RULS - AD - 1971 - 60

11/29/1971

- TRANSCRIPT OF DEPOSITIONS OF FRANK ROBERTSON + ALBERT WINKLER

PGS - 49

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-36896-70 P.W.

RULS - AD - 1971 - 60

THE ALLAN-DEANE CORPORATION, a Delaware Corporation qualified to do business in the State of New Jersey,

Plaintiff,

vs.

THE TOWNSHIP OF BEDMINSTER, a municipal corporation of the State of New Jersey, and THE TOWNSHIP OF BEDMINSTER PLANNING BOARD,

Defendants.

DEPOSITIONS UPON ORAL EXAMINATION

OF

FRANK P. ROBERTSON
ALBERT E. WINKLER

TRANSCRIPT of the depositions of FRANK P. ROBERTSON and ALBERT E. WINKLER, Witnesses, called for oral Examination by the Plaintiff in the above-entitled action, said depositions being taken pursuant to Rules governing Civil Practice in the Courts of New Jersey by and before QUENTIN D. LUCARELLO, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, at the Offices of the Township Clerk, Bedminster Town Hall, Bedminster, New Jersey, on Monday, November 29, 1971, commencing at ten o'clock in the morning.

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

WILLIAM W. LANIGAN, ESQ.,
By DANIEL F. O'CONNELL, ESQ. (Robertson)
and
By WILLIAM W. LANIGAN, ESQ. (Winkler)
Attorneys for Plaintiff,

EDWARD D. BOWLBY, ESQ. and
MC CARTER & ENGLISH, ESQS.,
By NICHOLAS CONOVER ENGLISH, ESQ.,
Attorneys for Defendants.

[redacted]

[redacted]

I N D E X T O W I T N E S S E S

NAME	DIRECT	CROSS
FRANK P. ROBERTSON	4 - O'Connell	
ALBERT E. WINKLER	16 - Lanigan	

F R A N K P. R O B E R T S O N, having been first duly sworn according to law by the Notary, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNELL:

Q Now, Mr. Robertson, your attorney, Mr. English, I'm sure, has explained what we will be doing here this morning. This is a deposition. The scope of depositions is wide and it's merely discovery, a discovery procedure. Commencing with that thought in mind can you identify yourself for the record and relate what your relationship is to the Township of Bedminster?

A My name is Frank P. Robertson and I'm the Township Clerk of the Township of Bedminster.

Q And how long have you been Township Clerk?

A Since February 2, 1948.

Q And could you tell us, if you know, who the Township Clerk was prior to your taking office?

A Yes, George Lester Poulson.

Q Now, in serving the Township of Bedminster have you also served in other capacities?

A Yes.

Q And could you tell us what they are?

A A member of the Planning Board.

Q And for what period? A I'll

have to do some digging for that.

Q Well, I don't think that's that important as to the time period. A All right. For a period of about three years, and Secretary of the Planning Board from its inception to December 31, 1965.

Q Did Mrs. Sieminski follow you as Secretary to the Planning Board? A Yes, she did.

Q Now, in your capacity as Clerk of the Township, is it your responsibility to maintain the records for the Township Committee? A Yes.

Q And do you maintain those records?

A Yes.

Q Does anyone else, to your knowledge, have any records pertaining to the Township Committee's meetings, be they the agenda, the formal meetings or anything else?

A No. You mean original records?

Q Yes. A No.

Q In relation to your capacity as keeper of the records for the Township, would you have all records pertaining to adoptions of any zoning amendment or zoning ordinance? A Yes.

Q Now, I go to the zoning ordinance of the Township of Bedminster, and on page 15, there's a history of the ordinance set forth on that page. The first item states that it was adopted on December 30, 1946. Since this

was prior to your becoming Township Clerk do you have records of the meetings of the Township Committee as of that date, either December 30, 1946 or preceding it, relating to the adoption of the official ordinance?

A Yes, right here. All that would appear here would be the second notice.

Q This is the December 30, 1946 meeting?

A That is correct.

Q The notice of the adoption of the ordinance. Now, Mr. Robertson, are there any minutes preceding December 30, 1946 which relate any discussion or correspondence leading up to the adoption of this zoning ordinance?

A Yes.

Q Could you give us the first date of any reference to the zoning ordinance from your records?

A Any mention, you're saying?

Q Any mention of the zoning ordinance.

A April 6, 1946.

Q And could you tell us what was noted in the minutes of April 6, 1946?

MR. ENGLISH: Off the record.

(Off the record discussion.)

MR. ENGLISH: In preparation for the deposition this morning I asked Mr. Robertson to please review the minutes of the Township

Committee and in an effort to put a book mark in every minute that seemed to have some bearing upon the adoption of the zoning ordinance or any amendments thereto. Mr. Robertson has done so and the books are here with the markers inserted in them. Mr. O'Connell has suggested that rather than interrogate Mr. Robertson at length the Township undertake to make a photo copy of each of the entrys that Mr. Robertson has identified and furnish them to counsel. The defendants have no objection to this suggestion.

MR. O'CONNELL: I would just like to add one thing.

Q Mr. Robertson, would these documents encompass all the official minutes pertaining to the zoning ordinances, amendments thereto and any Township Committee action on the Master Plan?

A Yes.

Q Including any proposed revision of the Master Plan?

A Yes.

MR. O'CONNELL: At a previous deposition of Mrs. Ann Sieminski, the now Secretary of the Planning Board, plaintiff requested copies of the consultant's reports referred to in the Master Plan, Bedminster Township, New Jersey, March, 1965, Roman numeral eleven, appendix, which did

list some twenty some odd reports considered by the Planning Board in their adoption of the Master Plan. At that time Mrs. Sieminski stated that she was not -- that she did -- they did not have copies of the reports and I have now been supplied copies of the reports by Mr. Robertson in compliance with our request.

Q Now, Mr. Robertson, during Mrs. Sieminski's deposition there was reference to private Committee hearings both of the Planning Board and of the Township Committee and committees appointed by both of these bodies. My question to you is, do you have any records of these meetings or any minutes taken at these meetings?

MR. ENGLISH: Do you understand the question?

THE WITNESS: Yes, and I know what he's driving at.

A I would have only records of the official action of the Township Committee.

Q Mr. Robertson, do you know, this is to your personal knowledge, do you know who might have minutes to the sub-committee meetings or whether, in fact, there ever were any minutes taken?

THE WITNESS: Off the record?

MR. O'CONNELL: Off the record.

(Off the record discussion.)

A I don't know.

Q Do you know of any one who might have these names? A Names?

Q Names of anyone who took minutes or who might have the records? A No, not offhand.

Q Now, in relation to the zoning ordinance of the Township of Bedminster, would the minutes which you're making copies of for us contain all correspondence from the public relating to any amendment?

A They would contain either correspondence or comment made at a public meeting.

Q Do you retain records of correspondence outside of the minutes pertaining to the zoning amendments and zoning changes? A Anything of major importance would be in the minutes.

Q But, Mr. Robertson, do you keep other correspondence which would not be of major importance but which were submitted to the Township Committee for their consideration?

A Yes.

Q Do you have those pieces of correspondence on file here? A Off the record?

MR. O'CONNELL: Off the record.

(Off the record discussion.)

A There was very little.

MR. O'CONNELL: Off the record.

(Off the record discussion.)

THE WITNESS: The minutes contain a summary of all correspondence directed to the Township Committee.

Q Now, Mr. Robertson, in relation to your zoning ordinance as opposed to your Master Plan, do you have copies of any reports from your engineers or consultants relating to either the initial adoption of the ordinance or any amendment thereto? A The only reports which I would have are the ones that you have in relation to the Master Plan.

Q So, then, to the best of your knowledge there never were any reports compiled by your consultants relating to any of the zoning changes? A Mr. Agle, the planning consultant, would have furnished reports relative to zoning changes.

Q And he would have copies of these reports?

A You also have them.

Q Now, you say, Mr. Robertson, that we have copies of these reports. Are these the reports you have submitted to us in relation to the Master Plan?

A Yes.

MR. ENGLISH: What time period are you

talking about?

MR. O'CONNELL: From 1946 on.

MR. ENGLISH: Since the adoption of the Master Plan?

MR. O'CONNELL: I was asking for reports which related to zoning amendments as opposed to the Master Plan itself.

MR. ENGLISH: Okay.

MR. O'CONNELL: We don't know whether there are any. What our major concern is, is if there were any consultant reports relating to the change in zones and the like that are not part of the minutes which we're getting copies of we would like to have the reports as well.

THE WITNESS: All that I would have in the way of documentation would be the minutes themselves or the reports furnished by Mr. Agle.

MR. ENGLISH: Off the record.

(Off the record discussion.)

MR. O CONNELL: May we have these?

MR. ENGLISH: Yes.

MR. O'CONNELL: For the record, I'm referring to eleven reports which have been handed to me by Mr. Robertson which are from

Charles K. Agle and addressed to various bodies, official bodies of the Bedminster Township, either Planning Board, Township Committee or Board of Health.

Q Now, Mr. Robertson, these reports were prepared by Mr. Agle subsequent to the adoption of the Master Plan. Do you have any reports --

MR. ENGLISH: Off the record.

(Off the record discussion.)

MR. O'CONNELL: The record, I think, should note that some of the studies and memos were prepared prior to the adoption of the Master Plan.

MR. ENGLISH: Excuse me. Could I suggest that the record show that the earliest date of the eleven reports which Mr. Robertson has just handed to Mr. O'Connell is January 25, 1965 and the latest date on any of those reports is October 21, 1965.

Q Now, Mr. Robertson, do you have any reports that were prepared by any consultant prior to January 25, 1965 relating to either the Master Plan or the zoning ordinance irrespective of the consultant reports which are made part of the appendix of the Master Plan? Are there any other reports? A I believe that you have

them all.

Q. Were there any reports prepared after October 21, 1965 in relation to either the Master Plan or the zoning ordinance or any amendment thereto?

A Will you repeat your question.

Q Yes. Are there any reports, do you have any reports in your files from any consultant subsequent to October 21, 1965? A No.

Q Relating to either the Master Plan or the zoning ordinance? A No.

Q Now, Mr. Robertson, going back to the zoning ordinance, in 1957, about December of 1957, there was an amendment to the zoning ordinance. This will be reflected, I'm sure, in the minutes which we will receive, but from your personal knowledge of that meeting, in this meeting, to identify it for you, the amendment dealt with the property then owned by Mr. Rodenbach. Are you familiar with Mr. Rodenbach, first? A Yes.

Q Do you remember this particular meeting leading up to the amendment to the zoning ordinance?

A You're referring to 1965?

Q 1965, that is right.

A And the date?

Q I'm referring to 1957.

A May I have the date again?

Q My records show December 2, 1957.

A This is the date of the final adoption of an amendment to the zoning ordinance.

Q Could you tell us briefly what that change was, what that amendment was? A The amendment involved Section 2 of Article 3 of the zoning ordinance wherein it amended the definition of "Accessary use or building" to read "Assessary use or building is a subordinate or building customarily incident to and located on the same lot with the main use of the building". It amended in supplemented Section 21 of Article 3 --

MR. O'CONNELL: Off the record.

(Off the record discussion.)

Q I just want you to refresh your recollection. We are going to have copies of all of these documents anyway. When I refer to Mr. Rodenbach I'm questioning more specifically as to your recollection of Mr. Rodenbach's various applications to the Planning Board and to the Township Committee. Are you familiar with Mr. Rodenbach's property which is located or was located at the intersection of Route 202, Route 202 and Route 206 and Lamington Road. There's a triangle? A Yes, I'm familiar with that property.

Q All right. Are you familiar with the building which was constructed on that property?

A This is the building currently occupied by Research Cottrell Incorporated.

Q Now, Mr. Robertson, would you, as clerk of the building permit, which was issued at the time Mr. Rodenbach constructed this particular building?

A No, I would not. That would be in the hands of the building inspector.

Q To your recollection do you remember when this building was constructed? A No.

Q To your recollection do you remember when the zone for this building was changed to "Office and Research"?

A Not without referring to the record.

MR. O'CONNELL: I have no further questions of Mr. Robertson.

MR. ENGLISH: I have no questions.

(At this point Mr. O'Connell left the depositions and Mr. Lanigan took over the examination of the next witness.)

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A L B E R T E. W I N K L E R, having been first duly sworn according to law by the Notary, testified as follows:

DIRECT EXAMINATION BY MR. LANIGAN:

Q Mr. Winkler, you're the Mayor of the Township of Bedminster? A Yes, sir, I am.

Q And how long have you been Mayor?

A I took office in 1970.

Q In January of 1970?

A 1970, yes.

Q And prior to that time were you a member of the Township Committee? A Yes, I was.

Q At what time did you first become a member of the Township Committee? A In 1956, in August, the expired term of William Lovejoy, until December 31, and then I had to run for a year to fill his term out.

Q So that you have been a member of the Township Committee since 1956? A August of 1956.

Q And the Township Committee is composed of how many persons? A Three.

Q And has been composed of three?

A Yes, as long as I have been in contact with the Town.

Q And how were you selected, Mayor, to become Mayor? A We are appointed by the other two members.

Q I see. Now, in your capacity as Mayor do you sit as a member of the Planning Board?

A Yes, I do.

Q And you're designated by reason of your office as a member of the Planning Board, as Mayor?

A Yes.

Q Now, prior -- A According to law, this is the way the law reads.

Q That is right. Now, prior to 1970, when you were not the Mayor, were you at any time a member of the Planning Board? A Yes, I was.

Q Now, since what time? A Exact dates I cannot give you. It was in the early 1960's, I believe.

Q You're not certain of the exact date?

A The date, no, I'm not.

Q Perhaps the minutes would reflect --

A I'm quite sure they would.

Q Do you recall whether you were on the Planning Board at the time of the consideration of the Master Plan of 1965? A Yes, I was.

Q Are you familiar with the circumstances surrounding the planning for an adoption of that Master Plan?

A Would you say that again? In other words, I'm what, now?

Q Are you familiar with the terms and circumstances surrounding the planning for and the adoption of the Master Plan? A Yes.

Q Of 1965? A Yes.

Q Did you participate in the engagement of a planner? A Yes, I did, yes.

Q And what is that planner's name?

A Charles Agle.

Q And was he employed by the Township Committee, as well? A That I can't answer by law. I couldn't know if the law changed that the Planning Board had the right to hire him or whether it would have to come before the Township Committee. I cannot answer that directly.

Q Well, has he, the Mayor, advised the Planning Board as well as the Township Committee?

A Not at a Township Committee, no.

Q And what is the name of the other individual from the Township Committee who serves on the Planning Board with you? A That would be Scriven Lorillard.

Q How long has he been serving in that capacity with you, if you know? A The exact date I cannot answer. He's been on the Township Committee now -- This will be his second term, so he's been on the Township Committee -- This will be his fourth term. I can't answer the date of that. It's in the minutes

[redacted]

that "a large area of relatively open space in proximity to

building was constructed and after Research Cottrell was there? A Not to my knowledge.

Q Mayor, with respect to the application of the plaintiff, the Allan-Deane Corporation, are you familiar with the location of the plaintiff's land located at the intersection of Route 202? A Am I familiar with all the land?

Q Yes. A Yes.

Q Are you familiar with the plaintiff's application?

A With the -- with who's application?

Q With the plaintiff's application, Allan-Deane's application. A Yes.

MR. ENGLISH: Application for what?

MR. LANIGAN: Application to the Planning Board.

A Application to the Planning Board?

Q Dated May 24, 1971.

A Yes.

Q And you, as Mayor of the Township, received a copy of that letter, did you not?

A I did, sir.

Q Has the Township Committee taken any action with respect to that letter? A The Township Committee, no.

Q Have they responded to it?

A It was turned over to the Planning Board on record by the minutes.

Q The letter was? A Yes.

Q I see. Now, as a member of the Planning Board do you know if there's been any action with respect to that letter? A After --

Q After the letter was received?

A Yes, there was.

Q What was that action? A They were going through that new Master Plan. I can't recall the full action of it right now. I can't remember.

Q Do you know of any proposed action?

A No, I do not.

Q All right. Has the Township Committee or the Planning Board, to your knowledge, ever engaged a sewer consultant? A A sewer consultant?

Q Yes. A I think the Board of Health has gotten a sewer consultant, yes.

Q And you're not a member of the Board of Health?

A No.

Q All right. Now, Mayor, with respect to the plaintiff's property, do you know how far away the property is away from the intersection of Route 202 and 287?

A No.

Q Can you -- A Exact, you mean?

You want footage or mileage?

Q Well, if you know say so and if you don't, obviously do not answer. A No. I really don't know how many feet or how many miles it is.

Q Is it less than a mile, if you know?

A No, I really don't know.

Q Mayor, with respect to the plaintiff's property as it fronts on Route 202, 206, can you describe the general character of the area beginning with the transportation facility from your recollection?

A You'd like me to describe the area?

Q Yes. A The area --

Q I want you to describe the area across the street from the front of the property that Allan-Deane Corporation owns in the Township. A That Allan-Deane owns?

Q Yes. A You're going east of 206, then? You're going into the Town of Pluckemin?

Q Yes. A And on the left going in?

Q Yes. A You said "across".

Q Beginning at the center, if you can recall.

A Well, I recall some parts of it. There's a very open field. How many acres, I couldn't recall, and there's some --

Q Where is that located?
A That's off 206. It fronts 206, up to a farm house.
Q And is that below the intersection of 206 and Washington Valley Road? A Yes, it is.
Q Before the gas station?
A That would be practically across from the Sunoco Station there.
Q All right. And what are the other properties that you can recall? A And walking in the back up on the hill area, as you see, we have -- right in here, is this correct?
Q Well, beginning at the intersection of Route 206 and Washington Valley Road can you describe the properties going north on the right-hand side of the road?
A Oh, describe the properties?
Q Yes. A Not owned by Allan-Deane?
Q Not owned by Allan-Deane. Can you describe those properties? A We have, on the corner, an A & P Shopping Center.
Q Now, when did that come in?
A I don't recollect. I don't know what date it was.
Q Within the last three or four years?
A Yes. It would be the last -- somewhere in that vicinity, yes.

Q Was that permitted by ordinance?
A Yes.
Q Or by variance, do you recall?
A That was -- I really can't answer that.
Q And how big an area does that comprise?
A I really don't -- I can't answer that one.
Q Okay. Keep going north, then.
A And then we have a real estate -- an old home that's been turned into a real estate. I think there's about five homes along that area that are in some sort of a business, that the homes are turned into businesses, antique shops, real estate offices, mostly.
Q Okay. A And then it goes down to an open space.
Q Which is the Allan-Deane property?
A Which joins the Allan-Deane property, correct.
Q Okay. Now, going back, again, at the intersection will you go up the left-hand side of the street and describe for us what is situated on Route 202-206.
A You're going this side?
Q Again going north, beginning with the liquor store on the corner.

MR. ENGLISH: Going north on the west side?

MR. LANIGAN: On the west side, yes.

A You want to go from Burnt Mills Road south?

Q North. A Well, we have the Post Office and a liquor store there and then we have a couple of homes there that have antique shops in them and naturally we have the church and the community center and then we have some more homes, just residential homes, and then we have a tavern there and we have a Sunoco Station and below that we have the new State Police Highway Garage and then there's another old gas station that hasn't been in operation for a number of years and then we come to another property.

Q Now, the tavern is directly in front of Aliano-Deane's property, is it not? A Within feet, let's put it that way.

Q How many feet? A It could be --

Q Fifty feet? A One hundred feet, I would say.

Q And the Sunoco Station is directly across the street, is it not? A Yes.

Q And this transportation facility, what takes place there? A Transportation facility of the State Highway Department?

Q Yes. A They have trucking, their trucks and I understand it's going to be for maintenance

of Route 287 and they're also going to have a State Police Headquarters there with a helicopter.

Q Is there a heli pad there now?

A In their plans they showed us that there would be a heli pad there. I have never seen it myself.

Q Okay. Now, the Allan-Deane property, as it immediately faces this facility, and the tavern and the gas station, and the abandoned gas station, is zoned how?

A This map here shows "R-1".

Q That's "R-1"? A Yes.

Q And that's what, residential?

A That's residential, yes.

Q Do you believe that suitable for residential development?

MR. ENGLISH: I object to the question.

Answer the question, if you can.

A It's all depending on who wants to live there. That's a man's own mind, but it's not up to us to tell him that they can't live there.

Q Well, what do you think?

A What do I think?

Q Yes. A I think that it's entirely up to the people who own it and it's entirely up to the people who want to buy. Now, if they want to live along a State highway, that's peoples' own -- that's their

own minds. That's not me, for me to make up my mind for them. I'm not going to tell -- I never made it a habit of telling people what they want to do with their land.

Q Well, you zoned it that way, did you not?

A Yes.

Q You were a member of the Township Committee?

A Yes.

Q Who passed the ordinance zoning it that way?

A Yes.

Q So, is it your opinion that is suitable when, for residential dewllings? A Yes, I would say it's suitable for residential development, yes. It's zoned that way. I'm sure my thinking at that time could have been that the little town of Pluckemin could try to build more homes and maybe make a little larger village.

Q So that your intention was to create a longer village? A Village.

Q By zoning it that way?

A That was my personal thinking.

Q Do you know if that was the intention of the other Township Committee men as well?

A I can't really answer that. This was my own thinking.

Q How close together are those houses as they are presently constituted on the main street of Pluckemin?

A I'm quite sure they're no more than, anywhere from three

feet to twenty-five feet apart. It varies. Some are very close and some are spread apart.

Q Do you have any estimate as to what size plot they're on? A No, I have not.

Q Is it less than an acre?

A I couldn't answer that. I really don't know.

Q Do you have any knowledge of any other consultants to the Township Committee or the Planning Board other than Mr. Agle? A No, no others.

Q You would have to pay them, wouldn't you?

A I would.

Q And to your knowledge --

A Very true, sir. I would know about it.

Q Okay. One final line of questioning. Did you participate in any way with negotiations with the State Highway Department with respect to the ingress and egress from Route 78 and 287? A Did we negotiate with them?

Q Did you participate in any way in the negotiations with the State Highway Department? A In a meeting?

Q In any way. A Did I? No.

Q Do you know what the intention of the Township Committee was at that time with respect to the exits, if you recall? A No, I don't recall. I

don't recall what it was.

Q And, likewise, I assume you do not recall what the opinion of the Planning Board was?

A No, not at this time, no. I don't recall.

MR. LANIGAN: I have no other questions.

MR. ENGLISH: No questions.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-36896-70 P.W.

THE ALLAN-DEANE CORPORATION, a Delaware Corporation qualified to do business in the State of New Jersey,

Plaintiff,

vs.

THE TOWNSHIP OF BEDMINSTER, a municipal corporation of the State of New Jersey, and THE TOWNSHIP OF BEDMINSTER PLANNING BOARD,

Defendant.

CERTIFICATE OF OFFICER

I, QUENTIN D. LUCARELLO, 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 witnesses, FRANK P. ROBERTSON and ALBERT E. WINKLER, were 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 stenographically by and before me at the time, place and on the date hereinbefore set forth.

I D[redacted]URTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of either 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.

A NOTARY PUBLIC OF THE STATE OF NEW JERSEY

MY COMMISSION EXPIRES ON DECEMBER 17, 1974.