

RULS - AD - 1971 - 40

11/2/1971

- TRANSCRIPT OF PARTIAL DEPOSITION OF PAUL GAVIN

PGS - 10

1
2 **THE ALLAN-DEANE CORPORATION,**
3 **etc.,**

RULS - AD - 1971 - 40

4 Plaintiff,

5 vs.

6 **THE TOWNSHIP OF REDMINSTER,**
7 **etc., et al.,**

8 Defendants.

: DEPOSITION UPON
: ORAL EXAMINATION
: OF
: PAUL F. GAVIN

: (EXCERPT)

9 TRANSCRIPT of the partial deposition of Paul F.
10 Gavin, a witness, called for Oral Examination by the plaintiff
11 in the above-entitled action, said deposition being taken
12 pursuant to Rules governing Civil Practice in the Courts of
13 New Jersey by and before IRVING SABOR, a Notary Public and
14 Certified Shorthand Reporter of the State of New Jersey, at
15 the office of William W. Lanigan, Esq., 59 South Finley
16 Avenue, Basking Ridge, New Jersey, on Tuesday, November 2,
17 1971, commencing at 10:00 o'clock in the forenoon.

18 **Appearances:**

19 WILLIAM W. LANIGAN, ESQ., and
20 DANIEL F. O'CONNELL, ESQ.,
Attorneys for Plaintiff.

21 EDWARD D. BOWLBY, ESQ., and
22 MC CARTER & ENGLISH, ESQS.,
By NICHOLAS CONOVER ENGLISH, ESQ.,
23 Attorneys for Defendants.
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1 PAUL F. GAVIN, having been duly sworn according
2 to law, testified as follows:

3 DIRECT EXAMINATION BY MR. LANIGAN:

4 Q Mr. Gavin, you are familiar with the litigation
5 involved in this case? A Yes, I am.

6 Q Are you familiar with the Answer which was filed?
7 I show it to you to refresh your recollection.

8 MR. ENGLISH: Have you ever seen that?

9 THE WITNESS: No.

10 Q Did you participate in any way --

11 MR. LANIGAN: Mr. English, I am perfectly
12 willing to stop. I do not want to encroach upon
13 your attorney-client privilege, but it is necessary
14 for me to find out how much participation he had
15 in some of the statements which are made in the
16 Answer.

17 MR. ENGLISH: None.

18 MR. LANIGAN: He had no participation.

19 MR. ENGLISH: I never met the gentleman until
20 Saturday and I drafted the Answer.

21 MR. LANIGAN: Perhaps I will see whether he
22 has some familiarity.

23 MR. ENGLISH: He said that he had never seen
24 it before.

25 Q Let me ask you this then, Mr. Gavin. With respect

1 to the Answer, there were certain defenses raised and I would
2 like to read to you one of the defenses and ask you if you
3 can tell me what it is.

4 The THIRD DEFENSE states "Plaintiffs have failed to
5 exhaust their administrative remedies, so that the Complaint
6 must be dismissed." A Yes.

7 Q Do you have any idea what that means?

8 A Well --

9 MR. ENGLISH: I object to this line of
10 questioning. He had nothing to do with the Answer.
11 He was not consulted on it. He has not read it.
12 I suggest that this is improper. I direct the
13 witness not to answer this question.

14 There are other ways that you can find out the
15 substance of the Answer, but this man knows nothing
16 about it.

17 MR. LANIGAN: He is chairman of the Planning
18 Board. You are right, there is another way and
19 perhaps we will explore that, but I would rather
20 not do that.

21 If he does know the answer we can cut through
22 a lot of red tape. If I send interrogatories with
23 respect to the same questions, he is chairman of
24 the defendant and if he has no knowledge and can
25 offer no opinion, certainly I am left with counsel's

1 answer which would, in all due respect, not be
2 satisfactory.

3 MR. BOWLEY: I don't see how you can expect
4 to get a layman to answer a question such as that.
5 That is a legal defense. It requires a little bit
6 of different expertise to understand it. I don't
7 think it is a factual matter.

8 MR. LANIGAN: Okay. That is the first question.
9 Let's go through the others and see whether the
10 answer is the same as to the others.

11 Q Mr. Gavin, the EIGHTH DEFENSE to all Counts refers
12 to "a large area of relatively open space in proximity to
13 densely populated areas in a large metropolitan area is
14 desirable both in respect to the quality of the regional
15 environment and as an antidote to urban sprawl."

16 Mr. Gavin, what do you mean by "the quality of the
17 regional environment?"

18 MR. ENGLISH: I object to that. He doesn't
19 mean anything because he has not seen the Answer
20 and read the Answer. I direct him not to answer
21 the question.

22 Q With respect to the next question, what is the
23 "antidote to urban sprawl" referring to there?

24 MR. ENGLISH: He doesn't refer to it. As I
25 told you, I have. I direct him not to answer that

1 question.

2 Q In the NINTH DEFENSE to all Counts it states "The
3 reasonableness of the Zoning Ordinance in the Township of
4 Bedminster must be considered in addition to other consider-
5 ations in light of the population density, land uses and
6 zoning ordinances of other municipalities in northern New
7 Jersey."

8 What are those other considerations that you refer to?

9 MR. ENGLISH: I object to the question on the
10 same ground. He doesn't refer to anything and I
11 direct him not to answer the question.

12 Q What are the "other municipalities in northern New
13 Jersey" that you refer to?

14 MR. ENGLISH: He has not referred to anything.
15 I direct him not to answer the question.

16 Q With respect to the TENTH DEFENSE in all Counts, it
17 refers to the Zoning Ordinance of the Township of Bedminster,
18 "the valid exercise of zoning power, in that it tends to
19 promote and preserve the values of open space on the edge of
20 a large densely populated metropolitan center, and of mini-
21 mizing interference with existing environmental conditions
22 and ecological systems."

23 My question to you is, what is the geographical edge of
24 this densely populated metropolitan center?

25 MR. ENGLISH: I make the same objection and

1 direct the witness not to answer the question.

2 Q What is the way that there is a minimizing of
3 interference with existing environmental conditions and
4 ecological systems?

5 MR. ENGLISH: Same object and same direction
6 to the witness.

7 Q What are these "environmental conditions"?

8 MR. ENGLISH: Same objection, same direction.

9 Q What are these "ecological systems"?

10 MR. ENGLISH: Same objection, same instructions
11 to the witness.

12 Q Going back to the EIGHTH DEFENSE, Paragraph 3 of
13 that defense refers as follows: "The social interests
14 described in Paragraph 2 of the EIGHT DEFENSE to all Counts
15 can be vindicated only by upholding the validity of the
16 provisions for five-acre minimum lots in the Zoning Ordinance
17 of the Township of Bedminster."

18 My question to you is, what social interests are you
19 talking about and how can social interests be vindicated?
20 What does that mean?

21 MR. ENGLISH: Same objection and same direction
22 to the witness.

23 Q In the TENTH DEFENSE, Mr. Gavin, the Amended Answer
24 refers to to the fact that plaintiff seeks to construct a
25 Research-Office facility on the site in question.

1 What is the similarly zoned space which remains
2 undeveloped in nearby municipalities which has been referred
3 to in that defense?

4 MR. ENGLISH: I object on the same ground and
5 the same instructions to the witness.

6 MR. LANIGAN: If I might say here, that these
7 are questions which I am entitled to have answered
8 and I don't presume to have counsel answer them.

9 Since they relate to factual matters and to
10 the explanation of phraseology with which I am
11 unfamiliar, and if counsel cannot be expected to
12 testify as to what he meant by vindicating social
13 interests, then I am left to the discovery process
14 in asking the chairman of the Planning Board, of
15 the defendant, otherwise discovery is meaningless
16 and nullity and it is with that thought in mind
17 that I am respectfully asking that you reconsider
18 and have the witness direct his attention to those
19 questions and supply us with the answers as part of
20 the discovery process.

21 MR. ENGLISH: I stand on my present position.

22 MR. LANIGAN: All right. Under the rules, I
23 think that what we better do is find out whether
24 these questions are going to be answered or not by
25 Mr. Gavin and perhaps adjourn the hearing until we

1 can get an answer. I am going to ask the Court
2 to direct that

3 MR. ENGLISH: All right.

4 MR. LANIGAN: I will also make a motion in the
5 alternative for a more definite statement or a
6 motion to strike your defenses on the ground that
7 there has been a refusal to complete discovery.

8 MR. ENGLISH: You have your remedies, Mr.
9 Lanigan, but I think your basic premise is
10 fallacious in that you assume that Mr. Gavin is the
11 only witness who has knowledge of all the facts on
12 which we intend to rely. Asking him to in effect
13 testify to the whole case is unreasonable and
14 improper.

15 MR. LANIGAN: It would have been simple, if he
16 had no knowledge as you have just pointed out, for
17 him to say so. The witness was instructed not to
18 answer on matters which I am certain, as a result
19 of the first part of these depositions and his
20 familiarity with the area, he has complete knowledge.

21 I think perhaps that we should adjourn and
22 make some arrangements to go into court and have
23 this decided. This is crucial to the defense of
24 this case.

25 MR. ENGLISH: All right. Are we through for

Gavin - direct

1 the day?

2 MR. LANIGAN: Yes.

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THE ALLAN-DEANE CORPORATION, :
etc., :

Plaintiff, :

vs. :

CERTIFICATE OF OFFICER

THE TOWNSHIP OF BEDMINSTER, :
etc., et al., :

Defendants. :

I, IRVING SABOR, a Notary Public and Certified
Shorthand Reporter of the State of New Jersey, do hereby
certify that prior to the commencement of the examination
the witness, Paul F. Gavin, was sworn by me to testify the
truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true
and accurate transcript of the testimony as taken stenograph-
ically by and before me at the time, place and on the date
hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative
nor employee nor attorney nor counsel of any of the parties
to this action, and that I am neither a relative nor employee
of such attorney or counsel, and that I am not financially
interested in the action.

Irving Sabor

A Notary Public of the State
of New Jersey.

My Commission Expires
August 1974