

RULS-AD-1975-30

10-17-1975

- Letter from Judge to attorneys re: Allan Deane case  
& re affect Mt. Laurel I has on it

pages - 4

THE COMMITTEE ON OPINIONS

FILED

SOMERSET COUNTY COURT

OCT 20 2 24 PM '75

B. THOMAS LEAHY  
JUDGE

SOMERSET COUNTY  
CLERK OF SUPERIOR COURT



SOMERVILLE, NEW JERSEY  
08876

October 17, 1975

RULS - AD - 1975 - 30

William W. Lanigan, Esq.  
59 South Finley Avenue  
Basking Ridge, New Jersey 07920

Edward D. Bowlby, Esq.  
Bowlby, Woolson & Guterl  
17 E. High Street  
Somerville, New Jersey 08876

Nicholas Conover English, Esq.  
McCarter & English  
550 Broad Street  
Newark, New Jersey 07102

Peter A. Buchsbaum, Esq.  
Dept. of the Public Advocate  
Division of Public Interest Advocacy  
P.O. Box 141  
Trenton, New Jersey 08625

Lois D. Thompson, Esq.  
300 Park Avenue  
New York, New York 10022

RE: Allan-Dean Corporation v. Bedminster, et als  
Docket Nos. L-36896-70 P.W. & L-28061-71 P.W.

S-8541 ✓

S-9153 ✓

Gentlemen and Madam:

Subsequent to this court's reaching a decision on this matter the New Jersey Supreme Court rendered its decision in Southern Burlington County N.A.A.C.P. et al v. Township of Mount Laurel, N.J. (1975), Supreme Court of New Jersey, A-11, September Term, 1973, decided March 24, 1975.

The parties to this action not having been able to agree on the form of the order which should be entered, argument was held on that issue. During argument as to the form of the order the court permitted argument as to whether reconsideration of the decision in this case is mandated by the decision in Mount Laurel. Having carefully reviewed its decision and having studied the opinion in Mount Laurel, this court is convinced that the latter expressly holds that the law of New Jersey is not as this court believed it to be when the decision was rendered in this case. I have, therefore, reconsidered my decision in the light of Mount Laurel.

The factual data related in pages 1 through 26 of this court's decision are hereby reaffirmed as findings of fact along with the findings of fact expressed on page 39 of my decision. I further find that the proofs established that the effect of Bedminster's land use regulations has been to prevent various categories of persons from living in the township because of the limited extent of their income and resources. I further find that Bedminster, covering 26 square miles, is of sizeable land area and is outside the central cities and older built-up suburbs of

New Jersey. Bedminster is in the path of inevitable future residential, commercial and industrial demand and growth and is not likely to remain rural for any appreciable period considering its location approximately 30 miles from New York City and considering its accessibility now that Interstate Routes I-287 and I-78 pass through and intersect within it and give it a most strategic location.

Unlike the Mount Laurel situation, however, there has been, over the years, in the Bedminster vicinity, a reasonably effective system of area planning through the efforts of the Somerset County Planning Board and in coordination with the Tri-State Regional Planning Commission and these planning efforts are reflected, to a noticeable degree, in the land use regulations adopted by Bedminster Township.

Clearly, Bedminster is a developing municipality which must, by its land use regulations, make realistically possible a variety and choice of housing compatible with regional needs. The appropriate region is found to be the area contained within the counties of Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset and Union as set forth in N.J.S.A. 32:22B-13 as the New Jersey portion of the Tri-State Regional Planning Commission's jurisdiction. This is a logical region when state statutes and federal funding requirements under the Demonstration Cities and Metropolitan Development Act of 1966, 80 Stat. 1255, 42 U.S.C.A. §3301 et seq., and the Inter-governmental Cooperation Act of 1968, 82 Stat. 1103, 42 U.S.C.A. §4231 et seq. and Budget Circular No. A-95, July 24, 1969, are considered.

Bedminster has not, as a matter of fact found by this court, provided for a variety and choice of housing compatible with the needs of its region. Therefore, there has been a violation of substantive due process or equal protection under the state Constitution and the heavy burden falls upon the township to validate its land use regulations.

The evidence presented in this case amply supports the existence of strong ecological reasons for preserving much of Bedminster Township in an open, lightly-populated status. This court finds that a substantial and very real danger and impact will result from development within the Raritan River Watershed area that lies within Bedminster Township. On the other hand, however, the existing drainage and sewer situation in the Pluckemin and Bedminster Village corridor along U.S. Highway 202 is such that a comprehensive sewer program in that corridor is already an absolute essential. The proofs establish that an appropriate solution to the drainage and sewer problem can be effectuated in a manner compatible with reasonably dense housing development. The substantial and very real danger to the ecology from increased population and development does not, therefore, apply throughout the entirety of the township.

It is clear that Bedminster Township has an obligation to afford the opportunity for decent and adequate housing of all types including low and moderate income housing to the extent of its fair share of the present and prospective regional need therefor.

In rendering its original decision it was the considered opinion of this court that the New Jersey Legislature had, since 1957 when Kozesnik v. Montgomery Tp., 24 N.J. 154, was decided, enacted legislation in compliance and conformity with federal legislation which imposes a requirement upon local zoning ordinances of reasonably complying with existing regional and county planning. This court was of the opinion that the "accordance with a comprehensive plan" required of a zoning ordinance by N.J.S.A. 40:55-32 could no longer be met by merely finding a comprehensive plan within the terms of the zoning ordinance itself in light of those legislative enactments.

The Supreme Court, in Mount Laurel, has clearly held, however, that ... "under present New Jersey legislation, zoning must be on an individual municipal basis, rather than regionally." In footnote No. 22 of that opinion the Supreme Court noted that the Legislature has, by statute, accepted the fact that land use planning must be done more broadly than on a municipal basis. The court recognized the statutory obligation of county planning boards to prepare county master plans, recognized the coordinating functions of the Department of Community Affairs and its Division of State and Regional Planning and recognized the Tri-State Regional Planning Commission and the federal grant requirement of compliance with comprehensive regional planning before approvals can be made to advance federal funds for a myriad of public purposes. The Supreme Court clearly stated, however, "authorization for regional zoning -- the implementation of planning --, or at least regulation of land uses having a substantial external impact by some agency beyond the local municipality, would seem to be logical and desirable as the next legislative step." This is a clear holding that the legislature has not yet taken the step of imposing any requirement that zoning comply with regional planning requirements.

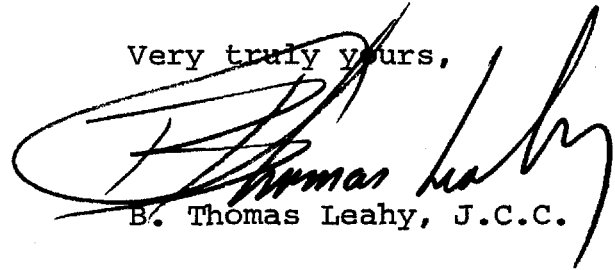
Since this court's ultimate decision was based upon a belief that the legislature had taken such steps, it is necessary to withdraw that decision in light of the Supreme Court's holding.

This court now finds that the Township of Bedminster has not met the heavy burden of establishing that its present land use regulations are, viewed in their entirety, warranted by any valid ecological need. Clearly, ecological needs warrant limitation of development within a large part of the township but, since there is no statutory authority for this court to measure the validity of the zoning ordinance against the county land use plan or existing regional plans, there is no basis for this court to delineate what portions of the ordinance are valid and what portions are not valid. There being no standard against which to measure the validity of the zoning ordinance other than its compliance with the mandates of the state constitution and the enabling act, the ordinance must stand or fall in its entirety to the extent that it fails to comply with the standards set forth in Southern Burlington County N.A.A.C.P. et als., v. Township of Mount Laurel. It is for the municipality initially to act without judicial supervision in bringing its ordinance into compliance with state law.

It is the decision of this court that the Bedminster Township Zoning Ordinance as it is now written does not comply with present state law, and the Township is granted until January 31, 1976 to adopt amendments to bring its ordinance into compliance with state law.

To avoid further loss of time, an order to that effect accompanies this decision.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read "B. Thomas Leahy". The signature is written over the typed name and title.

B. Thomas Leahy, J.C.C.

BTL/d

Original to County Clerk