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Pre-trial memorandum of Plaintiff

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Attorney(s) for Plaintiff, The Allan-Deane Corporation

SUPERIOR COURT

THE ALLAN-DEANE CORPORATION, ET AL.

LAW DIVISION
SOMERSET COUNTY

Plaintiff(s)

vs.

Docket No. SL-36896-70 P.W.
L-28061-71 P.W.

THE TOWNSHIP OF BEDMINSTER, ET AL.

Defendant(s)

CIVIL ACTION
PRETRIAL MEMORANDUM OF
PLAINTIFF

1. NATURE OF ACTION: This is an action seeking relief to litigant for Defendant's non-compliance with the Court's Order entered September 28, 1977.

2. ADMISSIONS AND STIPULATIONS:

Parties should be able to agree that the primary issue is Defendant's compliance, vel non with this Court's Order of September 28, 1977; and that Plaintiffs will enter evidence first at the hearing.

3-4. FACTUAL AND LEGAL CONTENTIONS: (Annexed hereto).

See attachments

5. DAMAGE AND INJURY CLAIMS:

Plaintiff requests specific relief in the form of conceptual approval of a density range for the Allan-Deane site and the appointment of a planning expert to administer all approval processes.

6. AMENDMENTS:

None

7. LEGAL ISSUES AND EVIDENCE PROBLEMS:

Defendant's compliance vel non with the Court's Orders, the Mt. Laurel and Madison mandates and the Municipal Land Use Law.

8. LEGAL ISSUES ABANDONED:

None

9. **EXHIBITS:** Parties should be able to agree upon entrance of:
- a. the 1973 and 1977 Bedminster Zoning Ordinances
 - b. the current subdivision and site plan Ordinances

10. **EXPERT WITNESSES:**

1. Carl Lindbloom
2. Alan Mallach
3. E. James Murar
4. John Rahenkamp

11. **BRIEFS:**

Plaintiff will submit further a Brief, at the request of the Court.

12. **ORDER OF OPENING AND CLOSING:**

Conduct of the hearing is within the discretion of the Court.
Plaintiff is willing to present its case first.

13. **ANY OTHER MATTERS AGREED UPON:**

None

14. **TRIAL COUNSEL:**

For Plaintiff, The Allan-Deane Corporation - Henry A. Hill, Jr.

15. **ESTIMATED LENGTH OF TRIAL:** At least two days on issue of compliance; length of trial on issue of specific corporate relief will depend on procedure and scope of issues to be considered.

16. **WEEKLY CALL OR TRIAL DATE:**

Unknown

17. **ATTORNEYS FOR PARTIES CONFERRED** by telephone several times and have **MATTERS THEN AGREED UPON:** been unable to agree upon anything except:

18. **IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED.**
except Interrogatory answers due from both sides. Requests for admissions due from Defendants.

19. **PARTIES WHO HAVE NOT BEEN SERVED:**

None

PARTIES WHO HAVE DEFAULTED:

None

Dated: *May 20,*

19 78.

By

Henry A. Hill, Jr.
Henry A. Hill, Jr.
Attorney for Plaintiff
The Allan-Deane Corporation

3-4. Plaintiff's Factual and Legal Contentions

A. On December 19, 1977, the Bedminster Township Committee adopted a new Zoning Ordinance in response to this Court's Order Vacating Stay entered September 28, 1977; various statements by public officials on the record indicate that serious study and preparation of the Ordinance had commenced at least as early as March of 1977. The other land use Ordinances currently in effect in Bedminster are a Site Plan Ordinance, adopted *December 19, 1978* and a Subdivision Ordinance, adopted *December 1, 1979*.

B. Plaintiff's Affidavits and Brief filed in support of the Order to Show Cause, dated March 23, 1978, made out a prima facie case of non-compliance with this Court's Order, ie. exclusionary zoning and zoning not in accordance with the enabling Act (N.J.S.A. 40:55D-1 et seq.). The following violations of State law and the previous Orders of this Court are apparent;

1. Bedminster's land use regulations permit fewer multifamily dwelling units in the Township than the previous Ordinance which was invalidated by this Court.
2. Zoned density in the Pluckemin Area is substantially lower than density for such areas permitted under the Somerset County Master Plan, in violation of N.J.S.A. 40:55D-2d.
3. An appropriate variety and choice of housing units is not possible under the Ordinance because over 97% of vacant land is zoned so as to preclude lots of less than 2.5 acres per unit.
4. Bedminster's land use regulations discourage a reasonable supply of multi-bedroom units in all cluster and multifamily development.
5. Insufficient areas have been zoned for (least-cost) housing.
6. The Ordinance imposes undue cost generating requirements not justified by public health and welfare concerns.
7. The "Critical Area" zoning provisions are both confiscatory and are an arbitrarily excessive regulation of private property.

Factual and Legal Contentions

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8. The zoning provisions applicable to the Pluckemin Area and critical areas are not substantially consistent with the Bedminster Master Plan as required by N.J.S.A. 40:55D-62.
9. The Zoning Ordinance is invalid on its face because it contains bedroom restrictions which are prohibited under Mt. Laurel.
10. The Historical Zone regulations violate N.J.S.A. 40:55D-62a and 40:55D-65, are confiscatory and constitute a denial of due process.
11. The Bedminster Subdivision and Site Plan Ordinances impose excessive fees in violation of N.J.S.A. 40:55D-8b.
12. The Subdivision Ordinance violates N.J.S.A. 40:55D-53.
13. The Subdivision Ordinance violates various sections of N.J.S.A. 40:55D-1 et seq. which deals with Planned Developments.

C. Defendant bears the heavy burden of establishing a valid basis for its present exclusionary Ordinance at the hearing on the Order to Show Cause.

D. Since this Court in Letter Opinions dated February 24, 1975, and October 17, 1976, found that Bedminster could provide its fair share of (least-cost) housing units despite its perceived obligation to protect water quality, this Court should not reopen its prior decision in order to permit defendants to offer new proofs on the environmental issue.

E. Plaintiffs bear the burden of proof on the issue of Defendant's compliance, vel non; Defendants bear the burden of proof on the affirmative defense of environmental justification for non-compliance. (Plaintiffs contend that the environmental issue has already been determined by this Court and should not be reopened - See D).

F. The determination of who bears the initial moving burden at the hearing is within the discretion of the Court.

G. Specific corporate relief is the only effective remedy if the Court finds Defendant's new Ordinance to be impermissably exclusionary.

H. Administration of Specific Corporate Relief

The administration of specific corporate relief and the enforcement of previous Court Orders will involve a number of novel legal questions. In the event that this Court determines that Bedminster Township has not, in fact, complied with this Court's previous Orders, the Allan-Deane Corporation proposes that the Court adopt the following procedure in the administration under Rule 1:10-5 and Rule 4:59-2(a) of specific corporate relief.

Summary of Administration Procedure

- Stage I - Court Approval of density range;
- Stage II - Court Appointment of Planning Expert;
- Stage III - Planning Expert reviews site plan and preliminary subdivision documents and makes written recommendation to Court;
- Stage IV - Court makes final determination on grant of approvals and retains jurisdiction.

Stage I - Court Approval of Density Range

A. Under authority of N.J. Court Rule 4:59-2(a), Oakwood at Madison v. Madison and Pascack Assoc. v. Mayor and Council of Washington, the Court shall appoint a Planning Expert within 30 days of approval of a density range (see Stage I).

1. The parties may each submit a list of qualified planners for the Court's consideration in the appointment process.

B. Qualifications

1. Minimum education of Masters in Planning, City Design or related discipline.
2. Must be a licensed New Jersey Professional Planner, and a full member of the American Institute of Planners.
3. Demonstrated experience in municipal planning and work with zoning subdivision, site plan and related development ordinances.

C. Renumeration of Planning Expert

1. New Jersey Court Rule 4:59-2(a) requires that costs be paid by the defaulting party (Bedminster Township).

Stage III - Duties of Planning Expert

A. In administering the following duties, the Planning Expert may retain consultants, assistants and/or counsel to be reimbursed for their services in the same manner as the Planning Expert.

B. The Planning Expert shall study the Allan-Deane site plan and preliminary subdivision plat which shall be submitted to him within 30 days of this Court's determination of a density range, and the objections, if any, of Bedminster Township to the proposed development plan under procedures to be administered by him which will insure that all parties to the litigation have an adequate opportunity to be heard within the 120 day time period.

C. The Planning Expert shall review the site plan and preliminary subdivision plat and the objections, if any, of Defendants to insure that the Allan-Deane proposal: 1) complies with "reasonable requirements to protect the public welfare"; and 2) that the Allan-Deane property is "environmentally suited to the degree and type of development proposed" (Madison, 72 N.J. 551).

1. Site plan, subdivision and other Bedminster Township development ordinances previously in effect will not be considered by the Planning Expert in making his recommendations.
2. "Reasonable requirements to protect the public welfare" will be in accordance with N.J.S.A. 40:55D-38 to 40:55D-44 whenever possible.
3. The Planning Expert may recommend conditions, changes in the site plan or preliminary subdivision site plat and performance standards to insure that the Allan-Deane property is "environmentally suited to the degree of density and type of development proposed".

D. The Planning Expert shall submit written findings of fact and recommendations to the Court within 120 days of his receipt of Allan-Deane's proposed site plan and preliminary subdivision plat.

1. Copies of said findings of fact and recommendations shall be provided to the Planning Board and Township Committee of Bedminster.

2. Said recommendations shall not constitute final action until included in a Court Order.

Stage IV - Final Action by the Court

A. The Court shall schedule a hearing on the Planning Expert's findings and recommendations.

1. Cross-examination of the Planning Expert shall be permitted.

B. The Court shall reverse a finding or deny a recommendation only if not supported by sufficient evidence in the record before the Planning Expert.

C. The Court shall enter a final order which shall constitute site plan approval and preliminary subdivision approval if the Planning Expert so recommends and his recommendations are supported by sufficient evidence in the record.

1. If the final Order grants site plan and subdivision approval, it shall also direct the Planning Expert to apply for all necessary state and federal permits on behalf of Bedminster Township including all necessary E.P.A. sewage approvals and D.O.T. access approvals.

D. The Court should retain jurisdiction to assure that final subdivision approval and other approvals are granted expeditiously and in accordance with the approved density.