

RULS - AD - 1980 - 410

11/3/80

- Plaintiff's complaint in Lieu of Perogative Writ
- Summons (11/15/80)
- Stipulation Extending Time to Answer (1/5/81)

Pgs - 15

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RULS - AD - 1980 - 410

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SOMERSET COUNTY CLERK

Entered *[Signature]* Indexed *[Signature]*

WINNE, BANTA, RIZZI & HARRINGTON
25 EAST SALEM STREET
HACKENSACK, NEW JERSEY 07602
(201) 487-3800
ATTORNEYS FOR Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY

*TT 15 days
TD to be set*

LEONARD DOBBS,

Plaintiff,

vs.

TOWNSHIP OF BEDMINSTER,
a Municipal Corporation,

Defendant.

Docket No.

CIVIL ACTION

COMPLAINT IN LIEU
OF PREROGATIVE WRIT

Plaintiff LEONARD DOBBS, residing at 111 Central Avenue, Lawrence, New York, by way of Complaint against the defendant, says:

FIRST COUNT

1. Plaintiff Dobbs is the contract purchaser of a tract of land consisting of approximately 200 acres located on River Road in the defendant TOWNSHIP OF BEDMINSTER, which tract is located to the immediate west of the junction of River Road and Routes Nos. 202-206 in said township.

2. Defendant township is a municipal corporation organized and existing under the laws of the State of New Jersey and is a developing municipality within the meaning of the decisional law of the State of New Jersey.

3. Pursuant to an Order of the Superior Court of New Jersey, Law Division, Somerset County, in the action bearing Docket Nos. L-36896-70 P.W. and L-28061-71 P.W., entitled "Allan-Deane Corporation, et al. v. The Township of Bedminster, et al.", defendant township has recently undertaken to formulate and adopt a revised zoning and land use ordinance, entitled "THE LAND DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF BEDMINSTER" [hereinafter "zoning ordinance"] for the purported purpose of regulating and limiting the use and development of land within its boundaries and to effect certain rezoning of the lands consisting of the so-called corridor of land to the immediate east of Routes Nos. 202-206 within the defendant township so as to provide for an appropriate variety and choice of low and moderate income housing as required by said Order of the Court.

4. As the result of the aforesaid rezoning and the increased residential development to be permitted by it, the total population of defendant township will necessarily undergo an increase in the immediate future.

5. The area occupied by defendant township contains a number of major arteries of traffic, including interstate and state highways, which not only will result in an increase in the

population of defendant township but also will significantly affect the character, orientation and economic perspective of defendant township.

6. The true developing corridor of land within the defendant township consists of the areas both to the east and west of Route Nos. 202-206 and has been designated as such in the Somerset County Master Plan and the New York Regional Plan, and there is evidence of a further developing corridor of land on both sides of Interstate-78 both to the east and west of Interstate-287.

7. The increased employment and economic growth which will result from development of the aforesaid corridors must be responded to by the defendant township by provision for increased services.

8. Plaintiff has requested that the defendant township give consideration to the provision for a regional retail and commercial development district or districts within said township, said district or districts to be located in the area of the tract of land for which plaintiff is the contract purchaser, because such land, by virtue of its proximity to the aforesaid major arteries of traffic, is ideally situated above all other tracts within the defendant township for such uses.

9. Defendant has failed to respond in any manner to such request by plaintiff, has not rezoned the tract of land for which plaintiff is the contract purchaser and has left said tract in a R-3 Residential zone.

10. Further attempts by plaintiff to effect a rezoning of the tract of land in question through resort to administrative remedies would be futile in light of the opposition which defendant has made known to the particular uses and zoning changes proposed by plaintiff.

11. The uses and zoning changes proposed by plaintiff as aforesaid are designed to meet not only the current needs of nearby areas in and about defendant township which have been developed, but also the future needs of other nearby areas within defendant township which will be developed pursuant to the zoning ordinance adopted by defendant.

12. The increase in population caused by the development authorized by defendant township in its zoning ordinance and by the presence of the major arteries of traffic described hereinabove will further result in a commensurate increase and expansion in the needs of such population for ancillary uses and services such as those proposed by plaintiff.

13. The uses and zoning changes proposed by plaintiff as aforesaid would be for the public benefit and would serve the general welfare of the defendant township.

14. The zoning ordinance recently adopted by defendant township fails to enact a comprehensive zoning scheme, as it rezones only a small percentage of the total area of the defendant township, and fails to provide for the variety of retail, commercial and other uses which are necessary to serve the uses mandated by the rezoning effected by defendant.

15. Defendant township cannot rely upon the possible development of retail and commercial uses in neighboring municipalities within its region as a purported justification for its failure to provide for such uses in the zoning ordinance adopted by it.

16. Said zoning ordinance fails to adequately fulfill the needs and requirements of the general welfare, and is arbitrary, capricious and unreasonable.

WHEREFORE, plaintiff demands judgment against defendant:

A) Declaring the zoning ordinance adopted by defendant township invalid;

B) Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a regional retail and commercial development district;

C) Awarding the plaintiff his costs of suit and attorneys' fees herein;

D) Granting the plaintiff such further relief as the Court deems just and proper.

SECOND COUNT

1. Plaintiff repeats and realleges all of the allegations contained in the First Count and incorporates same herein by reference.

2. By virtue of its failure to adopt a comprehensive zoning scheme, defendant has failed to plan and zone in a

manner which will promote the public health, safety, morals and general welfare, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(a).

3. Subsection B of the Land Use Plan contained in the master plan adopted by defendant township states that it is the planning objective of said township:

****to contain business activities substantially within their present boundaries***."

Said master plan recognizes various purported principles with regard to business and commercial development, which principles are inconsistent with the requirements of the Municipal Land Use Law:

"1. Bedminster's business districts are designed for neighborhood commercial uses only -- small retail and service establishments designed to serve residents of the Township.

"2. Strip commercial development along major highways is hazardous and results in the deterioration of surrounding areas. Provision for roadside restaurants, stores and facilities catering to transient traffic...has been considered and found incompatible with the development philosophies of Bedminster Township and is specifically excluded by this Plan."

Said master plan further recommends, in contravention to the requirements of the Municipal Land Use Law, the following action to implement those and other related principles which are intended to limit retail and commercial development:

"(a) Confining business activities to the provision of retail goods and personal services essential to support nearby residential facilities; and the exclusion of any enterprises which export product, services, or administration beyond the local residential trading areas."

4. Section 405(A) of the zoning ordinance adopted by defendant township, in applying the aforesaid principles by permitting retail and service activities of only a local nature in districts designated as Village Neighborhood districts (which districts occupy only a small area within defendant township), also contravenes the requirements of the Municipal Land Use Law.

5. The master plan and zoning ordinance adopted by defendant township have failed to ensure that land development within defendant township will not conflict with the development and general welfare of neighboring municipalities, the county within which defendant township is located, and the State as a whole, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(d).

6. The master plan and zoning ordinance adopted by defendant township have further failed to provide sufficient space in appropriate locations for a variety of, among other things, commercial and retail districts in order to meet the needs of defendant's present and prospective population, of the residents of the region in which defendant township is located, and of the citizens of the State as a whole, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(g).

7. The master plan and zoning ordinance adopted by defendant township have further failed to encourage the proper coordination of various public and private activities and the efficient use of land, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(m).

8. The master plan and zoning ordinance adopted by defendant township are, in other material respects, inconsistent with and in violation of the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

9. By seeking to contain business and commercial activities within their present territorial boundaries, the master plan and zoning ordinance of the defendant township constitute an illegal and improper zoning scheme.

10. As the result of the foregoing deficiencies and shortcomings, the master plan and zoning ordinance of the defendant township are inconsistent with and contrary to the purposes and intent of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

11. Also, as a result of the foregoing, the master plan and zoning ordinance of the defendant township are inconsistent with and contrary to the purposes and intent of the Master Plan of the County of Somerset.

WHEREFORE, plaintiff demands judgment against defendant:

A) Declaring the master plan and zoning ordinance of the defendant township invalid;

B) Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a regional retail and commercial development district;

C) Awarding the plaintiff his costs of suit and attorneys' fees herein;

D) Granting the plaintiff such further relief as the Court deems just and proper.

THIRD COUNT

1. Plaintiff repeats and realleges all of the allegations contained in the First and Second Counts and incorporates same herein by reference.

2. As a developing municipality, defendant township has the obligation not only to make possible an appropriate variety and choice of housing, but also to make possible, within its boundaries, an adequate and broad variety of facilities which would serve the needs of defendant's present and prospective population and that of its immediate region.

3. The zoning ordinance adopted by defendant township fails to comply with the foregoing obligation and is, as a result, invalid.

WHEREFORE, plaintiff demands judgment against defendant:

A) Declaring the zoning ordinance adopted by defendant township invalid;

B) Compelling a rezoning of the tract of land for

which plaintiff is a contract purchaser to a regional retail and commercial development district;

C) Awarding the plaintiff his costs of suit and attorneys' fees herein;

D) Granting the plaintiff such further relief as the Court deems just and proper.

FOURTH COUNT

1. Plaintiff repeats and realleges all of the allegations contained in the First, Second and Third Counts and incorporates same herein by reference.

2. Under the provisions of the zoning ordinance adopted by defendant township, the tract of land for which plaintiff is a contract purchaser is zoned exclusively for residential purposes.

3. Said tract lies in the immediate vicinity of major traffic arteries and public thoroughfares, and its highest and best suited use is for regional retail and commercial purposes.

4. The present classification of plaintiff's property, prohibiting its use for regional, retail and commercial purposes, is arbitrary and unreasonable in that it bears no reasonable relation to the public health, safety and welfare of the defendant township and its inhabitants.

5. For the reasons set forth hereinabove, said zoning ordinance, as applied to plaintiff's property, constitutes an improper and unlawful exercise of the police power delegated to

the defendant township, depriving plaintiff of his property without just compensation or due process of law, and the said zoning ordinance is unconstitutional, null and void.

WHEREFORE, plaintiff demands judgment against defendant:

A) Declaring the zoning ordinance adopted by defendant invalid;

B) Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a regional retail and commercial development district;

C) Awarding the plaintiff his costs of suit and attorneys' fees herein;

D) Granting the plaintiff such further relief as the Court deems just and proper.

FIFTH COUNT

1. Plaintiff repeats and realleges all of the allegations contained in the First, Second, Third and Fourth Counts and incorporates same herein by reference.

2. The proximity of plaintiff's property to major traffic arteries and public thoroughfares renders it impossible to utilize said property for residential purposes as said property is presently zoned, because residential development near such traffic arteries and public thoroughfares is economically impractical, especially given the lot area required by the

zoning ordinance adopted by defendant for the district in which plaintiff's property is located.

3. Such residential development is rendered further impracticable by virtue of the fact that soil conditions on plaintiff's property would require either the use of off-site sewerage treatment, which type of treatment is not possible for the residential development which would be required under the present zoning of plaintiff's property, or economically impractical on-site sewerage disposal systems.

4. As a direct result, the operation of a zoning ordinance adopted by defendant has so restricted the use of plaintiff's property and reduced its value so as to render said property unsuitable for any economically beneficial purpose, which constitutes a de facto confiscation of said property.

5. For the reasons set forth hereinabove, said zoning ordinance is unconstitutional, null and void in that it deprives plaintiff of the lawful use of his property without just compensation or due process of law.

WHEREFORE, plaintiff demands judgment against defendant:

A) Declaring the zoning ordinance adopted by defendant invalid;

B) Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a regional retail and commercial development district;

C) Awarding the plaintiff his costs of suit and attorneys' fees herein;

D) Granting the plaintiff such further relief as
the Court deems just and proper.

WINNE, BANTA, RIZZI & HARRINGTON
Attorneys for Plaintiff

By:


Joseph L. Basralian

Dated: November 3, 1980

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DEC 11 1980

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1980 DEC -5 AM 8 57

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M. Lewis Bambrick
Clerk

DEC 19 10 31 AM 1980

Entered Indexed

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HACKENSACK, NEW JERSEY 07602
(201) 487-3800
ATTORNEYS FOR PLAINTIFF(S)

Plaintiff(s)

LEONARD DOBBS,

vs.

Defendant(s)

TOWNSHIP OF BEDMINSTER, a
Municipal Corporation.

SUPERIOR COURT
OF NEW JERSEY

LAW DIVISION

SOMERSET COUNTY

Docket No. L-12502-80

CIVIL ACTION
Summons

The State of New Jersey, to the Above Named Defendant(s):
TOWNSHIP OF BEDMINSTER

YOU ARE HEREBY SUMMONED in a Civil Action in the Superior Court of New Jersey, instituted by the above named plaintiff(s), and required to serve upon the attorney(s) for the plaintiff(s), whose name and office address appears above, an answer to the annexed complaint within 20 days after the service of the summons and complaint upon you, exclusive of the day of service. If you fail to answer, judgment by default may be rendered against you for the relief demanded in the complaint. You shall promptly file your answer and proof of service thereof in duplicate with the Clerk of the Superior Court, P. O. Box 1300, Trenton, New Jersey 08625, in accordance with the rules of civil practice and procedure.

If you are unable to obtain an attorney you may communicate with the New Jersey State Bar Association by calling toll free 800-792-8315. You may also contact the Lawyer Referral Service of the County in which you reside, by calling . If you cannot afford an attorney, you may communicate with the Legal Services office of the County in which you reside, by calling

Dated: November 15, 1980

W. Lewis Bambrick
W. Lewis Bambrick
Clerk of the Superior Court

Name of defendant to be served: Township of bedminster
Address for service: Municipal Building, Hillside Avenue,
Bedminster, New Jersey 07921

FILED S 7364
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Clerk

McCarter & English
550 Broad Street
Newark, New Jersey 07102
Attorneys for Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY
DOCKET NO. L-12502-80

LEONARD DOBBS, :
 :
 Plaintiff, : Civil Action
 :
 -vs- : STIPULATION EXTENDING
 : TIME TO ANSWER
 TOWNSHIP OF BEDMINSTER, a :
 Municipal Corporation, :
 :
 Defendant. :
 :

It is hereby stipulated and agreed by and between the attorneys for plaintiff, Winne, Banta, Rizzi & Harrington (Joseph L. Basralian, Esq.) and the attorneys for defendant Township of Bedminster, McCarter & English, Esqs. (Alfred L. Ferguson, Esq.) that the time within which defendant Township of Bedminster may move, answer or otherwise plead be and it hereby is extended till January 28, 1981.

WINNE, BANTA, RIZZI & HARRINGTON

MCCARTER & ENGLISH

By: Joseph L. Basralian
Joseph L. Basralian,
Attorney for Plaintiff

By: Alfred L. Ferguson
Alfred L. Ferguson
Attorney for Defendant

DATED: January 5, 1981