RULS-AD-1976-180

9/14/1976

- NOTICE OF CROSSMOTION FOR AN ORDER COMPELLING WILLIAM ALLEN TO ANSWER

PGS - 47

S-1290

ent'd ✓ C. D. ____ J ____

Recorded Bk. ____ Page ____

The original of the within Notice of Crossmotion has been filed with the Clerk of the Superior Court of New Jersey and copies of the within Notice of Crossmotion have been filed with the Clerk of Somerset County.

FILED

SEP 14 3 52 AM 1976

SOMERSET COUNTY
L. R. OLSON, CLERK

MASON, GRIFFIN & PIERSON
201 NASSAU STREET
PRINCETON, N. J. 08540
(609) 921-6543
ATTORNEYS FOR Plaintiff

RULS - AD - 1976 - 180

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a Delaware Corporation, qualified to do business in the State of New Jersey, Plaintiff, vs. THE TOWNSHIP OF BERNARDS, in the County of Somerset, et al., Defendants.	Civil Action NOTICE OF CROSSMOTION FOR AN ORDER COMPELLING WILLIAM W. ALLEN TO ANSWER CERTAIN QUESTIONS ON DEPOSITION AND ORDERING DEFENDANT TO PRODUCE PUBLIC RECORDS

TO: McCarter & English, Esqs.
550 Broad Street
Newark, New Jersey 07102

SIR:

PLEASE TAKE NOTICE that on Friday, September ~~17~~ 16, 1976, at the same time Defendants are heard on their motions, we shall apply to the Court at the Somerset County Court House, Somerville, New Jersey, for the following Orders:

1. An Order directing the witness, William W. Allen, to answer the following questions propounded to him on oral depositions taken on July 20 and 22, 1976, in which he was directed by Defendants' attorney, Nicholas Conover English, Esq., of McCarter & English, not to answer:

A. (T-11-19) Q. Well, I believe you got a notice to take your deposition, which included a request that you bring with you all your personal notes. I wonder if you could produce those at this time.

B. (T20-2) Q. Wouldn't you agree, Mr. Allen, that your findings as to where R. C. A. employees working out of the Bridgewater plant live might be affected by the income levels and the exclusionary zoning practices of the municipalities, the income levels of the employees and the exclusionary zoning practices of the municipalities surrounding Bridgewater?

C. (T52-16) Q. Fine, then there were some techniques that you considered and rejected as being too blatant and transparent for use by Bernards Township, is that correct?

D. (T52-23) Q. Were there any techniques that occured to you, and were discussed, which were rejected as possibly not passing muster in Court?

E. (T84-20) Q. No? Could you explain that? Let us suppose that all the municipalities around Bridgewater and Bridgewater itself, were exclusionarily zoned, and let us suppose, just as a proposition, that there was no municipality within 15 miles of the center of Bridgewater Township that was not exclusionary, and where people earning less than $15,000 or $18,000 could reasonably be expected to live because of the zoning

practices. Would you feel then that your J C R D had a rational basis and it could be used in determining Bernards' fair share?

F. (T88-15) Q. Did he agree with your final number, that Bernards' share was 354 units of low and moderate income housing?

G. (106-18) Q. Your J O R D model indicates that the proper population of Bernards Township should be 27,915 people if there had been no exclusionary zoning in Bernards Township from day one.

H. (T131-8) Q. What was the general subject matter of the meeting?

I. (T132-23) Q. At the Lorent (sic) trial, Mr. Hannigan (sic) asked you if you had commented during your election campaign that you intended to prevent development in the P. R. N. zone. Do you recall that question?

J. (T9-8, 7/22/76) Q. I am going to repeat my question, and Mr. English may wish to object, and I am going to ask you what occurred at that meeting.

K. (T11-12, 7/22/76) Q. "Do you recall what Mr. Roach's general position was with regard to Bernards and its obligations under Mr. Laurel"; and

2. For an Order directing Defendant, Bernards Township, to produce all bills and vouchers in accordance with the New Jersey "Right-to-Know Law" (N. J. S. A. 47:1A-1, et. seq.) submitted by McCarter & English in accordance with the New Jersey local fiscal affairs law, N. J. S. A. 40A:5-16; and

3. An Order awaring the expenses of this Crossmotion to Plaintiff in accordance with R. 4:23-1(c).

In support of the within motion, Plaintiff shall rely upon the transcript of the deposition of William W. Allen taken July 20 and 22, 1976, the affidavit attached hereto, and upon oral argument before this Court.

MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff

By _____
Henry A. Hill, Jr.
A Member of the Firm

Dated: September 13, 1976

MASON, GRIFFIN & PIERSON
201 NASSAU STREET
PRINCETON, N. J. 08540
(609) 921-6543
ATTORNEYS FOR

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY
DOCKET NO. L-25645-75 P. W.

ALLAN-DEANE CORPORATION, a Delaware Corporation, qualified to do business in the State of New Jersey,	Civil Action
Plaintiff,	AFFIDAVIT IN SUPPORT OF PLAINTIFF'S CROSS-MOTION
vs.	
THE TOWNSHIP OF BERNARDS, in the County of Somerset, et al.,	
Defendants.	

JOHN KERWIN, of full age, being duly sworn, upon his oath deposes and says:

1. I am the Project Manager of the Allan-Deane Corporation, with offices in the Borough of Far Hills.

2. I did request of the Township of Bernards copies of bills and vouchers for legal services rendered to the Township by the law firm,

McCarter & English. I initially spoke to a secretary in the Municipal Building in the Township of Bernards. I thereafter spoke to Mr. Fred Connelly, Township Administrator. He requested that I come back at a later time as before releasing these records he would have to check with the attorneys.

3. When I returned, Mr. Connelly stated that he had spoken to the attorneys and they claimed the bills were privileged. Mr. Connelly did not release the billing referred to as being attached to the vouchers given to me and attached hereto as Exhibit A and Exhibit B.

John Kerwin

JOHN KERWIN

Sworn to and subscribed
before me, this 13th day
of September, 1976.

Patricia Groark-Suarez

PATRICIA GROARK-SUAREZ
NOTARY PUBLIC OF N. J.
MY COMMISSION EXPIRES DEC. 10, 1979

Township of Bernards
West Oak Street,
Basking Ridge, N. J.
Telephone 766-2510

Date ..... Check No. 163

Claimant's Name McCarter & English
Counsellors at Law

Address 550 Broad Street, Newark, NJ 07102

Re. Bernards Township ads Allan-Deane

TO ALL LEGAL SERVICES RENDERED in connection with the above case from February 24 through May 29, 1976 as per billing attached. 21,564.

#173

(Be sure to sign at "X" before submitting this voucher)

Claimant's Certification

I solemnly declare and certify under the penalties of law that the above bill is correct in all its items; that the articles have been furnished services rendered as stated therein; that no part has been given or received by any person or firm within the knowledge of this claimant in connection with any unpaid claim; that the amount stated is justly due and owing; and that the charges are a reasonable one.

McCarter & English
Malcolm C. English
Partner

June 14, 1976
Date

Copy Receipt Received and Checked

Signature

Date

Having knowledge of the facts, I hereby certify that the above goods have been received or the services rendered.

Frederick C Conley
Approved for Payment

JUN 16 1976

Approved for Payment

Joanne L. Howell
Finance Chairman

Committeeman

Approved for Payment
Funds Available

Account Charged

EXHIBIT A

ONE COPY of bill must be filed with Township Clerk, properly certified, by the first ... duplicate copy of order.

Township of Bernards
West Oak Street,
Basking Ridge, N. J.
Telephone 766-2510

Date ..... Clerk No. .....

Claimant's Name McCarter & English
Counsellors at Law

Address 550 Broad Street, Newark, NJ 07102

Re. Bernards Township ads Allan-Deane Corporation TO ALL LEGAL SERVICES RENDERED in connection with the above case from June 1, 1976 through June 30, 1976 as per attached billing.	$12,30(

Not yet processed for payment

(Be sure to sign at "X" before submitting this voucher)

Claimant's Certification

I solemnly declare and certify under the penalties of law that the above bill is correct in all its particulars; that the articles have been furnished services rendered as stated therein; that no part thereof has been given or received by any person or firm within the knowledge of this claimant in connection with the above claim; that the amount therein stated is justly due and owing; and that the amount charged is a reasonable one.

McCarter & English
By N. C. English
Nicholas Conover English,
Partner

July 14, 1976
Date

... Receipts Received and Checked

Signature

Date

Having knowledge of the facts, I hereby certify that the above goods have been received or the services rendered.

Approved for Payment

Approved for Payment

Finance Chairman

Committeeman

Approved for Payment
Funds Available

Account Charged

EXHIBIT B

MASON, GRIFFIN & PIERSON
COUNSELLORS AT LAW
P. O. BOX 391
201 NASSAU STREET
PRINCETON, NEW JERSEY
08540

TELEPHONE
921-6543
587-2224
AREA CODE 609

RALPH S. MASON
GORDON D. GRIFFIN
KESTER R. PIERSON
RUSSELL W. ANNICH, JR.
HENRY A. HILL, JR.
G. THOMAS REYNOLDS, JR.
JOHN A. HARTMANN, III
JOHN A. McKINNEY, JR.
RICHARD M. ALTMAN
CRAIG H. DAVIS
BARBARA ULRICHSEN
BENJAMIN N. CITTADINO

September 13, 1976

Clerk, Superior Court of New Jersey
State House Annex
Trenton, New Jersey 08625

Re: Allan-Deane Corporation vs.
Township of Bernards, et al.
Docket No. L-25645-75 P.W.

Dear Sir:

I am enclosing herewith for filing originals of the following documents in connection with the above-captioned matter:

1. Notice of Cross-Motion for an Order Compelling William W. Allen to Answer Certain Questions on Deposition and Ordering Defendant to Produce Public Records;

2. Affidavit in Support of Plaintiff's Cross-Motion; and

3. Brief for Plaintiff, Allan-Deane Corporation, in Opposition to a Motion for an Order Compelling E. James Murar to Answer Certain Questions on Depositions.

Sincerely,

John A. McKinney, Jr.

JAM/ejm
Enclosures
cc/encls: N. E. English, Esquire
Somerset County Clerk

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a Delaware corporation, qualified to do business in the State of New Jersey, Plaintiff -vs- THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, et al. Defendants	:	Civil Action

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BRIEF OF BERNARDS TOWNSHIP DEFENDANTS IN OPPOSITION TO PLAINTIFF'S CROSSMOTION FOR AN ORDER COMPELLING WILLIAM W. ALLEN TO ANSWER CERTAIN QUESTIONS

McCARTER & ENGLISH
Attorneys for Bernards Township Defendants
550 Broad Street
Newark, NJ 07102
(201) 622-4444

This brief is filed by defendants in opposition to a motion by plaintiff for an order compelling William W. Allen to answer certain questions on deposition.

The notice of motion states that plaintiff will rely upon the transcript of the deposition of William W. Allen taken July 20 and 22, 1976, and the court will find it convenient, -- and indeed necessary, -- to refer to that transcript.

The notice of motion lists particular questions propounded at the deposition with identification by letter from A to K, inclusive, and we will, from time to time, refer to those questions by that designation.

By way of background, in 1969, plaintiff, Allan-Deane Corporation, bought over 1,000 acres of land in Bernards Township which was, at the time of purchase, and still is, zoned for single family residential use on 3-acre minimum lots. By its first amended complaint herein, plaintiff seeks to declare the zoning of its lands invalid. The original complaint alleged that the entire zoning ordinance of Bernards Township is invalid by reason of its failure to make provision for low and moderate income housing in compliance with the requirements of Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel, 67 N.J. 161 (1975). Subsequent to the filing of the original complaint and before an answer

thereto was filed, the defendant Township adopted Ordinance 385, which makes specific provisions for low and moderate income housing. In its first amended complaint, plaintiff has attacked the validity of Ordinance 385 and reiterates that the entire zoning ordinance fails to comply with the requirements of the Mt. Laurel case. The witness, William W. Allen, is a member of the Township Committee of the Township of Bernards and is also a member of the Planning Board. As part of the work leading up to the adoption of ordinance 385, Mr. Allen prepared a report entitled "Mt. Laurel, a Truly Regional Response" which is dated September 1, 1975, and which was marked as Exhibit PWA-4 at the deposition. This report constitutes an analysis of the "Region" in which Bernards Township is located and of its "fair share" housing needs. Defendants regard Mr. Allen's report as a study which lends support to the adequacy of the "fair share" of regional housing needs which has been adopted by Bernards Township through its zoning ordinance and otherwise. As such, the Allen report will be offered into evidence.

A.

This objection relates to a question, or rather a request of the witness, at T-11-19, to produce his personal notes. Parenthetically, the record shows that Mr. Allen did

produce a great many papers from his file. (T-14-21 to T-18-17) The papers which he produced were marked as Exhibits PWA-1, PWA-2, PWA-3, PWA-7 and PWA-8. There is nothing in the record, nor in the motion papers, to indicate that plaintiff has not been furnished with every relevant backup document to Mr. Allen's Report, PWA-4.

Plaintiff's motion goes beyond backup documents for the Report, PWA-4, and wants production of Mr. Allen's entire file of personal notes. Plaintiff's request goes beyond what is properly discoverable, and its motion with respect to Question A should be denied.

The scope of discovery defined in Rule 4:10-2(a) is as follows:

> "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action * * *. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; * * *."

By virtue of Rule 4:18-1(a), production of documents extends to those "which constitute or contain matters within the scope of R-4:10-2."

The personal notes of Mr. Allen are neither admissible in evidence nor is there any showing that they could or would lead to the discovery of admissible evidence. The reason is that the validity of the Bernards Township zoning ordi-

nance, including Ordinance 385, must be assessed in terms of the reasonableness and validity of its practical application, probable effects, and objective purposes. In other words, the issue is whether the ordinance itself is arbitrary and unreasonable and it is immaterial whether or not the individual legislators (i.e. Township Committeemen) or any of them were arbitrary and unreasonable. The present proceeding is one to adjudge the reasonableness and validity of the Bernards Township zoning ordinance in terms of its practical application, and not to pass judgment on the quality of the legislative process leading up to enactment. This is not a proceeding where the court, like a school teacher, grades the Township on how well it did its homework before adopting the zoning ordinance or any amendments thereto.

In State v. Sutton, 87 N.J.L. 192 (E. & A. 1915), aff'd sub nom Sutton v. N.J., 224 U.S. 258 (1917), a statute required street railway companies to grant free passage to police officers in uniform or on duty. The court upheld the provision, arguing that it tended to secure police on street railway cars, promoting the public peace and general welfare. The Court of Errors and Appeals stated at 87 N.J.L. 194:

> "The argument against the constitutionality of this regulation is based fundamentally upon the contention that the considerations that have just been mentioned were not those that operated upon the mind of the legislature, which, on the contrary, it is said, were of a purely monetary

character, the real purpose of the legislation in question being to save expense to the public by throwing it upon the public utilities by the exaction from them of an unconstitutional tribute.

"This argument fails to discriminate between the purposes of legislators and the objects of legislation, and hence gives no force to the established doctrine that courts deal only with the latter, i.e., with the objects of legislation as expressed in the statutory language, and are not concerned with and indeed cannot take judicial notice of the purposes of the lawmaker saving as they are so expressed."

In American Grocery Co. v. Board of Commissioners, 124 N.J.L. 293 (S.Ct. 1940), aff'd o.b. 126 N.J.L. 367 (E. & A. 1941), prosecutor attacked the validity of an amendment to an ordinance licensing food markets in the City of New Brunswick. The amendment lowered the number of outlets required for the license requirements to be applicable and raised the licensing fee. Against a contention that the adoption of the ordinance was improperly motivated, the court stated at 124 N.J.L. 296-97:

"In support of the unreasonableness at the drawing of the line at 'more than two concessions,' it is suggested that the passage of the ordinance was motivated by bad faith for ulterior motives. The suggestion is rested upon the premise that the amending ordinance was not in fact passed as a revenue measure but rather to satisfy the local retail merchants who, fearing the competition, appeared as a body with their counsel and urged its passage. In other words, bad faith--ulterior motives--are charged against both those who urged the passage of the ordinance and against

the city fathers who claimed that it was necessary revenue measure.

> "Neither personal interest, fraud or corruption on the part of the commissioners is intimated or charged. Under the circumstances, it is well settled that when city commissioners, as here, perform a legislative function their motive for passing an ordinance cannot affect its validity. Cf. Moore v. Haddonfield, 62 N.J.L. 386, 41 Atl. Rep. 946; Frelinghuysen v. Morristown, 76 N.J.L. 271, 274, 280, 70 Atl. Rep. 727; 43 C.J. 297, § 312; 19 R.C.L. 898, § 197, and p. 904, § 203. It is the end result that is controlling. And that result must be supported by proper exercise of power...."

In Del Vecchio v. South Hackensack Township, 49 N.J. Super. 44 (App. Div. 1958), the Appellate Division reversed a judgment invalidating an ordinance and said at p. 50:

> "The governing body of the municipality, in considerations of public policy, is the sole judge of the necessity and reasonableness of their ordinances. Thorne v. Kearney, supra; Budd v. Camden, 69 N.J.L. 193 (Sup. Ct. 1903); Bellington v. Township of East Windsor, 32 N.J. Super. 243, 249 (App. Div. 1954); 5 McQuillin, op. cit. supra, §18.22, p. 452, §18.25, p. 467. We are reluctant to substitute our judgment for those in whom the primary discretion has been reposed. The motives personal to the members of the local government should not be considered, 5 McQuillan, op. cit., supra, §18.27, p. 468, n.39, the determination having to rest on the situation that the amended ordinance seeks to remedy and its application to the plaintiff. Ct. Isola v. Belmar, 34 N.J. Super. 544, 552 (App. Div. 1955)."

In Kirzenbaum v. Paulus, 57 N.J. Super. 80 (App. Div. 1959), Judge Conford said for the court at p. 84:

> "If there was legal power to adopt the ordinance and resolution, the motives of the members of

> the governing body in doing so, absent fraud, personal interest or corruption, are immaterial. American Grocery Co. v. Bd. of Com'rs. of City of New Brunswick, 124 N.J.L. 293, 297 (Sup. Ct. 1940), affirmed 126 N.J.L. 367 (E. & A. 1941)."

In LaRue v. East Brunswick, 68 N.J. Super. 435 (App. Div. 1961), plaintiff challenged the validity of a zoning ordinance which rezoned part of the municipality to permit apartment buildings. The ordinance was enacted after the land owner, an apartment building developer, held a dinner at which all of the members of the governing bodies involved were present. The re-zoning followed closely the provisions proposed by the developer. The Appellate Division affirmed the trial court's judgment dismissing the complaint, stating at p. 445:

> "Absent a showing of fraud, personal interest, or corruption, an authorized legislative enactment by a properly empowered municipal body is not subject to attack merely on the ground that the motives of the members of the governing body were questionable. Kirzenbaum v. Paulus, 57 N.J. Super. 80, 84 (App. Div. 1959); see Annot., 71 A.L.R.2d 568 (1960)."

The criteria for determining the validity of a zoning ordinance were stated by the court at p. 452:

> "Plaintiffs' assertion that the amendatory ordinance is not in accordance with a comprehensive plan, and is inconsistent with the zoning purposes set forth in R.S.40:55-32, is predicated upon the assumption that the ordinance as amended permits the erection of multiple dwelling units in ten of the township's

> eleven districts. Insofar as this assumption is based on the vague and conflicting testimony of certain Planning Board members, a Committeeman, and a planning consultant, called as an expert witness, it cannot be given any credence. The language of the ordinance, construed in terms of the surrounding circumstances, is what determines its meaning, and neither the faulty memories of those who enacted it nor the constructional conclusions of expert witnesses may remove final interpretation of that language from the domain of the trial judge. * * *
>
> "The requisite test of the validity of a municipal zoning ordinance is its reasonable relation to the objectives of land use regulation as set forth in R.S. 40:55-32. The burden of demonstrating that the districting of certain uses is arbitrary and capricious rests upon the proponent of such a proposition and debatable questions are resolved in favor of upholding the legislative judgment. Bogert v. Washington Twp. 25 N.J. 57, 62 (1957)."

As regards to the justiciability of the merit of the legislative process, the court held at p. 457:

> "The knowledge and memory of the municipal officials are germane only to the extent that they shed light on possible self-interest interfering with exercise of an independent judgment. The attempted connection in this regard has, as heretofore concluded, proved unsuccessful. In the present circumstances, the contention is not well taken. The legislative process, whatever its shortcomings, is designed to produce beneficial and farsighted regulatory social codes by means of the votes of intelligent and devoted democratic leaders. If the product falls far short of this goal, there may at times be recourse to the courts; but if merely the competence of the producers is at issue, the exclusive remedy lies at the polls." (Emphasis added).

In Csaki v. Woodbridge Township, 69 N.J. Super. 327 (Law Div. 1961), the plaintiff, a landowner, challenged an ordinance authorizing and appropriating funds for a sanitary sewer, designed to serve plaintiff's and other tracts, even though plaintiff's land was undeveloped. The cost of the sewer was to be assessed in part against the plaintiff. The plaintiff alleged that enactment of the ordinance was motivated in part by personal ill will. The court dismissed the complaint, stating that ill will was not established and that:

> "In any event, if there was legal power to adopt the ordinance, the motives of the members of the governing body are immaterial." 69 N.J. Super. at 333.

In Bonsall v. Mendham, 116 N.J. Super. 337 (App. Div. 1971), plaintiff was not permitted to elicit testimony from the chairman of the planning board concerning the intent of the board in eliminating a provision of the zoning ordinance of the defendant township. In affirming a judgment for the defendant, the Appellate Division stated, at p. 347:

> "The interpretation to be accorded the ordinance was to be gathered from the ordinance itself rather than from the testimony of former members of the board."

In Guaclides v. Mayor, etc. Englewood Cliffs, 119 N.J. Super. 403 (Law Div. 1972), the court held at p. 406:

> " . . . the right of the mayor and council to reserve to itself the power to approve or disapprove site plan recommendations is unquestionable. The assertion by plaintiffs that the exercise of this right was a politically moti-

> vated attempt by the governing body to usurp the power of the planning Board does not invalidate the ordinance. Plaintiff has failed to show 'fraud, personal interest, or corruption,' LaRue v. East Brunswick, 68 N.J. Super. 435, 445 (App. Div. 1961). As long as 'there was legal power to adopt the ordinance, the motives of the members of the governing body are immaterial.' Csaki v. Woodbridge Tp., 69 N.J. Super. 327, 333 (Law Div. 1961)."

Other authorities holding that the validity of legislation, including zoning ordinances, must be assessed in terms of the reasonableness of its probable effects and its "objective purpose", not the subjective purposes and motives of the legislators, either indivudally or collectively, who enacted it, include: Palmer v. Thompson, 403 U.S. 217, 224-25 (1971); Southern Alameda Spanish Speaking Organization v. Union City, 424 F.2d 291, 295 (9th Cir. 1970); S & L Associates, Inc. v. Washington Township, 35 N.J. 224 (1961); Marie's Launderette v. Newark, 33 N.J. Super. 279, 284 (Law Div. 1954), rev'd o.g. 35 N.J. Super. 94 (App. Div. 1955); Wilke & Holzheiser, Inc. v. Dept. of Alcoholic Beverage Control, 420 P.2d 735, 55 Cal. Rptr. 23 (1966); Roanoke v. Fischer, 173 Va. 75, 119 S.E. 259 (1923); People v. Gibbs, 152 N.W. 1053 (Mich. 1915); Higgins v. Lacroix, 137 N.W. 417 (Minn. 1912); Burack v. Poughkeepsie, 32 A.D.2d 806, 302 N.Y.S.2d 314 (App. Div. 1969); DeSena v. Gulde, 24 A.D.2d 165, 265 N.Y.S.2d 239 (App. Div. 1965); Glen Cove Theatres, Inc. v. Glen Cove, 32 Misc.2d 772, 233 N.Y.S.2d 972 (Sup.

Ct. 1962); State v. Clepper, 174 N.E.2d 271 (Ct. App. Ohio 1961); 1 R. Anderson, American Law of Zoning, § 7.01, at 477-78 (1968); 2 A. Rathkopf, Zoning and Planning, 52-1 to -10 (3rd ed. 1972); Annotation, "Motive of members of municipal authority approving or adopting zoning ordinance or regulation as affecting its validity," 71 A.L.R.2d 568 (1960); Annotation, "Validity of municipal zoning ordinance as affected by motive of members of council which adopted it," 32 A.L.R. 1517 (1924).

In Palmer v. Thompson, supra, Mr. Justice Black said for the Supreme Court at 403 U.S. 224 and 225:

> "Petitioners have also argued that respondents' action violates the Equal Protection Clause because the decision to close the pools was motivated by a desire to avoid integration of the races. But no case in this Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it. * * *
>
> "It is difficult or impossible for any court to determine the 'sole' or 'dominant' motivation behind the choices of a group of legislators. Furthermore, there is an element of futility in a judicial attempt to invalidate a law because of the bad motives of its supporters. If the law is struck down for this reason, rather than because of its facial content or effect, it would presumably be valid as soon as the legislature or relevant governing body repassed it for different reasons.
>
> "It is true there is language in some of our cases interpreting the Fourteenth and Fifteenth Amendments which may suggest that

> the motive or purpose behind a law is relevant to its constitutionality. Griffin v. County School Board, supra; Gomillion v. Lightfoot, 364 U.S. 339, 347 (1960). But the focus in those cases was on the actual effect of the enactments, not upon the motivation which led the States to behave as they did."

In the context of land use planning, the court in Southern Alameda Spanish Speaking Organization v. Union City, supra, declined to invalidate a city-wide referendum which had nullified a zoning amendment permitting a low income housing project, and in distinguishing another case, stated at 424 F.2d 295:

> "Purpose was judged, however, in terms of ultimate effect and historical context. The only existing restrictions on dealing in land (and thus the obvious target of the amendment) were those prohibiting private discrimination. The only 'conceivable' purpose, judged by wholly objective standards, was to restore the right to discriminate and protect it against future legislative limitation. The amendment was held to constitute impermissible state involvement (in the nature of authorization or encouragement) with private racial discrimination. 387 U.S. at 381, 87 S.Ct. 1627.
>
> "The case before us is quite different. As we have noted, many environmental and social values are involved in determinations of land use. As the District Court noted, ' * * * [T]here is no more reason to find that [rejection or rezoning] was done on the ground of invidious racial discrimination any more than on perfectly legitimate environmental grounds which are always and necessarily involved in zoning issues.'
>
> "If the voters' purpose is to be found here, then, it would seem to require far more than a simple application of objective standards.

> If the true motive is to be ascertained not through speculation but through a probing of the private attitudes of the voters, the inquiry would entail and intolerable invasion of the privacy that must protect an exercise of the franchise. Spaulding v. Blair, supra. . ." (Emphasis added).

In MTW, Inc. v. City of Milwaukee, 327 F.Supp. 990 (E.D. Wis.) 1971, the court stated at p. 992:

> " . . . a city ordinance which is valid on its face may not be condemned by the court because a legislative committee may have expressed an unworthy purpose in furthering its adoption."

The controlling rule was aptly stated by the Supreme Court of Michigan in People v. Gibbs, 186 Mich. 127, 152 N.W. 1053 (S.Ct. 1915) at 1055:

> "The contention that this amendment was enacted for the purpose of protecting or benefitting special interests and was inspired by other motives than guarding the general welfare is immaterial and cannot be considered here. Courts are not concerned with the motives which actuate members of a legislative body in enacting a law, but in the results of their action. Bad motives might inspire a law which appeared on its face and proved valid and beneficial, while a bad and invalid law might be, and sometimes is, passed with good intent and the best of motives."

Simon v. Needham, 311 Mass. 560, 42 N.E.2d 516 (1942), involved the validity of an amendment to a zoning ordinance which increased the minimum lot size in a substantial portion of the town from 10,000 square feet to one acre. In reporting favorable on the amendment to the Town Meeting, the Planning Board argued that the cost of municipal services would be higher if the area were developed in lots smaller than

one acre. The Supreme Judicial Court of Massachusetts upheld the amendment. With respect to the Planning Board's report, the Court concluded (42 N.E.2d at 519):

> "It cannot be assumed that the voters in following the recommendations of the board were activated by the reasons mentioned by the board.... These reasons dealt with merely one phase of a subject under discussion at the town meeting. We do not know what other considerations were advanced for the passage of the amendment. The citizens of the town were undoubtedly familiar with the locality and with all the material factors involved in the necessity, character and degree of regulation that should be adopted in the public interest. The action of the voters is not to be invalidated simply because someone presented a reason that was unsound or insufficient in law to support the conclusion for which it was urged. It was said Attorney General v. Williams, 178 Mass. 330, 335, 59 N.E. 812, 813, in reference to a statute, that it was the duty of this court to sustain it if a reasonable construction shows it to to be valid 'even if it appeared that, in the endeavors which suggested the legislation, considerations were presented to the legislature which would not be a sufficient constitutional justification for such an enactment.'"

As stated by Professor Anderson in American Law of Zoning, § 7.01 at 477-78:

> "Another observation, preliminary to discussion of the cases dealing with the purpose of zoning, may be warranted by the repetitious use of the words 'purpose' and 'objective'. When these words are employed, they are intended to mean the purpose or objective of the ordinance as gathered from its language, its surrounding circumstances (including other provisions of the ordinance or other ordinances of the municipality),

and its probable effect on certain land, on the area, or the community as a whole. The words are not used to refer to the motives of the legislators, individually or collectively, in adopting the ordinance. While the courts purport to search for the 'intent' of the legislature, the intent they seek is an intended construction or an intended effect or application. They seek to discover this in the language of the ordinance, the context of the language, and the probable effect of the ordinance on the land, the area, and the community. Where there is ambiguity in the language, they may examine extrinsic facts, including the legislative history of the ordinance. But they seek the objective purpose of the ordinance, not the motives of the legislators who adopted it."

In 5 McQuillin on Municipal Corporations (3d ed. 1969 Revised Volume) § 16.90 at p. 287, the learned author states:

"Except as they may be disclosed on the fact of the act or are inferrible from its operation, the courts will not inquire into the motives of legislators in passing or doing an act, where the legislators possess the power to pass or do the act and where they exercise that power in a mode prescribed or authorized by the organic law. Therefore, neither the motives of the members of a municipal legislative body nor the influences under which they act can be shown to nullify an ordinance duly passed in legal form, within the scope of their powers. In such case the doctrine is that the legislators are responsible only to the people who elect them. The rule governs a determination by a court of the reasonableness of an ordinance."

And in 6 McQuillin on Municipal Corporations (3d ed. 1969 Revised Volume) § 20.09 at p.22, the author states:

"The general rule is that the validity of an ordinance is to be determined from its

terms and its purpose, operation and effect. Evidence extrinsic to the ordinance is admissible, however, according to most authorities, to show that its operation and effect is arbitrary and unreasonable. Validity is to be determined not alone by the caption and phraseology of the ordinance but also by its practical operation and effect. Subsequent changes in facts may render an ordinance valid as to the facts before the change, invalid as to the changed facts.

"The validity of an ordinance is to be tested by its operation rather than by its enforcement, nonenforcement, or wrongful or defective enforcement. In other words, the validity of an ordinance is not affected by failure to enforce it or by its wrongful enforcement or by the fact that it is repeatedly violated. Nor does abuse in enforcement of an ordinance affect its validity. While the question of what is actually being done under a law or ordinance is always material and at times very important, yet, as stated, what is done is not the real test of validity. When a law or ordinance is assailed upon the ground that it offends against some other paramount law, the question ordinarily is not limited to what is being done, but goes to the extent of what may be done under the law. Accordingly, the constitutionality of an ordinance is to be determined by its operative effect and not by its enforcement."

In the case at bar, there are no allegations in the first amended complaint charging the defendant municipal bodies with fraud, personal interest or corruption. Were such issues to be raised by the plaintiff they would have to be specially pleaded, Rule 4:5-8(a), and they have not been alleged in any respect. To be sure, the Fifth Count of the First Amended Complaint, in Paragraphs 4 and 8, alleges that the Somerset County Planning Board "has conspired with Bernards Township

and other municipalities" to preserve exclusionary zoning and to hold secret meetings. Said allegations do not raise issues of fraud, personal interest or corruption.

It follows that the personal opinions, statements, purposes and motives of the members of the Township Committee are of no materiality and relevant to the issues defined in the pleading, and had no bearing whatsoever upon the reasonableness or unresonableness of the zoning ordinance.

The position which we take is consistent with the rulings made by Judge Leahy in the similar case pending in this court of Lorenc v. Township of Bernards. At the trial in Lorenc Judge Leahy sustained an objection to a question put by plaintiff's counsel to Mr. Allen, the same witness, about alleged comments the witness had made of an intention to prevent development in a particular zoned district. Judge Leahy adhered to the same position in ruling on motions directed to the propriety of certain interrogatories propounded by the plaintiffs Lorenc, et al., which rulings were made in chambers on September 16, 1976.

It follows from the foregoing authorities and principles that plaintiff has no right to depose Mr. Allen about his mental processes or his personal views and opinions.

In New Jersey Turnpike Authority v. Sisselman, 106 N.J. Super. 358 (App. Div. 1969), cert. den. 54 N.J. 565 (1969)

the Appellate Division affirmed certain orders entered below. One order was described thus at 106 N.J. Super. 363:

> "In another pretrial motion defendants sought to compel the Turnpike commissioners to appear for oral depositions. Judge Pashman heard this application on March 1, 1968 and ruled that the commissioners were immune from depositions 'barring allegations of improper behavior,' which were not present in the case. It was determined that, absent such allegations, 'the mental processes of fact-finders are beyond the permissible limits of our discovery procedures.'"

In affirming this order, the court held, at p. 367:

> "We now turn our attention to Judge Pashman's order of April 5, 1968, insofar as it denied defendants' motion to take the oral depositions of the three Turnpike Authority commissioners. That denial was based, as noted above, on the premise that they were immune from inquiry into the mental processes by which they made their decisions, in the absence of allegations of improper behavior on their part.
>
> "We agree with that determination on the basis of the record herein. United States v. Morgan, 313 U.S. 409, 61 S.Ct. 999, 85 L.Ed. 1429 (1941), expresses the generally accepted rule that the head or heads of an administrative agency may not be examined to probe the mental processes surrounding his or their promulgation of a regulation. Administrative determinations have a quality resembling that of a judicial proceeding. See, too, Braniff Airways Incorporated v. C.A.B., 126 U.S. App. D.C. 399, 379 F.2d 453, 460 (D.C. C.A. 1967).
>
> "Moreover, all the facts material to the determination of legality or arbitrariness of the actions of the Authority have been spread upon this lengthy record, and there is no showing that interrogation of the commissioners

personally is necessary to enable the correct determination of this litigation.

In New Jersey Sports and Exposition Authority v. McCrane, 119 N.J. Super. 457 (L.Div. 1971); aff'd. 61 N.J. 1 (1972), Judge Pashman observed at 119 N.J. Super. 470:

> "Cheval also served a notice to depose New Jersey Treasurer Joseph M. McCrane, chairman of the Authority, Mr. David Werblin and Commissioner of Environmental Protection, Richard J. Sullivan. An attempt during the oral argument to ascertain what facts were sought of these individuals at the deposition was unrevealing. No specific answer was forthcoming. It was pointed out that such officials would be generally immune from deposition if the purpose was to ascertain their mental processes. New Jersey Turnpike v. Sisselman, 106 N.J. Super. 358, 367 (App. Div. 1969), aff'd 54 N.J. 545 (1969)."

In United States v. Morgan, 313 U.S. 409 (1941) which was cited by the court in Sisselman, Justice Frankfurter said for the court at p. 421:

> "Over the Government's objection the district court authorized the market agencies to take the deposition of the Secretary. The Secretary thereupon appeared in person at the trial. He was questioned at length regarding the process by which he reached the conclusions of his order, including the manner and extent of his study of the record and his consultation with subordinates. His testimony shows that he dealt with the enormous record in a manner not unlike the practice of judges in similar situations, and that he held various conferences with the examiner who heard the evidence. Much was made of his disregard of a memorandum from one of his officials who, on reading the proposed order, urged considerations favorable to the market agencies. But the short of the business is that the Secretary should never have

> been subjected to this examination. The proceeding before the Secretary 'has a quality resembling that of a judicial proceeding.' Morgan v. United States, 298 U.S. 468, 480. Such an examination of a judge would be destructive of judicial responsibility. We have explicitly held in this very litigation that 'it was not the function of the court to probe the mental processes of the Secretary.' 304 U.S. 1, 18. Just as a judge cannot be subjected to such a scrutiny, compare Fayerweather v. Ritch, 195 U.S. 276, 306-07, so the integrity of the administrative process must be equally respected. See Chicago, B. & Q. Ry. Co. v. Babock, 204 U.S. 585, 593. It will bear repeating that although the administrative process has had a different development and pursues somewhat different ways from those of courts, they are to be deemed collaborative instrumentalities of justice and the appropriate independence of each should be respected by the other. United States v. Morgan, 307 U.S. 183, 191."

While the cases just cited deal with the depositions of administrative officers rather than of municipal legislators, a comparison of the reasoning of Mr. Justice Frankfurter with that expressed by the Supreme Court in Palmer v. Thompson, supra, indicates that there is no difference in the rationale protecting either legislators or administrative officers from inquiry into their personal motives and purposes.

Plaintiff may contend that the personal notes of Mr. Allen are discoverable because of allegations in the complaint of conspiracy, malice and an intentional governmental policy of exclusionary zoning (see T-12-25). As has been already pointed out, the controlling rule or law is that

conspiracy, malice and an intentional governmental policy of exclusionary zoning do not fall within the established exceptions to the general rule as to the nonadmissibility of a Township Committeeman's private thoughts and motives. Parenthetically, we have been unable to find any allegations of malice in the First Amended Complaint.

Accordingly, plaintiff's motion with respect to Question A should be denied.

B.

The question to which Paragraph B of plaintiff's motion was directed was actually reported at T-25-2. The record will show that there was no direction to the witness not to answer the question, although there was an objection to the form of the question. There is accordingly no basis for Paragraph B of plaintiff's motion and the same should be denied.

C.

The question, reported at T-52-16, is objectionable as being leading, argumentative and contrary to what the witness had said. The transcript will show that two questions earlier plaintiff's counsel had attempted to characterize the witness's computations as "rigging". The purpose of discovery is to secure relevant information, and not to trap an unwary witness into agreeing to a loaded question replete with characterizations and pejorative terms.

A proper question directed to so much of Question C as was legitimate was asked by plaintiff's counsel at T-53-17 and was answered without objection. Plaintiff's motion as to Question C should be denied.

D.

Question D, reported at T-52-23, was improper because it sought the private views of a member of the Township Committee which have no bearing whatsoever on the validity of the ordinance. See the discussion, supra, under Point A.

E.

This question is reported at T-84-20. Plaintiff's motion is not well taken because the witness was not directed not to answer the question. Moreover, the record shows that the question was answered; see T-86-3.

F.

This question is reported at T-88-15 and asked Mr. Allen if another person, Mr. Agle, agreed with something. The question was objected to as calling for hearsay. In the colloquy (T-88-22) plaintiff's counsel admitted that he had already asked the same question of Mr. Agle himself. It is difficult to see how plaintiff has been injured by its failure to secure an answer to that improper question. Plaintiff's motion as to Question F should be denied.

G.

This question, reported at T-106-18, is improper because it seeks to entrap the witness into admitting by implication that there had been exclusionary zoning in Bernards Township. This question is improper for the reasons already argued in Point C, supra. The record shows (T-107-7) that counsel proceeded to pursue the line of inquiry in an unobjectionable manner. Plaintiff's motion as to Question G should be denied.

H.

The question is reported at T-131-8. The question was improper because it sought to elicit information about a closed meeting called by the Somerset County Planning Board (see T-130-17). It is a matter of record in this court that plaintiff, Allan-Deane Corporation, filed an action against the Townships of Bedminster and Bernards, the Borough of Far Hills, the Somerset County Planning Board and others, which bears Docket No. L-25645-75, seeking to have the meeting declared void as failing to comply with Open Public Meetings Act (OPMA). On return of the order to show cause therein, the complaint was dismissed by Judge Leahy. Plaintiff, Allan-Deane Corporation, has taken an appeal from such dismissal to the Appellate Division of the Superior Court where said matter is now pending and undetermined. Inasmuch as the

dismissal of the complaint stands unless and until it is reversed on appeal, the inquiry as to what transpired at a meeting which the court has held was validly a closed meeting, was improper and the direction to the witness not to answer the question was clearly justified. Plaintiff's remedy, if any, lies in the Appellate Division and not on discovery proceedings in the within action. Plaintiff's motion as to Question H should be denied.

I.

This question appears at T-132-23. The direction to the witness not to answer the question was based upon Judge Leahy's ruling at the trial of the Lorenc case. Plaintiff's motion with respect to Question I should be denied for the reasons already argued under A, supra.

J.

This question appears in the second volume of the transcript (T-9-8). The question was improper for the reasons already argued under H, supra, and plaintiff's motion in this respect should be denied.

K.

This question appears in the second volume of the transcript at T-11-12. The record will show that there was no direction to the witness not to answer the question and

the question was, in fact, answered. Plaintiff's motion in this regard is totally unfounded.

* * * * *

Plaintiff's motion for an award of expenses in connection with its within motion for the award of expenses as provided in Rule 4:23-1(c) should be denied.

From what has already been said herein, there is no merit to plaintiff's motion to compel Mr. Allen to answer the eleven questions, some of which he did, in fact, answer.

Moreover, in considering the standing of plaintiff to be awarded a counsel fee on its motion, the court will want to read carefully the colloquy which appears in the transcript of Mr. Allen's deposition at T-57-17 to T-59-12. The whole tenor of the remarks of plaintiff's attorney is indicative of seeking an excuse for harassment of the defendants. Of particular significance is the statement of plaintiff's attorney, as reported at T-56-18: "I know you have made the argument that Mr. Allen's personal notes are not available to me, and that will be the subject of a motion. If you prevail on the motion, all members of the governing body will become individual parties in this litigation. We are going to get this material one way or the other, Mr. English, and I think that you are off base in tell-

ing us that we cannot have it. But we are willing to spend the time to get it."

The quoted remarks of plaintiff's counsel warrant the inference that plaintiff's within motion is designed primarily to set the stage for harassment of the members of the Township Committee. Such being plaintiff's express purpose, plaintiff is clearly not entitled to an award of expenses in connection with this motion.

Respectfully submitted,

McCarter & English
Attorneys for Defendants

By: Nicholas Conover English
Nicholas Conover English
A Member of the Firm

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a Delaware corporation, qualified to do business in the State of New Jersey, Plaintiff -vs- THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, et al. Defendants	:	CIVIL ACTION

BRIEF IN OPPOSITION TO MOTION
FOR PRODUCTION OF ATTORNEY'S BILLS

RICHARD J. McMANUS, ESQ.
and McCARTER and ENGLISH, ESQS.
Attorneys for the Defendants

RICHARD J. McMANUS, ESQ.
on the Brief

STATEMENT OF THE QUESTION

Plaintiff moves the Court for an order directing defendant Township of Bernards to produce all bills and vouchers presented by McCarter and English, Esqs., trial counsel for the Township in this matter. In support of the motion plaintiff submits the affidavit of its project manager, John Kerwin, who relates that he requested Township Administrator, Frederick C. Conley, to give him copies of these bills and vouchers but that Mr. Conley, upon advice of counsel, would release the vouchers only.

The vouchers are attached to Mr. Kerwin's affidavit and indicate the amount paid (or owed in the case of Exhibit B) by the Township for legal services rendered during specified periods. The July 6 voucher also contains a certification by the claimant, McCarter and English, that the amount charged is a reasonable one and is justly due and owing. It further contains a certification by the Administrator that the services have been rendered.

Attached to these vouchers when presented by McCarter and English were detailed bills indicating the nature of the work performed during the period. A copy of the June 14 bill has been submitted to the Court with this brief.

ARGUMENT

Plaintiff contends that the Local Fiscal Affairs Law, N.J.S.A. 40A:5-16, and the "Right To Know" Law, N.J.S.A. 47:1A-2, require a municipality to release all legal bills in its records upon request, even to a current adversary. Defendants reply that the lawyer-client privilege, N.J.S.A. 2A:84A-20, and the Rules Governing the Courts of the State of New Jersey, in particular R.4:10-21, create an exception to the Right To Know Law for legal bills.

The Local Fiscal Affairs Law, N.J.S.A. 40A:5-16 provides that "the governing body of any local unit shall not pay out any of its moneys...a. unless the person claiming or receiving the same first present a detailed bill of items or demand, specifying with particularity how the bill or demand is made up..."

The administrative rules of the Township (Revised General Ordinances Chapter 2, section 5.4) require that all claims be presented on the standard voucher form. In practice, if the details of the bill will take up more space than is available on the form, the claimant's bill is attached.

The portion of the Right To Know Law which applies to these financial records reads:

> "Except as otherwise provided in this act or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of the Governor, all records which are required by law to be made, maintained or kept on file by any board, body, agency, department, commission or official of the State or of any political subdivision thereof or by any public board, body, commission or authority created pursuant to law by the State or any of its political subdivisions, or by any official acting for or on behalf thereof (each of which is hereinafter referred to as the "custodian" thereof) shall for the purposes of this act, be deemed to be public records. Every citizen of this State, during the regular business hours maintained by the custodian of any such records, shall have the right to inspect such records. Every citizen of this State shall

> also have the right, during such regular business hours and under the supervision of a representative of the custodian, to copy such records by hand, and shall also have the right to purchase copies of such records." (N.J.S.A. 47:1A-2)

Absent their connection with this litigation, defendants would not refuse to release legal bills. They are a record required to be made by law. The Right To Know Law permits inspection and copying, however, only "except as otherwise provided...by any other statute (or)...rule of court..." The lawyer-client privilege, N.J.S.A. 2A:84A-20 (Rule 26 of the Rules of Evidence), and R:4:10-2, "Scope of Discovery," are such exceptions.

The applicable portion of Rule 26 states that "communications between a lawyer and his client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (a) to refuse to disclose any such communication, and (b) to prevent his lawyer from disclosing it..." The privilege shall be claimed by the lawyer unless otherwise instructed by his client or may be claimed by the client in person.

The June 14 bill submitted to the Court is a communication given in the course of a lawyer-client relationship and in professional confidence. It does not contain specific advice but certainly gives an accurate record of how the attorney spent his time. Careful examination by an opposing attorney would reveal much of trial strategy, in particular those areas of the defense considered vulnerable by counsel. Consequently a rule which permitted examination of trial counsel's bills to public bodies would always place the public body at a disadvantage in litigation. No comparable right to examine the bills of its private adversary would exist.

This statutory exception to the Right To Know Law is further supported by R:4:10-2. In general parties may not obtain discovery of privileged matter, R:4:10-2(a). This prohibition is underscored by R:4:10-2(c) which permits discovery of documents prepared for trial (as a bill arguably might be considered) upon a showing that

the party has substantial need of the materials for the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Even when these showings are made, however, the rule directs the court to "protect against disclosure of mental impressions, conclusions, opinions or legal theories of an attorney..."

The gist of defendant's objection to this motion is that the McCarter and English bills do indirectly reveal impressions, conclusions, opinions and legal theories of trial counsel to the eye of a legally trained adversary. Pursuant to the rule, therefore, they should be protected by the court from discovery (or public examination) even if the plaintiff demonstrates substantial need and hardship which in this case it has not.

Respectfully submitted,

Richard J. McManus

Richard J. McManus, Esq.

550 BROAD STREET

NEWARK, NEW JERSEY 07102

June 14, 1976

Township of Bernards

IN ACCOUNT WITH

McCARTER & ENGLISH

Re. Township of Bernards ads Allan-Deane Corporation

TO ALL LEGAL SERVICES RENDERED in the above matter from February 24 through May 29, 1976, as follows:

1976

(February 24) Examination of law with respect to open meeting under the Open Public Meeting Act; preliminary research for opinion regarding Open Meeting Act; (February 25) Preparing opinion letters regarding transcription at meetings and closed session for discussion with attorneys; (February 26) Forwarding opinion letters to Mr. Conley; telephone conference with Messrs. Herold and Brokaw; attending meeting of Planning Board at request of Chairman; (March 3) Telephone conference with Mr. Brokaw; telephone conference with attorney for Allan-Deane regarding meeting of Somerset County Planning Board to discuss Allan-Deane proposal and objections; attending hearing before Judge Lennox and decision to postpone meeting; (March 9) Telephone conference with Mr. Conley and Mr. Brokaw regarding Planning Board meeting of March 9, 1976; (March 10) Telephone conference with Mr. Hill; conference with Mr. Conley; (March 12) Studying complaint of Allan-Deane and forwarding copy to Mr. Conley; (March 13) reviewing complaint; (March 15) Legal research; forwarding complaint to Mr. Agle; telephone conference with Mr. Agle regarding sewer expert; telephone conference with Mayor Deane and Mr. Conley regarding complaint and response in newsletter; telephone conference with Mr. Hyatt, attorney for AT&T regarding complaint; obtaining copy of U.S. Corps of Engineers water resources report; reviewing complaint; consideration of preliminary matters in this case; (March 16) Telephone conference with Messrs. Preiser, Brokaw, Conley and Larson regarding show cause hearing in Somerville regarding meeting with County Planning Board; telephone conference with Mr. Agle; two telephone conferences with Mr. Conley regarding participation in suit by Somerset County; arranging court appearance; reviewing complaint; consideration of issues raised therein; consideration of requirements of Sunshine Law; (March 17) Consideration of papers filed for show cause hearing with respect to March 18, 1976 proposed conference;

consideration of law with respect to Open Public Meetings Act, and analysis of possible construction thereof; attending show cause hearing in Somerville; conferring with County Planning Board counsel and members about hearing before Judge Leahy regarding meeting of Somerset County Planning Board; (March 18) Consideration of Judge Leahy's ruling; telephone conference with Mr. Conley regarding new law suit by Allan-Deane over meeting of Somerset County Planning Board; reviewing attorney papers; to Somerville to meet four representatives of Town prior to meeting; (March 19) Review of Somerset County Master Plan; telephone conference with Mr. Agle; memorandum regarding Somerset County Planning Board gathering; considering elements of Mt. Laurel-type action; (March 22) Examination of February 10, 1976 minutes before Planning Board; examination of documents submitted by Allan-Deane at that time; conferring with Mr. Conley; telephone conference with attorneys for AT&T regarding their participation; consideration of strategy and defenses; (March 23) Consideration of obligations imposed by Mt. Laurel decision on Bernards Township; telephone conference with Mr. Conley; reviewing strategy and possible notice of motion to dismiss various claims; telephone conference with adversary regarding meeting of Planning Board; (March 24) Consideration of Allan-Deane proposal; telephone conference with Chairman of Environmental Commission; (March 25) Reviewing prior testimony of Township officials; consideration of strategy; reviewing proposals before Planning Board; preparation of memorandum regarding preliminary conclusions; conference with Mr. Conley regarding planning and environmental problems and defense of suit; (March 26) Reviewing status of present ordinance before Judge Leahy in Lorenc suit; preparing for and attending night meeting of Township Committee and Planning Board; advising Committee to adopt new ordinance; conference with Mr. Brokaw; consideration of Mt. Laurel and its implication, including definition of region; (March 28) Preparing draft notice of examination and notice to produce; preparing draft interrogatories; drafting answer to complaint; review of various land use and development studies; considering appropriate scope of demand for production of documents and interrogatories; (March 29) Attending conference with Messrs. Deane, Larson and Conley; consideration of documents; preparation of separate defenses and drafting notice of motion to dismiss; (March 30) Consideration of standing issues; communicating with Mr. Conley regarding "closed meeting complaint"; preparation of answer; revising notice of examination and notice to produce; revising interrogatories, miscellaneous correspondence and telephone conference regarding answer; (March 31) Communicating with Mr. Conley; further consideration of law with respect to Mt. Laurel issues;

conference and examination of law with respect to admissibility of evidence of developer's economic data; revising draft answer, notice of motion, notice of examination and notice to produce, interrogatories and separate defenses; (April 1) Examination of law with respect to admissibility of evidence in zoning challenge; telephone conference with Messrs. Brokaw and Conley regarding answer; revising notice of motion and responding papers; consideration of law with respect to sufficiency of complaint, standing, and proper parties; preparation of memorandum of law in support of motion; consideration of confiscation argument; (April 2) Examination of law with respect to admissibility of evidence regarding economic data; consideration of law of standing; preparation of brief in support of motion; telephone conferences with Messrs. Conley and Brokaw regarding answer and separate defenses; preparing responding papers; (April 4) Work on brief in support of motion; (April 5) Examination of law with respect to admissibility of economic data in zoning challenge cases; revising brief in support of motion to dismiss; attending to preparation of notice of motion, interrogatories, notice of examination and requests to produce; serving and filing notice of motion to dismiss, and brief; revising draft of answer; telephone conference with Mr. Conley; (April 7) Examination of law with respect to admissibility of evidence in zoning challenge; attending to correspondence; (April 8) Forwarding copy of motion papers to attorney for AT&T; (April 9) Telephone conference with Mr. Conley; ordering copy of Freehold Township opinion from Judge Lane; telephone conference with Mr. Agle; (April 13) Consideration of evidentiary questions; telephone conference with plaintiff's attorney regarding motions and interrogatories; initial review of plaintiff's interrogatories; miscellaneous correspondence; (April 14) Consideration of plaintiff's interrogatories; consideration of new executive order; preparing memoranda; (April 15) Search for unpublished Mt. Laurel-type decisions; (April 16) Preparation of draft of objections to interrogatories; (April 19) Consideration of documents; attending to miscellaneous correspondence; preparing final schedule of answers to interrogatories and forwarding copies to Messrs. Agle, Conley and Larson; (April 20) Intra-office conference; conference with Mr. Agle regarding fair share analysis; telephone conference with Mr. Conley; (April 21) Reviewing draft of answer and preparing additional defenses; attending work session of Planning Board and Township Committee regarding new ordinance; (April 22) Conferring with Mr. Agle regarding proposed studies to be made by Mathematica; (April 26) Telephone conference with Mr. Conley; telephone conference with adversary regarding discovery; conference with Mr. Hart regarding resolution; upon receipt

of plaintiff's brief in opposition to motion to dismiss, study thereof; reviewing reports; conferring with Messrs. Hill and Preiser regarding current status of this case; (April 27) Further revision of answer and separate defenses; preliminary consideration of answers to plaintiff's interrogatories; communicating with Fred Conley; upon receipt of Allan-Deane's notice of appeal, study thereof; preparation of memoranda; telephone conference with adversary regarding discovery and pending motions; review of records; (April 28) Study for reply brief on motion to dismiss; preliminary consideration of request for admissions; intra-office conference regarding status of case and action to be taken; (April 29) Telephone conference with Mr. Conley; further work on reply brief; reviewing revised draft of answer; attempting to obtain copies of state documents; assembling documents for use at trial; (May 3) Completing, serving and filing reply brief; receiving and studying plaintiff's request to produce; (May 4) Conferring with Messrs. Hill and Agle regarding deposition; further revision of answer and separate defenses; consideration of standing questions; consideration of Allan-Deane's due process argument; (May 5) Revising answer; conferring with Messrs. Deane and Conley; conference regarding strategy and motion to dismiss; reviewing legal authorities with respect to standing of developer to maintain a suit alleging violation of due process; (May 6) Consideration of Judge Meredith's recent decision in Montgomery Township; reviewing documents; consideration of possible revisions in answer; consideration of law with respect to standing of developer to raise Mt. Laurel questions; considering response to plaintiff's request for documents; being advised of adjournment of motion; reviewing recent publications; (May 7) Preliminary draft of request for admissions; consideration of various definitions of "region"; consideration of possible additional defenses; revising answer to conform to Lorenc response to requests for admissions; conference regarding motion adjournment and strategy and action to be taken; reviewing opinion of Judge Furman in Middlesex County cases; reviewing legal authorities with respect to standing of developer who "after-purchased" to assert due process argument; (May 9, 10) Preparation of memorandum with respect to standing of developer to assert due process claim; consideration of changes in draft answer; (May 11) Reviewing Mr. Larson's letter regarding answers to interrogatories; consideration of steps to be taken; considering strategy for discovery and issue of standing; before Judge Leahy on argument of motion to dismiss complaint; (May 12) Preparing various memoranda for use in discovery; telephone conference with Messrs.

Roach and Larson; consideration of comments to interrogatories; consideration of current status of case; (May 13) Revising answer; reviewing technical material on water quality control; (May 14) Considering procedures on discovery; attending to correspondence; studying technical material on water quality control; (May 17) Reviewing legal authorities and preparation of memorandum with respect to attorney-client privilege; attending to correspondence; telephone conference with Mr. Herold regarding special meeting; reviewing second set of interrogatories; (May 18) Reviewing legal authorities and preparation of memorandum with respect to attorney-client privilege; considering procedures on discovery and telephone conference with Messrs. Conley and Hill; reviewing letter from Mr. Hill regarding discovery; preparing for Township meeting; attending Township meeting on new ordinance; conference with Mr. Herold; attending Township Council meeting as substitute attorney upon resignation of Mr. Herold; (May 19) Further review of legal authorities and preparation of memorandum with respect to attorney-client privilege; intra-office conference with respect to discovery problems and applicability of attorney-client privilege; (May 20) Further review of legal authorities and preparation of memorandum with respect to attorney-client privilege; Communicating with Messrs. Conley and Hill about procedures on discovery of documents; preparing for depositions; intra-office conference regarding resignation of Mr. Herold and pending litigation; (May 21) Further review of legal authorities and preparation of memorandum with respect to attorney-client privilege; conference in New Brunswick with General Whipple and Mr. Larson; study in preparation for depositions; (May 24) Preparing for and today taking deposition of Mr. Kerwin and examining documents from plaintiff's files; (May 25) Preparing for and taking deposition of Mr. Murar and further examination of documents from plaintiff's files; (May 26) Intra-office conference with respect to discovery of private memoranda of township officials; reviewing legal authorities with respect thereto; arranging the assembling of documents for plaintiff's inspection; considering scope and direction of further discovery; preliminary study of first amended complaint; preparing memorandum of conference with General Whipple and Mr. Larson; (May 27) Intra-office conference with respect to discovery of private memoranda of township officials; reviewing legal authorities with respect thereto; further consideration of first amended complaint and drafting separate defenses; reviewing at some length procedural and tactical problems; (May 28) Preparing response to notice to produce and hand delivering to plaintiff's attorneys; drafting answer to amended complaint; prepara-

tion of memorandum with respect to discovery of private papers of township officials; (May 29) Assembling documents.

$20,500.00

Disbursements:		
Clerk of the Superior Court, filing Notice of Motion	$30.00	
Cynthia I. Morris, transcript of proceedings before Judge Leahy	150.00	
Publications	9.50	
Miscellaneous disbursements, including carfare, telephone, postage and Xeroxing	875.47	1,064.97
		$21,564.97