepted by opposing factions and cited as unbiased sources to support one's goals.² In Nutley both sides have successfully used the Association's reports as a strategy to influence decision-makers and the interested public.

The orientation of the professional planners seems to be toward the most economic use of land. This should not be too surprising since the organization was founded and is supported by county-wide building interests (bankers, builders, real estate brokers, etc.). Their long and short range goals are to upgrade the economic use and value of land.

This economic orientation would seem to explain why the professional planners have been used successfully by both factions. Early, in formulating the 1958 zoning law, they gave professional support to a tight zoning law. They wanted community development to be orderly, to preserve investments and, whenever possible, increase land values. After all they represent economic interests which view zoning as a means of promoting economic goals.³

¹Observed by author during Zoning Board hearings.

²Banfield, p. 252.

³Makielski, p. 189.

However, they part company with the residents on apartment house construction. The Planners of the PVCPA want zoning, controlled development, but not of an intensity that would reduce profitable economic growth and investment. Apparently zoning is, in their view, a means to prevent deterioration not economic upgrading.

Therefore, at an early stage they helped the residents draw up a zoning plan but afterwards, as the 1966 apartment study showed, their land upgrading values put them on the side of the economic notables.

The studies of the PVCPA gave strong support and legitimacy to the goals of the notables. The framing of the discussion of the apartment and the Hillside issues into economic and statistical terms gave legitimacy and a public interest rationality to goals which were highly visible to most citizens in terms of self interest for the notables. In other words for a "non-profit" group to present statistics and data to support notable claims adds a glow of public interest legality to a claim that may otherwise be viewed as one of personal gain by the general public. Their reports showed that notable goals were for the general welfare, the good of the community. Coming from a group of "experts" from outside the community it could be argued that they are more neutral, more precise in their evaluation, and more knowledgeable.

There were more than economic criteria in these particular

cases. Preserving the quiet residential nature of the area cannot be measured by any statistical formula worked out by the professional planners of the association. One student of planning saw "no technical or scientific criteria by which decisions on land use could be made and the conflict thereby avoided."¹ The strategy of using the data of the PVCPA placed the discussion on a plane that could only lead to the desired conclusions for changing the status-quo.

The standards of evaluation by the technician have been accurately described by Banfield as standards which focus on factual information and drawing conclusions from the data leaving out those "elements of the situation that are controversial, intangible, or problematic." He tends to ignore those premises (quietness of the area; landscaping) that are not quantifiable and favor "those that can be measured in money terms."²

The legitimacy and public interest mantle that the professional planners provided in both Hillside and the apartment study were of major significance. The fact that the association is supported by economic notables illustrates the ties that many such planning organizations have with business interests. For example, consider the following conclusions reached in one PVCPA report using strictly

¹E. C. Yokley, The Law of Subdivisions, (Charolettesville, The Michie Co., 1963), p. 190.

²Banfield, p. 330.

an economic and statistical approach to the question of what kind of housing should be built in the future for Clifton, New Jersey:

Industrial uses, commercial uses, high rise apartments and homes costing over \$40,000 are assets to the city as well as the new garden apartment developments. All other uses represent a tax liability to the city because of the existing tax structure in Clifton. In another town, however, where there is very little business and industry even \$25,000 homes with one school child per unit will pay for themselves because of the high tax rate.

The high cost of land in Clifton almost prohibits homes being build under \$30,000 at this time.¹

Obviously studies of this nature are an excellent device for managing land use changes within the community -- particularly the construction of apartments in residential areas.

Why the preference for apartment houses over single family homes? The reasons are economic. Two hundred and forty units to say four acres of land is far preferable to a land holder or a tax officer then sixteen single family homes. The value to the owner, the developer, the builder for high density use has been dealt with at length in earlier chapters. Also more units for middle class families means more customers to Clifton businesses.

¹Passaic Valley Citizens Planning Association, Clifton Master Plan, Report No. 4, A Cost Revenue Study, p. 13.

CHAPTER XII

NEIGHBORHOOD GROUPS

Neighborhood groups are political interest groups since they make demands upon government.¹ They are then an inherent part of the political process. All of the residents who felt adversely affected by proposed land use changes had to turn to government for authoritative decisions favoring their neighborhood preservation, status quo goals. They are part of a political process which consists of actors who work within a set of rules to defend certain stakes or to get certain rewards by influencing the actions of government.² Therefore, in the context of this definition, both economic notables and residents, whether acting in a formal or an informal organized basis, are all actors within the political process.

Real or perceived threats to ones immediate physical environment, the home, the neighborhood, usually brings some kind of response from Nutley residents. Certainly any change in the physical arrangements of a city or town will have some sort of impact on the citizenry, either in a positive or negative fashion. The impact

¹Davies, p. 1.

²Sayre and Kaufman, Governing New York City, p. 7.

will be most severe to those living near the altered site.¹ It is not surprising then that many suburban residents activate their political resources on only such occasions. "Home ownership is after all, a distinguished characteristic of the residential suburb, and the instinct to protect property values is strong and widespread."² Physical threats to the home are clear and very immediate to the home owner. He may not see the immediate consequences of a national welfare program but he can understand the implications of a proposal which alters the immediate area of his home.

Wars, diplomacy, the fluctuations of the national economy, these matters are both difficult for the average man to understand and difficult for him to influence, but the land use of his neighborhood, the proper recording of his property, the education of his children, the construction of a new highway ... affect his everyday life ... they are matters which he cares deeply about.³

The threats to the home were very real and significant to the residents in all three cases: Hillside residents feared the impact of more traffic on their street; Highfield Lane residents feared the general impact of numerous apartment dwellers on their area: more school children, more traffic, higher taxes, and the probable addition of more people to the community who would have little interest or concern about its needs and problems. In addition, the fear of Negroes was a constant preoccupation although this possible but

¹Wilhelm, p. 201.

²Ibid., p. 164.

³Wood, Suburbia, p. 268.

highly improbably consequence was not as visible as the other articulated concerns. For the Feland residents the impact was of a slightly different nature than Highfield Lane: the intrusion of more people, traffic, and children, (seven families are considerably less than the 126 apartment units) into the quiet secluded rustic street that had, over the years, acquired a sacred character because of its history and tradition and also the efforts of the home owners to restore and maintain their homes. The loss of the street's most historic house with its extensive gardens increased the consequences of the private-public decision that would change the area.

The two major factions in these land use conflicts did not divide in accordance with a stated hypothesis of this study: that there would be a division between those who commuted and those who did not; between old and new residents who would have different values. The factions divided on occupational lines -- between those who had an economic stake in the community, i. e., a local business or local investments, and those who made their living in nearby communities or commuted to New York or were employed in Nutley at salaried jobs. Thus, those who earned their living outside of local businesses such as teachers, engineers, an architect, and commuting businessmen, were always found among the ranks of the protesting residents. Few, if any, protesting residents had business stakes in the local area. Thus, unlike Greer, we did not find a sharp alignment between old and new residents but a division which is based on differing

social and economic interests.

The newcomers began slowly to organize. They did so because of a new and different image of the community and its political process. The issues which recurred with regularity centered around the land use of the municipality and the expansion of the school system. For them, both kinds of development should be subordinated to their own stake in a proper residential enclave; the location of industry and commerce, of roads and public improvements would all be decided in terms of their effects upon existing neighborhoods.

The older political order, however, had long been committed to mixed development, with large scale industrial growth as the most lucrative investment of community land.¹

Greer concludes that upon such issues the newcomers organized to challenge the old order. In Nutley both traditional long time economic and social forces within the community found new sources of support from citizens who have moved into the community within the last two or three decades.

Individual political involvement in local affairs is not a uniform characteristic of the average Nutleyite but is dependent on economic and social variables. Wood's observation that those whose livelihood rests in the town are much more likely to become active in local government than those whose attachment is mainly through residence in a particular neighborhood, is applicable to Nutley.² Also, more significantly, his conclusion that small groups (such as businessmen and retired people), hold the balance of power appears

¹Greer, Governing the Metropolis, p. 98.

²Wood, Suburbia, p. 181.

to have general validity in this particular area.¹

The stakes were sufficient to spur people into political activity who ordinarily would not be active except in the case of voting. The activists among the residents - those who did organize, wrote letters, or spoke out at public meetings were almost without exception people who would suffer direct economic gains or losses from the contemplated action. In studying the behavior of New Haven citizens Robert Dahl observed that "only citizens who expect the decision to have important and immediate consequences for themselves . . . , try to influence the outcome."² The core of opposition to any land use proposal always consisted of the immediate area residents. Participants such as Resner, who lived away from the affected site, and spoke out at public hearings against the Paul apartments because he saw the outcome as one having direct consequences on his home and the whole community, were indeed the exception. Thus the immediate residents were the ones who placed a high value on the ultimate decision and were motivated to invest a considerable amount of their resources of time, money, and energy to oppose.

How successful were the residents? In two of the three cases they lost (although they did extract compromises); only in Hillside were the residents successful. Yet even after defeating the

¹Ibid.

²Dahl, p. 297.

street for the third time some of the residents felt that the issue would be proposed again and the result might be different. In these three cases then the record appears to favor the proponents of change - the economic notables. At best the residents were only able to prolong the decision making process by appealing the initial adverse decision. Our conclusion is that they are significant actors but possess less political resources, apply their resources with poor strategy and, in most cases, operate with less efficiency, skill, and cohesion than their opponents, the economic notables.

They are not as strong as Davies found them in New York City nor as insignificant as Kaplan found them in Newark. Davies found that in urban renewal projects neighborhood groups "... may have sufficient power locally to prevent a project from being built."¹ Their potential power in blocking projects was sufficient for Davies to observe that "the inclusion of neighborhood groups in renewal decision-making is becoming a political necessity."² Kaplan found their effectiveness to be practically of no consequence.

The role of grass roots opposition in Newark's redevelopment program has been insignificant. Not once between 1949 and 1960 did a neighborhood committee succeed in altering or delaying NHA's (Newark Housing Authority) plans for an area. The opposition of site residents, small businesses, and neighborhood associations may present a serious threat to some redevelopment agencies; to NHA such opposition is a minor irritant.³

¹Davies, p. 206.

²Ibid.

³Kaplan, p. 135.

Neighborhood groups then are significant political actors in local government but their effectiveness varies from community to community and from issue to issue. Davies found their blocking efforts to be a significant factor in either defeating or modifying urban renewal proposals. Jesse Burkehead found them almost unbeatable in Syracuse Metropolitan politics as they were always able to stop real estate developers.¹ On the other hand Kaplan found that in Newark, New Jersey, neighborhood opposition was "insignificant."²

Some planners and engineers within government agencies, such as Robert Moses, look upon such groups with scorn and disdain. Moses "respected people who did things and disliked people who criticized. To him the civic organizations represented simply an assemblage of critics who were incapable of getting a road or housing project built."³ One of his staff irritated at opposition efforts to an urban renewal project retorted that "neighborhood groups are crap."⁴

Probably these critical attitudes are shared by many Nutley public officials who receive some of the anger from fearful residents. Both Orechio and Addio have commented that protesting residents simply do not know the law nor can they follow the technicalities of zoning rules. Frequently they do not know what they are

¹Martin, p. 299.

²Herold Kaplan, Urban Renewal Politics: Slum Clearance in Newark, p. 143.

³Davies, p. 15.

⁴Ibid.

talking about.¹ As Addio stated, 'many of them don't have the information as to how they will be affected.'²

The lack of cohesion and poor coordination of their efforts were factors that limited the potential influence of the residents. Only in the Feland case was there a formal organization set up by the area citizens. There was some communication and recognized informal leadership among the Highfield Lane and Hillside Avenue residents but no cohesive group was formed nor did they secure the services of an attorney. In all instances the residents consulted informally among themselves concerning strategy and alerted each other when there was to be a public meeting. For the most part they were greatly dependent on the Sun for information on proposed changes and hearing dates. The general result was late and poorly timed responses by the residents.

The leaders and spokesmen of the residents were all well educated and articulate individuals who were reasonably skilled about the technical and legal question under consideration. They knew the political actors and governmental structure. Glomb was reasonably successful in coordinating and directing the activities of about one hundred residents.

All three residential groups failed to recruit any allies

¹Interview, Orechio.

²Interview, Addio.

in their blocking efforts. The Hillside and Feland residents did agree to support each other at the September meeting but even this didn't amount to much as many Hillside residents left the town hall after the bond issue had been decided in their favor. No town organization such as the League of Women Voters, the Lions Club, Rotary Club, one of the two major political parties, or other community groups materialized as allies. In the Feland case there was extensive publicity yet the opponents consisted mainly of area residents. Some League officials, although sympathetic, pointed out that their group broke up for the summer and could offer no organized support. Even so the League's history of remaining aloof from local controversial issues, limits the probability of the organization lending such support. Davies found that alliances "among neighborhood groups are the exception rather than the rule."¹ In Nutley such alliances are non-existent. Thus, the behavior of groups in these cases lends support to Dahl's principle that citizens participate only when the issue has direct and immediate personal consequences.² This then is an important qualification to the attribute of suburban citizens having a strong sense of community consciousness and civic responsibility that

¹Davies, p. 186.

²In New Haven Dahl found citizens who were politically inactive almost all of their lives became involved in a political issue for the first and probably the last time in their lives because the issue was a threat to their neighborhood. The threat was a proposal by a junk dealer to build surplus low cost metal homes in their neighborhood. Dahl, p. 192.

"impels them to take part in local affairs."¹ This weakness in failing to attract such outside support limited the ability of the dissenting residents to become actors on a community wide basis. Glomb made the most extensive efforts to get outside support such as contacting the Nutley Historical Association. Some Feland residents wrote letters to the White House and to a state Senator. Glomb also tried to get Lion and Rotary members interested but was told by fellow members "to lay off - you don't know what you are getting into."

Another weakness concerning organization relates to the fact that not all affected residents were involved in dissent. The phenomena of imperfect mobilization was always a factor. There were some individuals in the Enclosure such as Reilly and a nearby neighbor who were not visible opponents. Reilly was of course a friend of Samara. The other neighbor, a retired professional, chose not to get publicly involved although he felt as the protestors did.

Time to organize and prepare strategy was one resource that the residents did not have to any great extent. Resident leaders such as Gurgus and Glomb held responsible jobs which required frequent out of town travel. There were many demands on their time from their jobs. They were limited in the amount of time they could spend in preparing for and in attending the public hearings which extended from a four to six month time span.

¹Wood, Suburbia, p. 186.

Another aspect of time was the awareness that a proposed land use change was coming up before a public body. Notice in due time was one resource the residents did not have. In most cases advanced warning was limited from five to ten days. Few read the legal notices which are required by law to be printed two weeks before any public hearing. In all cases the Sun never prints an article on land use changes more than one week prior to a hearing. Glomb remarked that the pressure of time prevented him from putting together accurate drawings of the Feland subdivision even though he was a professional engineer and was working with a neighbor who was a highly qualified New York architect. (Italics mine.) The town engineer, Anlas, was quick to point out that such evidence (Glomb's sketches of what the subdivision would look like) must be drawn to exact specifications, otherwise there could be a violation of the laws of evidence. Most residents were alerted by their neighbors as to the immediate date of public hearings. Ample notice is important since "if the residents are informed early in the process, there will be time for groups to calculate their stakes and for opponents of the project to mobilize."¹ One of Robert Moses' strategies was to give the neighborhood as little as possible. Nutley presents a pattern somewhat similar to those found in New York City. An examination of the Nutley Sun for the past twenty years shows no controversial proposal over land use

¹Davies, p. 184.

becoming publicly visible for a significant amount of time prior to any public hearing. When the Feland house was sold residents were informed for four months after that no changes were contemplated. Only through personal contacts did an Enclosure resident find out that plans for a subdivision had been filed with the Planning Board.

A question which remains unanswered is why those officials having protectionist values did not warn residents of pending proposals and hearings. Possibly they themselves are not fully aware of exact dates much earlier than the residents. They may also personally hesitate on activating opposition to the economic notables by themselves. An important factor to consider is that there is no recognized permanent group or leadership to contact prior to the issue's public visibility. Still why such officials do not make extensive efforts to mobilize public opposition remains a major question for further consideration.

The residents did have access to responsive governmental actors such as the Mayor and the Chairman of the Planning Board. Makielski considers this access crucial to the political resources of any group.¹ Yet this resource was not fully utilized since even when residents knew a public official personally they hesitated to talk to him because such action could have appeared as personal pressure. For example, Mr. and Mrs. McCormack did not contact Commissioner

¹Makielski, p. 144.

Gundersdorff, a personal friend, for this reason. Mrs. McIntosh apparently did not utilize all her personal contacts for the same reason.

Few instances could be found where residents contacted those whom they knew were hostile to their cause. Most of the contacts were with the Mayor and Carew, not with Orechio, Addio, or Lucy.¹

The public hearings required by law provide the chief vehicle for aroused citizens to register their hostility and opposition before a portion of the community. It is true that in small communities communication between officials and citizens are eased because of the frequency of personal contacts. Even though the Commissioners can be accosted on the street and be reached by phone it appears that few take advantage of this accessibility.

The hearings have always been important for the Mayor. He might have found it very difficult to oppose the new street to Hillside if there was no public opposition. On the other hand both Addio and Orechio stated that huge turnouts at such meetings had little effect on the way they voted. As they see it such dissident speakers are not necessarily representative of the whole community. They feel that Mayor Chenoweth is much too responsive to a very few voices at public meetings.

¹This pattern of contacting only those officials who are favorable to your position is similar to that found by Bauer with interest groups in national policy formulation. See Raymond Bauer, et al., American Business and Public Policy, (New York: Atherton Press, 1963).

Certainly the hearings have some impact on the residents holding similar views because in most instances this may be the only time that they come together in any sort of organized fashion. The hearings bring people together who have not been formally organized into a group and open up paths of communication that formerly were nonexistent. Potential neighborhood leaders and activists become visible to their neighbors¹ when they articulate their dissent at public hearings.

Money was always a factor in determining the extent of opposition that residents could muster. The hiring of an attorney such as Goldberg costs between three to five hundred dollars. After the Commissioners upheld the Planners decision on the Feland subdivision many residents wanted to go to the courts. Some felt that the probable court costs of anywhere from five hundred to one thousand dollars precoudeed any further opposition. Others were just plain tired of the dispute which had dragged on so long. Carew thought that money was not the major obstacle but to those interviewed it seemed to have been an important consideration.

Seasonal scheduling was another factor which seemed to have weakened the resident response. All of these cases appeared during the summer when many residents were away on vacation. The departure of many citizens from the town during the June to

¹Wilhelm, pp. 80 and 160.

September months meant less opposition at public hearings. Attending hearings during this time involves considerable time and inconvenience for some. Many mentioned the difficulty of organizing the neighbors for this reason. The strategy of timing appears to be one well utilized by the notables.

The strategy of the residents was shaped and limited by the middle class rules of the game which they followed. Decisions must be based on law and orderly procedure. Disagreements must be solved by discussion and "reason." The Enclosure residents were always concerned that their tensions and hostility were not always under control, particularly in the personal confrontations with Samara. "After all we have to live with each other after it is all over" was not an infrequent remark. Visible conflict is reduced by the middle class style of political behavior observed in Nutley. The community seems to fit Robert Wood's description of an integrated political system.

Such a system is one:

with no sharp social, economic, and political division; a system in which most problems are resolved through a bargaining and negotiating process . . . in such a system there would be no overt conflict. In a small community men want to cooperate and they cannot tolerate the trouble maker, for his existence threatens the existence of all.¹

The meetings with Samara at Reilly's house illustrates this characteristic. The face to face contacts at these meetings, the efforts to persuade him, the discussions with the civic groups, such as the

¹Wood, Suburbia, p. 267.

League, the Elks, are all part of this middle class communication network. Schaefer's efforts at an informal agreement with Samara also points to a highly personalized political process.

The role of civic groups such as the Elks Club must be considered an important part of the communications process at least among the town officials. Almost every town official has been a member, usually an officer in the Elks. The club's location diagonally across from town hall with its hospitable bar make it an ideal organization for personal communication. The Elks role in the recruitment process requires further examination.

This general focus on public and private discussion, persuasion, willingness to accept the end products of the governmental decision making process, appear to minimize the development of extensive conflict and prevent deep social and economic cleavages among the citizenry. The Feland issue is similar to other Nutley land use issues in the sense that it places Italian ethnic businessmen against a generally professional middle class group which is concerned with preserving the rustic landscaped environment. Thus although the potential for ethnic hostility is strong it has been kept under control. It is only after some discussion does a resident display any ethnic hostility. "You like to think they (Italian ethnic officials) make their decisions on the basis of law and the community good. You can't think otherwise."¹ Thus the threats of boycotting Italian businessmen

¹Unidentified source.

such as Samara rarely materializes because of the realization that "individuals must regardless of conflict come to terms with oneself and neighbors."¹ The realization that one must deal with antagonist on the next day on a separate issue may indeed be a strong pragmatic reason in preventing ethnic hostility or community wide factional differences.

In summary then, the residents do not appear to be able to block all of the direct threats to their immediate neighborhood. Over the past decade the distribution of influence has been about as proportionate as indicated by these three cases. On balance the economic notables have been more cohesive and have applied their resources with greater skill.²

Are then the residents unable to influence the outcomes in a manner favorable to their interests? The history of cases do indicate that the residents can at least force the notables to negotiate and not infrequently to modify their goals. Thus in Nutley "no group regardless of how many channels of influence are available to it, can be certain that its efforts will result in the official decisions it wants. There are almost always other groups demanding something else. That is why negotiation and compromise are the normal procedures;

¹Vidich and Bensman, p. 291.

²In Chicago Banfield found "business groups and property owners' groups tend to be more cohesive than either religious or political groups." Political Influence, p. 170.

every group gets less than it sought, but more than it might have obtained had it been inactive."¹ Sayre's generalization is applicable here - for the residents not to act would almost certainly have resulted in worse deprivations than they suffered from the final output. The very fact that neighborhood opposition does materialize in most instances forces the economic notables to consider most carefully the stakes that can be successfully gained in the current context of community preferences and values.

¹Sayre, Governing New York City, p. 513.

CHAPTER XIII

ROLE OF THE PRESS

The Sun is a major political actor not only as a source of information about town events for the citizenry, but also as the recognized spokesman for the economic notables of the community.

The bias of the paper is not sharply visible but an examination of its views and handling of news content for these three cases over an extended period of time reveals an activism that is far from neutral. The editorials reflect the most defined preference for the goals of the economic actors while the news articles reflect them in a more neutral manner. The paper has never criticized the land use proposals of the notables. Most of the residents interviewed seem to be aware of the paper's position and discounted the editorials accordingly. Although the Enclosure residents thought that the Sun was fair in its coverage it was indicative that the paper never expressed any dismay at the lose of the historic house but, in fact, editorialized that "what the law permits no Planning Board may stop."¹

The paper does not criticize developers or buyers for

¹The Nutley Sun, July 1, 1965, p. 4.

land use issues but usually the Mayor or the Planning Board. The Zoning Board on the other hand is rarely criticized, but, on occasions, is praised for rejecting minor variance requests. In fact publisher Frank Orechio will defend the developer.

We believe citizens are wrong when they rap the buyers. After all when the average person purchases a piece of land he has an objective in mind - buying the parcel for his own use or to convert the purchase to a profitable transaction. Usually, the seller of a home built on land which can be subdivided exacts an exorbitant sum from the buyer because the seller anticipates the buyer will proceed to subdivide the land and, thus, be in a position to pay the high price demanded by the seller. Too often the critics of land buyers lose sight of this important fact.¹

If the buyer and developer is not responsible for such subdivision threats then who is responsible? "The blame should be borne jointly by the Town Commission and all the citizens of Nutley."²

Mayor Chenoweth and the Planning Board have been particularly criticized. "We are satisfied that neither the Town Commission nor the town Planning Board has developed a sufficient sense of urgency to keep Nutley from stagnating."³ Thus attempts by the Mayor and the Planners to stop the new street were viewed as attempts to block progress and result in economic stagnation.

This is not to say that the paper at this point was taking a position against subdivisions. The editor was using the issue to attack the Mayor for consistently blocking notable goals. To place

¹Ibid., Oct. 21, 1965, p. 4.

²Ibid.

³Ibid., June 10, 1965, p. 4.

the blame on the total community was to confuse even more the question of just who is responsible for these land use changes. The paper has never suggested that the citizenry should support the Planning Board in its periodic attempts to get the Commissioners to tighten up the zoning ordinance.

Publisher Frank Orechio is a highly visible political actor in the community. Many Nutleyites have described him as a very active participant in land transactions. Although he never was elected to public office he has held many appointed posts. In the Republican Party he seems to be somewhat of an independent. He became head of the county Young Republicans during the fifties in spite of opposition from the Republican county executive committee.¹ He has been described as one who had climbed high in party affairs, . . . in spite of rather than with the support of the regular county machine."² Prior to that he had served as President of the Nutley Chamber of Commerce.³ During the early sixties he served briefly on the Zoning Board. He resigned quickly however for no apparent reason.⁴ The circumstances of this appointment are unclear.

The Sun's assistant publisher is also actively involved in

¹Ibid., February 21, 1957, p. 16.

²Ibid.

³Ibid., Jan. 14, 1956, p. 18.

⁴Interview, Chenoweth.

real estate. Warren Knight, who was appointed assistant publisher in 1966, is an official of Eastern Properties Improvement Corporation, a realty company, with extensive holdings of land in Florida and elsewhere.¹

Historically the paper has always been a political resource of the notables. The former publisher, Ralph Heinzen, supported Commissioner John Lucy's 1957 plan to sell eleven acres of park land to developers for apartment house construction.

If, . . . , the town sells the acres at today's high land values and builders plant garden apartments on the hillside, we can add a million dollars or more of ratables . . . , and we can collect taxes on those ratables every year from here on.

The Planning Board should not be allowed to hold up progress and to squelch the Lucy plan on untruths and dated thinking, . . .²

The support for Paul's apartments was more open. Pictures of the project and a repetition of the fact that the town would benefit from future tax monies were in ample evidence. A statement such as "these apartments would bring Nutley \$100,000 in tax ratables every year one town official told the Sun,"³ is an example of the paper's modified bias. Four days prior to the Zoning Board giving approval to Paul's apartments Orechio wrote an editorial giving his personal support to the project. He wrote that he believed that "the Board of

¹Ibid., April 14, 1966, p. 9.

²Ibid., Dec. 31, 1957, p. 6.

³Ibid., Nov. 10, 1965, p. 1.

Adjustment made a serious error last August. On this site apartments are of far superior use than factories."¹ Apparently the support is still given even after the project has been completed. In 1967 the Paul apartments were referred to "as a work of art."² In a related statement William Carew, Planning Board chairman, was described by Orechio as having "an antagonistic obsession against the location of apartments in areas zoned for industry."³

Another example of the paper's position was the quick positive response that was given to the apartment report by the Passaic Valley Citizens Planning Association which favored the development of high rise apartments for Nutley. Orechio called it a historic report and felt "... it was cheap at any price."⁴

Nevertheless the paper does not take a direct clearly visible position which is supportive of the goals of the economic notables. After all it cannot go too far in taking positions which favor special interests.⁵ Thus its arguments are presented in terms of what is best for the community. For the town to be progressive there must be "progressive action" to keep the business district viable and

¹Ibid., Jan. 13, 1966, p. 4.

²Ibid., Oct. 12, 1967, p. 1.

³Ibid., April 4, 1968, p. 1.

⁴Ibid., May 12, 1966, p. 4.

⁵Makielski, p. 150.

economically sound. Decisions on land use changes must be decided in the context of "additional tax ratables" and according to the rule of law.

Most scholars agree that newspapers have some impact on citizen attitudes toward the political system.¹ They play an important part in the network of communication systems within the community.² Even if many citizens are highly skeptical of the paper's accuracy (outside of the community activists interviewed in this study, we do not know if this is true throughout the community) it still remains as the main source of information about current and pending events in the community. It may be a factor in shaping individual perceptions and interpretations of events. If many do take their clues for reacting to a proposed land use change from the media, as Davies contends, then the Sun is a significant actor in shaping community responses.

The paper is the only source of news about community events so the residents are dependent on it for clues and information for proposals which may have an impact on their lives. A proposal must become known to become an issue.³ How quickly and extensively residents respond to threatened changes in land use is dependent on early awareness of the issue. If the only notice on a zoning variance

¹Davies, p. 149.

²Greer, American Sociological Review, vol. 25, p. 518.

³Martin, et al., p. 314.

is the legal notice required by law then the chances for a viable response may be small. In both the Feland and Paul cases the lack of advance warning left the residents little time to effectively organize or develop their case.

The limitations of the paper's role are also of interest. The Mayor has never had the support of the paper in his twenty years of political life, yet his popularity remains consistently high. His prestige is intact even though he has blocked the goals of the economic notables several times.

In view of such evidence one can reasonably conclude that the Sun is a significant and frequent actor "in the search for political stakes."¹

¹Kaufman, p. 84.

CHAPTER XIV

THE PROCESS OF LAND USE ALLOCATION AND THE PUBLIC INTEREST

One of the major questions regarding any policy formulation process is whether it produces outcomes which are productive for the "public interest" or the "common good of the community." Just what is the "public interest" is naturally difficult to get agreement on since in almost all political systems with some degree of pluralism, the diverse citizenry will articulate different criteria based on diverse value systems. In Nutley the notables and the protectionists define the public interest on land use policy from different frames of reference since each approaches "the problem from his distinctive and limited point of view."¹ Nevertheless the results from this competition had produced outcomes which can be defended as workable and reasonably satisfactory for both value systems and are in the "public interest" of society.² For purposes of this analysis

¹Martin, et al., p. 327.

²This is of course a value judgment by the author since there is no general consensus on what constitutes the public interest in a given issue area. See Charles E. Lindblom's The Policy Making Process, (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1968), pp. 17-18.

"public interest" refers to those outcomes which:

- 1) increase the number of choices for individual citizens,
- 2) add to the material comfort of a significant part of the citizenry,
- 3) are not harshly destructive of the major value preferences of the community.

This suburban decision making process resembles what Professor Banfield calls a "mixed-decision choice process" in his research on Chicago. This process is a combination of social choice and central decision choice by "which selections are made among the action possibilities open to some group or public."¹ Decisions made by social choice are the "accidental by-product of the action of two or more actors."² Each actor seeks to attain his own ends. Some scholars argue that the variety of social and economic forces in the community results in a competitive process which is more likely to produce a more "rational" decision than one made by a central decision-maker. In a way this is the kind of process found in Nutley to a large extent. One finds the competition of forces between the notables and the residents producing outcomes which probably either actor was not particularly certain of. On almost every issue of land use one finds this interplay of social and economic forces. A central decision

¹Banfield, p. 326.

²Banfield, p. 327.

process exists when the decision is made by a single individual or group such as a mayor, a board or a committee. Thus, if Mayor Chenoweth or the Zoning Officer, or a board made the final decision without other variables influencing their choice you would have a central decision making process. However, in Nutley, the central decision makers act in response to many forces: the residents, the Commissioners, the notables, and, in some instances, the courts.

In Nutley then, as in Chicago, we find a combination of both - social choice and central decision choice. The Board's make the final authoritative allocation of values. They are central decision-makers but they do not act in isolation but respond to the interplay of social forces in the community. They must and do relate the issue before them to the total political environment. To do so they must consider conflicting notable and resident goals and the distribution of resources of the actors in considering the final outcome. Furthermore, they must weigh the intensity and significance of the articulate participants, and search for ends which are satisfactory to both parties.

There is a combination of forces and, as a result, policies are set as a resultant of such conflict, not because some one policy making individual or group achieves an integration but because the pulling and hauling of various views accomplishes finally some sort of decision intended and probably different from what any advocate could comfortably defend by reference to his own limited values. The weighing or aggregation is a political process, not an intellectual

process.¹

In summary then, the decision-making process described here consists of competing interests whose interaction has had an impact on the final results. These results are also reflective of the values and judgements of central decision makers who exercise authority over the competing groups. The ultimate end product may be greatly influenced by other prior decisions such as the 1958 zoning ordinance. They are not exclusively a resultant of economic and social changes.

The central question still remains however as to the desirability and feasibility of this manner of determining what will be done with the land in the community.

The residents have put through an adequate number of zoning specifications that do in fact protect a substantial part of the total community. The laws and their administration have not been sufficient to prevent all challenges to the status quo of land use since controversial decisions such as the Feland and Paul ones are not infrequent and receive the official stamp of approval. Nevertheless Nutley is far from becoming an apartment community such as West Orange, New Jersey. Certainly the residents have forced the economic notables to consider carefully their objectives in the light of the potential high intensity of citizen opposition. Land use changes are not

¹Ibid.

attempted unless the costs and predictable realization of goals have been reasonably considered.

In a way the goals of the notables are a response to the housing needs and demands of many citizens. Apartments and single family homes are being constructed to house the expanding population. Generally they make their decisions on careful calculations of cost and careful use of available space. Who is to say that this kind of decision-making process for the utilization of valuable space is not more desirable than other methods such as by a central decision maker? Where there was one house on the Feland estate before there will now be seven. Middle income apartments now occupy formerly vacant land which heretofore had been reserved for future industrial use. The builder must consider the most economic use of the land in question. He seeks to:

maximize the profits in a market in which certain types of behavior are set by the forces of competition, and to do this it will be necessary for him to calculate costs carefully with appropriate attention to selection and planning of the site, market analysis, and protection of the future of the development.¹

On the other hand the accommodations and modifications secured by the residents have kept to a substantial degree the suburban atmosphere and openness of space, trees, parks, and community landscaping so greatly prized by the residents. They have forced compromises such as lower density, landscaping, and a two and one half

¹Martin, et al., p. 286.

story limit on almost all apartment houses. Thus in spite of intensive utilization of the land (99% of Nutley is now built up) the town has retained a residential nature in addition to a viable business district that few, very few, of the nearby communities have (particularly those in adjoining Passaic County).

The contrast between Nutley and nearby communities such as Passaic and Clifton are partly explainable because of historical social and economic developments. Communities northwest and south (Newark) of Nutley have been populated with many factories and supporting businesses and firms. Cities such as Newark, Clifton, Paterson, and Passaic have large working class populations, many small stores, and a large business district. Land development reflects this and the varied stages of the industrial revolution which left its mark on this section of New Jersey. Although many working class neighborhoods show a significant amount of time and energy invested in the homes, the differences with middle class communities, such as Nutley, in preserving desirable land uses and upgrading land uses, are very noticeable. Homes in working class districts are older and because of other factors such as neighborhood, nearness to factories, cost far less than Nutley homes. In Passaic one finds factories and stores widely interspersed among the homes. Also the patterns of development were established prior to the introduction of zoning laws which were quickly adapted in most middle class communities.

Certainly the ability of most lower income groups to activate their political resources to preserve their smaller property investments is far less than the higher educated and higher income groups found in Nutley and nearby Montclair.

If the protective values of the residents had been dominant and the Feland house remained intact (if they were dominant the probability is that no builder would have raised the issue to begin with); the Paul Apartments not built, the community would have been deprived of additional units of housing which are in short supply within the inner suburban ring surrounding New York City. There would also be the loss of jobs resulting from less intensive housing construction. This is not to say that the process is a model for development nor that the community could not have been designed in a manner more conducive to the needs of modern man and society. An observer of the suburban towns found in northern New Jersey could not help but conclude that there had been waste, poor planning, and, in many cases spatial development that seems to serve the interests of no one.

The finding here is that the physical environment seems to reflect the pluralistic nature of the social, economic, and political forces of the community. The mixture of land use development in Nutley reflects the bargaining and the goal conflicts between the two major social and economic forces of the community.

The outputs then are indicative of the dominant values within the community. The political process has worked reasonably well to keep the tensions and conflicts to a level that enables the community to conduct problem solving activities without prolonging factional cleavages.

This, competition, conducted under middle class "rules of the game" seems to produce results which are not antagonistic to the "public interest."

There is a distribution of resources in both the formal structure of government and among the non-governmental actors. On balance the distribution of resources and skillful application by the economic notables in utilizing their political resources has resulted in substantial achievement of their economic goals.

This is not to say that they have had their way in all major land use decisions. After all, in 1958 they finally accepted a modified but a reasonably strong zoning law. The ordinance was tolerable since they had extracted many compromises such as the continuation of both single family homes and apartments in areas zoned for industrial use. The restriction of only industry to such zones as proposed by the Planning Board would have shut the door on such economic ventures as the Paul Apartment complex. Thus they have been forced to bargain and compromise with the residents: the 1958 zoning law; the reduction of homes from eight to seven in the Enclosure; and the reduction of apartment units and stories in the Paul case.

Nutley is far from the one half to five acre residential fortresses found in Westchester or in eastern Long Island. It appears that suburban towns such as this one possessing a viable business community can only accomplish protective neighborhood goals to a modified extent. That is to say there will be many instances when the residents will not have their own way. The protective residents favoring the status quo must bargain with the local economic notables over the priorities of social and economic values. Not to be active means that the decision will be made on the basis of economic considerations only.

The evidence in Nutley appears to validate some of Makielski's findings concerning zoning politics in New York City: (1) that no single set of actors could completely dominate zoning policy, (2) bargaining is a major characteristic of a pluralistic system and reduces conflict while change occurs.

In terms of values and interests Nutley shows a modified pluralism but certainly not of the variety and to the extent found in the political system of New York City. Here the pluralism is limited to two major contending forces; the local businessmen and the protective residents.

We find here a variety of forces struggling to achieve limited but conflicting goals. Even though the distribution of influence and the distribution of resources is not even, the outputs in Nutley have resulted in community development in which both strongly

motivated forces have achieved partial accomplishment of their goals.

Other factors which should be considered at this point in this land use decision process are the determinants of prior decisions and individual values. Decisions made prior to a current visible issue may be of significance in determining the final outcome. For example, the decision in 1958 to keep industrial zones open to a multiplicity of uses meant a high probability that a Paul apartment proposal would be made and approved. Many decisions then are the "inevitable end product of past decisions."¹

Certainly the values of many residents were a strong factor in the end product of past decisions. In order to comprehend the final results of land use allocation the dominant values of participating individuals in the system must be considered. The end products are a result of the competition between the economic values of the notables and the preservative values of the residents. Some scholars, however, have contended that changes in land use are caused not from any human value determinant but from:

1. changes in the size and composition of population.
2. changes in technology.
3. changes in the level and distribution of income.
4. consequent changes in the social and economic organization of urban communities.²

¹Martin, p. 285.

²Wilhelm, p. 21.

It appears very strongly, that a fifty category, the degree of personal feeling toward the pace and manner of change must also be considered.

The process of deciding the available choices on this particular issue is of some importance to society. After all, the far reaching effect of land development separates it from other kinds of private activity.¹ The decisions made by a developer or several businessmen produces results which have a substantial impact on the immediate physical environment of many citizens. In effect they determine under what physical conditions present and future generations will work and live. They are decisions which remain with us for a long time and influence the "... position of many who were not party to the decision process."²

Another noteworthy characteristic of these decisions is that they are not exclusively private ones but are public-private in nature since, in most instances, public officials must approve what private individuals have proposed.

The limits of this study preclude any findings that the process has become more democratic than it was say thirty years ago. Certainly the number of actors and decision makers has increased but whether they are now more representative of the social and economic groups within the community as Adrian asserts is a question that must be answered elsewhere.

¹Martin, et al., p. 286.

²Ibid.

CHAPTER XV

CONCLUSIONS AND SUMMARY

The most frequent and persistent activists in land use conflicts are those who have a direct economic stake in the final outcome. The residents who advocated social ends, that is the preservation of the residential nature of their immediate neighborhood, were active but not to the extent the economic notables were. Resident activity is for the most part, ad hoc, confined to one particular land use issue.

The economic activists were representatives of the business community: real estate brokers, builders, insurance men, bankers, suppliers of construction materials, and local attorneys. Those who espoused protective values in almost all instances did not have any economic interests in the community - thus no opposing actors were found, with the exception of William Carew, to have any economic business interests in the community. In Carew's case his involvement was as a part time real estate broker in Nutley; his main source of income was derived from a bank in an adjoining community.

No community organization was found to be visibly involved in any of the 1965 controversies. The opponents were residents from the immediate area of the proposed change and at no time were

they effectively organized. In the Enclosure, where some success was achieved in an organizational sense, the group was cohesive only on that particular issue. After the final decision the group disappeared as an organized entity on the local scene.

In the Hillside street case, the Chamber of Commerce could have taken a position for the proposed street and parking lot but it was good politics for the Chamber not to be publicly active. The Chamber's influence with the Mayor was nil. Quite possibly the Chamber could not have taken a firm public position since many merchants at the end of Franklin Avenue already had a public lot and might not have been too anxious to fight for a lot which may benefit their competition. Merchants from other areas were not in evidence during the hearings.

The League of Women Voters, which took a public position in favor of stronger zoning laws and opposing apartment houses in the late fifties, has never been active in any particular land use controversy as described here. Some individual members have appeared before the Boards to express an opinion but this rarely amounted to anything more than one individual speaking in general terms about the "public interest." In 1967 three league officials, including the Chapter president, did appear to present a statement to Commissioners in which they indicated their approval and support for the proposed amendment to the zoning law.

Local attorneys were found to be very active, both as

intermediaries and as involved participants. Goldberg, Crockett, and Citrino play an intermediary role while the Donohue brothers were active in both roles, having a direct economic stake in the street and parking lot. The role of attorneys as negotiators in the political process is again emphasized here.

On balance the cases indicate that the residents usually lose in blocking goals decided and acted upon by the economic notables. The community is changing - housing is being constructed within the community and more and more frequently the housing is apartment construction which is viewed with anxiety by many affected residents. Thus the economic notables, although they are forced to bargain and compromise with the residents, usually obtain economic benefits from the final outcome.

Robert Wood has stated that one of the myths of suburbia is that the residents are likely to care a great deal about local events. This may very well be the case, but in Nutley, in the cases examined here, their involvement is very similar to general citizen involvement found elsewhere. That is to say, they become active only when the issue has a very direct and immediate relationship to their own personal style of living. The issue must have an impact on their neighborhood, their home, their convenience, and their general value preference for an environment that is less congested or populated than other areas. The activists who do not fall into this category are very rare indeed. Not even the highly organized Enclosure residents were

able to attract any significant block of support from the general community. In turn they did not give support to the Highfield Lane residents. The whole community does not get concerned. Even in this relatively homogeneous community there appears to be many "communities" in the town and rarely, at least in this issue, do they act in concert.

The issues, the probable consequences of the outcomes, the technical in's and out's of the zoning laws, were not beyond the comprehension of many of the residents. They certainly knew what was at stake and became educated very quickly on the technical zoning questions. Resident leadership consisted of highly educated individuals such as Glomb, a senior electronics engineer, and Girgus, also a senior engineer. The observations and comments made by the residents during public meetings showed a reasonable grasp of the questions at issue. Their comments put the proposal to an exhaustive analysis of the consequences and alternatives.

The residents are not able to organize or do not wish to organize longer than an immediate issue. Certainly the goal of strengthening the zoning laws should have provided some motivation and incentive but this is not the case. The ability to persist over a long period of time to secure protective goals is not in evidence. Once the battle is over they lose all interest. The probable reason is that most of them have limited time to spare because of job and family demands. The time problem becomes more acute when there

are a number of public hearings spread out over a long time span (anywhere from two to six months). They simply lack the time to respond on a consistent basis.

Although the business community is also fragmented because of differing interests and stakes, it does display a far more stable and enduring amount of cohesiveness. In many instances their stakes are similar in terms of economic goals, and their value structure is quite congruent. Most economic notables come into contact with each other on a frequent business or personal basis. Membership in such local social organizations such as the Lions Club, Rotary, and the Elks, enables them to develop extensive personal relationships with each other that provides an ease of contact and communication possessed by few of the residents. The latter may never really get together until a physical threat to their neighborhood forces them to get together.

The visible strength of the notables is noticeable in their ability to overcome the formal diffusion of power found in a governmental structure composed of a five man executive and legislative council, with considerable policy-making and policy implementation authority delegated to the planning and zoning boards. They have overcome this somewhat decentralized structure by:

- 1) placing their representatives in office especially on the Zoning Board and in general exercising a considerable amount of influence over who gets the nomination.

- 2) acquiring political resources and using them with sufficient skill.
 - 3) possessing economic goals and values which produces a significant amount of cooperation among economic actors.
 - 4) possessing a system of personal communication which facilitates the development and the application of political strategies.¹
- The result is to exercise a disproportionate amount of influence over land use decisions.

Those who seek changes in land use have acquired much experience and generally possess sufficient knowledge for achieving their goals. They know the formal and the informal rules of the political system; they know or are decision makers themselves and have a reasonable idea of what goals are acceptable and subject to approval.

Would the outcomes have been different if the residents had had wide community support? The probability is that they would have been so. It is conceivable that if the community-at-large responded with strong support to a threatened neighborhood, the public officials, particularly those with an economic orientation, would have been more cautious in making the final decision. This, of course, is only speculation since wide community response on any issue is an infrequent

¹Sayre writes that: "Resources, skill, and diligence in exploiting them are three conditions that make for success in influencing community decisions. A fourth may often be the ability to choose goals that do not strain the compliance of others in the system." Hauser, p. 133.

occurrence. It appears that unless local ad hoc groups have outside support, they can only achieve a partial modification of the proposed change.

There is reasonable evidence to conclude that if the residents had failed to take any action, the final outcome would have been far more to their disadvantage. The key vote in the Hillside street case by Jernick and the Mayor might not have been forthcoming if there were little or no opposition. The fact that there was a great deal enabled them to justify their negative vote in accordance with their values concerning the public good. It is probable that the mere threat of protest, the possibility of a lengthy decision-making process may cause the economic notables to consider carefully the feasibility of their goals, and to decide upon their modification. Potential dissent may require the proposed change to be in a design and form that is somewhat salable and attractive to the community. This may involve limited density for an apartment house, attractive landscaping and attractive design of single family homes.

One surprising factor was that the conflict over land use was not simply an example of conflict between commuters and non-commuters. Many of the opposing residents were those who worked within the community. The residents were composed of both commuters and non-commuters. On the other hand few commuters could be found among the economic notables.

Davies found that projects could be more easily opposed than supported in New York City. In Nutley the reverse is true. The opponents are initially at a disadvantage since they are almost always in the position of reacting late and are forced to work within legal ground rules agreed to by the notables. The act of opposing may be easy in itself but to oppose meaningfully and successfully is not so easy. Davies found a number of neighborhood groups, ongoing and new ad hoc groups, active in opposing urban renewal projects. Our evidence does not validate the popular myths noted by Robert Wood in Suburbia that suburban residents are highly organized and active in a variety of public issues. Here they did not materialize at all.

In view of these findings additional knowledge about the manner of resolving conflict in this particular issue area has been developed. However, only similar studies of other related political systems can validate the generalizations of political behavior described here.

This kind of suburban system, older and with more social diversity than post-World War II suburbs, does have more of a pluralistic characteristic than most sociologists indicate in their research on middle class suburbs. Nutley is not as pluralistic as Makielski found New York City to be when he studied the zoning process there. But it is plural in the sense that there is more than one major value system. In Nutley as in New York, we do find that

bargaining is a major part of the process.¹ Certainly this process of negotiating, of a system of bargaining, permits conflict to be reduced in Nutley.

Suburbia is not, at least in this study, a completely unified, cohesive system as most writers would have us believe. In a recent book the author referred to a New York Times editorial which observed that local zoning in New Jersey is "too often . . . intended to discourage the growth of a community, in order to spare its present residents the cost of new schools and other public works for newcomers."² This study indicates that such generalizations about suburbia are too often misleading. There are significant economic forces within the communities to balance such protective values.

The purpose of this study is to provide some systematic ordering of information about political behavior in the suburbs. Very few scholars have the detailed information necessary to formulate the generalizations that about in their books on suburban political life. Political science, as a discipline, has not pushed "ahead rapidly with the necessary arduous business of direct and systematic observation

¹Makielski, p. 188.

²Editorial, The New York Times, Dec. 21, 1964, p. 28, discussed in H. Wentworth Eldredge (ed.), Taming Megalopolis, vol. 1, p. 329.

of the phenomena it seeks to describe and analyze."¹ It is clear from the comparable works on politics of suburbia that the discipline has only begun to gather the empirical data necessary for theory construction in this significant area of American political life.

¹Oliver Garceau, "Research in the Political Process," Political Behavior, Heinz Eulau et al. (ed.), (Glencoe: The Free Press, 1959), pp. 52-53.

APPENDIX

APPENDIX A ZONING LAWS

The first zoning law was developed by Edward M. Bassett in New York in 1916. His writing and consulting after 1916 helped establish the New York City style of zoning throughout the country. He concluded that some land owners were ruining the institution of private property by locating intense uses where they did not belong, or by exploiting their land to the detriment of their neighbor's right to exploitation. Zoning would restrict the owners to defined uses in certain geographic areas. Simialr uses tended to be placed or located together.

Bassett reasoned that the natural "competitive system would be perfected if the few mavericks were herded into their appropriate area, thus separating compatible uses. ... He believed that the right way to control land use was by a map that places the intense uses in the center and along the major streets, with a gradual lessening of intensity, from factory to store to apartment to detached dwelling, in concentric rings of decreasing intensity out from the center where the heavy weights are. It also showed how to impose a smaller and lower envelope on one area than on another. Building height and percent of land coverage was observed to decrease naturally with distance from the center of the city. Therefore, rings of envelopes allowing greater and greater height and bulk as they approached the center might be put in map form. Since the regulations in one district tended to be only slightly more or less intense than those in the adjoining district, the system viewed from any one point in the city appeared to treat everyone almost equally. Such a zoning system appeared to Bassett as a discovery of the natural law itself, since it so perfectly corrected both intermingling and overcrowding, the two flaws in the city's process of natural selection.¹

Bassett's concepts soon spread to almost all of New York's suburban communities. Many planners feel that Bassett style zoning made it so simple that it was caught up in the do-it-yourself movement. As a result "much zoning is done by amateurs, working over official district maps with colored pencils, usually after dark in a poorly lighted city council chamber."² One planner scornfully calls this "the Amateur Hour."³

¹William Weismantel, "A New Vision in Law: The City as Artifact," Urban Life and Form, ed. Werner Hirsch, p. 50.

²Ibid., p. 46.

³Ibid.

ARTICLE VI, I. SCHEDULE OF REGULATIONS AS TO BULK, HEIGHT AND OTHER REQUIREMENTS - NUTLEY ZONING ORDINANCE

DISTRICT	TYPE OF USE	MINIMUM LOT SIZE				MINIMUM YARD DIMENSIONS				MAXIMUM HEIGHT		% LOT COVERAGE MAXIMUM	
		AREA SQ. FEET	WIDTH FEET	DEPTH FEET	PER D.U. SQ. FEET	FRONT FEET	REAR FEET	ONE SIDE FEET	BOTH FEET	STORIES	FEET		
R-1	ONE FAMILY DWELLING	INTERIOR	5000	50	6000	5000	25	HEIGHT OF BUILDING	4	1/2 HEIGHT	2 1/2	30	
		CORNER	6000	60		6000			4-25				
R-2	ONE FAMILY DWELLING	INTERIOR	5000	50	6000	5000	20	HEIGHT OF BUILDING	4	1/2 HEIGHT	2 1/2	30	
		CORNER	6000	60		6000			4-20				
	2	TWO FAMILY DWELLING	6000	60		3000	20	HEIGHT OF BUILDING	4	HEIGHT OF BUILDING	2 1/2	30	
	3	GARDEN APARTMENT OR 3 FAMILY DWELLING GROUPS	15,000	100		2000	35	50	20	40	2 1/2	30	20%
4	ROOMING HOUSES	6000	60		5000+200 PER ROOMER	20	HEIGHT OF BUILDING	4	HEIGHT OF BUILDING	2 1/2	30		
R-3	1	RES. 2 USES	ALL REQUIREMENTS AS IN R-2 ZONE										
	2	MULTI-FAMILY DWELLING STRUCTURES EXCEEDING 2 1/2 STORIES IN HEIGHT	43,560	150		2000	35	50	15	30	4	50	20%
B-1	1	RESIDENTIAL	ALL REQUIREMENTS AS PRESCRIBED IN THE R-1, 2 AND 3 ZONES										
	2	OFFICES AND LABS CLUBHOUSE					20	10	4	1/2 HEIGHT	2	25	50%
B-2	1	RESIDENTIAL	ALL REQUIREMENTS AS PER ARTICLE V, G. 1; RESPECTIVE R ZONE REQ'S.										
	2	RETAIL SHOPS, OFFICES CLUBHOUSE					IN LINE	10	4	1/2 HEIGHT	2 1/2	30	60%
B-3	1	OFFICES					IN LINE	10	NONE EXCEPT 1/2 HEIGHT WHERE ABUTTING R ZONE	2	25	60%	
	2	STORES					IN LINE	10		2	25	60%	
	3	PUBLIC ASSEMBLY					IN LINE	10		2	25	40%	
B-3	4	MORTUARY IN * MORTICIAN'S HOME					20	10	4	1/2 HEIGHT	2 1/2	30	50%
	5	* RESIDENCE	*ALL OTHER RESIDENTIAL USE SUBJECT TO ARTICLE V, H, II. SPECIAL RESTRICTION - MIXED R & B USE IN SAME STRUCTURE PROHIBITED										
B-4	1	ALL BUSINESS USES	ALL REQUIREMENTS AS IN B-3 ZONE										
	2	WHOLESALE STORAGE, LIGHT PROCESS, SUPPLY YARDS, REPAIR GARAGES					20	10	PERIMETER STRIP HEIGHT OF BUILDING	2	20	70% (BOTH BUILDING AND STORAGE AREAS)	

		CORNER	6000	60	6000	20	HEIGHT OF BUILDING	4-20	24			
R-2	2	TWO FAMILY DWELLING	6000	60	3000	20	HEIGHT OF BUILDING	4	HEIGHT OF BUILDING	2 1/2	30	
	3	GARDEN APARTMENT OR 3 FAMILY DWELLING GROUPS	15,000	100	2000	35	50	20	40	2 1/2	30	20%
	4	ROOMING HOUSES	6000	60	5000+200 PER ROOMER	20	HEIGHT OF BUILDING	4	HEIGHT OF BUILDING	2 1/2	30	
R-3	1	RES. 2 USES	ALL REQUIREMENTS AS IN R-2 ZONE									
	2	MULTI-FAMILY DWELLING STRUCTURES EXCEEDING 2 1/2 STORIES IN HEIGHT	43,560	150	2000	35	50	15	30	4	50	20%
B-1	1	RESIDENTIAL	ALL REQUIREMENTS AS PRESCRIBED IN THE R-1,2 AND 3 ZONES									
	2	OFFICES AND LABS CLUBHOUSE				20	10	4	1/2 HEIGHT	2	25	50%
B-2	1	RESIDENTIAL	ALL REQUIREMENTS AS PER ARTICLE V, G. 1; RESPECTIVE R ZONE REQ'S.									
	2	RETAIL SHOPS, OFFICES CLUBHOUSE				IN LINE	10	4	1/2 HEIGHT	2 1/2	30	60%
B-3	1	OFFICES				IN LINE	10	NONE EXCEPT 1/2 HEIGHT WHERE ABUTTING R ZONE		2	25	60%
	2	STORES				IN LINE	10			2	25	60%
	3	PUBLIC ASSEMBLY				IN LINE	10			2	25	40%
	4	MORTUARY IN * MORTICIAN'S HOME				20	10	4	1/2 HEIGHT	2 1/2	30	50%
	5	* RESIDENCE	*ALL OTHER RESIDENTIAL USE SUBJECT TO ARTICLE V, H, II. SPECIAL RESTRICTION - MIXED R & B USE IN SAME STRUCTURE PROHIBITED									
B-4	1	ALL BUSINESS USES	ALL REQUIREMENTS AS IN B-3 ZONE									
	2	WHOLESALE STORAGE, LIGHT PROCESS, SUPPLY YARDS, REPAIR GARAGES				20	10	PERIMETER STRIP HEIGHT OF BUILDING		2	20	70% (BOTH BUILDING AND STORAGE AREAS)
M	1	ALL COMMERCIAL USES	ALL REQUIREMENTS AS IN B-4 ZONE									
	2	CERTAIN INDUSTRIAL USES USES FROM WHICH NO SMOKE, DUST, FUMES OR ODORS ARE DISSEMINATED BEYOND BOUNDARIES OF THE DISTRICT AND WHICH CONSTITUTE NO UNUSUAL HAZARD OF FIRE AND EXPLOSION				20	10	BUILDING HEIGHT	TWICE BUILDING HEIGHT	4	50	50%
SPECIAL B-4 & M ONLY	ONLY B-4 & M ZONES SUBJECT TO SPECIAL PERMIT FROM THE BOARD OF COMMISSIONERS											
	GAS STATIONS - USED CAR LOTS		7,500	75	100		35	25	10	45	1 STORY	15

APPENDIX C

Village of Euclid v. Ambler Realty Co.

272 U. S. 365 (1926)

Building zone laws are of modern origin. Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing which require and will continue to require additional restrictions in respect of the use and occupation of private lands in urban communities.

... apartments sometimes result in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk ... the disturbing noises incident to increased traffic ... until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed. Under these circumstances, apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances.

Meeting of the Board of Adjustment of the
Town of Nutley, duly called and held in
the Commission Chambers of the Town Hall
on Monday, January 17, 1966 at 7:50 p.m.

The meeting was called to order by Chairman, Joseph Addio.

PRESENT: Joseph Addio, Chairman; Gerard C. Biondi, Acting Vice-Chairman and Secretary; Armen Maurillo and John Gorman. Ernest Piro, Building Inspector, was also present at meeting. Recording Secretary was Mr. Winard, Certified Shorthand Reporter, of Winard & Winard, Newark, New Jersey.

Reporter was sworn in.

CHAIRMAN: The purpose of this meeting is to consider the request of Paul Properties-Nutley, Inc., 110 East 42nd Street, New York, New York, for variance from the provisions of the Nutley Zoning Ordinance, in connection with Block 490, Lot 1, #442-462 River Road, Nutley, New Jersey. The Secretary will please read the decision of the Building Inspector and grounds for the appeal in this case.

Here, Mr. Biondi, Secretary, read the decision of the Building Inspector and grounds for the appeal, which are attached hereto and form a part of these minutes.

BIONDI: All the papers appear to be in order.

A COMPLETE COPY OF THE MINUTES CAN BE OBTAINED FROM WINARD & WINARD, NEWARK, NEW JERSEY.

Following a recess, a motion was made by Mr. Biondi to adopt the Resolution read by Mr. Addio, which motion was seconded by Mr. Maurillo; which copy of Resolution is attached hereto and forms a part of these Minutes.

YEAS: Messrs. Biondi, Maurillo and Addio.

NAY: Mr. Gorman.

The Secretary was instructed to advertise and/or publish the decision of the Board in this matter.

The meeting was adjourned.

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M. A. , Georgetown University

The Politics of Land Use in a Suburban Political System.

Dissertation directed by Stephen David, Ph. D.

This is a study on the politics of land use in one suburban political system - Nutley, New Jersey, located in the inner suburban ring surrounding New York City.

Few political scientists have systematically studied the suburban political process. This research is an attempt to develop knowledge about these smaller political units which can be compared with data in other similar types of communities.

A central question in the design of this study is the extent and influence of the business community in determining the final outputs of land use decisions. That is to what extent do business elites dominate land use policy in those suburban communities which have a viable business district amidst predominantly single family homes.

Specifically the questions to be answered are:

1. Who are active in such issues?
2. What strategies are used in achieving goals?
3. Who gains and who loses as a result of such governmental decisions?
4. What political resources do the participants have?

The politics of land use is studied through an analysis of three cases which occurred in 1965 and are typical of land use conflicts in this community and in most suburban communities located around New York City. They consist of: 1) a proposal to construct a new street from the business district to a residential area in order to speed up the traffic flow through the downtown area.

2) a request to subdivide an old estate in a prestige area into eight single family homes. This involved the destruction of a historical house viewed as sacred by many in the community.

3) a proposal to construct an apartment house complex near a single family home neighborhood.

Data was obtained from over forty interviews, local newspapers and public records.

The business notables were successful in two of the three cases. The estate was subdivided; the historical house was torn down and an apartment complex of 138 units was constructed.

The protesting residents were successful in blocking the new street and in modification of the other two economic goals: the apartment units were reduced from 201 to 138, and the lots on the estate were reduced from 8 to 7.

The two dominant forces active in land use policy inputs and outputs were: the business (economic) notables, i. e., those who earned most of their income from community investments, and the

residents, those owners of single family homes who want to preserve the status-quo of land use. In the cases these two conflicting values, economic and protective, were manifested.

The cases and the history of land use policy demonstrate that the economic notables have generally achieved their goals, although they must bargain and compromise with protesting residents. Both factions have significant political resources including representatives on governmental decision making boards such as the town Commission, and Planning and Zoning Boards.

Protesting residents were weakly organized. In only one case did a formally organized group materialize. Residents became informed on proposed land use changes just prior to the public hearing and lacked sufficient time to organize, and prepare strategy. They did not attract support from citizens who lived more than a few blocks from the proposed site.

The notables have time, money, and a high degree of knowledge concerning zoning laws. Such resources combined with acquired experience on land use matters insure that they are more likely to accomplish their goals.

The results reflect the two dominant community values, economic and protective. The town's physical development indicates that the results are satisfactory to both sides: houses and apartments have been built while at the same time, the rustic, landscaped environment of the area has been preserved.

VITA

Joseph Albert LaMay, son of Joseph Bernard and Mae LaMay, was born on May 10, 1933, in Paterson, New Jersey. He attended Bishop Loughlin Memorial High School, New York City, and was graduated in June 1951.

After serving four years in the U. S. Navy he entered the Pennsylvania State University in 1956 and received the degree of Bachelor of Arts in June 1960.

From 1960 to 1962 he was employed in the U. S. Department of Commerce, Washington, D. C. In 1962 he entered the U.S. Atomic Energy Commission as a Management Intern. Assigned to the New York office of the Commission he worked in the fields of personnel, organization and methods, and contract administration.

During his federal employment he attended night classes at Georgetown University where he received the Master of Arts degree in 1964.

In September 1965 he was accepted as a graduate student in the Graduate School of Arts and Sciences of Fordham University where he majored in Urban Politics under the mentorship of Professor Stephen M. David. At Fordham he was awarded a Graduate Assistantship, a Teaching Fellowship, an Esso Foundation Fellowship, and a NSF Summer Fellowship.

In 1968 he was appointed to the rank of Lecturer in Political Science at Vassar College, Poughkeepsie, New York.