

RULS - AD - 1976 - 190

9/14/1976

- NOTICE OF CROSS-MOTION FOR MORE SPECIFIC ANSWERS TO INTERROGATORIE

PGS - 135



ent'd X I. C. D. _____
Recorded Bk. _____ Page _____
FILED

SEP 14 9 53 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 - 190

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
CROSS-MOTION
*FOR MORE SPECIFIC
ANSWERS to
INTERROGATORIES
FIRST SET*

TO: McCARTER & ENGLISH, ESQS.
550 Broad Street
Newark, New Jersey 07102
Attorneys for Defendants,
The Township of Bernards, et al.

SIRS:

PLEASE TAKE NOTICE, that on the 17th day of September,
1976, at 9:00 o'clock in the forenoon or as soon thereafter as

counsel may be heard, the undersigned, attorneys for the Plaintiff, Allan-Deane Corporation, will apply to the Superior Court of New Jersey, Law Division, Somerset County, at the Court House in Somerville, New Jersey, for an Order compelling Defendants, The Township of Bernards, The Township Committee of the Township of Bernards and the Planning Board of the Township of Bernards, to furnish more specific and responsive answers to Interrogatories number 1 (a) (iii); 5; 6 (a) (b); 7; 10 (c); 16; 17; 18; 19; 20; 22; 32 (a) (b); 34; 35; 38; 39; 40; 41, copies of said Interrogatories are attached hereto.

MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff, The
Allan-Deane Corporation

By: Henry A. Hill, Jr.

INTERROGATORIES

1. (a) Identify those person who were retained to provide expert or other technical services with respect to the adoption of the Defendants' present Master Plan or Zoning Ordinance. Without limitation of the foregoing, specify,

(i) the persons employed or retained by Charles Agle in research, drafting, planning or other functions relating to the Master Plan or Comprehensive Zoning Ordinance;

(ii) any other expert or technical firms or persons retained or consulted;

(iii) the particular studies, services or other functions which each person provided;

(iv) the date when each person was retained; and

(v) the professional qualifications of each such person, including his education, prior employment and publications.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in your answer to Interrogatory No. 1(a) above, which is not more than ten pages in length.

1(a). The only expert employed by the Township for technical services in preparation of the Master Plan was Mr. Charles K. Agle, 10 Nassau Street, Princeton, New Jersey. Mr. Agle was appointed at the Township Committee Organization Meetings on January 2, 1974 and January 1, 1975. Mr. Agle's employees were: Draftsmen - Jack McDonald, Ken Abrams, Bob Allen. Secretary - Terry McQuade. Qualifications will be supplied. In addition, members of the Planning Board of course worked extensively on the Master Plan.

5. (a) Describe all meetings or conversations of Defendants in 1969, 1970 or 1971 with Officials from the American Telephone & Telegraph Co. or the 195 Broadway Corporation regarding A.T.&T.'s request for a rezoning of 24.5 acres from Residential to Office Research (OL-1) in order to allow A.T.&T. to construct its world headquarters in BERNARDS TOWNSHIP. Without limitation of the foregoing, specify:

(i) the time, place and persons present;
(ii) the general substance of what each person said; and
(iii) the conclusions or instructions which resulted.

(b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in your answer to Interrogatory No. 5(a) above, together with the general substance of their knowledge.

5. Objected to. The information called for is burdensome. It calls for information on meetings 5 to 7 years ago as to which there may or may not be a record. It also calls for irrelevant information, in that meetings 5 to 7 years ago preceding zoning changes are irrelevant; the fact of the zoning change may or may not be relevant. Plaintiff may inspect all Township files relating to zoning changes (except privileged material, if any).

6. Set forth all facts which support, rebut or pertain in any way to the validity of the rezoning of Residential lands in 1971 to Office-Research use in order to permit the construction of the A.T.&T. world headquarters. Without limitation of the foregoing, specify:

(a) the zoning purpose or purposes as permitted in N.J.S.A. 40:55, which said rezoning was intended to promote;

(b) the manner in which the rezoning followed the objectives of the TOWNSHIP's Master Plan; and

(c) all expert or technical reports, studies, findings or data of any kind which supported the rezoning of 24.5 acres of formerly Residential land to Office-Research.

(d) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory Nos. 6(a), 6(b) and 6(c) above.

6(a). Objected to. Zoning change in 1971 is not at issue. Also burdensome.

(b) Objected to. See 6(a).

(c) A search of the files did not produce any reports. Plaintiff can inspect files.

(d) Same as 6(c).

7. (a) Set forth all representations made by the American Telephone & Telegraph Co. or its subsidiary, 195 Broadway Corporation, regarding the number of employees who would be working at the BERNARDS A.T.&T. facility, the salary or income levels of various categories of employees, and A.T.&T.'s representations with regard to the availability of housing for said employees. Without limitation of the foregoing, specify:

(i) all economic, fiscal or other data conveyed by A.T.&T. or its subsidiaries to Defendants regarding the income levels of the employees who would be working at the BERNARDS TOWNSHIP A.T.&T. facility;

(ii) all expert or technical reports, studies, findings or data of any kind given to Defendants by A.T.&T. or prepared by or for Defendants regarding the income levels of A.T.&T. employees in BERNARDS TOWNSHIP, the housing needs of A.T.&T. employees or the impact of A.T.&T. on the BERNARDS TOWNSHIP region; and

(iii) all expert or technical reports, studies findings or data of any kind prepared by Defendants, A.T.&T. or its subsidiaries, regarding the commercial needs of the employees at the BERNARDS TOWNSHIP A.T.&T. facility for shopping and other services.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in your answer to Interrogatory No. 7(a) above.

7. "Socioeconomic, Environmental and Traffic Impact Report" dated July 17, 1973 was submitted by 195 Broadway Corporation and an Addendum to that report was submitted by the same corporation on September 17, 1974. Both of these voluminous reports are available for review at the Township offices.

AT&T, et al. may have made oral representations or statements at public meetings or in the press. Plaintiff may inspect all minutes of public meetings and has access to media information.

10. With respect to Defendant-Planner, Charles K. Agle, set forth:

(a) the date on which he was appointed as Planner for Defendant, PLANNING BOARD;

(b) the period during which he has served as Planner for Defendants;

(c) whether he has written any memoranda to Defendants or given any oral advice to Defendants similar to or touching upon any of the matters discussed in his memorandum of July 10, 1972 to the Bedminster Planning Board entitled "Accommodation of Corporate Offices, e.g. A.T.&T., Western Electric, J-M, etc." If the answer to this Interrogatory is in the affirmative, attach, in accordance with Rule 4:17-4(a), a copy of all documents addressed to Defendants or prepared while working for Defendants relating to or pertaining in any way to his opinions regarding the obligation of municipalities which accommodate large employment generators to zone for housing, commercial facilities or service facilities to provide for the needs of persons employed in that municipality;

(d) specify the professional qualifications of Mr. Agle including his education, prior employment and his publications.

10 (a). See answer to 1(c). Mr. Agle's first employed meeting with the Planning Board was January 1972.

(b) From January 1972 to present.

(c) There is no single document relating exclusively to the housing obligations proportioned to local employment, similar to the Bedminster Document of 10 July 1972. It is, however, implicit in the Master Plan and all discussions and work leading to that document. Handwritten minutes of Planning Board secretary outline presentation of Mr. Charles Agle at Master Plan Hearing on July 29, 1969. Copy of these notes is attached. These notes indicate that Mr. Agle left a report. The report has not been discovered in our files.

(d) Professional qualifications of Mr. Agle will be supplied.

16. (a) Describe all meetings or conversations of Defendants at which Plaintiff's letter of November 1, 1971 was the subject of discussion. Without limitation of the foregoing specify:

(i) the time, place and persons present;
(ii) the general substance of what each person said; and
(iii) the conclusion or instructions which resulted.

(b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 16(a) above, together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 16(a) and 16(b) above.

16. Objected to as burdensome and irrelevant. Plaintiff is free to inspect all records of plaintiff and minutes of meetings (except privileged material) if plaintiff believes information sought is relevant.

17. (a) Describe all meetings or conversations of Defendants at which Plaintiff's letter of November 11, 1975, was the subject of discussion. Without limitation of the foregoing, specify:

(i) the time, place and persons present;
(ii) the general substance of what each person said; and
(iii) the conclusion or instructions which resulted.

(b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 17(a) above, together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 17(a) and 17(b) above.

17. Objected to. See answer to No. 16.

18. (a) Describe all meetings or conversations of Defendants at which Plaintiff's letter of December 31, 1975, was the subject of discussion. Without limitation of the foregoing, specify:

(i) the time, place and persons present;
(ii) the general substance of what each person said; and
(iii) the conclusion or instructions which resulted.

(b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 18(a) above, together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 18(a) and 18(b) above.

18. Objected to. See answer to No. 16.

19. (a) Describe all communications between Defendants and Charles V. Agle which related to the zoning of Plaintiff's properties or Plaintiff's plans for the development of its properties in BERNARDS TOWNSHIP. Without limitation of the foregoing, specify:

(i) the date, place, manner and source of each such communication;

(ii) the persons present during the communications;

(iii) the general substance of what each person said or wrote; and

(iv) identify the source of all memoranda, reports or studies prepared by Mr. Agle to justify the existing zoning of Plaintiff's properties, Defendants' existing housing policies, criticizing or commenting on the methodologies of Plaintiff's expert witnesses in computing BERNARD TOWNSHIP'S "fair share" of housing, housing density and land costs, or any other subject relative to the issues in this litigation.

(b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 19(a) above, together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 19(a) and 19(b) above.

19. Mr. Agle will supply all files for inspection unless they are already marked in the Lorenc lawsuit and in possession of the Court. Township files are open for inspection. If communication refers to oral contacts, objected to as burdensome and harassing.

20. (a) Describe all meetings or conversations of Defendants at which Plaintiff's proposal presented at a public meeting of the PLANNING BOARD on February 10, 1976, was the subject of discussion. Without limitation of the foregoing, specify:

(i) the time, place and persons present;
(ii) the general substance of what each person said; and
(iii) the conclusion or instructions which resulted.

(b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 20(a) above, together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 20(a) and 20(b) above.

20. Objected to. See answer to No. 16. Plaintiff is free to inspect minutes of all public meetings, except for closed portions thereof, when pending, threatened or anticipated litigation was discussed.

22. (a) Describe all communications between Defendants and William E. Roach, Jr., Director of the Somerset County Planning Board or with any other member of the Somerset County Planning Board, which related to the zoning of Plaintiff's properties in BERNARDS TOWNSHIP or to Plaintiff's proposal for the development of its properties. Without limitation of the foregoing, specify:

(i) the date, place, manner and source of each such communication;

(ii) the persons present during the communications;

(iii) the general substance of what each person said or wrote; and

(iv) and identify any correspondence known to Defendants between Mr. Roach and the New Jersey Department of Community Affairs, Mr. Roach and the New Jersey Department of Environmental Protection, or between members of the Somerset County Planning Board or its staff and any employee of the State of New Jersey, relating to the zoning of Plaintiff's properties, Plaintiff's development plans, or that portion of the Somerset County Master Plan which designates the County Planning Board's recommendations as to the proper use of Plaintiff's lands.

(b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 22(a) above, together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 22(a) and 22(b) above.

22. Defendants' files are open for inspection by plaintiff. Request for oral communications objected to as burdensome. Defendants have no specific knowledge other than what is in the Township files.

32. (a) Set forth all facts which support, rebut or pertain in any way to the prohibition of mobile homes in the entire TOWNSHIP. Without limitation of the foregoing, specify:

(i) the zoning purpose or purposes of as permitted in N.J.S.A. 40:55, which such prohibition is intended to promote;

(ii) the manner in which the prohibition is consistent with the objectives of the TOWNSHIP'S Master Plan;

(iii) all facts which support the prohibition of mobile homes in the entire TOWNSHIP;

(iv) all expert or technical reports, studies, findings or data of any kind which support such prohibition; and

(v) all economic, fiscal or other data of any kind which supports the contention that Plaintiff may practicably develop its properties with such prohibition.

32(a) Answers not yet available; will supply.

32. (b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 32(a) above together with the general substance of their knowledge. Without limitation of the foregoing, identify each person or persons who:

(i) first proposed such prohibition;
and
(ii) communicated with Defendants in support of or in opposition to such prohibition.

(c) In accordance with Rule 4:17-4(a), attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 32(a) and 32(b) above which is not more than ten pages in length.

32(b). See answer to No. 31.

34. (a) Describe all meetings, conversations or communications (written or verbal) between or among Defendants during the period from November 11, 1975 and March 11, 1976, which related to Plaintiff's development proposal. Without limitation of the foregoing, specify:

(i) the date, parties and place;
(ii) the general substance of what was said or written by each person; and
(iii) the identities of all persons present during each meeting or conversation.

34(a). Objected to as burdensome and harassing. Plaintiff attended many public meetings with shorthand reporter. Plaintiff may inspect Township files. Interrogatory is too broad, vague and is overreaching.

34. (b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 34(a) above together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 34(a) and 34(b) above which is not more than ten pages in length.

34(b). See answer to No. 34(a).

35. (a) Describe all communications to Defendants from TOWNSHIP residents which commented upon Plaintiff's proposed use of its properties. Without limitation of the foregoing, specify:

- (i) the date, manner and source of the communication;
- (ii) the general substance of the communication;
- (iii) if the communication was verbal, identify all persons present during the conversation; and
- (iv) what response, if any, was made by Defendants to the communication.

35(a). Objected to. See answer to No. 34. Plaintiff may inspect files. Plaintiff attended many public meetings with shorthand reporter.

35. (b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 35(a) above together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 35(a) and 35(b) above which is not more than ten pages in length.

35(b). See answer to No. 35(a).

38. (a) State whether there are in existence any documents in any way discussing or pertaining to any matters referred to in the within action, other than those identified in the answers to any Interrogatories hereinabove set forth or not disclosed herein for any reason whatsoever, and, if so, state the description, nature, custody, contents, location and otherwise identify the same, including, but without limitation of the foregoing, the date of each and the name of each addressee or recipient thereof, where applicable.

(b) In accordance with the Rules, attach a copy of all documents identified in the answer to Interrogatory No. 38(a) above.

38. Objected to as too broad, vague, burdensome and harassing; insofar as it pertains to client-attorney communication, privilege is invoked.

39. (a) Describe all meetings, conversations or communications (written or verbal) between or among Defendants during the period between March 11, 1975 and the present, which related to Plaintiff's development proposal. Without limitation of the foregoing, specify:

(i) the date, parties and place;
(ii) the general substance of what was said or written by each person; and
(iii) the identities of all persons present during each meeting or conversation.

39. Objected to. See answers to Nos. 34, 35 and 38. Plaintiff may inspect all public Township files for details of meetings, including minutes, except for meetings closed to public to discuss pending, threatened or anticipated litigation.

40. Did one or more members of Defendant public bodies attend a meeting on March 18, 1976, called by the Somerset County Planning Board to discuss the zoning of the Somerset Hills or the ALLAN-DEANE development proposals?

Yes.

41. (a) If the answer to the preceding Interrogatory is in the affirmative, identify all persons present at that meeting and describe all conversations at that meeting. Without limitation of the foregoing, specify:

(i) the time, place and persons present;

(ii) the general substance of what each person said; and

(iii) the conclusion or instructions which resulted.

41(a) (i) Thursday, March 18, 1976 at 8:00 P.M. in the First Floor Conference Room of County Administration Building. Persons who attended from defendants were: Robert M. Deane, William W. Allen, Godfrey K. Preiser and Ralph Schlenker.

(ii) The meeting consisted of a general discussion of the Somerset County Master Plan.

(iii) No conclusions or instructions resulted.

41. (b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 41(a) above, together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory Nos. 41(a) and 41(b) above.

41 (b) and (c). Persons who attended.

Shorthand reporter was present pursuant to order of Judge Leahy.

MCCARTER & ENGLISH
COUNSELLORS AT LAW
550 BROAD STREET
NEWARK, N. J.
07102

June 10, 1976

AREA CODE 201
622-4444

Re. Bernards Township ads
Allan-Deane Corporation

Henry A. Hill, Jr., Esq.
Mason, Griffin & Pierson
P.O. Box 191
201 Nassau Street
Princeton, NJ 08540

Dear Mr. Hill:

In connection with the answers to plaintiff's first set of interrogatories, I enclose copies of the following documents which are responsive to the following questions: 1(b), 2(b), 10(c), 11(b) and 30(b).

Very truly yours,


Alfred L. Ferguson

ALF:hk
Encs.

RECEIVED

JUN 15 1976

M. G. & P.
H.A.H.

ANALYSIS and OBSERVATIONS
Concerning

PROPOSED REVISION
BERNARDS TOWNSHIP MASTER PLAN
WITH SUGGESTED
ZONING STANDARDS

June 1969

(New edition for July 29 Hearing)

Charles K. Agle
Planning Consultant

28 July 1969

WOODRUFF J. ENGLISH
NICHOLAS CONOVER ENGLISH
FRANCIS E. P. MCCARTER
ARTHUR C. HENSLEY, JR.
ARTHUR L. NIMS, III
EUGENE M. HARING
JULIUS B. POPPINGA
GEORGE C. WITTE, JR.
STEVEN B. HOSKINS
RODNEY N. HOUGHTON
THOMAS F. DALY
ALFRED L. FERGUSON
CHARLES P. MERRILL
ANDREW T. BERRY
JOSEPH E. IRENAS
JOHN L. MCGOLDRICK
RICHARD C. COOPER
PETER C. ASLANIDES
ARMAND POHAN

JOHN R. DROSDICK
JAMES F. HAMMILL
WILLIAM H. HORTON
FREDERICK B. LEHLBACH
MARY L. PARELL
FRED B. WHITE, III
RICHARD M. EITREIM
JOHN E. FLAHERTY
STEVEN G. SIEGEL
GEORGE T. HILL
ARTHUR F. DICKER, III
WILLIAM T. REILLY
JAMES A. WOLLER
ROBERT M. BECKER
TERRY V. HAUSER
DAVID M. LINDLEY
ROBERT A. WHITE
HAYDEN SMITH, JR.
GEORGE W. C. MCCARTER
RICHARD D. OUAY
STUART E. RICKERSON
MICHAEL C. BARR
STEPHEN E. DARNELL
GERALD C. HARVEY
JOHN B. BRESCHER, JR.

MCCARTER & ENGLISH

COUNSELLORS AT LAW

550 BROAD STREET

NEWARK, N.J.

07102

(201) 622-4444

CABLE: "MCCARTER"

JAMES R. E. OZIAS
WARD J. HERBERT
OF COUNSEL

MONMOUTH COUNTY OFFICE
766 SHREWSBURY AVENUE

TINTON FALLS, N.J.

07724

(201) 622-4444

OR

(201) 842-8288

June 11, 1976

Re: Bernards Township ads. Allan Deane

Henry A. Hill, Esq.
Mason, Griffin & Pierson
201 Nassau Street
Princeton, NJ 08540

Dear Mr. Hill:

I enclose a copy of "Analysis and Observations Concerning Proposed Revision, Bernards Township Master Plan", June, 1969, by Charles K. Agle, dated July 28, 1969, referred to in answer to Interrogatory No. 10 C.

Very truly yours,


Alfred L. Ferguson

ALF:jc
Enclosure

cc: James R. Hillas, Jr., Esq.

Attorney(s): MASON, GRIFFIN & PIERSON
Office Address & Tel. No.: 201 Nassau Street, Princeton, New Jersey 08540
(609) 921-6543
Attorney(s) for Plaintiff

THE ALLAN-DEANE CORPORATION, a
Delaware corporation, qualified to do
business in New Jersey, Plaintiff(s)
vs.

THE TOWNSHIP OF BERNARDS, IN THE
COUNTY OF SOMERSET, et al.,
Defendant(s)

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

CIVIL ACTION
PROOF OF MAILING

1. I, the undersigned, am employed by the firm of Mason, Griffin & Pierson,
attorney(s) for plaintiff

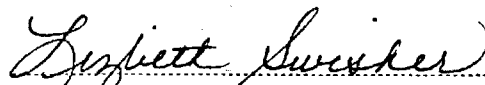
in the above entitled action.

2. On September 13, 19 76, I mailed in the U.S. Post Office in Princeton,
New Jersey, a sealed envelope with postage prepaid thereon, by regular mail, ~~with a receipt~~
~~requested~~, addressed to McCarter and English, Esquires, 550 Broad Street, Newark,
New Jersey, 07102
at said addressee's last known address at above address
containing copy of Notice of Cross-Motion

~~and obtained a receipt of such mailing, which is attached to the original copy.~~

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing state-
ments made by me are wilfully false, I am subject to punishment.

Dated: September 13, 19 76 .


Lizbeth Swisher

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

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

September 13, 1976

TELEPHONE
921-6543
587-2224
AREA CODE 609

Superior Court of New Jersey
Law Division
State House Annex
Trenton, New Jersey 08625

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

Dear Sir:

Enclosed herewith please find an original and 1 copy of documents listed below:

- | | |
|--|--|
| <input type="checkbox"/> Summons | <input type="checkbox"/> Notice pursuant to R. 4:42-1(b) |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> & Order |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Order dated |
| <input type="checkbox"/> Interrogatories | <input type="checkbox"/> Request to Enter Default & |
| <input type="checkbox"/> Answers to Interrogatories | <input type="checkbox"/> Certification |
| <input type="checkbox"/> Notice to Take Oral Depositions | <input type="checkbox"/> Stipulation of Dismissal |
| <input type="checkbox"/> Notice of Motion & Affidavits | <input type="checkbox"/> Judgment |
| <input type="checkbox"/> Other: | |

Will you please:

- File.
 File and charge our account.
 File and return conformed copy.
 File and list for argument on the date listed in the notice.
 Serve.
 Sign and return to us for filing.
 Return original Acknowledgment of Service.
 Other:

Also enclosed herewith please find our check in the amount of \$

Very truly yours,
MASON, GRIFFIN & PIERSON

By Henry A. Hill, Jr.
Henry A. Hill, Jr.

bs
Encls.

cc: McCarter and English, Esqs.
Somerset County Clerk
John F. Richardson, Esq.

S-1290

*2nd set
of interrogatory.*

RECEIVED

NOV 10 1976

NOV 10 10 32 AM 1976
SOMERSET COUNTY
CLERK

William H. [Signature]
Deputy Clerk Superior Court
of New Jersey - Mercer County

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

ent'd I. C. D. 13
Recorded Bk. _____ Page _____

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

X

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

Civil Action

vs.

NOTICE OF MOTION

12-3-76

THE TOWNSHIP OF BERNARDS, IN)
THE COUNTY OF SOMERSET, a)
municipal corporation of the State of)
New Jersey, THE TOWNSHIP)
COMMITTEE OF THE TOWNSHIP OF)
BERNARDS, and THE PLANNING)
BOARD OF THE TOWNSHIP OF)
BERNARDS,)
Defendants.)

*FOR MORE SPECIFIC
ANSWERS to Interrogatory*

SECOND SET.

TO: McCarter and English, Esquires
550 Broad Street
Newark, New Jersey 07102

SIRS:

PLEASE TAKE NOTICE that on the 3rd day of December, 1976, at
9:00 o'clock in the forenoon or as soon thereafter as counsel may be heard,
the undersigned, attorneys for the plaintiff, the Allan-Deane Corporation,
will apply to the Superior Court of New Jersey, Law Division, Somerset

County, at the Court House in Somerville, New Jersey, for an Order compelling the defendants, the Township of Bernards, the Township Committee of the Township of Bernards and the Planning Board of the Township of Bernards to furnish more specific and responsive answers to Interrogatories (second set) Nos. 1, 3, 4, 5, 8, 13(a)-(b), 14, 21, 22, 23, 24, 25, 26, 27, 33, 36(a)-(i)-(iv). Copies of said Interrogatories are attached hereto.

MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff

By Henry A. Hill, Jr.
Henry A. Hill, Jr.

Dated: November 9, 1976

I hereby certify that the original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton and a true copy of the same has been filed with the Somerset County Clerk.

MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff

By Henry A. Hill, Jr.
Henry A. Hill, Jr.

INTERROGATORIES

1. (a) Set forth all facts which supported, rebutted or pertained in any way to the validity of the rezoning in February, 1967, of a tract of land bounded by North Maple Ave., Route #287, the Passaic River, Osborne Pond, and Madisonville Road, from 1-acre to 3-acre residential zoning. Without limitation of the foregoing, specify:

(i) the zoning purpose or purposes as permitted in N.J.S.A. 40:55, which said rezoning was intended to promote;

(ii) the manner in which the rezoning followed the objectives of the Township Master Plan; and

(iii) all expert or technical reports, studies, findings or data of any kind which supported the rezoning of that tract of land from 1-acre to 3-acre residential zoning, including all reports, documents, studies, findings or data of any kind accumulated by the attorneys for Bernards Township to defend the legal action brought by Dr. Vera Detwieler in April of 1967, attacking the rezoning from 1-acre to 3-acre residential of the 79 acres owned by her.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory No. 1(a) above.

Ans.

1. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action.

3. (a) Describe all meetings or conversations held by members of the Township Committee of the Township of Bernards and the Planning Board of the Township of Bernards prior to January 3, 1969, regarding the proposal referred to in Anthony P. Curran's letter of January 3, 1969, to Judge Meredith. Without limitation of the foregoing, specify:

(i) the names and present addresses of all members of the Bernards Township Committee and Bernards Township Planning Board on January 3, 1969;

(ii) the time, place and persons present at each such meeting;

(iii) the general substance of what each person said at each such meeting;

(iv) the conclusions or instructions which resulted; and

(v) if a vote was held to authorize Anthony P. Curran to request a postponement and to represent that the Township Committee and Planning Board considered the proposal or development of the tract was attractive, state the names of all persons who voted in favor of such proposal, and the names of all persons who opposed it.

(b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 3(a) above, together with the general substance of their knowledge.

Ans.

3. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action.

4. (a) Describe all meetings or conversations of Defendants or of former members of the Township Committee and Planning Board of Bernards Township with officials from Mahler and McCabe Co., requesting the rezoning of a 138-acre site bounded by North Maple Avenue, Route #287, the Passaic River, Osborne Pond and Madisonville Road, from 3-acre residential zoning to office-laboratory zoning. Without limitation of the foregoing, specify:

(i) the time, place and persons present;
(ii) the general substance of what each person said; and
(iii) the conclusions or instructions which resulted.

(b) State the names and address of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 4(a) above, together with the general substance of their knowledge.

Ans.

4. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action.

5. (a) Set forth all facts with support, rebut or pertain in any way to the validity of the rezoning of the 138-acre site bounded by North Maple Avenue, Route #287, the Passaic River, Osborne Pond and Madisonville Road, in Bernards Township, in May, 1970, to office-laboratory use. Without limitation of the foregoing, specify:

(i) the zoning purpose or purposes as permitted in N.J.S.A. 40:55, which said rezoning was intended to promote;

(ii) the manner in which the rezoning followed the objectives of the Township's Master Plan;

(iii) all expert or technical reports, studies, findings or data of any kind which supported the rezoning of this land from 3-acre residential zoning to office-laboratory use; and

(iv) all facts which support the distinction between the treatment and rezoning of this property in February, 1967, from 1-acre to 3-acre residential zoning and the rezoning of this same property in May, 1970 from 3-acre residential to office-laboratory use.

Ans.

5. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action.

5. (b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 5(a) above, together with the general substance of their knowledge. Without limitation of the foregoing, identify each person or persons who:

(i) first proposed the rezoning of this property from 1-acre residential to 3-acre residential;

(ii) first proposed the subsequent rezoning of the same property from 3-acre residential to office-laboratory use; and

(iii) communicated with Defendants in support of or in opposition to either rezoning.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 5(a) and 5(b) above.

Ans.

5. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action.

8. (a) Identify all documents in the files of Defendants which support, rebut or pertain in any way to the statement made by Mayor Robert E. O'Neil on June 7, 1971 to the effect that Bernards Township recognized, prior to June 7, 1971, that there was a need for multi-family housing and was, prior to June 7, 1971, "thoughtfully weighing the problem of multiple housing seriously."

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory No. 8(a) above.

(Ans.

8. (a) Defendants do not have any specific documents in which reference is made to Mayor O'Neill's letter of June 7, 1971. Defendants have not searched the minutes of the Township Committee and Planning Board in detail, since such minutes have been made available and copies thereof have been furnished to plaintiff. Defendants believe there may have been informal discussions by and between members of Planning Board and Township Committee and others with respect to possible multi-family housing to be built in the Township, but defendants have no way of accurately identifying any such informal discussion.

13. (a) Set forth all facts which support, rebut or pertain in any way to the validity of Ordinance No. 293, adopted in September, 1972, which Ordinance revised the fee schedule for building permits in Bernards Township. Without limitation of the foregoing, specify whether the purpose of Ordinance No. 293 was to permit A.T.&T. to purchase a building permit to construct the Basking Ridge facility at a savings of more than \$150,000.

(Ans. 13. (a) This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action. Defendant is under no obligation to support, rebut or set forth the facts pertaining to validity of Ordinance No. 293, since same is not challenged in this action.

1 (b) Specify all facts which support the policy decision (as contained in the adoption of Ordinance No. 293) to lower building permit fees for large commercial tax ratables, while imposing substantial fees (as contained in Ordinances No. 364 and No. 347) on residential developers seeking to build housing in Bernards Township. Without limitation of the foregoing, specify:

(i) all facts which would tend to support Defendants' contention that housing developers should pay large fees and new non-residential tax ratables should pay lower fees;

(ii) and identify the source of all expert or technical reports, studies, findings or data of any kind which would tend to support Defendants' distinction in the treatment of housing developers and commercial tax ratables.

Ans.

13. (b) Ordinance 293 revised the building permit fee schedule. Ordinance 364 involves the requirement of an environmental impact report as part of the site plan review for both residential and industrial uses. Ordinance No. 347 is the PRN Ordinance, and, as a part thereof, involves a fee schedule for submitting an application, which includes environmental impact statement and site plan approval procedures. Accordingly, the fees required by said three ordinances are not comparable and Interrogatory No. 13(b) seeks a comparison of information about items which are not comparable.

13. (c) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answers to Interrogatory Nos. 13(a) and (b) above, together with the general substance of their knowledge.

(d) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory Nos. 13(a), (b) and (c) above.

(Ans.

13. (c) Charles Agle; Fred Conley; members of Township Committee and Planning Board when the various ordinances were adopted.

14. (a) Identify all documents in the possession of Defendants or in the possession of the Bernards Township Police Department relating to the investigation conducted by the Bernards Township Police Department in 1973 and the Somerset County Prosecutor's Office regarding the charges heard by the Somerset County Grand Jury that Bernards Township officials, who were A.T.&T. employees or who were spouses of A.T.&T. employees, reduced the building fees required to be paid by A.T.&T. by approximately \$176,000. Without limitation of the foregoing, specify:

- (i) the persons named in the charges;
- (ii) and identify all statements taken by Bernards Township Police Chief Harry M. Allen or members of his department in connection with this investigation;
- (iii) and identify the general substance of what each person said;
- (iv) and identify the persons subpoenaed to appear before the Grand Jury and, if known to Defendants, what each witness said.

Ans.

14. (a) Defendants have no documents in their possession relating to Bernards Township Police Department Investigation, if any, in 1973, or any investigation by Somerset County Prosecutor's office. Defendants have no knowledge of persons subpoenaed before the Grand Jury. Defendants have no notes or transcripts of Grand Jury proceedings.

Bernards Township Police Department does have copies of statements taken from various persons in 1973 in its files, which statements were turned over to Somerset County Prosecutor's office. Said statements are privileged.

The information sought by Interrogatory No. 14 is irrelevant to this action.

1.. (b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answers to Interrogatory No. 14(a) above, together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory Nos. 14(a) and 14(b) above.

21. State the total number of acres in Bernards Township which Defendants contend constitutes aquifer out crops and swamps essential to water resources, and identify the source of all data which supports, rebuts or pertains in any way to Defendants' contentions in the answer to this Interrogatory.

Ans.

21. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action. In any event, See Natural Resource Inventory, Bernards Township (November 1975), and supporting maps and data referred to therein. Data to answer this interrogatory is equally available to plaintiff as to defendant, and defendant is under no duty to make computations for benefit of plaintiff.

22. State the total number of acres in Bernards Township which Defendants contend have grades or slopes of 20% or steeper, and identify the source of all documents or data which supports, rebuts or pertains in any way to Defendants' contentions in the answer to this Interrogatory.

Ans.

22. See answer to No. 21.

23. State the total number of acres in Bernards Township which Defendants contend constitutes proposed park lands, and identify the source of all documents, data and materials, which supports, rebuts, or pertains in any way to Defendants' answer to this Interrogatory.

Ans.

23. See answer to No. 21. In addition, see "Recreation and Open Space Master Plan", prepared by Maurice Wrangel, New York City, which report was adopted by the Township Planning Board as part of the Bernards Township Master Plan.

2 State the total acreage all lands in Bernards Township which Defendants contend constitutes short-term flood plains, aquifer out crops and swamps essential to water resources, grades of 20% or steeper, and proposed park lands.

Ans.

24. See answer to No. 21.

25. (a) State the total number of acres in Bernards Township which Defendants contend constitutes "environmentally critical lands" and, if that number is greater than the total number of acres contained in Defendants' answer to the preceding Interrogatory, identify all categories of land not included in Defendants' calculations in the answer to the preceding Interrogatory which Defendants contend constitute environmentally critical lands not suitable for housing, giving the location of all such land, the nature and environmental characteristics of all such land, and identifying the source of all documents which supports, rebuts or pertains in any way to Defendants' classification of such lands as environmentally critical and unsuitable for housing.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to this Interrogatory.

Ans.

25. (a) See answer to Interrogatory 21 and documents cited and relied on in Natural Resource Inventory. Interrogatory 25 cannot be answered since (1) all land is to some extent environmentally critical. (2) The suitability of land for housing depends on many factors, including but not limited to type and density of the housing as well as environmental factors peculiar to the land.

26. State the total number of acres in Bernards Township reasonably zoned for industry and commerce, and identify the source of all documents which support, rebut or pertain in any way to Defendants' answer to this Interrogatory.

Ans.

26. Use of the word reasonably is improper. Number of acres in various zones under zoning in effect under Ordinance 393 is set forth in answer to Interrogatory No. 18.

27. State the total number of acres in Bernards Township which Defendants contend constitutes the net vacant acreage in Bernards Township suitable for housing. If this number is lower than the number which would be derived by subtracting from the total vacant acreage of Bernards Township the acreage classified as short-term flood plains, aquifer out crops and swamps essential to water resources, grades of 20% or steeper, proposed park land, vacant lands reasonably zoned for industry and commerce, and all farm land in present use, explain fully and in detail how this number was derived, giving all calculations, Defendants' reasoning with respect to the exclusion from the total vacant acreage in Bernards Township of any additional categories of lands and identifying the source of all data or documents which support the exclusion of said additional categories of lands from the total vacant acreage of Bernards Township in order to calculate the net vacant acreage suitable for housing.

Ans.

27. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action. Defendant does not understand the words "suitable for housing" as used by plaintiff in Interrogatory No. 27. Defendants have made no calculations so as to give a figure of net vacant acreage, as plaintiff makes its calculations as proposed in Interrogatory No. 27.

Charles Agle, Township Planner, whose deposition has been taken in this action, has made estimations of the number of acres available for various uses.

33. (a) State Defendants' contentions with regard to the maximum grade on which housing development can responsibly take place within Bernards Township. If the grade percentage is less than 20%, identify the source of all documents and set forth the facts which support, rebut or pertain in any way to Defendants' contentions in this regard.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to this Interrogatory.

Ans.

33. (a) Interrogatory is improper and vague; word "responsibly" is not defined. Defendants contend that high or medium density land use housing can be constructed economically without an excessive cost for site improvements on land with slopes no greater than 10 percent. Housing can be constructed on lands with slopes up to 15 percent at an increased economic cost. The marginal cost for construction of such housing on lands with slopes of 15 to 20 percent is so great as to all but preclude anything but the most expensive and highest density housing.

36. (a) Describe all investigations, conferences or meetings conducted by Defendants, individual members of Defendant public bodies, or Defendants' consultants, agents or attorneys to ascertain whether or not the housing, which would be permitted as a special exception under Ordinance No. 385 (which was introduced on first reading by the Township Committee of the Township of Bernards on 5/4/76), might be eligible for subsidies under any program of the Department of Housing and Urban Development, the Farmers Home Administration, the New Jersey Housing Finance Agency, the New Jersey Mortgage Finance Agency, or the Housing Demonstration Grant Program of the State of New Jersey. Without limitation of the foregoing, specify:

Ans.

36. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action. Defendants additionally invoke attorney-client privilege with respect to participation by attorneys, if any. Township files are open for inspection.

36. (a) (i) the person or persons who conducted such investigation and any person or persons employed by the Federal Government or the State of New Jersey in administering such program who was consulted, and the time and place when such discussions or conversations were held;

(ii) and state whether or not any of Defendants' employees, agents, or attorneys have reviewed the regulations and guidelines of the Department of Housing and Urban Development or any of its programs, the regulations of the Farmers Home Administration or the regulations of the New Jersey Housing Finance Agency, the New Jersey Mortgage Finance Agency or the Housing Demonstration Grant Program, in order to ascertain whether the provisions contained in Ordinance No. 385 are compatible with such regulations;

Ans.

36. (a) (i) Various Township officials conferred with representatives of various State and Federal governmental agencies from time to time.

(ii) Yes.

36. (a) (iii) and state whether or not Defendants allege that housing built in conformance with Ordinance No. 385 would be eligible, under Federal or State guidelines and regulations, for any subsidy from the Department of Housing and Urban Development, the Farmers Home Administration, the New Jersey Housing Finance Agency, the New Jersey Mortgage Finance Agency, or the New Jersey Housing Demonstration Grant Program and, if the answer to this question is in the affirmative, state which programs Defendants allege might, under current regulations and guidelines, subsidize housing built in conformance with Ordinance No. 385;

(iv) if Defendants contend that there are subsidy programs available for the construction of low and moderate income housing in Bernards Township not enumerated above, [specify] all such programs and state whether or not, as to each such program, Defendants contend that it would be available under its current rules, guidelines and regulations for subsidizing housing built in conformance with Ordinance No. 385.

Ans.

36. (a) (iii) Defendants have made no such allegations although defendants believe that housing built in conformance with Ordinance 385 would qualify for various State and Federal housing subsidies, including, without limitation, Department of Health and Urban Development Section 8, 42 U.S.C. §1437f, Section 202 and Section 235 subsidies, Farmers Home Administration subsidies pursuant to Section 515 and subsidies and guarantees of the New Jersey Housing Finance Agency and other agencies of the State of New Jersey.

36. (a) (iv) Defendants have made no such contention and further object to this interrogatory as burdensome, harassing and not relevant to the subject matter of the pending action and on the ground that this interrogatory is improper.

36. (a) (v) whether or not Bernards Township has adopted an approved housing assistance plan (HAP) to render Bernards Township eligible for subsidies under §8 of the Lower-Income Housing Assistance Program;

(vi) and describe fully and in detail all steps taken or contemplated by Defendants, pursuant to 42 U.S.C. §§1439 (a)-(c) (1970 ed., Supp. IV), to encourage the Secretary of HUD to make subsidies available for Bernards Township;

(vii) if Bernards Township does not presently have a housing assistance plan, describe fully and in detail when and if Defendants propose to adopt such a plan.

(Ans.

36. (a) (v) No.

Ans.

36 (a) (vi) HUD regulations with respect to 42 U.S.C. §1439(a) et seq. have been reviewed from time to time; no definite action has been taken or is now contemplated.

Ans.

36. (a) (vii) No housing assistance plan is presently in effect.

36. (b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 36(a) above, together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory No. 36(a) and No. 36(b) above.

Ans.

36. (b) Frederick Conley; Charles Agle; Margaret Fox; members of Planning Board and Council who had discussed subsidized housing from time to time.

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,) Civil Action
)
vs.)
)
THE TOWNSHIP OF BERNARDS, et al.,)
)
Defendants.)

PLAINTIFF'S BRIEF IN SUPPORT OF MOTIONS
FOR MORE SPECIFIC ANSWERS TO ITS
FIRST AND SECOND SET OF INTERROGATORIES

MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff,
The Allan-Deane Corporation
201 Nassau Street
Princeton, New Jersey 08540
(609) 921-6543

INTRODUCTORY STATEMENT

In September, 1976, Plaintiff filed a motion for more specific and responsive answers to certain of its first set of interrogatories propounded upon Defendants. In November, 1976, Plaintiff filed a motion for more specific and responsive answers to certain of its second set of interrogatories. At the time these motions were filed, they were not supported by memoranda of law. This brief is submitted in support of those motions which are now pending.

POINT I

DISCOVERY MAY BE OBTAINED REGARDING ANY
MATTER, NOT PRIVILEGED, WHICH IS RELEVANT
TO SUBJECT MATTER INVOLVED IN PENDING
ACTION. PLAINTIFF'S MOTION FOR MORE
SPECIFIC AND RESPONSIVE ANSWERS SHOULD
BE GRANTED.

Liberal procedures for discovery are essential to a modern judicial system in which the search for truth is paramount. Vanderbilt, C.J., Lang v. Morgan's Home Equipment Corp., 6 N.J. 333,338 (1951)., Caparella v. Bennet, 85 N.J. Super. 567, 571 (App. Div., 1964), Saia v. Bellizio, 103 N.J. Super. 465, 468 (App. Div., 1968). Every possible avenue of inquiry should be explored so that justice will be done. Huie v. Newcomb Hospital, 112 N.J. Super. 429 (App. Div., 1970), Myers v. St. Francis Hospital, 91 N.J. Super. 377 (App. Div., 1966).

The scope of interrogatories is as broad as is permissible an examination in pretrial discovery depositions. In re Wozar's Estate, 34 N.J. Super. 133 (App. Div., 1955). Plaintiff should not be foreclosed from examining defendants, through interrogatories, on any subject, unless the information sought has no possible bearing on the subject matter of the case, Foundry Equip. Co. v. Carl Mayer Corp., 11 FRD 108 (E.D. Ohio, 1950).

Defendants have refused to respond in both the first and second sets of plaintiff's interrogatories to

questions which concern the rezoning of certain lands in Bernards Township from a residential to an employment-generation category in order to accommodate A.T.&T. (First Set: Interrogatories Nos. 5, 6a, 6b, 7 and 10c; Second Set: Interrogatories Nos. 1, 3, 4, 5, 13, 13b, 13c, 14a, 14b and 14c). Defendants contend such inquiries are not relevant to the issues of the case and/or are burdensome and oppressive.

It is generally held that relevancy is to the proceedings and to the subject matter and not to the issues on the action. Gierman v. Toman, 77 N.J. Super. 18, (Law Div., 1962), Glick v. McKesson & Robbins, 10 FRD 477 (D.C. Mo., 1950). Whether or not the facts inquired into would support the relief claimed, it is not a valid objection to interrogatories that they are irrelevant to issues, since a party may propound questions on any subject which might conceivably have a bearing on the subject matter of the action. Glick, supra.

Under attack in this litigation is the entire Zoning Ordinance of Bernards Township and its underlying Master Plan. The rezoning of A.T.&T. lands and Ordinance 293, pertaining to a change in filing fees are, in fact, parts of that Zoning Ordinance. Clearly, plaintiff's interrogatories, which concern the ordinance amendments are relevant to the subject matter of the case

and defendants' answers should be compelled.

The purpose as well as the effect of the A.T.&T. amendment is intimately connected to the reasonableness and therefore the validity of the contested Zoning Ordinance. Defendants claim that only questions as to the effect of a zoning ordinance are permissible. In 5 McQuillen, Municipal Corporations, 816.91, p. 292, the editors make clear that it is within judicial power and duty to inquire into the purpose of an ordinance and in doing so, to determine whether that purpose is to serve the public welfare. Grogan v. DeSapio, 15 N.J. Super. 604 (Law Div., 1951). In Wital Corp. v. Denville, 93 N.J. Super. 107 (App. Div., 1966), the Court stated that while it has been the rule that inquiry is prohibited into legislative motivation of an ordinance valid on its face, that rule does not bar judicial inquiry into the purpose of the ordinance.

In a suit attacking a revision of a zoning ordinance, Judge Conford held, inter alia, that when the reasonableness of a zoning ordinance is at issue, the testimony of a municipal planning board member, with respect to the social and policy considerations taken into account by that body prior to the enactment of the ordinance, was admissible. Judge Conford stated:

"While it is held that an inquiry into legislative motivations will not be permitted in order to impugn the reasonableness of legislation valid on its face (citations) yet courts will consider evidence with respect to the purpose, object, reason, necessity and effect of an ordinance where the factors bearing upon its reasonableness are not manifest on its face." Clary v. Bor. of Eatontown, 41 N.J. Super. 47 (App. Div., 1956)

In its most recent landmark zoning decision, the New Jersey Supreme Court allowed judicial inquiry even into the motivation of the township planner and governing body with respect to a revision of the zoning ordinance. Oakwood at Madison, Inc. v. Township of Madison, _____ N.J. _____ (1977). In another recent decision, the Court allowed inquiry into the motivation of township officials who admitted that in considering proposals to rezone the corporate defendants' property, they were "motivated partly by a desire to obtain additional municipal revenues without placing concurrent demands upon locally financed governmental services." Taxpayers Ass. of Weymouth Twp., et al v. Weymouth Twp., 71 N.J. 24 (1976).

Finally, the ultimate assessment of the reasonableness of a zoning ordinance involves weighing the social and policy considerations which led to its adoption against the adverse impact upon him who asserts its unreasonableness: Judge Conford in Clary, supra. Plaintiff submits

that its interrogatories which concern the rezoning of land for A.T.&T. and the filing fee change to accommodate A.T.&T. are attempts to examine the social and policy considerations which led to the adoption of the Zoning Ordinance and Master Plan and are indeed relevant to the subject matter of the action. Defendants should be compelled to answer these interrogatories.

It is stated explicitly in the Court Rules that there can be no objection to a discovery on the grounds that it will be inadmissible at trial, if it is reasonably calculated to lead to admissible evidence. R.4:10-2. In Stout v. Toner, Justice Francis opined that the area of admissible cannot be anticipated by counsel. 128 N.J. Super. 490 (App. Div., 1973).

In their memorandum and brief filed in opposition to plaintiff's demand for more specific answers to the first and second set of interrogatories, defendants claim that the rezoning for A.T.&T. is irrelevant as to whether the current zoning ordinance of Bernards Township is valid under the Mount Laurel decision, and that the zoning change which allowed A.T.&T. to build its world headquarters in Bernards Township has nothing to do with regional housing needs. Defendants claim that in answering interrogatories they are under no obligation to comment upon the validity of that zoning change. An interrogated party is under obligation

to furnish relevant information in his possession which can be obtained without great labor and expense. Brown v. Dubar & Sullivan Dredging Co., 8 FRD 107 (DCNY, 1948).

The specific ordinance which allowed A.T.&T. to build is a part of the present Zoning Ordinance of Bernards Township; it is an integral part of Bernards Township's overall plan and has much to do with the present and prospective regional need for housing. Justice Hall made the connection:

"Certainly when a municipality zones for industry and commerce for local tax purposes it without question must zone to permit adequate housing within the means of the employees involved in such uses." So. Burlington Co. NAACP v. Mt. Laurel, 67 N.J. 151, 187, cert den. 423 U.S. 808 (1975)

Defendants contend that those questions in the second set of interrogatories (Nos. 21, 22, 23, 23, 25, 26, 27 and 33) pertaining to net acreage in Bernards Township and acreage deemed environmentally sensitive are not relevant and have no bearing on the issues in this case. Again, subject matter to which interrogatories must be relevant is to be distinguished from the narrow issues raised by the pleadings. Gieran, supra. There can be no question of the relevancy of environmental questions to the subject matter of this case.

In Urban League of New Brunswick v. Mayor and Council of Carteret et al., 142 N.J. Super. 11 (Ch.Div., 1976), evidence of acreage available for development of

housing purposes was used successfully to demonstrate that the zoning ordinances of several Middlesex County municipalities were constitutionally invalid. Through interrogatories, testimony and other methods, the Court first ascertained the number of vacant acres. It then excluded from the net available acreage those portions of each municipality which were identified as environmentally critical land: that is, short-term flood plains, aquifer outcrops and swamps essential to water resources, grades of 12% or steeper, and proposed park land. Also, excluded was vacant land reasonably zoned for industry and commerce and all farmland in present use. Plaintiff, through its interrogatories, has attempted to elicit from Defendants, the same information as that used by Judge Furman.

Clearly, information as to the environmental basis of deendants' Zoning Ordinance is relevant to the validity of that ordinance, the subject matter of this case.

Defendants have asserted in their separate defenses that sound zoning must reconcile environmental considerations with the legitimate housing needs of the region and of the State. Plaintiff has no quarrel here. It is the equitability of defendants' attempt at such a reconciliation that is at issue.

Defendants have defended Bernards Township's Zoning Ordinance on environmental grounds. Defendants should be compelled to answer interrogatories which concern environmental considerations. Plaintiff is entitled to know upon what factual claims its opponent intends to stand at the trial. Tinker & Razor v. Pipeline Inspection Co., 16 FRD 465, 466 (W.D.Mo. 1954).

The fact that plaintiff also can compile environmental data concerning Bernards Township is not a bar to defendants' answering to such questions. Bowles v. Safeway Stores, 4 FRD 469 (D.C.Mo., 1945). The New Jersey Court Rules state explicitly that it is not a ground for objection to interrogatories that the examining party has knowledge of the matters as to which discovery is sought. Plaintiffs are entitled to defendants' divulging those specific facts with respect to proper environmental concerns upon which defendants will rely at trial.

In order to eliminate the element of surprise, court rules require a litigant to disclose the facts upon which its cause of action is based. Rogotski v. Schept, 91 N.J. Super., 135 (App. Div., 1966), Caparella v. Bennet, 85 N.J. Super., 567 (App. Div., 1964), Branch v. Emery Transp. Co., 53 N.J. Super., 367 (App. Div., 1956). The purpose of our liberal pretrial discovery rules is not only

to elicit information but to obtain factual statements which may be used as affirmative evidence or for contradicting the answering party. Seiden v. Allen, 135 N.J. Super., 253 (Ch.Div., 1975). Plaintiff is entitled to have answers to its interrogatories which will permit their use at trial in the manner envisioned by the court rules. *Id.*, at 256.

Defendants also object to interrogatories which seek information with respect to environmental data on the grounds that such interrogatories ask for defendant's 'contentions' on those matters. While it is true that plaintiff phrased its requests as to what defendants 'contend' constitutes environmentally critical lands, such a request is to be distinguished from inquiry into the 'opinions' of a party. Plaintiff has not asked for defendants' opinions, but for defendants' assertions, arguments, the factual basis upon which their claims are founded. Professor Moore, on page 2311 of Federal Practice states: "... to say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the rules...". In U.S. v. Purdome, 30 FRD 338 (1962) Judge Oliver indicated the court's general agreement with Professor Moore's general conclusions that if an answer would serve some legitimate purpose, either in leading to evidence or narrowing the issues, the court should require

an answer. 4 Moore, Federal Practice §33.17, p.2310-2311.

Defendants have refused to answer in the second set of interrogatories (Nos. 36a, 36b) questions which pertain to efforts made by defendants to ascertain whether housing built under Ordinance 385 might be eligible for state or federal subsidies. As defendants themselves have said, the validity of an ordinance is to be judged, in part, by its operative effect. Certainly the realistic possibility of subsidies is relevant to the effect, if not to the purpose of a housing ordinance, which it is claimed will satisfy Bernards Township's obligation to provide housing opportunities for low and moderate income people.

POINT II

IT IS NOT A VALID OBJECTION TO AN
INTERROGATORY THAT IT ASKS FOR
INFORMATION WHICH INTERROGATEES MUST
PROCURE BY REFERENCE TO DOCUMENTS OR
BY COMPILING DATA. PLAINTIFF'S MOTION
TO COMPEL MORE SPECIFIC AND RESPONSIVE
ANSWERS TO INTERROGATORIES SHOULD BE
GRANTED.

The amount of work involved in the compiling of data is not determinative of the relevancy of requested information and thus cannot be a proper objection to an interrogatory. U.S. v. Dupont deNemours & Co., 13 FRD 98 (ND, Ill., 1952). Indeed, even the fact that the answer to an interrogatory may be burdensome and expensive is not a valid objection if the information sought is relevant and material. 4 Moore, Federal Practice, 33.20, p. 33-100.

The theory of the Rules is that counsel and the court are jointly engaged in an orderly search for the truth. U.S. v. Purdome, 30 FRD 338 (WD Mo., 1962). To that end, while the allowance of interrogatories is in the sound discretion of the court, the usual presumption is in favor of liberal discovery of relevant matters. Hickman v. Taylor, 329 U.S. 495 (1945). If interrogatories relate to the subject matter of the case, a party who presumably has such information may not object to interrogatories on the grounds that they would require extensive research. Bowles v. McMinville Mfg. Co., 7 FRD 64 (E.D. Tenn., 1946),

RCA Mfg. Co. v. Decca Records, Inc., 1 FRD 433

(S.D.N.Y., 1940).

In Adelman v. Nordberg Mfg. Co., 1 FRD 433

(SDNY 1940), the court overruled objections to interrogatories which called for detailed information concerning employee hours even though defendant alleged that 60,000 clock tapes containing 150,000 items on each tape would have to be analyzed. The court there held that it is not a valid objection to interrogatories that compilation of answers will necessitate large expenditures of time and money by defendant, if in other respects, the information sought is a proper subject of discovery. In another federal case, when defendant objected that it should not have to perform work on the behalf of the plaintiff and that the interrogatories propounded to it were burdensome, the court found that that sort of argument is "but a protest against the rationale and spirit of the Rules." U.S. v. Purdome, supra.

Defendants have objected, under Rule 4:17-4(d), to many interrogatories in both the first and second sets on the grounds that the information requested is on public file and available to the plaintiff (First set: Nos. 5, 6a, 6b, 7, 16, 17, 18, 19, 20, 21, 22, 34, 35, 38 and 39; Second set: Nos. 14 and 36). The court rule which allows production of documents in lieu of answers to interrogatories

does not diminish the duty to supply the requested information. A party cannot avoid answers by producing documents in which the information may, or may not, be found. In re Master Key, 53 FRD 87 (D. Conn. 1971).

Discovery methods are designed not only to elicit information from the opposing party but to obtain factual statements which may be used at trial as affirmative evidence or for contradicting the answering party. Selden v. Allen, supra. A distinct purpose for interrogatories is not only to narrow the issues at pre-trial, but to advise each party prior thereto "of the exact claims upon which its opponent intends to stand at the trial . . ." Tinker & Razor v. Pipeline Inspection Co., 16 FRD 465, 466, U.S. v. Purdome, supra. It is not enough to make records available and require the other party to find the answer. Austin Theatre v. Warner Bros., 22 FRD 302 (SDNY 1958).

In a case in which defendant intended to use plant-wide statistics to answer a charge of employment discrimination, the court found an invitation to plaintiff to inspect its records not a proper substitute for answers to plaintiff's interrogatories. Foster v. Boise-Cascade, 20 FR Serv. 2d 466 (S.D. Tex. 1975). And an offer by defendants to permit inspection of records in lieu of answering interrogatories was held not sufficient

in Clark v. Gen. Motors Corp., 20 FR Serv. 2d 679 (D. Mass. 1975). Even interrogatories eliciting names of all witnesses to any facts or issues involved in the litigation have been found relevant and answerable. Burke v. Central RR, 42 N.J. Super. 387 (App. Div. 1956).

In several of their objections to propounded interrogatories which request information concerning meetings and conversations among and between defendants, defendants claim that plaintiff is free to abstract whatever oral communications as are referred to in various files. Even more so than with written information, plaintiff is at a serious disadvantage when denied answers concerning oral communications. The Business Records Rule explicitly states that in order for that Rule to stand as the basis to an objection, the burden of extracting answers must be substantially the same for the party serving the interrogatories as the party served. R. 4:17-4(d). Clearly, the burden on plaintiff of extracting from written files relevant information concerning oral communications is not only a heavy burden, but an impossible one. Defendant presumably has knowledge or oral communications alluded to which are not recorded and are not capable of being extracted from written files. Plaintiff is entitled to such information if it is relevant to the subject matter of the case. Defendant may not answer in a manner which requires that questions

must be ferreted out. Selden, supra. In their justifications for refusing to answer propounded interrogatories, defendants have not met the heavy burden of outweighing State and Federal mandates for broad, liberal discovery.

POINT III

ATTORNEY-CLIENT PRIVILEGE SHOULD
BE NARROWLY CONSTRUED TO THE EXTENT THAT
INTERROGATORIES SEEK NON-PRIVILEGED
COMMUNICATION, PLAINTIFF'S MOTION TO
COMPEL ANSWERS TO CERTAIN INTERROGATORIES
SHOULD BE GRANTED.

Defendant have objected that certain of plaintiff's interrogatories seek to elicit privileged attorney-client communications work-product. The attorney-client privilege is not absolute but rather an exception to the more fundamental policy of liberal discovery rules. "It is therefore to be strictly limited," C.J. Vanderbilt, In re Selser, 15 N.J. 393, 405-406 (1954). Restrictions against discovery work-products violate the basic concepts of the rules of discovery and are to be construed narrowly. Dougherty v. Gellenthin, 99 N.J. Super. 283, 287 (Law Div. 1968).

Plaintiff submits that the attorney-client privilege does not here encompass information concerning investigations and meetings conducted by defendants with respect to the eligibility for subsidies for Ordinance 385 housing. Defendant should be compelled to answer such interrogatories.

POINT IV

THE PURPOSE OF DISCOVERY IS TO
PREVENT SURPRISE AT TRIAL. EVIDENCE
AT VARIANCE WITH ANSWERS AND NON-ANSWERS
TO PLAINTIFF'S INTERROGATORIES SHOULD NOT
BE ALLOWED AT TRIAL.

Our liberal discovery rules are to provide wide latitude so that the outcome of litigation depends less on surprise and maneuvering of counsel and more on the merits of this issues. Interchemical Corp. v. Uncas Printing & Finishing Co., 39 N.J. Super. 318 (App. Div. 1956). If evidence to be introduced at trial was known to the presenting party and if there is material variance between answers to interrogatories and proofs attempted to be adduced at trial, the court should exclude the proffered variant testimony. Branch v. Emery Transportation Co., 53 N.J. Super 367 (App. Div. 1959).

Plaintiff is entitled to rely on defendants answers or non-answers to propounded interrogatories and should not be subjected to surprise at trial. The purpose of discovery is not only to elicit information but to exact admissions and obtain commitments as to the position that an adverse party takes with respect to issues of fact. Aktiebolaget Vergos, et al. v. Clark, 8 FRD 536, 636 (D.C.D.C. 1949). Contradictory evidence should not be admitted at trial if such admission will result in

surprise and prejudice to plaintiff who is entitled to rely on defendants' answers.

Our courts have steadfastly held that the search for truth is paramount: concealment and surprise will not be tolerated. Saia v. Bellizia, 103 N.J. Super. 465 (App. Div. 1968), Rogotski v. Schept, 91 N.J. Super. 135 (App. Div. 1966), Caparella v. Bennet, 85 N.J. Super. 567 (App. Div. 1969).

Respectfully submitted,

MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff,
The Allan-Dean Corporation

By:


Henry A. Hill, Jr.

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, : Civil Action

Plaintiff, :

vs. :

THE TOWNSHIP OF BERNARDS, IN :
THE COUNTY OF SOMERSET, et al., :

Defendants. :

MEMORANDUM IN OPPOSITION TO PLAINTIFF'S
NOTICE OF CROSS-MOTION FOR MORE SPECIFIC
AND RESPONSIVE ANSWERS TO INTERROGATORIES

(1st Set)

McCarter & English, Esqs.
Attorneys for Defendants
The Township of Bernards,
The Township Committee and
The Township Planning Board
550 Broad Street
Newark, New Jersey 07102
(201) 622-4444

PRELIMINARY STATEMENT

Plaintiff brings this Cross-Motion for More Specific Answers to certain of its First Set of Interrogatories propounded by the plaintiff and answered by the defendant, Township of Bernards and the Planning Board of the Township of Bernards.

The Interrogatories as to which more specific and more responsive answers are requested are attached to the Notice of Cross-Motion.

Many of the Interrogatories as to which more specific answers are sought are directed to the production of documents. All documents which defendants have, except those as to which a privilege is claimed, are available for inspection and copying by plaintiff at the Township Offices in Basking Ridge. Indeed, plaintiff has already had access to these documents and has made voluminous copies.

Accordingly, the defendants have complied with the rules of Court, and specifically R.4:17-4(d), which provides as follows:

"(d) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from or requires annexation of copies of the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or

"ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries."

This rule was designed to cover the very situation which is present here: The plaintiff, Allan-Deane, seeks to make the defendant, Township Committee and the Township Planning Board, assemble documents which plaintiff conceives of as relevant to its case; attach those documents to the Answers to Interrogatories propounded by plaintiff; and thus, in effect, prepare plaintiff's own case at the time, cost and expense of the defendants. R.4:17-4(d) was specifically drafted for this purpose, and defendants have complied with it.

Since the defendants are public bodies, it is all the more unreasonable to ask the taxpayers to prepare plaintiff's case.

Many other Interrogatories as to which plaintiff seeks more specific answers deal with meetings, conversations or discussions between individual members of the Township Committee, the Planning Board, its consultants or attorneys, the public, the press and media, and others. All these occurred prior to the adoption of the Ordinance which is attacked by plaintiff in this action as not complying with Mount Laurel. It is the law of New Jersey that the validity of an ordinance is to be judged solely by its operative effect, and not by the process by which it was adopted. See legal argument presented to this Court in Defendant's Brief in Opposition to Plaintiff's Motion for Order Compelling

William W. Allen to Answer Certain Questions on Deposition, to be argued at the same date as this motion. Accordingly, what happened at a public meeting, what happened during individual conferences between two members of a public body, or what a consultant or attorney may have said on any one of numerous occasions is irrelevant. What is relevant is the fact of the ordinance, what is in it, and how it operates.

In any event, the plaintiff is free to inspect any and all records of the defendants, since they are public bodies whose records are by law available to the public, including the plaintiff, for inspection and copy.

To the extent that plaintiff seeks opinions or contentions of defendants, as reflected by these meetings, conversations or discussions, plaintiff has itself argued that such an inquiry is improper:

"Furthermore, Williams v. Marziano, 78 N.J. Super 265,271 (L. Div. 1963) does not allow inquiry into the opinions or contentions of a party during discovery." Brief for Plaintiff, Allan-Deane Corporation, in Opposition to a Motion for an Order Compelling E. James Murar to Answer Certain Questions on Depositions.

ARGUMENTInterrogatory No. 1

Interrogatory No. 1 seeks information on expert services utilized by the defendants in preparation of the Master Plan and the Zoning Ordinance. This information has been supplied, and it is submitted that the Answer to Interrogatory No. 1 is sufficient. Mr. Agle's desposition has been taken, and all documents which Mr. Agle produced and which he utilized in the performance of his consulting services to the Township have been produced and made available to the plaintiff.

Interrogatory No. 5

Interrogatory No. 5 seeks information on "all meetings or conversations" between the defendants and AT&T officials in 1969, 1970 and 1971 with respect to the zoning change which permitted AT&T to build its facility in Bernards Township.

The objections of defendants are stated in Answer to Interrogatory No. 5. The meetings, if any, all took place five to seven years ago. If there is a record of the meetings, and the record is in the Township files, the plaintiff is free to inspect the files and make any copies of records which it deems appropriate.

In addition, what may have occurred prior to the zoning change in meetings between representatives of the Township and representatives of AT&T, five to seven years ago, is

irrelevant to whether the current zoning ordinance of the defendants is valid under the Mount Laurel decision. The zoning change to which this Interrogatory is directed permitted AT&T to build; it of itself has nothing to do with low and moderate income housing, subsidized housing, or high density housing.

Plaintiff can make all the legal argument it wants about the fact that AT&T is located in Bernards Township. The process by which AT&T came to be located in Bernards Township is irrelevant.

Additionally, to ask these defendants to describe all "meetings or conversations" five to seven years ago between a group of individuals which could number as high as twenty or thirty is burdensome and harassing. To the extent that defendants have no records, to compel defendants to reconstruct from the memories of many individuals, some of whom are not now members of the Township Committee or the Township Planning Board, would result in guess work at best. Defendants should not be under a duty to undertake such a burdensome search for irrelevant information.

Interrogatory No. 6

Interrogatory No. 6 makes a broad and vague general demand for "all facts which support, rebut, or pertain in any way" to the validity of the 1971 rezoning of the AT&T property.

First, and most important, this demand is overbroad and burdensome. It is not the obligation of the defendants to

"support, rebut" or even comment upon the validity of the 1971 Zoning Ordinance in an action challenging the 1976 Zoning Ordinance on Mount Laurel grounds. The plaintiff is free to make any comment it wants about the 1971 zoning change; the defendants are under no obligation to write a treatise upon the validity of what they did five years ago.

Secondly, Interrogatory No. 6(a) is directed towards matter which is legal argument, the interpretation of N.J.S.A. 40:55.

Thirdly, it is not up to the defendants to say or prove that the zoning followed the objectives of the Master Plan, as requested in Interrogatory No. 6(b); rather it is up to the plaintiff to argue that the zoning did not follow the Master Plan, if any such argument can be made.

The plaintiff can search the files of the defendants for expert reports or technical matter, if it so desires. Defendants did in fact look for such reports or data, and could not locate any. Interrogatory No. 6(c) and (d) have been answered.

Interrogatory No. 7

Interrogatory No. 7 seeks all representations made by ATT&T to the defendants with respect to socio-economic data at its Bernards Township facility. This Interrogatory has been answered by a reference to the report furnished by AT&T, which had been made available for review by plaintiff.

Insofar as plaintiff seeks to compel defendant to

make a compendium or oral representations or statements made at public meetings or reproduced in the press or broadcast media, the Interrogatory is burdensome and harassing. This information is as available to plaintiff as it is to defendants, and under the applicable Court rule, the burden is on the plaintiff to obtain its own information. See R.4:17-4(d).

Interrogatory No. 10

Interrogatory No. 10 seeks information with respect to Charles K. Agle, the Planner Consultant to the Township. This Interrogatory has been answered. In addition, Mr. Agle's deposition has been taken and voluminous exhibits marked thereat.

Mr. Agle's professional qualifications have been supplied.

Interrogatory No. 16

Interrogatory No. 16 seeks information about "all meetings or conversations" relating to a letter of plaintiff sent on November 1, 1971 to defendants.

Plaintiff already has its own records which it has maintained, including its own transcripts of public meetings, about conversations and discussions which plaintiff had with defendants at that time. Plaintiff is also free to inspect all minutes of meetings or other matters of public record in the Township files (except privileged material, if any), in the event plaintiff believes the information sought is relevant to the present law suit.

In any event, the meetings or conversations between defendants at which the November 1, 1971 letter was discussed are irrelevant to the issues in the present suit, which are the validity and reasonableness of the Zoning Ordinance presently in effect in Bernards Township under the Mount Laurel doctrine.

Interrogatory No. 17

Interrogatory No. 17, like Interrogatory No. 16, seeks information about meetings and discussions of defendants involving plaintiff's letter of November 11, 1975.

Defendants make the same response to this Interrogatory as they do to No. 16.

Interrogatory No. 18

Interrogatory No. 18 seeks information about meetings or conversations of defendants involving plaintiff's letter of December 31, 1975.

Once again, defendants make the same objection to this Interrogatory as they do to No. 16.

Interrogatory No. 19

Interrogatory No. 19 seeks all communications between defendants and Mr. Agle relating to the zoning of plaintiff's properties or plaintiff's plans for a development.

Defendants have answered that Mr. Agle will supply all files for inspection. Indeed, his deposition has been taken and his files have been examined. In addition, the Township files are open for inspection, and plaintiff has inspected them.

If the Interrogatory seeks oral communications, the plaintiff is free to abstract whatever oral communications are referred to in the Township files. These would be contained in minutes of meetings at which Mr. Agle reported to the Township Committee and the Planning Board. To the extent that the Interrogatory seeks to compel defendants to try and recall every word which Mr. Agle may have said over a period of six years, the Interrogatory is objected to as burdensome and harassing and not calculated to lead to evidence admissible in this action.

Interrogatory No. 20

Interrogatory No. 20 seeks once again information about "meetings or conversations" of the defendants involving a public meeting held on February 10, 1976 at which plaintiff presented its proposal for a development of its property in the Township. The Interrogatory appears on its face to request information about any meeting or any conversation involving plaintiff's proposal.

It is highly probable that there has not been any public meeting, any discussion between two or more members of the Township Committee or the Planning Board, or any discussion between two or more members of anyone interested in the Bernards Township Municipal Government, where the plaintiff's proposal for a development of such size and scope was not mentioned or discussed. To try and impose upon defendants the obligation of identifying all such meetings or discussions is

burdensome, harassing and is not contemplated by the discovery rules.

Plaintiff can, of course, inspect all the Township documents, which it has already done.

Interrogatory No. 22

Interrogatory No. 22 seeks all communications, oral or written, between William Roach, Director of the Somerset County Planning Board, or any member of the County Planning Board, relating to the Township zoning or plaintiff's proposal for its properties.

Defendants have responded to this request by producing for inspection and copying by plaintiff all its public records, pursuant to R.4:17-4(d). If plaintiff wants this information, it can inspect the business records of defendants to obtain it. Defendants should not be placed under the obligation to search out the documents which plaintiff thinks it needs to prepare its litigation. This is the plaintiff's task, and it should be made to perform it.

Interrogatory No. 32

Interrogatory No. 32 calls for facts relating to the prohibition of mobile homes in the Township.

This Interrogatory was answered by separate letter dated July 14, 1976 from Alfred A. Ferguson, Esq. to Henry A. Hill, Esq., a copy of which is attached hereto, and which was not attached to the plaintiff's Motion. Interrogatory No. 32 has been answered.

Interrogatory No. 34

Interrogatory No. 34 seeks information on "all meetings, conversations or communications (written or verbal)" between or among the defendants between November 11, 1975 and March 11, 1976, relating in any way to plaintiff's development proposal.

Once again, plaintiff is attempting to cast upon defendants an impossible task: to seek out, identify, list and describe not only the many public meetings of the Township Committee and the Township Planning Board, but also any occasional or incidental discussion by any individual members thereof.

As to the public meetings, many of these were attended by the plaintiff with its own shorthand reporter in attendance. Plaintiff is free, of course, to inspect the Township files, which are public documents and available to it.

As to occasional or incidental meetings between individual members of the defendant Township Committee and Planning Board, the Interrogatory calls for irrelevant matter, since such incidental conversations cannot be relevant to any issue in the law suit. It is axiomatic that the reasonableness of the zoning ordinance is to be determined by its operative effect, and not the method by which it was adopted.

Additionally, and most importantly, the Interrogatory is broad, vague and harassing upon the defendants.

Interrogatory No. 35

Interrogatory No. 35 seeks "all communications to defendants from Township residents which commented upon plaintiff's proposed development".

Plaintiff may inspect public files and read any communications received from the public. Plaintiff may inspect the minutes of meetings to see what oral comments were made. Plaintiff attended many public meetings with its own shorthand reporter and should consult its own transcripts.

Interrogatory No. 38

Interrogatory No. 38 asks defendants to produce any documents "in any way discussing or pertaining to any matters" relevant to this law suit, other than those already identified in Answers to Interrogatories. Simply stated, the plaintiff is seeking to impose upon defendants the obligation to seek out each and every document which may, under some legal theory adopted by plaintiff, be relevant to this action.

It is not up to defendants to determine what documents may be relevant to plaintiff's theory of the case; this is the task of plaintiff, and it cannot shift the obligation to prepare its own law suit to an adverse party. The Interrogatory is broad, vague, burdensome and harassing in the extreme.

Insofar as the Interrogatory pertains to attorney-client communications, defendants invoke the privilege.

Interrogatory No. 39

Interrogatory No. 39 wants detailed information on all "meetings, conversations, oral communications (written or verbal)" between or among defendants during the period of March 11, 1975 to the present, relating to plaintiff's proposed development. This is similar to Interrogatory No. 34, discussed infra, and defendants make the same response.

It is burdensome and harassing, and cannot lead to relevant material or facts.

Interrogatory No. 40 and No. 41

These Interrogatories seek the substance of a meeting held by the Somerset County Planning Board, with representatives of various Somerset County municipalities.

The defendants in their Answer specified who attended from the Township of Bernards.

This meeting, held on March 18, 1976, at 8:00 p.m., at the County Planning Board Offices, was the subject of an action instituted by the plaintiff and was the subject of the ruling by Judge Leahy, which allowed the meeting to proceed, upon the condition that a Court reporter transcribed the proceedings of that meeting to await a ruling as to whether the meeting was subject to the Sunshine Statute.

Defendants have stated generally what occurred at the meeting. Defendants should not be under the obligation to try and reconstruct verbatim what happened at that meeting, when a verbatim transcript, or notes, in fact already exist.

If plaintiff wants a transcript, it should move before Judge Leahy, or before the Appellate Division, where the matter is now pending.

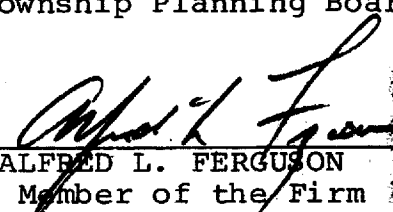
CONCLUSION

For the foregoing reasons, the Cross-Motion of the plaintiff for more specific and responsive answers to the designated Interrogatories should be denied.

Respectfully submitted,

McCarter & English, Esqs.
Attorneys for Defendants,
The Township of Bernards,
The Township Committee and
The Township Planning Board

By: _____


ALFRED L. FERGUSON
A Member of the Firm

July 14, 1976

Re: Bernards Township ads. Allan Deane

Henry A. Hill, Jr., Esq.
Mason, Griffin & Pierson
201 Nassau Street
Princeton, NJ 08540

Dear Mr. Hill:

This letter will supplement the answers of defendant to plaintiff's First Set of Interrogatories.

Interrogatory No. 32 calls for information relating to mobile homes and the zoning ordinance.

No provision is made for mobile homes in the ordinance. The New Jersey Housing Finance Agency has never approved financing for a project with mobile homes, and such housing is not believed to be eligible for other types of subsidized housing development. Such housing does not comply with building codes at present time, although various state authorities are working to change this.

The New Jersey Housing Finance Agency has never financed a project with mobile homes.

Defendant knows of no subsidized housing which incorporates mobile homes.

Henry A. Hill, Jr., Esq.

Page 2

July 14, 1976

Defendant believes that this may be due to unclear status of mobile homes as real property subject to taxation by the municipality or as personal property not subject to taxation. For the same reason the status of mobile housing as real estate capable of being mortgaged is unclear in the State of New Jersey.

Very truly yours,

Alfred L. Ferguson

ALF:jc

5-1290

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

Dec 30 8 51 AM 1978

SOMERSET COUNTY
L. R. OLSON, CLERK

THE ALLAN-DEANE CORPORATION, :

Plaintiff, :

vs. :

Civil Action

THE TOWNSHIP OF BERNARDS, et al, :

Defendants. :

:

BRIEF IN OPPOSITION TO MOTION TO COMPEL MORE
SPECIFIC ANSWERS TO INTERROGATORIES (SECOND SET)

RICHARD J. McMANUS and
McCARTER & ENGLISH
Attorneys for Defendants
550 Broad Street
Newark, New Jersey 07102
201- 622-4444

subject matter of the pending suit is dependent upon the nature of the cause of action and of the relief sought, although it is not limited to the issues raised by the pleadings. Gierman v. Toman, 77 N.J. Super. 18, 21 (Law Div. 1962). Relevance in discovery matters is decided on a case-by-case basis, in the sound discretion of the Court. Myers v. St. Francis Hospital, 91 N.J. Super. 377, 386 (App. Div. 1966).

The subject matter of this suit is whether Bernards Township's Zoning Ordinance unreasonably restricts plaintiffs' development of their lands and whether it is violative of the mandates of So. Burlington County, N.A.A.C.P. v. Township of Mt. Laurel, 67 N.J. 151 (1975). The relief sought is the invalidation of the ordinance so as to permit plaintiffs greater density land development and a rezoning of the township.

The discovery now sought against defendants does not reasonably relate to these issues. In large measure, the information sought relates to events which occurred as long as seven years prior to the adoption of the present ordinance. Much of it relates to issues not raised by plaintiffs' First Amended Complaint.

Accordingly, it is irrelevant and is not reasonably calculated to lead to the discovery of relevant evidence. Defendants' objections to these interrogatories as irrelevant properly should be sustained and plaintiff's motion to compel more specific and responsive answers should be denied. See

discussion of each interrogatory to which this motion is directed, supra.

b. Discovery must not be oppressive or unduly burdensome.

In addition to the requirement that discovery be relevant to the subject matter of the pending action, New Jersey courts have recognized that discovery may not be unduly burdensome. Gierman v. Toman, 77 N.J. Super. 18 (Law Div. 1962). This is also the rule followed under the federal rules of discovery. See, e.g., LaChemise LaCoste v. Alligator Co., Inc., 60 F.R.D. 164, 171 (D. Del. 1973); Mort v. A/S D/S Svendborg, D/S, AF 1912 A/S, 41 F.R.D. 225 (D. Pa. 1966); Industrial Equipment & Supply Co. of Reading v. Minnesota Mining & Manuf. Co., 20 F.R. Serv. 506 (D. Pa. 1954); Zenith Radio Corp. v. Radio Corp. of America, 106 F. Supp. 561, 565 n.6 (D. Del. 1952), reconsideration denied, 109 F. Supp. 913 (D. Del. 1953). Cf. DaSilva v. Moore-McCormick Lines, Inc., 47 F.R.D. 364 (D. Pa. 1969).

In Gierman v. Toman, 77 N.J. Super. 18 (Law Div. 1962), the court refused to enter an order compelling the defendant to answer an interrogatory requesting the nature of his assets in a malicious prosecution suit where punitive damages had been claimed. Although the court specifically found that the information requested was relevant to the subject matter of the suit, it found that it was not essential to the plaintiff and that answering it would be unduly burdensome to the answering party. Id., 77 N.J. Super. at 24.

In so holding, the court stated, as follows:

"I do not believe it is essential to the just determination of plaintiff's case that the detailed information sought should be compelled. To subject defendant to such extreme annoyance and the time and trouble required to list all possible assets and liabilities in detail is harassment.

* * *

It is unthinkable that a court should sanction such broad and unlimited search and report of a defendant's personal holdings on the mere basis of a demand for punitive damages." Id. at 24, 25.

As in Gierman v. Toman, so also here: the interrogatories which defendants have objected to are so all-encompassing as to subject them to undue burden, annoyance and harassment. Even if they sought information relevant to the causes of action alleged by plaintiff, which is not conceded, this Court has discretion to rule them improper. To compel their answer, this Court would sanction a broad and unlimited search of defendants' records and the records and memories of previous administrators, individual committee members and employees on the "mere basis of a demand" that Bernards Township's ordinance be struck down as violative of Mt. Laurel. This would be the kind of "unbridled excursion into matters not essential" which the Court in Gierman v. Toman indicates should not be permitted. Id. at 24.

Federal courts have refused to compel discovery on similar grounds. In Zenith Radio Corp. v. Radio Corp. of

America, 106 F. Supp. 561, 565 n.6 (D. Del. 1952), the Court held that the federal rule on interrogatories does not sanction oppression by the propounding party. In Schotthofer v. Hagstrom Const. Co., 23 F.R.D. 666, 668 (D. Ill. 1958), the district court stated as follows:

"Voluminous interrogatories requiring written answers involving minute factual details may be unreasonable and impose an undue burden upon the party to whom they are addressed. . . . The weight of the tendency to burden and oppress is enhanced where the interrogatory procedure follows use of the deposition procedure. . . ."

Objections to interrogatories were sustained where they were so broad and all inclusive as to be burdensome to the answering party. Mort v. A/S D/S Svendborg, D/S AF 1912 A/S, 41 F.R.D. 225 (D. Pa. 1966). Where interrogatories require extensive and unduly burdensome or oppressive investigations, research, compilation and evaluation of data, they are improper. LaChemise LaCoste v. Alligator Co., Inc., 60 F.R.D. 164, 171 (D. Del. 1973); Breeland v. Yale & Towne Mfg. Co., 26 F.R.D. 119 (E.D. N.Y. 1960).

Other valid grounds for objections under the federal rules include that the interrogatories are unnecessary, are adequately covered by other interrogatories, would result in undue labor and expense on the answering party and because answers, in effect, would require the answering party to prepare his adversary's case. See 8 Wright & Miller, Federal Practice and Procedure, §2174 (1970 ed.).

Defendants submit that each of these grounds are present in the interrogatories now before this Court.

Moreover, plaintiff has already had the opportunity to exhaustively examine the files of defendants as well as the minutes of the defendants, Township Committee and Planning Board. In propounding these interrogatories, plaintiff seeks either to subject defendants to further exhaustive searches of its records to discover what plaintiff has been unable to find itself or to require defendants to compile data and records already made available to plaintiff. Defendants should not be put to such futile searches or prepare plaintiff's own case for it. See Point Three, below.

Answers to these interrogatories would result in extensive investigation, compilation and comparison of data. Compelling answers would put defendants to great labor and expense in preparing proper answers covering years long prior to the adoption of the present ordinance and covering lands far different from those concerned in the pending action. Even if this Court holds such interrogatories to be relevant, their relevance is slight.

On balance, the burden on defendants far outweighs plaintiff's needs. Accordingly, defendants' objections to these interrogatories should be sustained and plaintiff's motion to compel more specific and responsive answers should be denied. See discussion of each interrogatory to which this motion is directed, supra.

POINT TWO

DEFENDANTS' OBJECTIONS TO CERTAIN INTERROGATORIES SHOULD BE SUSTAINED TO THE EXTENT THAT THESE INTERROGATORIES SEEK TO ELICIT PRIVILEGED ATTORNEY-CLIENT COMMUNICATIONS OR WORK PRODUCT.

Generally, New Jersey discovery rules are very broad. However, they are strictly limited to non-privileged matters. Rule 4:10-2(a) provides, in part, as follows:

"In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action"

The privileges to which this Rule refers are those set forth in the New Jersey Rules of Evidence. McNeff v. Jos. L. Muscarelle, Inc., 88 N.J. Super. 124 (Law Div. 1965).

Rule 26 recognizes the attorney-client privilege, and provides as follows:

"[C]ommunications between 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, and (c) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably anticipated, or (iii) as a result of a breach of the lawyer-client relationship, or (iv) in the course of recognized confidential or privileged communication between the client and such witness. The privilege shall be claimed by the lawyer unless otherwise instructed by the client. . . ."

To the extent that interrogatories seek to elicit privileged attorney-client communications or work product, defendants' objection should be sustained. There is no doubt that the matters into which certain of these interrogatories inquire are privileged attorney-client communications. They seek to elicit whether legal advice was furnished and, if so, what was the nature of such advice. They seek information on matters which are essentially legal argument, the response to which would be, in effect, in the nature of a legal opinion. See e.g., Interrogatory 36(a) and 36(a)(i) through 36(a)(iv).

Indeed, the Rules of Evidence defines a "client" as one who "consults a lawyer. . . for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity. . . ." N. J. Rules of Evidence, 26(3). In addition, they seek documents which record the privileged communications.

Accordingly, defendants' objection to interrogatories seeking privileged information and work product should be sustained and plaintiff's motion to compel more specific and responsive answers should be denied. See discussion of each interrogatory to which this motion is directed, supra.

POINT THREE

PLAINTIFF'S USE OF INTERROGATORIES WHERE THE INFORMATION SOUGHT HAS BEEN PROVIDED OR IS MORE READILY OBTAINED THROUGH OTHER DISCOVERY TECHNIQUES AMOUNTS TO HARASSMENT.

It is clear that, theoretically, the various discovery devices may be used in combination and in any order. However, under the circumstances of a particular case, the use of one type of discovery device where another is significantly more appropriate, constitutes harassment and will not be permitted. Boyden v. Troken, 60 F.R.D. 625 (N.D. Ill. 1973); Spector Freight Systems v. Home Indemnity Co., 58 F.R.D. 162 (N.D. Ill. 1973); Coca Cola v. Dixi-Cola Lab., 30 F.Supp. 275 (D. Md. 1939); United States v. General Motors Corp., 2 F.R.D. 528 (N.D. Ill. 1942); Checker Cab Mfg. Corp. v. Checker Taxi Co., et al., 2 F.R.D. 547 (D. Mass. 1942); Brightwater Paper Co. v. Monadnock Paper Mills, 2 F.R.D. 547 (D. Mass. 1942); Knox v. Alter, 2 F.R.D. 337 (W.D. Pa. 1942); Hartford-Empire Co. v. Glenshaw Glass Co., 4 F.R.D. 211 (W.D. Pa. 1943). See also Triangle Mfg. Co. v. Paramount Bay Mfg. Co., 35 F.R.D. 540 (E.D. N.Y. 1964):

"Although 'inconvenience and burden are always the lot of a party to whom interrogatories are propounded,' [case cited], there must necessarily be limits beyond which a party should not be required to go; this is particularly true when, as in the instant case, there exists a reasonable alternative to the discovery method employed by the inquiring party." (emphasis added)

The information sought, to the degree it is at all relevant, borders on the trivial. It is therefore the type of information for which the rules provide an alternative method of discovery.

Further, the information available to defendants can exist only in the pages of its records and minutes and in the minds of its present and former officers and employees. Plaintiff is attempting to cast upon defendants the impossible task: to seek, identify, list, compile, compute and describe numerous public meetings and data available in public records, as well as reconstructing the memories of various individuals regarding distant or irrelevant events.

Plaintiff has already been given the opportunity to inspect defendants' files. Documents produced by defendants may provide plaintiff with the basis for the data it seeks.

If plaintiff has found such searches and documents to be insufficient, let plaintiff search the memories of defendants former officers and employees. Plaintiff will then be assured that it knows all that there is to know, and both the defendant and the Court will be spared endless interrogatories.

It is not defendants' duty to decide what documents may be relevant to plaintiff's theory of the case. Nor can plaintiff shift to defendants the burden of preparing com-

putations and compilations which it deems necessary to the preparation of its lawsuit, especially where the information sought is equally available. Rule 4:17-4(d) provides to the contrary. Plaintiff's insistence on the use of interrogatories, thus, constitutes harassment.

This manner of proceeding has the added advantage that its costs, unlike discovery through interrogatories, are approximately the same for both parties. It is therefore less likely to be abused.

See discussion of each interrogatory to which this motion is directed, supra.

CONCLUSION

For the foregoing reasons, plaintiffs' Motion for more specific and responsive answers to the designated interrogatories should be denied.

Respectfully submitted,

RICHARD J. McMANUS and
McCARTER & ENGLISH,
Attorneys for Defendants,
Township of Bernards,
Township Committee and Town-
ship Planning Board

By: Nicholas Conover English

INTERROGATORIES

1. (a) Set forth all facts which supported, rebutted or pertained in any way to the validity of the rezoning in February, 1967, of a tract of land bounded by North Maple Ave., Route #287, the Passaic River, Osborne Pond, and Madisonville Road, from 1-acre to 3-acre residential zoning. Without limitation of the foregoing, specify:

(i) the zoning purpose or purposes as permitted in N.J.S.A. 40:55, which said rezoning was intended to promote;

(ii) the manner in which the rezoning followed the objectives of the Township Master Plan; and

(iii) all expert or technical reports, studies, findings or data of any kind which supported the rezoning of that tract of land from 1-acre to 3-acre residential zoning, including all reports, documents, studies, findings or data of any kind accumulated by the attorneys for Bernards Township to defend the legal action brought by Dr. Vera Detwieler in April of 1967, attacking the rezoning from 1-acre to 3-acre residential of the 79 acres owned by her.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory No. 1(a) above.

Ans.

1. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action.

3. (a) Describe all meetings or conversations held by members of the Township Committee of the Township of Bernards and the Planning Board of the Township of Bernards prior to January 3, 1969, regarding the proposal referred to in Anthony P. Curran's letter of January 3, 1969, to Judge Meredith. Without limitation of the foregoing, specify:

(i) the names and present addresses of all members of the Bernards Township Committee and Bernards Township Planning Board on January 3, 1969;

(ii) the time, place and persons present at each such meeting;

(iii) the general substance of what each person said at each such meeting;

(iv) the conclusions or instructions which resulted; and

(v) if a vote was held to authorize Anthony P. Curran to request a postponement and to represent that the Township Committee and Planning Board considered the proposal or development of the tract was attractive, state the names of all persons who voted in favor of such proposal, and the names of all persons who opposed it.

(b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 3(a) above, together with the general substance of their knowledge.

Ans.

3. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action.

4. (a) Describe all meetings or conversations of Defendants or of former members of the Township Committee and Planning Board of Bernards Township with officials from Mahler and McCabe Co., requesting the rezoning of a 138-acre site bounded by North Maple Avenue, Route #287, the Passaic River, Osborne Pond and Madisonville Road, from 3-acre residential zoning to office-laboratory zoning. Without limitation of the foregoing, specify:

(i) the time, place and persons present;
(ii) the general substance of what each person said; and
(iii) the conclusions or instructions which resulted.

(b) State the names and address of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 4(a) above, together with the general substance of their knowledge.

Ans. 4. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action.

5. (a) Set forth all facts with support, rebut or pertain in any way to the validity of the rezoning of the 138-acre site bounded by North Maple Avenue, Route #287, the Passaic River, Osborne Pond and Madisonville Road, in Bernards Township, in May, 1970, to office-laboratory use. Without limitation of the foregoing, specify:

(i) the zoning purpose or purposes as permitted in N.J.S.A. 40:55, which said rezoning was intended to promote;

(ii) the manner in which the rezoning followed the objectives of the Township's Master Plan;

(iii) all expert or technical reports, studies, findings or data of any kind which supported the rezoning of this land from 3-acre residential zoning to office-laboratory use; and

(iv) all facts which support the distinction between the treatment and rezoning of this property in February, 1967, from 1-acre to 3-acre residential zoning and the rezoning of this same property in May, 1970 from 3-acre residential to office-laboratory use.

Ans.

5. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action.

5. (b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answer to Interrogatory No. 5(a) above, together with the general substance of their knowledge. Without limitation of the foregoing, identify each person or persons who:

- (i) first proposed the rezoning of this property from 1-acre residential to 3-acre residential;
- (ii) first proposed the subsequent rezoning of the same property from 3-acre residential to office-laboratory use; and
- (iii) communicated with Defendants in support of or in opposition to either rezoning.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory Nos. 5(a) and 5(b) above.

Ans.

5. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action.

3. (a) Identify all documents in the files of Defendants which support, rebut or pertain in any way to the statement made by Mayor Robert E. O'Neil on June 7, 1971 to the effect that Bernards Township recognized, prior to June 7, 1971, that there was a need for multi-family housing and was, prior to June 7, 1971, "thoughtfully weighing the problem of multiple housing seriously."

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to Interrogatory No. 8(a) above.

(Ans.

8. (a) Defendants do not have any specific documents in which reference is made to Mayor O'Neill's letter of June 7, 1971. Defendants have not searched the minutes of the Township Committee and Planning Board in detail, since such minutes have been made available and copies thereof have been furnished to plaintiff. Defendants believe there may have been informal discussions by and between members of Planning Board and Township Committee and others with respect to possible multi-family housing to be built in the Township, but defendants have no way of accurately identifying any such informal discussion.

13. (a) Set forth all facts which support, rebut or pertain in any way to the validity of Ordinance No. 293, adopted in September, 1972, which Ordinance revised the fee schedule for building permits in Bernards Township. Without limitation of the foregoing, specify whether the purpose of Ordinance No. 293 was to permit A.T.&T. to purchase a building permit to construct the Basking Ridge facility at a savings of more than \$150,000.

Ans. 13. (a) This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action. Defendant is under no obligation to support, rebut or set forth the facts pertaining to validity of Ordinance No. 293, since same is not challenged in this action.

13. (b) Specify all facts which support the policy decision (as contained in the adoption of Ordinance No. 293) to lower building permit fees for large commercial tax ratables, while imposing substantial fees (as contained in Ordinances No. 364 and No. 347) on residential developers seeking to build housing in Bernards Township. Without limitation of the foregoing, specify:

(i) all facts which would tend to support Defendants' contention that housing developers should pay large fees and new non-residential tax ratables should pay lower fees;

(ii) and identify the source of all expert or technical reports, studies, findings or data of any kind which would tend to support Defendants' distinction in the treatment of housing developers and commercial tax ratables.

Ans.

13. (b) Ordinance 293 revised the building permit fee schedule. Ordinance 364 involves the requirement of an environmental impact report as part of the site plan review for both residential and industrial uses. Ordinance No. 347 is the PRN Ordinance, and, as a part thereof, involves a fee schedule for submitting an application, which includes environmental impact statement and site plan approval procedures. Accordingly, the fees required by said three ordinances are not comparable and Interrogatory No. 13(b) seeks a comparison of information about items which are not comparable.

14. (a) Identify all documents in the possession of Defendants or in the possession of the Bernards Township Police Department relating to the investigation conducted by the Bernards Township Police Department in 1973 and the Somerset County Prosecutor's Office regarding the charges heard by the Somerset County Grand Jury that Bernards Township officials, who were A.T.&T. employees or who were spouses of A.T.&T. employees, reduced the building fees required to be paid by A.T.&T. by approximately \$176,000. Without limitation of the foregoing, specify:

- (i) the persons named in the charges;
- (ii) and identify all statements taken by Bernards Township Police Chief Harry M. Allen or members of his department in connection with this investigation;
- (iii) and identify the general substance of what each person said;
- (iv) and identify the persons subpoenaed to appear before the Grand Jury and, if known to Defendants, what each witness said.

Ans.

14. (a) Defendants have no documents in their possession relating to Bernards Township Police Department Investigation, if any, in 1973, or any investigation by Somerset County Prosecutor's office. Defendants have no knowledge of persons subpoenaed before the Grand Jury. Defendants have no notes or transcripts of Grand Jury proceedings.

Bernards Township Police Department does have copies of statements taken from various persons in 1973 in its files, which statements were turned over to Somerset County Prosecutor's office. Said statements are privileged.

The information sought by Interrogatory No. 14 is irrelevant to this action.

14. (b) State the names and addresses of, and otherwise identify, all persons having knowledge of the facts set forth in the answers to Interrogatory No. 14(a) above, together with the general substance of their knowledge.

(c) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answers to Interrogatory Nos. 14(a) and 14(b) above.

21. State the total number of acres in Bernards Township which Defendants contend constitutes aquifer out crops and swamps essential to water resources, and identify the source of all data which supports, rebuts or pertains in any way to Defendants' contentions in the answer to this Interrogatory.

Ans.

21. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action. In any event, See Natural Resource Inventory, Bernards Township (November 1975), and supporting maps and data referred to therein. Data to answer this interrogatory is equally available to plaintiff as to defendant, and defendant is under no duty to make computations for benefit of plaintiff.

2. State the total number acres in Bernards Township which Defendants contend have grades or slopes of 20% or steeper, and identify the source of all documents or data which supports, rebuts or pertains in any way to Defendants' contentions in the answer to this Interrogatory.

Ans.

22. See answer to No. 21.

22. State the total number of acres in Bernards Township which Defendants contend constitutes proposed park lands, and identify the source of all documents, data and materials, which supports, rebuts, or pertains in any way to Defendants' answer to this Interrogatory.

Ans.

23. See answer to No. 21. In addition, see "Recreation and Open Space Master Plan", prepared by Maurice Wrangel, New York City, which report was adopted by the Township Planning Board as part of the Bernards Township Master Plan.

24. State the total acreage of all lands in Bernards Township which Defendants contend constitutes short-term flood plains, aquifer out crops and swamps essential to water resources grades of 20% or steeper, and proposed park lands.

Ans.

24. See answer to No. 21.

(a) State the total number of acres in Bernards Township which Defendants contend constitutes "environmentally critical lands" and, if that number is greater than the total number of acres contained in Defendants' answer to the preceding Interrogatory, identify all categories of land not included in Defendants' calculations in the answer to the preceding Interrogatory which Defendants contend constitute environmentally critical lands not suitable for housing, giving the location of all such land, the nature and environmental characteristics of all such land, and identifying the source of all documents which supports, rebuts or pertains in any way to Defendants' classification of such lands as environmentally critical and unsuitable for housing.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to this Interrogatory.

Ans.

25. (a) See answer to Interrogatory 21 and documents cited and relied on in Natural Resource Inventory. Interrogatory 25 cannot be answered since (1) all land is to some extent environmentally critical. (2) The suitability of land for housing depends on many factors, including but not limited to type and density of the housing as well as environmental factors peculiar to the land.

26. State the total number of acres in Bernards Township reasonably zoned for industry and commerce, and identify the source of all documents which support, rebut or pertain in any way to Defendants' answer to this Interrogatory.

Ans.

26. Use of the word reasonably is improper. Number of acres in various zones under zoning in effect under Ordinance 383 is set forth in answer to Interrogatory No. 18.

27. State the total number of acres in Bernards Township which Defendants contend constitutes the net vacant acreage in Bernards Township suitable for housing. If this number is lower than the number which would be derived by subtracting from the total vacant acreage of Bernards Township the acreage classified as short-term flood plains, aquifer out crops and swamps essential to water resources, grades of 20% or steeper, proposed park land, vacant lands reasonably zoned for industry and commerce, and all farm land in present use, explain fully and in detail how this number was derived, giving all calculations, Defendants' reasoning with respect to the exclusion from the total vacant acreage in Bernards Township of any additional categories of lands and identifying the source of all data or documents which support the exclusion of said additional categories of lands from the total vacant acreage of Bernards Township in order to calculate the net vacant acreage suitable for housing.

Ans.

27. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action. Defendant does not understand the words "suitable for housing" as used by plaintiff in Interrogatory No. 27. Defendants have made no calculations so as to give a figure of net vacant acreage, as plaintiff makes its calculations as proposed in Interrogatory No. 27.

Charles Agle, Township Planner, whose deposition has been taken in this action, has made estimations of the number of acres available for various uses.

33. (a) State Defendants' contentions with regard to the maximum grade on which housing development can responsibly take place within Bernards Township. If the grade percentage is less than 20%, identify the source of all documents and set forth the facts which support, rebut or pertain in any way to Defendants' contentions in this regard.

(b) In accordance with Rule 4:17-4(a), identify and attach a copy of all documents relevant to the facts set forth in the answer to this Interrogatory.

Ans.

33. (a) Interrogatory is improper and vague; word "responsibly" is not defined. Defendants contend that high or medium density land use housing can be constructed economically without an excessive cost for site improvements on land with slopes no greater than 10 percent. Housing can be constructed on lands with slopes up to 15 percent at an increased economic cost. The marginal cost for construction of such housing on lands with slopes of 15 to 20 percent is so great as to all but preclude anything but the most expensive and highest density housing.

36. (a) Describe all investigations, conferences or meetings conducted by Defendants, individual members of Defendant public bodies, or Defendants' consultants, agents or attorneys to ascertain whether or not the housing, which would be permitted as a special exception under Ordinance No. 385 (which was introduced on first reading by the Township Committee of the Township of Bernards on 5/4/76), might be eligible for subsidies under any program of the Department of Housing and Urban Development, the Farmers Home Administration, the New Jersey Housing Finance Agency, the New Jersey Mortgage Finance Agency, or the Housing Demonstration Grant Program of the State of New Jersey. Without limitation of the foregoing, specify:

Ans.

36. This interrogatory is improper and is objected to as burdensome and harassing and not relevant to the subject matter of this action. Defendants additionally invoke attorney-client privilege with respect to participation by attorneys, if any. Township files are open for inspection.

36. (a) (i) the person or persons who conducted such investigation and any person or persons employed by the Federal Government or the State of New Jersey in administering such program who was consulted, and the time and place when such discussions or conversations were held;

(ii) and state whether or not any of Defendants' employees, agents, or attorneys have reviewed the regulations and guidelines of the Department of Housing and Urban Development or any of its programs, the regulations of the Farmers Home Administration or the regulations of the New Jersey Housing Finance Agency, the New Jersey Mortgage Finance Agency or the Housing Demonstration Grant Program, in order to ascertain whether the provisions contained in Ordinance No. 385 are compatible with such regulations;

Ans.

36. (a) (i) Various Township officials conferred with representatives of various State and Federal governmental agencies from time to time.

(ii) Yes.

36. (a) (iii) and state whether or not Defendants allege that housing built in conformance with Ordinance No. 385 would be eligible, under Federal or State guidelines and regulations, for any subsidy from the Department of Housing and Urban Development, the Farmers Home Administration, the New Jersey Housing Finance Agency, the New Jersey Mortgage Finance Agency, or the New Jersey Housing Demonstration Grant Program and, if the answer to this question is in the affirmative, state which programs Defendants allege might, under current regulations and guidelines, subsidize housing built in conformance with Ordinance No. 385;

(iv) if Defendants contend that there are subsidy programs available for the construction of low and moderate income housing in Bernards Township not enumerated above, [specify] all such programs and state whether or not, as to each such program, Defendants contend that it would be available under its current rules, guidelines and regulations for subsidizing housing built in conformance with Ordinance No. 385.

Ans:

36. (a) (iii) Defendants have made no such allegations although defendants believe that housing built in conformance with Ordinance 385 would qualify for various State and Federal housing subsidies, including, without limitation, Department of Health and Urban Development Section 8, 42 U.S.C. §1437f, Section 202 and Section 235 subsidies, Farmers Home Administration subsidies pursuant to Section 515 and subsidies and guarantees of the New Jersey Housing Finance Agency and other agencies of the State of New Jersey.

36. (a) (iv) Defendants have made no such contention and further object to this interrogatory as burdensome, harassing and not relevant to the subject matter of the pending action and on the ground that this interrogatory is improper.

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

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

Civil Action

-vs-

RESPONSE TO REQUEST
TO PRODUCE

THE TOWNSHIP OF BERNARDS, et al. :

Defendants

TO: MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff
201 Nassau Street
Princeton, NJ 08540

SIRS:

PLEASE TAKE NOTICE that pursuant to the provisions of
Rule 4:13-1(b), defendants hereby respond to the Request to
Produce, a copy of which is attached hereto and made a part
hereof as Exhibit A. The responses contained herein are by
numbered paragraphs corresponding to the numbered paragraphs

contained in Exhibit A.

All items produced for inspection will be made available at reasonable times at the Bernards Township Municipal Building, Collyer Lane, Basking Ridge, New Jersey and not at the offices of Mason, Griffin & Pierson in Princeton.

1. Inspection will be permitted of all reports or documents, not privileged by law, prepared by or received by the Township of Bernards, the Township Committee of the Township of Bernards and the Planning Board of the Township of Bernards. Inspection will not be permitted of the records or memoranda of individual members of the Township Committee or Planning Board that are not made part of the public files and records as the same are not discoverable under Rule 4:10-2.

2. Same as No. 1.
3. Same as No. 1.
4. Same as No. 1.
5. Same as No. 1.
6. Same as No. 1.
7. Same as No. 1.
8. Same as No. 1.
9. Same as No. 1.
10. Same as No. 1.
11. Same as No. 1.
12. Same as No. 1.

13. Same as No. 1.

14. Same as No. 1.

MCCARTER & ENGLISH
Attorneys for Defendants

By NICHOLAS CONOVER ENGLISH
Nicholas Conover English
A Member of the Firm

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

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, et al.,)

Defendants.)

Civil Action

REQUEST TO PRODUCE

TO: McCARTER & ENGLISH, ESQS.,
550 Broad Street
Newark, New Jersey 07102

SIRS:

PLEASE TAKE NOTICE that on Monday, May 31, 1976,
Plaintiff demands that Defendants produce, pursuant to
R. 4:14-2(d) and R. 4:18-1, the following documents and
things at the offices of Mason, Griffin & Pierson, 201
Nassau Street, Princeton, New Jersey:

EXHIBIT A

DEFINITIONS

As used in this Request to Produce, the following terms will have the meanings set forth below:

A. DOCUMENT - means all documents as defined in Rule 4:18-1 of the New Jersey Rules of Civil Procedure, all writings of any nature whatsoever and all non-identical copies of different versions of the same document (e.g. copies of a printed document with different handwritten notations), in your possession, custody or control or to which you have or have had access, regardless of location, and includes but is not limited to, agenda, agreements, analyses, announcements, articles, assignments, bills, books, books of account, brochures, bulletins, calendar and diary entries, charts, checks, communications, computer output or input, contracts, correspondence, data sheets, drawings, handwritten notes, inserts, instructions, invoices, indexes, labels, magazines, magnetic tapes, manuals, maps, memoranda of agreements, mechanical reproductions, memoranda, minutes, motion picture film, notebooks, notes, notices, orders, packages, pamphlets, papers, periodicals, pictures, price lists, receipts, recordings, records, reports, samples, schedules, statements, statistical or informational accumulations, studies, summaries, tabulations, tape recordings, telegrams, teletypes, video tapes, vouchers, working papers, or any other written, recorded, transcribed, taped or

photographic matter, however produced or reproduced.

B. AND and OR - as used herein are both conjunctive and disjunctive.

C. DEFENDANTS - means The Township of Bernards, in the County of Somerset, the Township Committee of the Township of Bernards, and the Planning Board of the Township of Bernards or any of their respective servants, agents, consultants or employees, including the respective attorneys.

D. Each Request to Produce listed shall include any supplemental information, knowledge or data responsive to these Requests which is later generated, obtained or discovered by Defendants or any of them.

REQUESTS TO PRODUCE

1. Any and all reports or documents prepared by or received by Defendants with respect to all proposals considered by Defendants since 1967 regarding any rezoning to permit multi-family housing in Bernards Township, including any document concerning Defendants' obligation, duty or lack thereof to provide for low or moderate income housing.

2. Any and all reports or documents prepared by or received by Defendants concerning employment projections for Bernards Township, the Bernards Township housing region and the housing needs of persons employed within Bernards Township or the Bernards Township housing region.

3. Any and all reports or documents prepared by or received by Defendants concerning any methodology used to compute a municipality's fair share of the regional housing need, including any report, study or document commenting on the housing allocation technique used by Carl Lindbloom to compute Bernards Township's fair share allocation.

4. Any and all reports or documents prepared by or received by Defendants with respect to the rezoning of a tract of land, which tract of land includes the present A.T.&T. facility, in February, 1967 from 1-acre residential to 3-acre residential, including all reports and documents relied on to support the validity of that zoning change.

5. Any and all reports or documents prepared by or received by Defendants with respect to the rezoning of that same tract of land, formerly known as the Easling Tract, upon which is now situated the A.T.&T. facility, from 3-acre residential to office-laboratory (OL-1), including all reports and documents relied on to support the validity of that zoning change.

6. Any and all reports or documents prepared by or received by Defendants concerning or commenting upon Allen-Deane's proposals to develop its lands in Bernards Township, including any document prepared or received since the institution of this suit.

7. Any and all reports or documents prepared by

or received by Defendants which support, rebut or pertain in any way to the validity of the PRN-6 and PRN-8 Zones in Bernards Township, including any document relating to, concerning or commenting upon the estimated effect of the various PRN Zone provisions on housing costs.

8. Any and all reports or documents received by Defendants in 1964 or 1965 from the New York planning and consulting firm of Brown and Anthony, relating to or concerning the appropriate zoning of Plaintiff's lands, the lands presently occupied by A.T.&T. or the appropriate zoning along the Route #287 and #78 corridors.

9. All documents and reports received by Defendants relating to, concerning or commenting upon any proposal or long-range plan to sewer or to keep unsewered Plaintiff's property or the northwestern portions of Bernards Township, or relating to, concerning or commenting upon the suitability for septic systems or package plants of Plaintiff's property or the northwestern portion of Bernards Township.

10. All documents and reports received by Defendants relating to, concerning or commenting upon any proposal or long-range plan to improve the road systems in the northwestern portion of Bernards Township, including any traffic survey or study conducted in that portion of the Township.

11. All documents received by Defendants relating to water and water quality and the effect, if any, upon the same by Plaintiff's development plans, the development of the A.T.&T. property and the development of the Pingrey School.

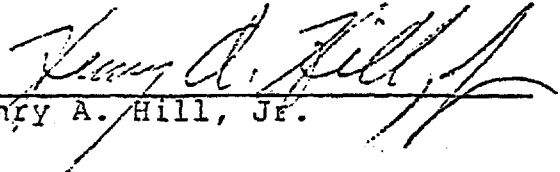
12. All documents prepared by or received by Defendants concerning the residential patterns, housing needs or residences of A.T.&T. employees.

13. All documents prepared by or received by Defendants concerning the incomes of A.T.&T. employees, or of the employees of any employer located within Bernards Township.

14. All documents prepared by or received by Defendants concerning any plan to provide public transportation for A.T.&T. employees or for any persons employed within Bernards Township but residing outside of the Township.

MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff

By:


Henry A. Hill, Jr.

Dated: April 29, 1976