RULS-AD-1974-10

1/10/1974

- LETTER TO LEAHY + ATTACHED TRIAL BRIEF (LANIGAN)

PGS - 9

RULS - AD - 1974 - 10

LAW OFFICES OF
WILLIAM W. LANIGAN
A PROFESSIONAL CORPORATION

WILLIAM W. LANIGAN
DANIEL F. O'CONNELL

SOMERSET HILLS & COUNTY NATIONAL BANK BUILDING
59 SOUTH FINLEY AVENUE
BASKING RIDGE, N.J. 07920

(201) 766-5270

CABLE ADDRESS
LANLAW

January 10, 1974

Honorable B. Thomas Leahy
Somerset County Court House
Somerville, New Jersey 08876

Re: The Allan-Deane Corporation v.
The Township of Bedminster
Docket No. L-28837-72 P.W.

Dear Judge Leahy:

I enclose and file on behalf of The Allan-Deane Corporation, a trial brief which represents a short amplification of the tril brief which is already on file with the Court as part of the pleadings in connection with the above-captioned matter.

A copy of this brief, together with a copy of this letter, is being served today upon all counsel in the litigation.

Respectfully submitted,

William W. Lanigan

WWL/ma
enclosure

cc: McCarter & English, Esqs.
John V. R. Strong, Esq.
Edward D. Bowlby, Esq.
Lois D. Thompson, Esq.

LAW OFFICES OF
WILLIAM W. LANIGAN
A PROFESSIONAL CORPORATION
59 SOUTH FINLEY AVENUE
BASKING RIDGE, NEW JERSEY 07920
(201) 766-5270
ATTORNEY FOR Plaintiff,
The Allan-Deane Corporation

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NOS. L-28061-71 P.W.
L-28837-72 P.W.
L-27700-72 P.W.

LYNN CIESWICK, et al.,

Plaintiffs,

THE ALLAN-DEANE CORPORATION, etc.,

Plaintiff,

ASSOCIATION OF BEDMINSTER CITIZENS, etc.,

Plaintiffs,

v.

TOWNSHIP OF BEDMINSTER, et al.,

Defendants.

BRIEF FOR AND ON BEHALF OF PLAINTIFF THE ALLAN-DEANE CORPORATION

STATEMENT OF FACTS

Plaintiff, The Allan-Deane Corporation, had previously instituted litigation contesting the validity of the zoning within the Township of Bedminster (The Allan-Deane Corporation vs. The Township of Bedminster, et al., Superior Court of New Jersey, Law Division, Somerset County, Docket No. L-36896-70 P.W.) Such litigation was involved and complex and its history will not be repeated herein. It is enough to state that with respect to a matter of degree, the issues before the Court are the same. It is the intention of this brief to highlight those differences of degree which arise because of subsequent action by the defendant, The Township Committee of the Township of Bedminster.

At the time of the commencement of the original suit, the Township of Bedminster was zoned exclusively for large acre residential zoning and, to a very limited extent, a form of office-research or commercial. With respect to the plaintiff's land, the zoning was largely three-acres with the exception of a small strip of land abutting the westerly portion of plaintiff's land which was zoned for one-acre. There was no provision for multi-family housing of any type or description.

On or about April 16, 1973, the Township Committee of The Township of Bedminster adopted an ordinance entitled "Revised Zoning Ordinance of the Township of Bedminster (1973)". Based

upon such passage of the ordinance and an exhibited, although unofficial, willingness to make certain amendments to such ordinance, the plaintiff moved and was granted by Order dated July 3, 1973, a dismissal of its cause of action against The Township of Bedminster and The Township of Bedminster Planning Board.

Following the passage of the zoning ordinance on April 16, 1973, The Township of Bedminster made no changes to its ordinance in the manner of amendments or clarifications which had been requested. In order to preserve the right to object to the ordinance and the deficiencies which plaintiff found with it even after its passage on April 16, 1973, plaintiff instituted the within action prior to the expiration of 45 days from the passage of the new zoning ordinance, alleging, among other things, that the zoning ordinance was "unreasonable, arbitrary and capricious" and was "in violation of plaintiff's rights under the Federal Constitution and the New Jersey Constitution because it denies plaintiff the use of its property".

Upon motion by the defendant, The Township of Bedminster, the action of the so-called Cieswick plaintiffs and an action commenced by Association of Bedminster Citizens were consolidated with the plaintiff's cause of action. It is this consolidated action which constitutes the subject litigation and in which this brief is respectfully submitted.

Since Allan-Deane has previously submitted a brief of over ninety pages which is part of the record, this brief is merely a short amplification of additional issues raised by the amended ordinance.

ARGUMENT

THE REVISED ZONING ORDINANCE ADOPTED ON APRIL 16, 1973 PURPORTS TO GIVE WITH THE ONE HAND AND TAKE AWAY WITH THE OTHER.

The real gist of plaintiff's cause of action in complaining that the revised zoning ordinance is arbitrary and capricious as it affects it, is the fact that the new zoning ordinance purports to permit a greater density than previously permitted, but in fact does not go far enough.

Under previous zoning, the density of dwelling units per acre was, for all practical purposes, a ratio of one dwelling unit per three acres of land. There were no provisions for clustering and in the instance of plaintiff's property, this caused a real hardship in that a great portion of plaintiff's property was, by all acknowledgement and definition, unusable for building purposes.

The new ordinance eliminated much of the objection which plaintiff previously had with respect to the zoning. For example, it permitted clustering which, under proper planning principles, would permit plaintiff to utilize its land and yet save a substantial number of acres for open space. The new ordinance permitted as well, the introduction of some commercial area immediately abutting the existing commercial area in the Village of Pluckemin. It also introduced a new concept in the zoning plan of the Township, that of a computation of the number

of allowable units based on density as set forth in terms of gross floor ratio.

Simply stated, a new concept under the zoning ordinance is to permit a maximum percentage to be utilized for gross floor space in any given acre. For example, with respect to plaintiff's property, plaintiff would be permitted to utilize six percent of an acre in gross floor area as defined in the ordinance and as computed by a somewhat tenuous route.

For example, in addition to establishing minimum floor areas for certain numbers of bedrooms, the ordinance requires that additional percentages be added for so-called storage and parking. The net result is to build up the percentage allocable to one-family dwelling unit to such an extent that the density per acre is thereby decreased. Quite effectively, therefore, the ordinance on the face purports to grant a greater density of dwelling units per acre and then, by the ordinance zone computation, builds up the percentages to such an extent that the number of units is thereby effectively decreased.

The net result of these machinations which must take place allows plaintiff, for example, to put 1.2 family dwelling units per acre on its land, which is hardly a sensible density for multi-family use located at one of the major interchanges in the east.

It must be noted also that the new ordinance would restrict the right of plaintiff to grant or deed any of its land to any entity other than the Township of Bedminster. For example, it would be impossible for plaintiff to deed a portion of a mountain to the National Park Service, the State Park System or the County Park System. Likewise it would preclude the opportunity of disposing of any dwellings not needed to a charitable group such as the Boy Scouts or a library association. To this extent it would not be an unreasonable request to broaden those entities which could receive such a gift of land.

CONCLUSION

It is respectfully submitted that the amended zoning ordinance which only permits a density of 1.2 dwellings per acre on plaintiff's land is an arbitrary, capricious and unreasonable exercise of the zoning power and effectively precludes plaintiff from the full use of its land. While it is not the five-acre zoning which plaintiff previously objected to in the prior litigation, the density actually permitted under the existing ordinance is not reasonable in light of the location of plaintiff's property and its relationship to abutting properties and the major highway system. For this reason, it is respectfully requested that this Court declare the density to be unreasonable and it is further respectfully requested that those provisions in the ordinance requiring an undue amount of parking space and storage space in relation to a dwelling unit be set aside as being arbitrary, capricious and unreasonable and void.

Respectfully submitted,

William W. Lanigan
Attorney for Plaintiff
The Allan-Deane
Corporation