RULS - AD - 1976 - 270

12/30/1976

- MOTION TO STRIKE PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS (2)
- LETTER TO CLERK (1)
- ANSWER TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS (34)
- BRIEF IN OPPOSITION TO MOTION TO STRIKE (11)

PGS - 48

WE CERTIFY THAT ON December 29, 1976
A COPY OF THE WITHIN Notice of Motion
WAS SERVED ON THE PARTIES AND IN THE
MANNER REQUIRED BY R.1:5. FILED
McCarter & English
McCARTER & ENGLISH

DEC 30 8 51 AM 1976
SOMERSET COUNTY
L. R. OLSON, CLERK

The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton, New Jersey.

McCarter & English
McCARTER & ENGLISH

note letter attached

5-1290

RULS - AD - 1976 - 270

McCarter & English
550 Broad Street
Newark, New Jersey 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,

vs.

THE TOWNSHIP OF BERNARDS, et al,

Defendants.

Civil Action

MOTION TO STRIKE PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

To: MASON, GRIFFIN & PIERSON
201 Nassau Street
Princeton, New Jersey 08540
Attorneys for Plaintiff

SIRS:

PLEASE TAKE NOTICE that on January 7, 1977, at 9:00 in the forenoon, or as soon thereafter as counsel may be heard, the undersigned, attorneys for defendants, will move before the Superior Court of New Jersey, Law Division, Somerset County, for

an Order to strike as oppressive, burdensome, harassing, repetitive, and beyond the scope of Rule 4:22-1, plaintiff's First Request for Admissions, paragraphs 7 through 59, inclusive, and 61 through 83, inclusive.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, defendants rely upon the pleadings filed herein together with a brief served herewith.

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

By: Nicholas C. English
NICHOLAS C. ENGLISH
A Member of the Firm

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

AREA CODE 201
622-4444

December 29, 1976

Re. The Allan-Deane Corporation
v. The Township of Bernards in
the County of Somerset, et al.
Docket No. L-25645-75 P.W.

Clerk of Somerset County
Court House
Somerville, NJ 08876

Dear Sir:

We enclose herewith Notice of Motion to Strike First Request for Admissions of plaintiff together with the original and one copy of supporting brief which we would ask that you hand to the judge who will hear this motion.

We are also enclosing herewith brief in opposition to motion to compel more specific answers to interrogatories (second set).

The notice of motion is presently returnable on January 7, 1977. We request that this motion, the motion to compel more specific answers to interrogatories, and the other discovery motion still outstanding in this case be assigned for argument before the same judge pursuant further to our request of December 15, 1976.

Very truly yours,

McCarter & English

SER:hk
Encs.

cc: Mason, Griffin & Pierson, Esqs.

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

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

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

DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Defendants herewith make the following response to the First Request for Admissions served by the plaintiff:

1. Defendants admit the matter of which an admission is requested in Paragraph 1 of plaintiff's Request for Admissions.

2. Defendants admit the matter of which an admission is requested in Paragraph 2 of plaintiff's Request for Admissions.

3. With respect to the matter of which an admission is requested in Paragraph 3 of plaintiff's First Request for

EXHIBIT B

Admissions, defendants admit that Exhibit C is a table entitled "Statistical Comparison" and that after reasonable inquiry, defendants admit that the statistics included in such "comparison" are derived and extracted from data appearing in documents entitled U.S. Census Data for New Jersey Township, Table 27, Page 32-6, 32-7, Table 29, Page 32-29, 32-33, Table 18, Page 32-6, 32-10, Table 20, Page 32-20, 32-24; New Jersey Population Report; and Annual Report, New Jersey Department of the Treasury, Fiscal Year 1975. By this admission, defendants do not admit the accuracy of such figures in projecting present population or income data, the methodology which plaintiff may have employed in deriving such figures from such data, or that Bernards Township and Mount Laurel Township are comparable.

4. With respect to the matter of which an admission is requested in Paragraph 4 of plaintiff's First Request for Admissions, defendants admit that one of the reasons for the adoption of Ordinance No. 388 was in response to the decision in Southern Burlington County N.A.A.C.P. vs. Township of Mount Laurel, 67 N.J. 151 (1975) which held, in part, that land should not be artifically removed from future residential use by its allocation to industrial and commercial purposes, but that it must be reasonably related to the present and future potential for such purposes, and that when a municipality zones for industry and

commerce for local taxes, it must zone to permit adequate housing within the means of the employees involved in such uses. One of the effects of Ordinance No. 388 is to restrict the number and type of places of employment in the Township of Bernards, thereby affecting, among other things, the Township's housing obligations under Mt. Laurel, and thereby bringing into better balance the potential number of jobs and the residential opportunities within the Township. Defendants further admit that such rezoning is consistent with the Bernards Township Master Plan for Land Use. Defendants deny that these motivations or reasons are unlawful or unreasonable.

5. Defendants admit the matter of which an admission is requested in Paragraph 5 of plaintiff's First Request for Admissions.

6. Defendants admit the matter of which an admission is requested in Paragraph 6 of plaintiff's First Request for Admissions.

7. Defendants object to Paragraphs 7 through 59, inclusive, of plaintiff's First Request for Admissions as burdensome, oppressive, harassing, repetitive and cumulative and as not within the scope of Rule 4:22-1. The said paragraphs are the subject of Defendants' Motion to Strike, presently returnable on January 7, 1977.

8. Defendants deny the matter of which an admission is requested in Paragraph 60 of plaintiff's First Request for Admissions. Defendants admit that plaintiff's land is located in the residential 3A district, but the matter of which an admission is requested fails to take into account the provisions in the Bernards Township Ordinance which allow for clustering and which are applicable to the residential 3A zone.

9. Defendants object to Paragraphs 61 through 71, inclusive, of plaintiff's First Request for Admissions as burdensome, oppressive, harassing, repetitive and cumulative and as not within the scope of Rule 4:22-1. The said paragraphs are the subject of Defendants' Motion to Strike, presently returnable on January 7, 1977.

10. Defendants object to the matter of which an admission is requested in Paragraph 72 of plaintiff's First Request for Admissions as being beyond the scope of Rule 4:22-1. Without waiving this objection, after reasonable inquiry information known or readily available to defendants is insufficient to enable defendants to admit or deny the matter of which an admission is requested in Paragraph 72 of plaintiff's First Request for Admissions as plaintiff does not define or quantify the meaning of "much", "remaining lands", "institutional", "use", "reasonably available" or "development".

11. Defendants object to Paragraphs 73 through 83, inclusive, of plaintiff's First Request for Admissions as burdensome, oppressive, harassing, repetitive and cumulative and as not within the scope of Rule 4:22-1. The said paragraphs are the subject of Defendants' Motion to Strike, presently returnable on January 7, 1977.

12. With respect to the matters of which admissions are requested in Paragraphs 84, 85 and 86 of plaintiff's First Request for Admissions, defendants admit that Charles K. Agle is a planner for Bernards Township. Defendants cannot truthfully admit or deny the remaining matters in Paragraphs 84, 85 and 86, for the reasons that such matters are directed to prior statements of Mr. Agle at his deposition in this case on June 7, 1976. With respect to any opinions, statements or admissions which Mr. Agle may have made or expressed therein, accuracy requires reference to the clarifying testimony of Mr. Agle in the case entitled Lorenc v. Township of Bernards, Superior Court, Law Division, Somerset County, Docket No. L-6237-74 P.W., on November 27, 1976 as contained in Exhibit A, attached hereto.

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

By: [signature]
NICHOLAS CONOVER ENGLISH
A Member of the Firm

C H A R L E S K. A G L E, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION BY MR. ENGLISH:

Q Mr. Agle, do you recall testifying earlier in this trial to the effect that creating primary employment jobs creates or provides some form of secondary jobs?

A Yes, sir.

Q I show you a transcript of your testimony on July 6, 1976, at Page 160, Line 17, and ask you if you recall testifying in this fashion:

"Question: So each time you provide for 3900 new jobs you are also providing, I believe you have been quoted, I believe one-and-a-half times additional jobs?

"Answer: That's right. You are providing a livelihood for other families other than work in the primary employment."

Do you recall testifying to that effect, Mr. Agle?

A Yes, sir.

Q I direct your attention to the transcript of your testimony on July 6, 1976, in this case, beginning at Page 169, Line 16. This is in the examination by Mr. Lanigan.

EXHIBIT A

"Question: Mr. Agle, you have been quoted and have testified elsewhere that the new AT&T facility which creates 3500 jobs will reflect or be a population increase of 27,125 persons; isn't that correct?

"Answer: I do not recall the figure precisely.

"Question: Well, you took the number of primary jobs, 3500, and added one-and-a-half times some more jobs, be they service jobs or secondary jobs, is that correct?

"Answer: That's approximately right.

"Question: You have testified elsewhere also that a household is 3.1 people. Is that the figure you used?

"Answer: I used 3.1 but now I use 3.0, actually less than that now.

"Question: Pardon?

"Answer: It is a little less than that now so I think 3.0.

"Question: You used 3.0 as late as the first week of June, though; is that correct?

"Answer: I don't recall. The 1st of June of this year?

"Question: Yes.

"Answer: I don't recall using 3.1 this late. What I have been talking about for the last year or so or two or three years is 3.0.

"Question: Well, taking the 3.0, dividing it into the 27,125 people, this comes out to approximately 8700 households; isn't that correct?

"Answer: Yes.

"Question: 8750?

"Answer: Right."

Now, Mr. Agle, you recall testifying to that effect?

A Yes, I do.

Q Now, can you tell us what is your position as to whether or not the creation of 3700 (3500) jobs at the AT&T facility in Bernards Township would result in a population increase of 27,125 persons or 8750 households?

A It would not provide a population increase because of the fact that much of the population currently resides within the area, within the region.

Q Well, then what would be the relationship of these 27,000-odd people to the jobs provided at the AT&T facility in Bernards Township?

A The livelihood provided for this many people would not exist and would be subtracted from the present population if, for example, AT&T had gone to the south

or southwest, but the livelihood is provided to approximately this number of people because the force of employment remains within the State of New Jersey or within the New York metropolitan area.

Q Now, do you recall testifying on this general subject at a deposition taken on June 7, 1976, in the case of Alan-Dean Corporation versus Bernards Township?

A I do.

THE COURT: What was that date?

MR. ENGLISH: June 7, 1976.

Q Now, I show you, Mr. Agle, a portion of the transcript of that deposition and direct your attention to Page 12 of that transcript, beginning at Line 1, and ending at Page 14, Line 21, and may I read into the record what appears in that portion of the transcript of the deposition in the Alan-Dean case taken on June 7, 1976.

"By Mr. Hill:

"Question: I will ask you whether some of these statements in it were made by you. Did you say, Mr. Agle, that all prior evidence, judicial, legislative, and executive plus technical planning consideration point to the mandate that employment centers must be accompanied by housing available to all workers

and in the same locality?

"Answer: Yes.

"Question: Is that still your view?

"Answer: Yes.

"Question: Did you say to Bedminster Township on July 10, 1972, that the moment of confrontation seems to have arrived, 'If AT&T is accommodated it will be extremely difficult in my view and impossible not to advise J.M. and Western Electric who are already your taxpayers plus others who will follow'?

"Answer: I think the view represents my continuing thinking.

"Question: More specifically, Mr. Agle, in this memorandum you said, 'The consequences of this must be faced. This means not a few invisible workers to start with but ultimately up to 3,000 for each of the corporations at hand plus others, aggregating in round figures 10,000 primary jobs. Throughout the country primary jobs are less than 40% of the total employment or, put in another light, one primary job supports at least one-and-one-half secondary jobs. This means that the domino effect of AT&T leading to J.M. and Western Electric for 10,000 jobs will continue to support distribution and service employment of 15,000 for a total of 25,000.

"'The 1970 census sh: a family size of 3.6 and overall population per occupied household of 3.1.'

"Did you say those words?

"Answer: Yes.

"Question: In working up answers to Bernards' interrogatories, one of the questions specifically for Mr. English is Information Question No. 17 which asked us what facts we relied upon to support the allegation that AT&T's primary employment would result in an increase in Bernards' population.

"In answer to that question we stated and I quote, 'The Agle memorandum of July 10, 1972, indicates that each primary job supports 1.5 secondary jobs. Taking the 3500 AT&T jobs the Agle formula would add 27,125 people to the present Township population and we calculated that by multiplying 3500 times 1.5 times 3.1 plus 3500 times 3.1.'

"Would you say that is an accurate way to compute the effect of AT&T on Bernards given your computation?

"MR. ENGLISH: I object to the question because it erroneously assumes that Mr. Agle stated that all of these people in jobs had to be accommodated within the same municipal boundaries.

"I think the phrase that you read from his memorandum talked about the locality and not the municipality.

"I think you are attributing something in the question to Mr. Agle which is contrary to what he has stated according to the record.

"By Mr. Hill:

"To rephrase it, if I changed that to read locality would you agree with our computation that based on your formula AT&T alone in Bernards Township would result in a population increase in the locality to 27,125 people?

"Answer: If you will allow me to expand the meaning of locality to region, I would say yes.

"Question: So as the planning consultant for Bernards Township you acknowledge that the effect of Bernards rezoning for AT&T, an act which you had nothing to do with, would be to increase the population in the Bernards housing region by 27,125 people?

"Answer: Approximately, yes.

"Question: Would you agree, Mr. Agle, that looking at Bedminster rezoning for AT&T alone that their action in rezoning would increase the population of Bedminster's region by 27,125 people?

"Answer: Yes."

Now, Mr. Agle, did I read correctly the transcript, the portion of a transcript of your testimony in the deposition in the Alan-Dean case on June 7, 1976?

A Do I understand you to ask me whether you read ---

Q Whether I read that correctly and that is what the transcript shows as to your testimony on deposition.

A That is right.

Q Now, can you explain the apparent discrepancy of what you have testified to this morning and what you are reported to have said in the Alan-Dean deposition?

A Yes. To be specific, on Page 13, Line 4, you will notice that I used the word "support distribution of service employment for a total of 25,000." Elsewhere in the testimony which you read earlier, I used the words to provide a livelihood for a total number of people.

In thinking about the general effect and reviewing what I had said four years earlier, I failed to distinguish between the words "increase population" and "support the population" or provide livelihood, so that the confusion is in this, which I became aware of later, and suggested that the interrogator be advised of my confusion which was the difference between provide

livelihood and increase the population specifically, and I regret very much this confusion.

Q Is it your position today, and has it ever been your professional position, that all employees have to be housed in the same municipality in which their place of employment is located?

A No.

Q Mr. Agle, have you prepared a map to illustrate your testimony this morning and could you produce it, please?

A Yes.

MR. ENGLISH: May I state to the Court that the purpose of the next line of testimony is to try to explain more clearly on the record the differences and separate significances of the clustering provisions in the PRN, under the PRN zoning ordinance No. 347 in relation to what is built on the high land, clustering on the high land and the use of the unbuildable flood plain as a basis for calculating the density which may be permitted under the applicable floor area ratio.

THE COURT: Yes.

Q Now, Mr. Agle, you have produced a map, and can you tell the Court, please, what that shows?

deposition, the one he made in July, or the one he made this morning with respect to whether or not the increase of primary and secondary jobs is either in the region, the municipality or something called locality, and I am really trying to clarify that.

THE WITNESS: Well, I believe that the word "region" is the one that I preferred and the concept that I prefer because in one of the depositions there was some discussion about these words and I said let me use the word "region," and so what I said this morning and at least on one other occasion is consistent, and the matter of locality is a much flubbier word that doesn't have any connotation of precision which is now forced upon us by the Mount Laurel decision.

BY MR. LANIGAN:

Q The region, for the purposes of your testimony, is defined as what?

A As I said it earlier, the definition that I prefer is something either within a 20-mile geographic circle or a 30-minute driving time.

Q Now, this morning when you were being

read your testimony from the deposition, it went all the way up to Page 15 and the next sentence, I will read the next sentence. This is Page 15 of the deposition dated June 7, 1976, Line 1:

"Question: Without getting into the numbers, would you agree generally that the relocation of the two large AT&T facilities into Bernards and Bedminster Townships have substantially increased both municipalities' obligation to provide housing?

"Answer: Yes."

A Yes.

Q To what extent has that obligation increased for Bernards?

A In Bernards there has been the Mount Laurel ordinance passed, so-called. This is 385, and the increase of the use of the PRN land.

Q I am sorry. Perhaps I can clarify it. I am not asking you how it has been done or what the Township has done to do whatever they're supposed to do.

My question to you is quite explicit. How much, and I will use your words, how much has there been a substantial increase in both municipalities' obligation to provide housing? How much is that?

MR. ENGLISH: If the Court please, I object to the form of the question. Those were

not Mr. Agle's words. Those were Mr. Hill's words in the question.

THE COURT: Isn't the answer to the question "yes"?

MR. ENGLISH: That's right.

THE COURT: Doesn't that constitute an adoption of those words?

MR. ENGLISH: Not necessarily.

THE COURT: Objection overruled. I take it in the context as I heard it read. That was an adoption without a distinction.

Q How substantial is the increase and what is the quantum of the increased obligation?

A I haven't measured in either case. This is a matter of trying to define the fair share which I haven't done in either municipality.

Q I would ask you to set fair share aside for a moment. Apart from fair share, apart from any obligation under Mount Laurel, this is consistent with your thesis which goes back seven or ten years; isn't that correct?

A That's right.

Q Now, how much is substantial? How much has the increase been? What is the substantial increase in Bernards' obligation because of AT&T?

28. (a) State whether Defendants, by answer to paragraph 14 of the Frist Count of the Complaint, intended to deny that Bernards Township was able to lower its equalized tax rate for 1976.

(b) If the answer to Interrogatory No. 28(a) is in the affirmative, set forth all facts which support the denial so made, and identify the sources thereof.

(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 Interrogatories No. 28(a) and (b) above.

Ans. 28. No. As is indicated in answer to the allegations in Paragraph 11 of the First Amended Complaint, there has been a decline in the equalized tax rate for Bernards Township from $3.92 per $100 in 1971 to $2.86 per $100 in 1975. In 1976, the equalized tax rate is $2.79 per $100. Had the plaintiff alleged that the equalized tax rate declined from 1975 to 1976 defendants would have admitted it. Defendants did intend to deny the allegation that the decline in the equalized tax rate from $2.86 per $100.00 to $2.79 per $100.00 is "significant" as alleged in Paragraph 14 of the First Count of the First Amended Complaint and that the decline in its equalized tax rate was due to "the revenues derived from A. T. & T." Furthermore, defendants deny and object to plaintiff's attempt to contrast the decline in the equalized tax rate in Bernards Township with the rise of general levies in other municipalities since the two figures have no relation and, in fact, the general levies in Bernards Township were increased from 1975 to 1976.

EXHIBIT O.

S-1290

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

THE ALLAN-DEANE CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action
	:	
THE TOWNSHIP OF BERNARDS, et al.	:	
	:	
Defendants.	:	

BRIEF IN SUPPORT OF MOTION TO STRIKE PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

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

PRELIMINARY STATEMENT

This is an action in lieu of prerogative writ.

The defendants bring this motion to strike certain of plaintiff's Requests for Admissions. For the convenience of the Court, a copy of the text of plaintiff's First Requests for Admissions, along with the accompanying exhibits, is attached to this brief. Defendants' answers to plaintiff's First Requests for Admissions are also attached to this brief. See Exhibits A and B, attached hereto.

ARGUMENT

Defendants bring this motion to strike certain of plaintiff's First Requests for Admissions on the grounds that they are unduly harassing, cumulative or repetitive. In addition, the matters of which admissions are requested are beyond the scope and intent of Rule 4:22-1. Defendants make this motion in lieu of separately setting forth the reasons for their objections to Requests number 7 through 59 inclusive, and 61 through 83 inclusive.

Defendants had made a good faith effort and diligent inquiry into the remaining matters of which admissions are requested, and have made answers thereto. See defendants' answers to plaintiff's First Requests for Admissions attached hereto as Exhibit B.

Objection to Requests for Admissions is permitted by Rule 4:22-1, which reads, in part, as follows:

> "The matter is admitted unless, within 30 days after service of the request... the party to whom one request is directed serves upon the party requesting the admissions a written answer or objection addressed to the matter, signed by the party or his attorney .... If objection is made, the reasons therefor shall be stated."

Plaintiff's First Requests for Admissions were served on defendants, through their attorneys, on December 2, 1976.

Defendants motion to strike improper Requests for Admissions is permitted. Williams vs. Marziano, 78 N.J. Super. 265, 267 (Law Div. 1963)

Defendants' general objection to responding to the balance of plaintiff's First Requests for Admissions stems from the fact that the matters of which admissions are requested have already been asked and answered on repeated occasions by these defendants in this action already. Plaintiff, in serving its First Requests for Admissions, is thereby subjecting defendants to unnecessary burden and oppression. Such action constitutes harassment of defendants by plaintiff.

Moreover, defendants have already provided plaintiff with responses to the very same or substantially similar questions as the ones contained in plaintiff's First Requests for Admissions which are the subject of this motion.

Defendants should be under no further obligation to collate the previous answers and admissions in order to respond to this, the latest, attempt to ask and receive answers to the same questions.

Neither should defendants be under the obligation minutely to examine each of the questions in plaintiff's First Requests for Admissions of which an admission is requested in order to determine whether it varies in any, ever so slight, degree from prior pleading in this case.

To do so would necessarily be expensive, burdensome, harassing or oppressive. No substantial purpose would be served thereby. In any event, plaintiff is fully as able as defendants to analyze the same documents, and plaintiff's First Requests for Admissions smacks of an effort by plaintiff to make defendants prepare its case.

The purpose of Requests for Admissions under Rule 4:22-1, and its predessessor R.R. 4:26-1, is stated in Williams v. Marziano, supra, 78 N.J. Super. 265,]67, as follows:

> "The purpose of the rule is to facilitate the trial by weeding out the facts over which there is no true controversy but which are often difficult or expensive to prove. Hunter v. Erie R.R. Co., 43 N.J. Super. 226, 231 (Law Div. 1956)."

This is a restatement of the rule enunciated in Hunter v. Erie R.R., supra, where Justice Hall, then Judge Hall, recognized that the rule permitting Requests for Admissions was intended to "expedite the trial, diminish its cost, and focus the attention of the parties upon the matters in genuine controversy." 43 N.J. Super. 226, 231.

It would be a perversion of the spirit of Rule 4:22-1, of its use were permitted here, not to diminish cost, but to cause duplication of time and effort; not to expedite trial but to expand discovery; and, to focus the attention of defendants on facts which have already been admitted or denied, which

are not central to the case and are not, therefore, in genuine controversy.

Indeed, in Hunter v. Erie R.R., supra, Justice Hall indicated that there is an obligation on the party requesting admissions, as well as upon the responding party. He wrote, at page 231, as follows:

> "It is to be assumed, therefore, that a party, before requesting admissions, has, by discovery or investigation, ascertained the facts concerning which admissions are requested and seeks to determine whether they will be disputed, to avoid, if possible, the expense and difficulty of proving at trial those as to which there is no dispute."

Plaintiff's failure to determine which matters have been admitted and which denied; which are and are not disputed; and which it will and will not need to prove at trial suggests bad faith and noncompliance with the Rules. For plaintiff to ask defendants to undertake its obligation comes close to asking defendants to prepare its case for trial, at public expense. Rule 4:22-1 was not intended for such purpose and should not be interpreted here to permit it.

Plaintiff's attempt to subject defendants to this burden is just its latest in a series of tactics designed to burden and harass defendant, to drive up the cost of legal defense of this action, and we submit, ultimately to force defendants into withdrawing their defense of this suit and to

accede to plaintiff's demands. In short, plaintiff seeks to destroy a rationally derived and reasonable comprehensive plan in Bernards Township in order that plaintiff be permitted to build what it wants, where it wants to, at the greatest economic gain to plaintiff, regardless of the adverse enviromental, socioeconomic, planning and regional considerations which may result thereby.

Without addressing each of the Requests for Admissions to which defendants object in the subject motion, defendants submit the following as an example of the nature of plaintiff's Requests for Admissions and their similarity to pleadings already filed and admissions already made by this defendant in this action. Defendants submit that the following example is not atypical of the other Requests for Admissions objected to herein.

Plaintiff's First Requests for Admissions, paragraphs 52, 53, 54 and 55, read as follows:

> "52. The equalized tax rate in Bernards Township has decreased since 1970 from $3.93 per $100 in 1971, to $3.72 per $100 in 1972, to $3.53 per $100 in 1973, to $3.27 per $100 in 1974, to $2.86 per $100 in 1975.
>
> 53. The principal reason for the recent decrease in the tax rate in Bernards is the presence of the American Telephone and Telegraph Company (hereinafter referred to as "A.T. & T.") Worldwide Headquarters in the Basking Ridge section of the

Township. This A.T.&T. facility will be valued at between $100 and $110 million (1975 dollars) when completed. At current assessment rates, this A.T.&T. ratable would yield revenues of $3.5 million when completed, an amount equal to 47.3 percent of the Township's total tax levy of $7.4 million during 1975.

54. The new A.T.&T. facility referred to in Request for Admission #53, although only partially completed, was assessed at $34.5 million during 1975 and yielded revenues of $1.3 million that year. Approximately $1.8 million in revenues from A.T.&T. are anticipated by the Township during 1976, and revenues of $3.5 million between 1978 and 1980 from A.T.&T. are anticipated.

55. Bernards Township will be able, when the A.T.&T. facility is completed, if the land costs of government and education do not increase, to lower its present equalized tax rate at least $1.00 to $1.86 per $100 in assessed evaluation."

Plaintiff filed its Complaint in lieu of Prerogative Writ on March 11, 1976. It was permitted to file an amended complaint and did so on May 21, 1976. Paragraphs 11, 12, 13 and 14 in plaintiff's First Amended Complaint in lieu of Prerogative Writ read as follows:

"11. Since 1970, BERNARDS TOWNSHIP residents have enjoyed a particularly favorable tax climate, with the equalized tax rate decreasing -- from $3.93 per $100 in 1971 to $3.72 per $100 in 1972 to $3.53 per $100 in 1973 to $3.27 per $100 in 1974 and $2.86 per $100 in 1975. Thus, while local equalized tax rates in New Jersey have generally increased, BERNARDS TOWNSHIP'S equalized tax rates have decreased.

12. The principal reason for the recent decrease of the tax rate in BERNARDS TOWNSHIP is the presence of the American Telephone and Telegraph Company (hereinafter referred to as "A.T.&T.") Worldwide Headquarters in the Basking Ridge section of the

TOWNSHIP. This A.T.&T. facility will be valued at $100 to $110 million (1975 dollars) when completed. At current assessment rates, this A.T.&T. ratable could yield revenues of $3.5 million when completed an amount equal to 47.3 per cent of the TOWNSHIP'S total tax levy of $7.4 million during 1975.

13. The new A.T.&T. facility, although only partially completed, was assessed at $34.5 million during 1975 and yielded revenues of $1.3 million last year. Approximately $1.8 million in revenues from A.T.&T. are anticipated by the TOWNSHIP during 1976, and revenues of $3.5 million between 1978 and 1980 from A.T.&T. would not appear unreasonable.

14. During 1975 and 1976, the revenues derived from A.T.&T. have enabled BERNARDS TOWNSHIP to lower its equalized tax rate significantly while other municipalities throughout New Jersey are raising general levies by 10 to 20 per cent in order to obtain minimum funds to finance local education. BERNARDS TOWNSHIP will be able, when the A.T.&T. facility is completed, if it continues to succeed in its efforts to exclude lower and middle income housing, to lower its present equalized tax rate at least $1.00 to $1.86 per $100 in assessed population."

Defendants' Answer to paragraphs 11 through 14 of First Amended Complaint was filed on June 3, 1976 and read as follows:

"11. Answering paragraph 11, defendants admit that the equalized tax rate has decreased from $3.92 (not $3.93 as stated in paragraph 11) per $100.00 in 1971, to $3.72 per $100.00 in 1972, to $3.53 per $100.00 in 1973, to $3.27 per $100.00 in 1974, and $2.86 per $100.00 in 1975. Defendants are without knowledge or information sufficient to admit or deny the allegations contained in the final sentence of paragraph 11, and except as herein specifically admitted, defendants deny the remainder of the allegations contained in paragraph 11 and further deny any characterization, interpretation or extrapolation contained in the matter of which an admission is requested.

12. Answering paragraph 12, defendants are unable to admit or deny the allegations contained therein since plaintiff does not define the meaning of "recent decrease of the tax rate" in Bernards Township. Plaintiff does not indicate whether this is an equalized tax rate or an actual tax rate. With respect to the allegation regarding the estimated valuation of the American Telephone and Telegraph Company facility when completed, defendants lack information or knowledge sufficient to admit or deny same as this calls for an anticipated valuation at some point in the future. With respect to the allegation regarding the anticipated valuation of the American Telephone and Telegraph Company facility or the amount of revenues which would be yielded if some future valuation of an as yet unfinished facility were hypothetically applied to the present total tax levy of Bernards Township during 1975, defendants lack information or knowledge either to admit or deny the same. Except as herein specifically admitted, defendants deny the remainder of the allegations contained in paragraph 12 and further deny any characterization, interpretation or extrapolation contained therein, including the hypothesis that a significant increase in the valuation of any present or future facility would have no effect on the tax rate or tax levy of a township.

13. Answering 13, defendants admit that the American Telephone and Telegraph Company facility is not fully completed, that it yielded approximately $1.3 million in tax revenues last year and that tax revenues from the American Telephone and Telegraph Company facility within Bernards Township for 1976 are anticipated to amount to approximately $1.8 million. Except as herein specifically admitted, defendants deny the remainder of the allegations contained in paragraph 13.

14. Answering paragraph 14, defendants deny that Bernards Township was able to lower its tax rate for 1976, and admit that, in fact, the actual tax rate in 1975 equalled $3.92 per $100 and increased to $4.12 per $100.00 in 1976. Defendants further deny that any effort has been made to exclude lower and middle income housing from defendant Township of Bernards, and further deny that the tax rate has been significantly lowered in defendant Township of Bernards during 1975 and 1976 as a result of reve-

> nues derived from the American Telephone and Telegraph Company. Defendants are at this time without knowledge or information sufficient to admit or deny the allegations in paragraph 14 regarding the actions of certain other unnamed municipalities throughout the State of New Jersey, not identified or parties to this action, or the reasons which such actions were taken and leave plaintiff to its proofs. Except as herein specifically admitted, defendants deny the remaining allegations contained in paragraph 14 and further deny any characterization interpretation or extrapolation contained therein."

Moreover, in paragraph 6 of plaintiff's First Requests for Admissions, plaintiff requests that defendants admit Exhibit E attached thereto as a genuine copy of Requests for Admissions served by another plaintiff in a case entitled Theodore Z. Lorenc v. The Township of Bernards, et al, Superior Court of New Jersey, Law Division, Somerset County, Docket No. L-6237-74 P.W. In defendants' answers to plaintiff's First Requests for Admissions herein, the genuiness of Exhibit E is admitted, as are defendants' answers to the Lorenc admissions served on April 23, 1976, attached to First Requests for Admissions as Exhibit "D".

Paragraphs 10, 11, 12 and 13 of Exhibit E, read as follows:

> "10. Since 1970, BERNARDS TOWNSHIP residents have enjoyed a particularly favorable tax climate with equalized tax rate decreasing -- from $3.93 per $100 in 1971 to $3.72 per $100 in 1972 to $3.53 per $100 in 1973 to $3.27 per $100 in 1974 and $2.86 per $100 in 1975. Thus, while local tax rates in New Jersey have generally increased, BERNARDS TOWNSHIP'S tax rates have decreased.

11. The principal reason for the recent decrease of the tax rate in BERNARDS TOWNSHIP is the presence of the American Telephone and Telegraph Company (hereinafter referred to as "A.T.&T.") Worldwide Headquarters in Basking Ridge section of the TOWNSHIP. This A.T.&T. facility will be valued at $100 to $110 million (1975 dollars) when completed. At current assessment rates, this A.T.&T. ratable could yield revenues of $3.5 million when completed, an amount equal to 47.3 per cent of the TOWNSHIP'S total tax levy of $7.4 million during 1975.

12. The new A.T.&T. facility, although only partially completed, was assessed at $34.5 million during 1975 and yielded revenues of $1.3 million last year. Approximately $1.8 million in revenues from A.T.&T. are anticipated by the TOWNSHIP during 1976.

13. During 1975 and 1976, the revenues derived from A.T.&T. have enabled BERNARDS TOWNSHIP to lower its tax rate significantly while other municipalities throughout New Jersey are raising general levies by 10 to 20 per cent in order to obtain minimum funds to finance local education."

Subsequently, the plaintiffs in Lorenc were permitted to amend their complaint. On July 16, 1976, Second Amended Complaint in lieu of Prerogative Writ was filed in that action and incorporated many of the matters of which admissions were requests in Exhibit E, including paragraphs similar to those quoted above. Defendants Answer was filed on July 30, 1976 and is a matter of record. Defendants filed an Answer to plaintiff's First Amended Complaint. Defendants submitted an Answer to the Requests for Admissions in the Lorenc case. Defendants answers to Exhibit E appear as Exhibit D, attached to plaintiff's First Requests for Admissions, the genuiness of which

is admitted in defendants' answer to plaintiff's Requests for Admissions in the case before the Court.

Now, plaintiff asks substantially the same questions for the third time. Intending to put upon defendants the burden of examining the matters of which admissions are requested, plaintiff would have defendants compare them with other pleadings in this case and in the Lorenc case in order to determine whether any changes have been made in the allegations or any new fact is now known to defendants which might modify their answers in order to prepare and submit a response to plaintiff's First Requests for Admissions.

Next, perhaps, plaintiff's will serve upon defendants Interrogatories asking the same questions. Indeed, this seems to be the direction taken by plaintiff in Interrogatory 28 of its third set, which reads, in part, as follows:

> "(a) State whether defendants, by answer to paragraph 14 of the Frist [sic] Count of the Complaint, intended to deny that BERNARDS TOWNSHIP was able to lower its equalized tax rate for 1976."

See Interrogatory No. 28 (Third Set) and defendants response attached hereto as Exhibit C.

Defendants submit that such tactics are, per se, harassing, burdensome, oppresive, repetitive and cumulative and puts defendants through unnecessary and undue expenses in

connection with this case.

Defendants should not be under any further obligation to respond to plaintiff's First Requests for Admissions of this nature to which objection is taken. The Court should not tolerate or sanction the tactic and procedure which plaintiff have evidenced by their service of First Requests for Admissions.

Accordingly, for the reasons stated above, defendants motion to strike Plaintiff's First Requests for Admissions, numbered 7 through 59 inclusive, 61 through 83 inclusive, should be granted.

Respectfully submitted,

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

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

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

THE ALLAN-DEANE CORPORATION,	:	
Plaintiff,	:	
vs.	:	Civil Action
THE TOWNSHIP OF BERNARDS, et al.,	:	
Defendants.	:	

BRIEF IN OPPOSITION TO MOTION TO STRIKE PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

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

ARGUMENT

Plaintiff files this brief to respond to Defendants' objections to Plaintiff's First Requests for Admission and submits that their objections are insufficient and do not constitute a proper or good faith response contemplated by Rule 4:22-1. Plaintiff respectfully urges the Court to order, that proper answers be served.

Plaintiff has properly served upon Defendants eighty-six (86) Requests for Admission. In keeping with the intent purpose of R.4:22-1 [FRCP 36(a)] to "expedite trial and to relieve the parties of the cost of proving facts which will not be disputed in trial and the truth of which can be ascertained by reasonable inquiry," Hanauer v. Siegel, 29 F. Supp 329 (N.D. 111.1939), Plaintiff's Requests are clear, concise, and for the most part, require but short answers by Defendants. Plaintiff submits the following as a fair example of the nature of its Requests.

7. The Township of Bernards is located in the County of Somerset, and is a sprawling urban-suburban community in the north-central portion of the County.
8. The Township of Bernards has a land area of 14.95 square miles, an amount equal to 8.2 per cent of Somerset County's land area of 305.6 square miles.
39. The median number of rooms per housing unit was 7.2 rooms in Bernards Township at the time of the 1970 U.S. Census of Housing.
40. The median number of rooms per housing unity was 5.9 rooms in Somerset County at the time of the 1970 U.S. Census of Housing.
61. On November 1, 1971, Allan-Deane formally applied to Defendant, the Planning Board of the Township of Bernards (hereinafter referred to as the "Board"), for a zoning change after several informal meetings with the Board.

Defendants have refused to answer seventy-six (76) of Plaintiff's Requests and have made a motion to strike all of the unanswered requests for the reason that such requests are purportedly "unduly harassing, cumulative or repetitive." (Defendants' Brief in Support of Motion to Strike Plaintiff's First Requests for Admissions, page 3.)

Rule 4:22-1 states, without elaboration, that if objections are made to Requests for Admission, reasons shall be stated. The sufficiency of such reasons has been left to judicial determination, to be guided by such body of case law, State and Federal, which has developed around the subject. Defendants offer no precedential guides to support the validity of their present objections. Indeed, there are none. There is nothing to be found in either Federal or New Jersey opinions which would uphold the sufficiency of the reasons given by Defendants for their refusal to respond to Plaintiff's Requests for Admission.

The burden of making proper responses is squarely upon the party to whom Requests for Admission are directed. That party must answer if the truth of the matter could be determined by reasonable inquiry Dulansky v. Iowa-Ill. Gas & Elec. Co., 92 F. Supp, 118, 124 (S.D. Iowa 1950). Rule 4:22-1 [FRCP 36(a)] adopts the view that a reasonable burden may be placed on parties when the discharge of the burden will facilitate preparation for total and ease the trial process. 4A Moore's Federal Practice §36.01, [7]. Defendants'

objections to Plaintiff's Requests for Admission are irrelevant. Defendants' refusal to answer is an attempt to evade and avoid their statutory duty.

Defendants' general objection to responding to the balance of Plaintiff's First Requests for Admissions is based on their assertion that the matters of which admissions are requested have already been asked and answered on repeated occasions by these Defendants in this action already." (Defendants' Brief, supra at 4). Defendants claim that since they have already provided Plaintiff with responses to similar questions, they should be under no obligation to "collate" the previous answers in order to respond to Plaintiff's Requests for Admission. (Defendants' Brief, supra at 4). Defendants further claim that Plaintiff's First Requests for Admission are "cumulative", and for that reason Defendants may refuse to answer them. (Defendants' Brief, supra at 3).

Professor Moore addresses the issue directly: "The various methods of discovery provided for in [FRCP] Rules 26 through 37 were always intended to be cumulative, rather than alternative or exclusive. Moore's, supra at §36.05 [4]. In neither Federal or New Jersey case law nor in commentary on FRCP 36(a) or New Jersey Rule 4:22-1, has the repetitive nature of a question been recognized as a valid basis for objection to a Request for Admission. On the

contrary, it has been stated by various Federal Courts that if a party so desires it may simultaneously take an adversary's deposition and require him to submit to Requests for Admission concerning the very same matter, Nebraska v. U.S. Rubber Co., 27 F. Supp 953 (S.D.N.Y. 1939); that a party does not have to elect between discovery by interrogatories and discovery by Requests for Admission, and may use either or both methods, Woods v. Robb, 171 F 2d 539 (5th Circ. 1948); that it is not a valid objection to a Request for Admission that the requesting party knows the answer, Photon, Inc. v. Harris Intertype, Inc., 28 FRD 327 (D.Mass 1961); and that a response that information requested has been made available to Plaintiffs elsewise is unacceptable, Chrapliwy v. Uniroyal, Inc., 17 FR Serv. 2d 719 (N.D.Ind. 1973). Clearly, Defendants reasons for refusal to respond to Plaintiff's Requests for Admission are insufficient.

The fact that a similar question has been asked before or similar information supplied in whatever context is totally irrelevant to the operation of the Rule and offers no relief from the statutory obligations, to admit or deny, which is placed squarely upon the one to whom Requests are directed. To assert otherwise indicates a misunderstanding of the basic purpose of Rule 4:22-1. The rule was designed to "obviate the necessity on the part of the presenting party to prepare and present proofs at the trial. . ." Hunter v. Erie R.R. Co., 43 N.J. Super. 226, 231 (Law Div. 1956). Any

matter admitted under Rule 4:22-1 is conclusively established. Thus requested admissions and responses become a part of the proof and have the effect of sworn testimony. Dulansky, supra at 122.

Unlike responses to Requests for Admission, responses to interrogatories and other discovery methods do not relieve either party of the necessity of proving facts and admissions. No matter how many interrogatories have been asked and answered, the requesting party is still entitled, under Rule 4:22-1, to admissions which will accomplish the purpose of that Rule. Electric Furnace Co. v. Fire Ass'n., 9 FRD 741 (N.D. Ohio 1949). Even if more than one set of Requests for Admissions deal with the same facts, the party to whom Requests are directed is required to respond. Moore's, supra at §36.05[4]. Clearly, present Defendants are under an obligation to answer Plaintiff's Requests for Admission, even if a response requires "collating" or repeating previously proffered statements.

On page 4 of their Brief in Support of Motion to Strike, Defendants assert that they should not be under the obligation to examine "minutely" each of the questions on Plaintiff's First Requests for Admissions "in order to determine whether it varies in any, ever so slight, degree from prior pleading in this case." It is difficult to understand Defendants' concern. Defendants are in no need

of protection here: they run no risk of sanctions if their responses are at issue with Plaintiff's pleadings. Indeed it is Plaintiff who is due protection. The Rule "concerning admission of facts requires an answer after service, regardless of what may have been previously asserted by the pleadings, and the party making a request is entitled to a direct and unequivocal answer without being required to search the record for possible denials lurking in papers or instruments previously filed in the record. In re Independent Distillers of Kentucky, 34 F. Supp. 724, 729 (W.D.Ky. 1940). Furthermore, even if matters requested have been controverted by verified pleadings, Defendants must respond to a requested admission. Ibid.

On page 5 of their Brief, Defendants state that ". . . it would be a perversion of the spirit of Rule 4:22-1 if [sic] its use were permitted here. . .to focus the attention of Defendants on facts which have already been addmitted or denied, which are not central to the case and are not, therefore, in genuine controversy." Defendants could not mean what they have said here. Seemingly, Defendants were paraphrasing Justice Hall's words in Hunter v. Erie, supra quoted in the paragraph directly preceding on page 5. The Court there stated that the intent of Rule 4:22-1 is to "expedite the trial, diminish its cost and focus the attention of the parties upon the matters in genuine controversy."

It seems obvious that Justice Hall meant that the Rule is to help the parties focus their attention AT TRIAL upon the matters in genuine controversy. Rule 4:22-1, of course, operates during the pre-trial period. It facilitates the trial by "weeding out the facts over which there is not true controversy", especially those facts and issues not central to the case. Williams v. Marziano, 78 N.J. Super. 265 (Law Div. 1963). Obviously it is no perversion of Rule 4:22-1 to focus, Defendants' attention, at this point in the proceeding, on facts which are not central to the case and are not in genuine controversy. It appears that Defendants have misread Justice Hall's directive.

On page 6 of their Brief, Defendants again seem to misinterpret the words of Justice Hall in Hunter v. Erie, supra. Defendants imply that Justic Hall imposed there an obligation on the party requesting admissions to have already determined, before serving such requests, which matters will be in dispute. Justice Hall wrote:

> "It is to be assumed, therefore, that a party, before requesting admissions, has, by discovery or investigation, ascertained the facts concerning which admissions are requested and seeks to determine whether they will be disputed, to avoid, if possible, the expense and difficulty of proving at trial those as to which there is no dispute."

It is obvious from a reading of the requests that Plaintiff believes it has ascertained the facts sought to

be admitted and is merely attempting to nail down precisely what Defendants are prepared to admit.

The statutory purpose of the Request is to ascertain whether the answering party regards the matter as presenting a genuine issue at trial. Moore's, supra at 136.01[7]. Plaintiff has ascertained those facts about which admissions are requested. Plaintiff now, pursuant to Rule 4:22-1, seeks to ascertain which of those facts will be disputed. Such a determination cannot be made unilaterally. It is incumbent upon Defendants to either admit or deny and in so doing state conclusively for this case what facts will be in dispute at trial.

Defendants appear to have failed to understand the distinction between discovery to ascertain facts and Requests for Admission which seek to determine conclusively the parties' position as to those facts and to force admission of facts about which there is no real dispute. Bede v. Beck, 11 FRD 293 (D.C. Ohio, 1951). Discovery in the form of interrogatories, depositions, production of documents, permission to enter upon land for inspection, is to the purposes of preparing a case: gathering information, discovering evidence, ascertaining facts which a party will seek to prove or disprove at trial. Requests for Admission, on the other hand, is that method of "discovery" which seeks to ascertain before trial what facts are in dispute between the parties,

to the end that the necessity of proving undisputed facts will be precluded and disputed issues will be presented clearly to the trier of fact. The beneficial result of the Rule concerning Requests for Admissions would be lost if the party making the request was not permitted to rely upon the answer to or failure to answer the request after its service. In re Independent Distillers, supre, at 729. If Defendants here are allowed to avoid answering Plaintiff's Requests, Rule 4:22-1 will be effectively rendered inoperative, null and void.

The rule concerning Requests for Admission "requires good faith and truthfulness in a response, and any responses which seek to evade or avoid. . . will not be countenanced." Dulansky, supra, at 124. Clearly, to countenance Defendants' refusal to answer Plaintiff's First Requests for Admission would be to defeat the purpose of Rule 4:22-1.

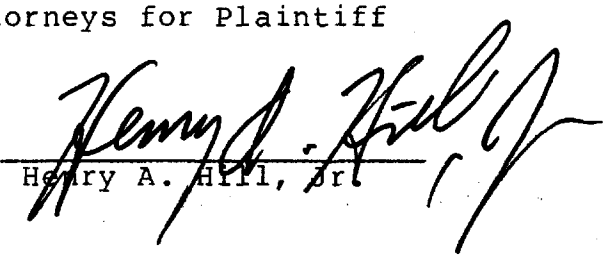
Accordingly, for the reasons stated above, Plaintiff's motion to determine the insufficiency of Defendants' responses to Plaintiff's First Requests for Admission should be granted and upon such findings Defendants should be ordered to properly answer.

CONCLUSION

For the foregoing reasons it is requested that the Defendants Motion to Strike Plaintiff's First Request for Admissions be denied.

Respectfully submitted,

MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff

By: 
Henry A. Hill, Jr.

S 1290

FILED

JAN 7 3 56 PM 1977

SOMERSET COUNTY
L. R. OLSON, CLERK

ORIGINAL HEREOF FORWARDED FOR FILING WITH CLERK OF THE SUPERIOR COURT on

1-7-77

DAVID G. LUCAS, J.C.C. t/a

Ent'd ✓ I. C. D. 77

Recorded Bk. ____ Page ____

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,	Civil Action
Plaintiff,	CONSENT ORDER EXTENDING TIME WITHIN WHICH TO COMPLETE DISCOVERY
vs.	
THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, et al.,	RULS - AD - 1977 - 10
Defendants.	

This matter having been opened to the Court by Messrs. McCarter and English, attorneys for defendants Township of Bernards, etc., et al., Messrs. Mason, Griffin & Pierson, attorneys for the Allan-Deane Corporation, and John F. Richardson, Esquire, attorney for the Somerset County Planning Board, and good cause appearing;

IT IS on this 31 day of January, 1977,

ORDERED that the time within which all parties to this action may conduct

and complete discovery be and hereby is extended for a period of 120 days from January 6, 1977, that is to and including May 6, 1977.

David G. Lucas, J.C.C. t/a

We hereby consent to the form and entry of the within Order.

McCARTER AND ENGLISH
Attorneys for Defendants

By Nicholas Conover English
Nicholas Conover English

MASON, GRIFFIN & PIERSON
Attorneys for Plaintiff

Original signed by
Benjamin N. Cittadino

By _____
Benjamin N. Cittadino

John F. Richardson
Attorney for Somerset County
Planning Board

JOHN F. RICHARDSON
Attorney at Law

December 31, 1976

1 EAST HIGH STREET, P. O. BOX 1034
SOMERVILLE, NEW JERSEY 08876

(201) 722-7737

The Honorable David J. Lucas
Courthouse
Somerville, New Jersey 08876

Re: Allan-Deane vs. Bernards Township
Docket No. L-25645-75 P.W.

Dear Judge Lucas:

Enclosed please find original and three copies of Consent Order regarding the extension of time to complete Discovery. Would you kindly sign all copies and return to me, two conformed copies in the envelope provided.

Thank you very much for your cooperation.

Very truly yours,

JOHN F. RICHARDSON

JFR:lgf
Enclosures
cc: McCarter & English, Esqs.
Attorneys for Defendants
Mason, Griffin & Pierson, Esqs.
Attorneys for Plaintiff

S-1290

ORIGINAL HEREOF FORWARDED FOR FILING WITH CLERK OF THE SUPERIOR COURT on

10-1-76

DAVID G. LUCAS, J.C.C. (ret)

Rec'd ____ J. C. D. ____

Recorded Bk. ____ Page ____

McCARTER & ENGLISH
550 Broad Street
Newark, NJ 07102
(201) 622-4444

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 ORDER EXTENDING TIME WITHIN WHICH TO COMPLETE DISCOVERY

This matter being opened to the Court by McCarter & English, Esqs., attorneys for defendant, The Township of Bernards, et al (Nicholas Conover English, Esq. appearing), in the presence of and on notice to Mason, Griffin & Pierson, Esqs., attorneys for plaintiff, (Henry A. Hill, Jr., Esq. appearing) and to John P. Richardson, Esq., attorney for the Somerset County Planning Board, and good cause appearing,

It is on this 1st day of October, 1976 ORDERED that the time within which all parties to this action may conduct

and complete discovery be, and it hereby is, extended up to and including January 6, 1977; and

It is FURTHER ORDERED that the time within which defendants, The Township of Bernards and the Township Committee and the Planning Board of the Township of Bernards may answer plaintiff's second set of Interrogatories be, and it hereby is extended up to and including September 30, 1976.

David G. Lucas

DAVID G. LUCAS, J.C.C. t/a

8/4/76

The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Somerset County, New Jersey.

McCarter & English
McCARTER & ENGLISH

WE CERTIFY THAT ON 8/4/76 A COPY OF THE WITHIN Notice of Motion WAS SERVED ON THE PARTIES AND IN THE MANNER REQUIRED BY R.1:5.
McCARTER & ENGLISH

FILED

S-1290

AUG 5 8 35 AM 1976

SOMERSET COUNTY
L. R. OLSEN, CLERK

X

I. C. D.

Recorded Bk. Pg.

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, v. THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET, et al., Defendants.	Civil Action NOTICE OF MOTION FOR AN EXTENSION OF TIME WITHIN WHICH TO COMPLETE DISCOVERY

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

SIRS:

PLEASE TAKE NOTICE THAT on Friday, August 13, 1976, at 9:00 o'clock in the forenoon or as soon thereafter as counsel can be heard, we shall apply to the Court (Honorable B. Thomas Leahy, J.C.C.) at the Somerset County Court House, Somerville, New Jersey,

for an order:

A) Extending the time within which discovery in this action may be conducted by all parties for an additional 150-day period up to and including January 6, 1977; and

B) Extending the time within which defendant may answer plaintiff's Second Set of Interrogatories up to and including September 30, 1976.

PLEASE TAKE FURTHER NOTICE THAT we shall rely on the Affidavit of Alfred L. Ferguson, Esq, attached hereto.

McCARTER & ENGLISH
Attorneys for Defendants, the
Township of Bernards, et al.

By: Alfred L. Ferguson
ALFRED L. FERGUSON
A Member of the Firm

AFFIDAVIT

STATE OF NEW JERSEY)
) SS:
COUNTY OF ESSEX)

ALFRED L. FERGUSON, ESQ., being duly sworn according to law, upon his oath deposes and says:

1. I am an attorney-at-law of the State of New Jersey, and I am employed by McCarter & English, Esqs., attorneys for defendants, the Township of Bernards, et al.

2. This action was commenced on March 11, 1976.

3. The time within which discovery may be completed expires on or about August 8, 1976.

4. Discovery has been conducted and will be conducted over the next several months by and through the cooperation of the attorneys for plaintiff and defendants.

5. Because of the complicated nature and the major issues of law and fact raised by the pleadings, much additional discovery will be required.

6. We have conferred with attorneys for plaintiff, and Mr. Hill agrees that additional time will be needed to complete discovery.

7. On or about May 17, 1976, we were served with plaintiff's Second Set of Interrogatories. The Interrogatories

are extensive and call for information which must be gathered from many sources and from records of defendants.

8. The time within which we were to answer Interrogatories expired on or about July 17, 1976.

9. We have requested an extension from Mr. Hill, attorney for plaintiff, and he consented to a three-week extension.

10. We will try to have the Answers to him within that three-week period, but it may not be feasible because of the location of records; the necessity of gathering information from many sources and insuring that the Answers are accurate. Accordingly, we are applying to this Court for a formal extension of time within which to answer said Interrogatories until September 30, 1976.

Alfred L. Ferguson

ALFRED L. FERGUSON

Sworn to and subscribed
before me this 4th day
of August, 1976.

Regina Nolan

REGINA NOLAN
A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 28, 1977

COPY

McCARTER & ENGLISH
COUNSELLORS AT LAW
550 BROAD STREET
NEWARK, NEW JERSEY
07102

August 4, 1976

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

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

Dear Sir:

We enclose original and one copy of Notice of Motion for Extension of Time for Discovery returnable Friday, August 13, 1976.

A copy has been filed with the County Clerk.

Please file the original and return one copy to us stamped "Filed" in the enclosed self-addressed reply envelope.

Very truly yours,

Alfred L. Ferguson

ALF:jc
Enclosures

cc: Henry A. Hill, Jr., Esq.
John F. Richardson, Esq.
Clerk of Somerset County
(With Enclosures)