

RULS-AD-1981-120

3/19/81

Notice of Motion to Intervene

Pgs - 52

VOGEL AND CHAIT
A PROFESSIONAL CORPORATION

Attorneys at Law

RECEIVED

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HERBERT A. VOGEL
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ARON M. SCHWARTZ
THOMAS F. COLLINS, JR.

HAROLD GUREVITZ
OF COUNSEL

March 19, 1981

Hon. Michael R. Imbriani,
Judge of the Superior Court
Court House
Somerville, N.J. 08876

RE: LEONARD DOBBS v. TOWNSHIP OF BEDMINSTER
DOCKET NO. L-12502-80; INTERVENERS-HENDERSON, PILLON, ENGLEBRECHT

Dear Judge Imbriani:

Enclosed please find the following documents in connection with the above-captioned matter:

1. Notice of Motion to Intervene returnable at the pre-trial conference tomorrow morning and requesting a waiver of the time requirements for serving and filing this Motion pursuant to R.1:6-3.
2. Proposed Answer by the defendant-intervenors.
3. Affidavits of each of the defendant-intervenors.
4. Brief in support of application for intervention.
5. Proposed Orders.

All of the defendant-intervenors reside on a street which adjoins the proposed regional shopping center rezoning. We have asked for the return date in the Motion for the pre-trial conference which is scheduled for tomorrow morning since we thought that the Court might prefer hearing those matters together. If your Honor wishes to have this Motion heard on another date, we would appreciate advice of the same from your secretary this afternoon.

Together with a copy of this letter, we are serving all referred to papers upon the attorneys of record.

Respectfully yours,
VOGEL AND CHAIT, P.C.

[Signature]
HERBERT A. VOGEL

HAV:hjb
Enc.

CC Joseph L. Basralian, Esq. (Winne, Banta, Rizzi & Harrington)
Alfred L. Ferguson, Esq. (McCarter & English)
by messenger service today.

Notice of motion
by Dobbs' neighbors
to intervene

3/20/81

VOGEL AND CHAIT
A Professional Corporation
Maple Avenue at Miller Road, Morristown, NJ 07960
(201) 538-3800
Attorneys for: Applicants for
Intervention

LEONARD DOBBS,

Plaintiff,

vs.

TOWNSHIP OF BEDMINISTER,
a Municipal Corporation,

Defendant,

ROBERT R. HENDERSON, DIANE M.
HENDERSON, ATTILIO PILLON and
HENRY E. ENGELBRECHT,

Applicants for Intervention)

)
) SUPERIOR COURT OF NEW JERSEY
) LAW DIVISION-SOMERSET COUNTY

) DOCKET NO. L-12502-80

) CIVIL ACTION

) NOTICE OF MOTION

TO: JOSEPH L. BASRALIAN, ESQ.
Winne, Banta & Rizzi
25 East Salem Street
P.O. Box 647
Hackensack, New Jersey 07602
Attorneys for Plaintiff

ALFRED L. FERGUSON, ESQ.
McCarter & English
550 Broad Street
Newark, New Jersey 07102
Attorneys for Defendant

4/3/81 MRD - granted OTBS

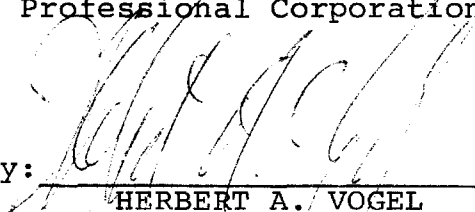
PLEASE TAKE NOTICE that on March 20, 1981 at 9 o'clock in the forenoon or as soon thereafter as counsel may be heard, at the Pretrial Conference scheduled in the above matter, the undersigned, Robert R. Henderson, Diane M. Henderson, Attilio Pillon and Henry E. Engelbrecht, Applicants for Intervention as Defendants, will apply to the Superior Court, Law Division, Somerset County at the Court House in Somerville, New Jersey for an ORDER:

1. Waiving the time requirement for service and filing as authorized pursuant to R.1:6-3; and

2. Permitting the Applicants for Intervention as Defendants to intervene in the above matter pursuant to R.4:33-1, in order to assert the defenses set forth in the proposed Answer of Robert R. Henderson, Diane M. Henderson, Attilio Pillon and Henry E. Engelbrecht, a copy of which is attached hereto, on the ground that the Applicants, as property owners adjacent to or near the property which the plaintiff has contracted to purchase and is seeking to have rezoned, have interests relating to the property and rezoning request which are the subject of this action and they are so situated that the resolution of this matter may, as a practical matter, impair or impede their ability to protect their interests, since their interests are not adequately represented by the existing parties; or in the alternative,

3. Permitting the Applicants for Intervention as Defendants to intervene in the above matter pursuant to R.4:33-2 in order to assert the defenses set forth in the proposed Answer of Robert R. Henderson, Diane M. Henderson, Attilio Pillon and Henry E. Engelbrecht, a copy of which is attached hereto, on the ground that some of the defenses of the Applicants raise questions of law and fact which are in common with some of the questions of law and fact in the main action.

VOGEL AND CHAIT
A Professional Corporation

By: 
HERBERT A. VOGEL

DATED: March 19, 1981.

*Filed copy
is in file
at May 7, 1981
section*

VOGEL AND CHAIT
A Professional Corporation
Maple Avenue at Miller Road
Morristown, New Jersey 07960
Attorneys for Intervener-Defendants

LEONARD DOBBS,

Plaintiff,

vs.

TOWNSHIP OF BEDMINSTER,
a Municipal Corporation,

Defendant,

ROBERT R. HENDERSON, DIANE
M. HENDERSON, ATTILIO PILLON,
and HENRY E. ENGELBRECHT,

Defendant-Interveners

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

ANSWER

Defendant-Interveners, ROBERT R. HENDERSON, DIANE M.
HENDERSON, ATTILIO PILLON, and HENRY E. ENGELBRECHT, each residing
on Matthews Drive, Bedminster, New Jersey, answering the
Complaint, say:

FIRST COUNT

1. Defendant-Interveners adopt the answers of the defendant as to Paragraphs 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15 and 16 of the First Count of the Complaint.

2. The allegations of Paragraph 8 are denied. Prior to the institution of this legal action, the plaintiff never made any request to either the governing body, the planning board or the zoning board of adjustment of the Township of Bedminster for a rezoning or a use variance. Furthermore, the defendant-interveners were not given any notice of any meetings of the plaintiff with officials of the Township prior to the filing of this action. The defendant-interveners deny the allegation that the plaintiff has exhausted, or indeed even attempted to invoke, the administrative procedures and remedies available to him with respect to the zoning ordinance of Bedminster.

3. The defendant-interveners deny the allegations of Paragraph 10. The defendant-interveners add that since the plaintiff has not made any attempt to even utilize his administrative remedies, it is impossible to conclude that resort to administrative remedies would be futile. The plaintiff is merely seeking to circumvent the normal administrative processes and to avoid any public hearings on his proposal for rezoning and thereby avoid and impede the rights of the defendant-interveners.

SECOND COUNT

1. Defendant-Interveners repeat their answers to the First Count.
2. Defendant-Interveners adopt the answers of the defendant as to Paragraphs 2 through 11 of the Second Count.

THIRD COUNT

1. Defendant-Interveners repeat their answers to the First and Second Counts.
2. Defendant-Interveners adopt the answer of the defendant as to Paragraph 2 of the Third Count.
3. Defendant-Interveners deny the allegations of Paragraph 3, and further add that the current zoning of the tract of land which the plaintiff is seeking to have rezoned is totally inappropriate for a regional shopping center and the current R-3% is reasonable in all respects.

FOURTH COUNT

1. Defendant-Interveners repeat their answers to the First, Second and Third Counts.
2. Defendant-Interveners admit that the land in question is zoned for residential purposes and point out that the adjoining lots owned by the defendant-interveners are located in the same residential zone and are currently being utilized for residential purposes as provided in the zoning ordinance of the Township of Bedminster.
3. Defendant-Interveners adopt the answer of the defendant to Paragraph 3 of the Fourth Count but add that the

tract of land in question is also in the immediate vicinity of, in fact it is adjacent to, the residential uses of the defendant-intervenors.

4. The allegations of Paragraph 4 are denied.

5. The allegations of Paragraph 5 are denied.

FIFTH COUNT

1. Defendant-Intervenors repeat their answers to the First, Second, Third and Fourth Counts.

2. The allegations of Paragraph 2 are denied.

Residential development in the tract of land which is the subject of this action is economically practical and reasonable, especially considering the fact that lots located directly adjacent to the tract in question are currently being used for residential purposes. The fact that a portion of the tract is near Route 206 does not render the tract unusable for residential purposes.

3. The allegations of Paragraph 3 are denied. The defendant-intervenors add that the soil conditions on the tract of land in question are identical to the conditions on their property and on-site septic systems are certainly economically practical in the area. This is clear in view of the fact that defendant-intervenors currently use on-site septic systems.

4. The allegations of Paragraph 4 are denied.

5. The allegations of Paragraph 5 are denied.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The plaintiff has failed to exhaust the administrative remedies available to him as required under R. 4:69-4 and is barred from bringing the within action.

SECOND SEPARATE DEFENSE

The Complaint was not filed within the 45 days of the adoption of the Revised Land Development Ordinance, and this action is therefore barred.

THIRD SEPARATE DEFENSE

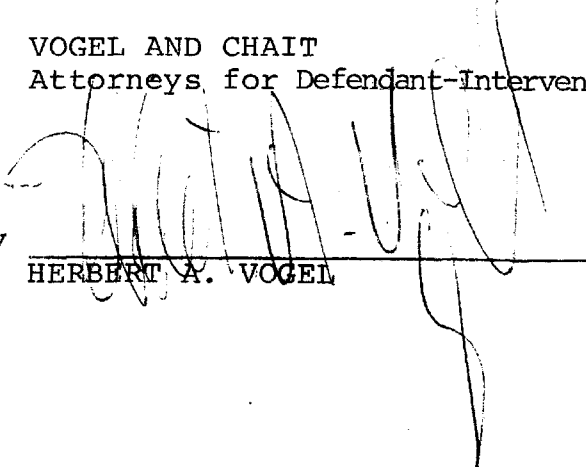
The plaintiff's request for relief in the form of a Court order rezoning the tract of land in question to retail commercial is barred since such an order would constitute state action which would deprive the defendant-interveners of their liberty and property interests without due process.

DEMAND FOR DOCUMENT REFERRED TO IN PLEADING

Defendant-Interveners demand, pursuant to R.4:18-2, a copy of the contract to purchase referred to in Paragraph 1 of the First Count of the Complaint, within five days after service of this Answer upon plaintiff.

VOGEL AND CHAIT
Attorneys for Defendant-Interveners

By


HERBERT A. VOGEL

Dated: March 19, 1981

VOGEL AND CHAIT
A Professional Corporation
Maple Avenue at Miller Road
Morristown, New Jersey 07960 (201) 538-3800
Attorneys for: Applicants for
Intervention

LEONARD DOBBS,

Plaintiff,

vs.

TOWNSHIP OF BEDMINISTER, a
Municipal Corporation,

Defendant,

ROBERT R. HENDERSON, DIANE M.
HENDERSON, ATILIO PILLON and
HENRY E. ENGELBRECHT,

Applicants for Intervention)

) SUPERIOR COURT OF NEW JERSEY
) LAW DIVISION-SOMERSET COUNTY

) DOCKET NO. L-12502-80

) CIVIL ACTION

) ORDER

This matter having been opened to the Court on the motion of Vogel and Chait, A Professional Corporation (Herbert A. Vogel, Esq., appearing) Attorneys for the Applicants for Intervention as Defendants, Robert R. Henderson, Diane M. Henderson, Attilio Pillon and Henry E. Engelbrecht, and Winne, Banta & Rizzi (Joseph L. Basralian, Esq., appearing) Attorneys for Plaintiff Leonard Dobbs and McCarter & English (Alfred L. Ferguson, Esq., appearing) Attorneys for the Defendant, Township of Bedminister, for an ORDER accompanied by an Answer setting forth the defenses

of the Applicants, and it appearing to the Court that the Applicants should be permitted to intervene as defendants;

IT IS on this _____ day of March, 1981:

ORDERED that the Applicants, Robert R. Henderson, Diane M. Henderson, Attilio Pillon and Henry E. Engelbrecht, be given leave to intervene in this action and to serve and file the aforementioned Answer immediately upon the entry of this ORDER, with like effect as if the Applicants had been named as original party defendants.

IT IS FURTHER ORDERED that the Applicants shall not be permitted any additional discovery other than the discovery which the plaintiff and defendant are permitted to undertake.

J.S.C.

VOGEL AND CHAIT
A Professional Corporation
Maple Avenue at Miller Road
Morristown, New Jersey 07960
(201)538-3800
Attorneys for: Applicants for
Intervention

LEONARD DOBBS,

Plaintiff,

vs.

TOWNSHIP OF BEDMINISTER, a
Municipal Corporation,

Defendant,

ROBERT R. HENDERSON, DIANE M.
HENDERSON, ATTILIP PILLON and
HENRY E. ENGELBRECHT,

Applicants for Intervention)

) SUPERIOR COURT OF NEW JERSEY
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) ORDER

This matter having been opened to the Court on the motion of Vogel and Chait, A Professional Corporation (Herbert A. Vogel, Esq., appearing) Attorneys for the Applicants for Intervention as Defendants, Robert R. Henderson, Diane M. Henderson, Attilio Pillon and Henry E. Engelbrecht, and Winne, Banta & Rizzi (Joseph L. Basralian, Esq., appearing) Attorneys for Plaintiff Leonard Dobbs and McCarter & English (Alfred L. Ferguson, Esq., appearing) Attorneys for the Defendant, Township of Bedminister, for an ORDER waiving the time requirements in

R.1:6-3, and good cause having been shown;

IT IS on this 20th day of March, 1981;

ORDERED that the Motion for Intervention of the Applicants for Intervention as Defendants is returnable on the 20th day of March, 1981 at 9:00 a.m. in the forenoon or as soon as possible thereafter as Counsel may be heard and that the time requirements of R.1:6-3 are hereby waived.

J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

LEONARD DOBBS

:

Plaintiff,

:

vs.

:

TOWNSHIP OF BEDMINSTER,
a Municipal Corporation,

:

Defendant

:

ROBERT R. HENDERSON, DIANE M.
HENDERSON, ATTILIO PILLON and
HENRY E. ENGELBRECHT

:

:

Defendant-Interveners

:

BRIEF IN SUPPORT OF
APPLICATION FOR INTERVENTION

VOGEL AND CHAIT,
A Professional Corporation
Maple Avenue at Miller Road
Morristown, New Jersey

Herbert A. Vogel, Esq.
Attorney for
Defendant-Interveners

THOMAS F. COLLINS, JR., ESQ.
On the Brief

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF FACTS	1
<u>ARGUMENT</u>	
<u>POINT I</u>	
THE DEFENDANT-INTERVENERS SHOULD BE PERMITTED TO INTERVENE IN THE ACTION PURSUANT TO EITHER R.4:33-1 or R.4-33-2.	4
CONCLUSION	8

STATEMENT OF FACTS

On November 5, 1980, the plaintiff in this action, Leonard Dobbs, filed a complaint in lieu of prerogative writs challenging the zoning of a tract of land in Bedminster Township. The complaint seeks relief in the form of a declaration that the entire zoning ordinance of the Township is invalid and an order compelling the rezoning of the specific tract of land to a regional retail and commercial development district. The plaintiff's complaint was filed prior to any request to the governing body, the planning board, the zoning board of adjustment or any government official for relief from the requirements of the existing zoning.

The defendant-interveners are residents of Matthews Drive, which is a cul-de-sac residential street located directly adjacent to the tract of land which is the subject of this suit. Three of the defendant-interveners, Robert R. Henderson, Diane M. Henderson, and Henry E. Engelbrecht reside in homes which are within 200 feet of the tract which the plaintiff is requesting the court to rezone. Attilio Pillon is the owner of a lot and home on the side of Matthew Drive which is across the street from the tract of land which is the subject of this action and his property is not within 200 feet of the tract.

Since the plaintiff did not attempt to make any request for administrative relief prior to the filing of this

law suit, the defendant-interveners did not receive any notice of any public hearings and did not have any opportunity to be heard pursuant to various New Jersey statutes nor did they have the opportunity to petition the governing body pursuant to N.J.S.A. 40:55D-63.

Late in January, 1981, Leonard ~~Dobbs~~ appeared before the Township Committee of the Township of Bedminster and, under the threat of the pending law suit, presented a proposal for rezoning of the tract of land which is the subject of this suit. Some of the defendant-interveners attended the January meeting of the governing body. Late in February and early in March, 1981, the defendant-interveners sought legal counsel. On March 19, 1981 this motion was filed on behalf of the defendant-interveners seeking waiver of the 14-day time requirements of R.1:6-3 and requesting leave to intervene in this action pursuant to either R.4:33-1 (Intervention as of Right) or in the alternative R.4:33-2 (Permissive Intervention).

The short notice was requested because the attorneys for the defendant-interveners became aware on Monday, March 16, 1981, that the court would be holding a pre-trial conference on March 20, 1981.

It should be noted that in January, 1981, the Hills Development Company, the successor in title to the Allan-Deane Corporation, sought to intervene in this action pursuant to R.4:33-1. The Hills Development Company owns

property in a different section of the Township and claimed an interest in the rezoning request which was based in arguments of delay and damage which would indirectly occur if the plaintiff was successful. The motion of the Hills Development Company was denied. The interests of the applicants for intervention are clearly distinguishable from those of the Hills Development Company since these applicants are residents of the lots closest to the tract in question and since they are claiming interests based in constitutional and statutory rights and property interests.

POINT I

THE DEFENDANT-INTERVENERS SHOULD
BE PERMITTED TO INTERVENE IN THE
ACTION PURSUANT TO EITHER R.4:33-1
or R.4-33-2.

R.4:33-1 states that:

"Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest unless the applicants' interest is adequately represented by the parties."

Under this rule and the applicable case law in New Jersey, it is clear that the defendant-interveners meet all of the requirements of R.4:33-1. See the Affidavits of the defendant-interveners. In State v. Lanza, 39 N.J. 595, at 600 (1963), the Supreme Court stated:

"Grant of permission to intervene in an action is committed in the first instance to the trial court. Ordinarily such applications are treated liberally there."

In an analogous case, The Allan-Deane Corp. v. Tp. of Bedminster, 63 N.J. 591 (1973), the New Jersey Supreme Court reversed the decisions of the trial court and the Appellate Division and held that non-residents of Bedminster Township who claimed an interest in the plaintiff-developers' suit for a rezoning were entitled to intervention as a matter of

right pursuant to R.4:33-1, even though the application was not made until more than nine months after the commencement of the suit. (The Allan-Deane Corp. v. Tp. of Bedminster, 63 N.J. 591 (1973) reversing and remanding 121 N.J. Super 288 (App. Div. 1972.))

In sharp contrast to the Allan-Deane interveners, the defendant-interveners in this case are residents of the tracts of land directly adjacent to the property which is the subject of this action and they are the persons who will be most directly impacted by the rezoning transaction which is also the subject of this action. As residents who live within 200 feet, three of the applicants, Robert R. Henderson, Diane M. Henderson, and Henry E. Engelbrecht have various statutory rights which are being impeded by this action. These rights include the right to petition the governing body pursuant to N.J.S.A. 40:55D-63 in order to prevent the effectiveness of a rezoning amendment unless two-thirds of all of the members of the governing body approve this rezoning.

In addition, their rights to written notice of any applications for a use variance before the zoning board of adjustment are being impeded and circumvented by this action.

Furthermore, the rights of all of the applicants, as residents of the Township, to newspaper notice of all public meetings relating to rezoning requests and their right to an opportunity to be heard at all public meetings are being impeded, if not irrevocably destroyed, by the plaintiff's

attempt to circumvent all local processes and public bodies.

In addition, the economic interest of the applicants for intervention will be impaired and impeded if the plaintiff obtains the relief he is seeking. Clearly, the development of a regional shopping mall, with all of the attendant negative impacts, including noise, lights, glare, traffic, crime, water and air pollution, directly behind the defendant-intervenors properties, will have a devastating effect on the value of their property. Indeed, even the pendency of this action is having a negative impact on the value and marketability of the property of the defendant-intervenors.

Furthermore, if the court grants the specific relief that the plaintiff is seeking, the court order will effectively deprive the defendant-intervenors of various liberty and property interests without due process of law. Thus, it is clear that the resolution of this matter may, as a practical matter, substantially impair and impede various statutory, constitutional and economic interests which are clearly encompassed by R.4:33-1.

It is also clear that the individual interests of the applicants for intervention will not be adequately represented by the Township within the meaning of R.4:33-1. It is also apparent that the Township will not adequately represent the interests of the defendant-intervenors in preventing the devastating negative economic impact on the value of their property which is already occurring due to the pendency of this action and

which will be exacerbated if the property is rezoned to permit a regional shopping mall.

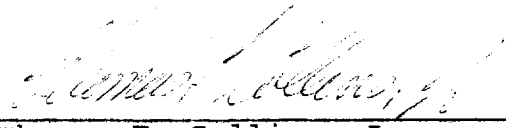
If the Court decides that intervention as of right pursuant to R.4:33-1 is not appropriate, the applicant-defendant interveners are also requesting permissive intervention pursuant to R.4:33-2. The applicant-defendant-interveners meet all of the requirements of R.4:33-2, since their application is timely, they are claiming some defenses which raise questions of law and fact in common with the questions raised in the main action, and their intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. See, R.4:33-2. The common questions arise concerning the issues of failure to exhaust administrative remedies and the reasonableness of the R-3% zoning. The intervention clearly will not unduly delay the action since the applicant-defendant-interveners will agree to limit their discovery to the types of discovery which the plaintiff and defendant are still permitted to indicate and they will abide with any schedules for discovery which are established for the plaintiff and the defendant.

CONCLUSION

The applicants for intervention respectfully request that the court grant their motion for intervention pursuant to R.4:33-1 or, in the alternative, pursuant to R.4:33-2.

Respectfully submitted,

VOGEL AND CHAIT, P.C.
Attorneys for Defendant-
Intervenors

By 
Thomas F. Collins, Jr.

Dated: March 19, 1981

*Filed
3-19-81
Somerset Co*

VOGEL AND CHAIT
A Professional Corporation
Maple Avenue at Miller Road
Morristown, New Jersey 07960
Attorneys for Defendant-Intervener

LEONARD DOBBS,)
)
) Plaintiff,)

vs.)

TOWNSHIP OF BEDMINSTER,)
a Municipal Corporation,)
)
) Defendant)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

AFFIDAVIT

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

ROBERT R. HENDERSON, of full age, having been duly
sworn accordint to law, upon his oath deposes and says:

1. I am a resident of Matthews Drive, Bedminster,
New Jersey and the husband of Diane M. Henderson and I am submitt-
ing this Affidavit in support of my application for an Order
granting leave to intervene in the above-captioned matter.

2. I have an interest in property which is located within 200 feet of the 200 acre tract of the 200 acre tract of property which the plaintiff, LFONARD DOBBS, is seeking to to have rezoned to permit a regional shopping center; in fact, my rear yard borders on the tract of land which is the subject of this action.

3. For the following reasons, among others, I have interests relating to the property and the transaction which are the subject of this action and I am so situated that the disposition of the action may, as a practical matter, impair or impede my ability to protect these interests:

a. I have an interest in property which is located within 200 feet of the area of land proposed for rezoning and, as such, I have various statutory rights relating to the possible rezoning of the 200 acre tract which the plaintiff is requesting the Court to rezone. It is my understanding that N.J.S.A. 40:55D-63 entitles property owners within 200 feet of an area proposed for rezoning to petition the governing body and prevent the effectiveness of the zoning ordinance unless there is a favorable vote of at least two-thirds of all of the members of the governing body. The plaintiff brought this action seeking to rezone the 200 acre tract without ever having requested a rezoning from the governing body and without having requested a recommendation for rezoning from the Planning Board of Bedminster Township. If the

plaintiff obtains the relief he is requesting under any count of his complaint, my statutory right to petition the governing body will clearly be "impaired or impeded" within the meaning of R.4:33-1 if not totally and irrevocably destroyed.

b. As a person with an interest in property which is located near the area proposed for rezoning and as a resident of Bedminster Township, I have not been given any opportunity to be heard before any official body or Court concerning the matters relating to the property and transaction which are the subject of this suit. If the plaintiff had proceeded before the governing body and planning board or before the zoning board of adjustment, I would have had the right to actual notice or newspaper notice of the meetings and I would have had an opportunity to be heard before the appropriate administrative agency. Therefore, as a result of the plaintiff's efforts to circumvent all local public bodies by proceeding directly to Court, my rights to notice and an opportunity to be heard are being "impaired or impeded" if not irrevocably lost.

c. As a residential property owner in the R-3 $\frac{1}{2}$ zone in Bedminster Township, I have relied on the surrounding residential zoning. I purchased my home in reliance on the residential zoning provided in the zoning ordinance and the plaintiff, by way of this suit, is attacking the zoning provision upon which

I have relied. It is clear that if the plaintiff obtains the relief he is seeking, including a declaration that the entire zoning ordinance is null and void and an order compelling the rezoning of the tract of land for which the plaintiff is a contract purchaser to a regional shopping center, my interests will be severely impeded or impaired.

The rezoning which the plaintiff is seeking and even the pendency of this action raising the possibility of rezoning will have a disastrous impact upon the economic value and marketability of my property.

4. For the following reasons, among others, my interests will not be adequately represented by the existing parties.

a. My statutory rights to petition the governing body and to public notice and an opportunity to be heard are all substantial private and individual interests which will not be adequately represented by the Township of Bedminster. Instead, it is questionable whether the township is even in the position to assert my statutory right to petition in protest pursuant to N.J.S.A. 40:55D-63. Furthermore, it is very unlikely that the Township will adequately protect my statutory and constitutional interests in notice and an opportunity to be heard.

b. Parties before the Court will clearly not adequately represent my right to rely on the residential zoning which is currently in effect and which was in effect when I purchased my home. The Township is not in the position to assert this interest. Furthermore, the Township will not adequately represent my interest in preventing the devastating negative economic impact on the value of my property which is already occurring due to the pendency of this action and which will be exacerbated if the property is rezoned to permit a regional shopping mall.

5. I should be permitted to intervene in the action pursuant to R.4:33-2 because some of the defenses I am raising in my answer raise questions of law or fact in common with some of the claims or defenses in the main action:

a. I am also raising the defense of failure on the part of the plaintiff to exhaust all administrative remedies prior to bringing an action in lieu of prerogative writs. The plaintiff has failed to comply with R.4:69-5 which requires exhaustion of administrative remedies since he never requested rezoning before the governing body and planning board prior to the filing of this action and he never requested a use variance. This defense is one of the separate defenses raised by the Township.

b. I am also raising the defense of the

reasonableness of the R-3% zoning. Questions of fact relating to my existing residential use and the fact that the houses on our street all use septic systems which were economically feasible are some of the factual questions which are in common with factual and legal issues raised by the Township.


6. This application is both timely and prompt. I did not know of the law suit until recently and I immediately sought legal advice and requested that my attorneys intervene immediately in the action in order to protect my constitutional, statutory and economic rights.

7. As a result of my promptness in bringing this Application, and in view of the fact that we will agree to limit our discovery to any remaining discovery which the plaintiffs and defendants are permitted to undertake, there will be no additional delay and no prejudice whatsoever to any of the parties if we are granted leave to intervene.

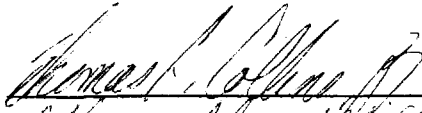
8. If I am permitted to intervene in this action, the within litigation will not be further complicated.

9. If I am not permitted to intervene in this action my rights and interests will be severely prejudiced.

10. For all of the aforementioned reasons, I should be granted permission to intervene in the Leonard Dobbs v. Township of Bedminster suit as a matter of right or alternatively by leave of the Court.


ROBERT R. HENDERSON

Sworn and subscribed before me
this 18th day of March, 1981.


Attorney at Law of the State of N.J.

*Filed
3-19-81
Somerset Co*

VOGEL AND CHAIT
A Professional Corporation
Maple Avenue at Miller Road
Morristown, New Jersey 07960
Attorneys for Defendant-Intervener

LEONARD DOBBS,)
)
) Plaintiff)
)
) vs.)
)
) TOWNSHIP OF BEDMINSTER,)
) a Municipal Corporation)
)
) Defendant)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

AFFIDAVIT

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

DIANE M. HENDERSON, of full age, having been duly sworn according to law, upon her oath deposes and says;

1. I am a resident of Matthews Drive, Bedminster, New Jersey and the wife of Robert R. Henderson and I am submitting this Affidavit in support of my application for an Order granting leave to intervene in the above-captioned matter.

2. I own property and a home within 200 feet of the 200 acre property which the plaintiff in this action, LEONARD DOBBS, is seeking to have rezoned to permit a regional shopping center; in fact, my rear yard borders on the tract of land which is the subject of this action.

3. For the following reasons, among others, I have interests relating to the property and the transaction which are the subject of this action and I am so situated that the disposition of the action may, as a practical matter, impair or impede my ability to protect these interests:

a. I am a property owner within 200 feet of the area of land proposed for rezoning and, as such, I have various statutory rights relating to the possible rezoning of the 200 acre tract which the plaintiff is requesting the Court to rezone. It is my understanding that N.J.S.A. 40:55D-63 entitles property owners within 200 feet of an area proposed for rezoning to petition the governing body and prevent the effectiveness of the zoning ordinance unless there is a favorable vote of at least two-thirds of all of the members of the governing body. The plaintiff brought this action seeking to rezone the 200 acre tract without ever having requested a rezoning from the governing body and without having requested a recommendation for rezoning from the Planning Board of Bedminster Township. If the

plaintiff obtains the relief he is requesting under any count of his complaint, my statutory right to petition the governing body will clearly be "impaired or impeded" within the meaning of R.4:33-1 if not totally and irrevocably destroyed.

b. As a property owner near the area proposed for rezoning and as a resident of Bedminster Township, I have not been given any opportunity to be heard before any official body or Court concerning the matters relating to the property and transaction which are the subject of this suit. If the plaintiff had proceeded before the governing body and planning board or before the zoning board of adjustment, I would have had the right to actual notice or newspaper notice of the meetings and I would have had an opportunity to be heard before the appropriate administrative agency. Therefore, as a result of the plaintiff's efforts to circumvent all local public bodies by proceeding directly to Court, my rights to notice and an opportunity to be heard are being "impaired or impeded" if not irrevocably lost.

c. As a residential property owner in the R-3% zone in Bedminster Township, I have relied on the surrounding residential zoning. I purchased my home in reliance on the residential zoning provided in the zoning ordinance and the plaintiff, by way of this suit, is attacking the zoning provision upon which

I have relied. It is clear that if the plaintiff obtains the relief he is seeking, including a declaration that the entire zoning ordinance is null and void and an order compelling the rezoning of the tract of land for which the plaintiff is a contract purchaser to a regional shopping center, my interests will be severely impeded or impaired.

The rezoning which the plaintiff is seeking and even the pendency of this action raising the possibility of rezoning will have a disastrous impact upon the economic value and marketability of my property.

4. For the following reasons, among others, my interests will not be adequately represented by the existing parties.

a. My statutory rights to petition the governing body and to public notice and an opportunity to be heard are all substantial private and individual interests which will not be adequately represented by the Township of Bedminster. Instead, it is questionable whether the township is even in the position to assert my statutory right to petition in protest pursuant to N.J.S.A. 40:55D-63. Furthermore, it is very unlikely that the Township will adequately protect my statutory and constitutional interests in notice and an opportunity to be heard.

b. Parties before the Court will clearly not adequately represent my right to rely on the residential zoning which is currently in effect and which was in effect when I purchased my home. The Township is not in the position to assert this interest. Furthermore, the Township will not adequately represent my interest in preventing the devastating negative economic impact on the value of my property which is already occurring due to the pendency of this action and which will be exacerbated if the property is rezoned to permit a regional shopping mall.

5. I should be permitted to intervene in the action pursuant to R.4:33-2 because some of the defenses I am raising in my answer raise questions of law or fact in common with some of the claims or defenses in the main action:

a. I am also raising the defense of failure on the part of the plaintiff to exhaust all administrative remedies prior to bringing an action in lieu of prerogative writs. The plaintiff has failed to comply with R.4:69-5 which requires exhaustion of administrative remedies since he never requested rezoning before the governing body and planning board prior to the filing of this action and he never requested a use variance. This defense is one of the separate defenses raised by the Township.

b. I am also raising the defense of the

reasonableness of the R-3% zoning. Questions of fact relating to my existing residential use and the fact that the houses on our street all use septic systems which were economically feasible are some of the factual questions which are in common with factual and legal issues raised by the Township.

6. This application is both timely and prompt. I did not know of the law suit until recently and I immediately sought legal advice and requested that my attorneys intervene immediately in the action in order to protect my constitutional, statutory and economic rights.

7. As a result of my promptness in bringing this Application, and in view of the fact that we will agree to limit our discovery to any remaining discovery which the plaintiffs and defendants are permitted to undertake, there will be no additional delay and no prejudice whatsoever to any of the parties if we are granted leave to intervene.

8. If I am permitted to intervene in this action, the within litigation will not be further complicated.

9. If I am not permitted to intervene in this action my rights and interests will be severely prejudiced.

10. For all of the aforementioned reasons, I should be granted permission to intervene in the Leonard Dobbs v. Township of Bedminster suit as a matter of right or alternatively by leave of the Court.

Diane M. Henderson
DIANE M. HENDERSON

Sworn and subscribed before me
this 15th day of March, 1981.

Thomas Collins
Attorney at Law
State of N.J.

VOGEL AND CHAIT
A Professional Corporation
Maple Avenue at Miller Road
Morristown, New Jersey 07960
Attorneys for Defendant-Intervener

LEONARD DOBBS

Plaintiff,

vs.

TOWNSHIP OF BEDMINSTER,
a Municipal Corporation,

Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

AFFIDAVIT

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

HENRY E. ENGELBRECHT, of full age, having been duly
sworn according to law, upon his oath deposes and says;

1. I am a resident of Matthews Drive, Bedminster,
New Jersey and I am submitting this Affidavit in support of my
Application for an Order granting leave to intervene in the
above-captioned matter.

2. I own property and a home within 200 feet of the 200 acre property which the plaintiff in this action, LEONARD DOBBS, is seeking to have rezoned to permit a regional shopping center; in fact, my rear yard borders on the tract of land which is the subject of this action.

3. For the following reasons, among others, I have interests relating to the property and the transaction which are the subject of this action and I am so situated that the disposition of the action may, as a practical matter, impair or impede my ability to protect these interests:

a. I am a property owner within 200 feet of the area of land proposed for rezoning and, as such, I have various statutory rights relating to the possible rezoning of the 200 acre tract which the plaintiff is requesting the Court to rezone. It is my understanding that N.J.S.A. 40:55D-63 entitles property owners within 200 feet of an area proposed for rezoning to petition the governing body and prevent the effectiveness of the zoning ordinance unless there is a favorable vote of at least two-thirds of all of the members of the governing body. The plaintiff brought this action seeking to rezone the 200 acre tract without ever having requested a rezoning from the governing body and without having requested a recommendation for rezoning from the Planning Board of Bedminster Township. If the

plaintiff obtains the relief he is requesting under any count of his complaint, my statutory right to petition the governing body will clearly be "impaired or impeded" within the meaning of R.4:33-1 if not totally and irrevocably destroyed.

b. As a property owner near the area proposed for rezoning and as a resident of Bedminster Township, I have not been given any opportunity to be heard before any official body or Court concerning the matters relating to the property and transaction which are the subject of this suit. If the plaintiff had proceeded before the governing body and planning board or before the zoning board of adjustment, I would have had the right to actual notice or newspaper notice of the meetings and I would have had an opportunity to be heard before the appropriate administrative agency. Therefore, as a result of the plaintiff's efforts to circumvent all local public bodies by proceeding directly to Court, my rights to notice and an opportunity to be heard are being "impaired or impeded" if not irrevocably lost.

c. As a residential property owner in the R-3% zone in Bedminster Township, I have relied on the surrounding residential zoning. I purchased my home in reliance on the residential zoning provided in the zoning ordinance and the plaintiff, by way of this suit, is attacking the zoning provision upon which

I have relied. It is clear that if the plaintiff obtains the relief he is seeking, including a declaration that the entire zoning ordinance is null and void and an order compelling the rezoning of the tract of land for which the plaintiff is a contract purchaser to a regional shopping center, my interests will be severely impeded or impaired.

The rezoning which the plaintiff is seeking and even the pendency of this action raising the possibility of rezoning will have a disastrous impact upon the economic value and marketability of my property.

4. For the following reasons, among others, my interests will not be adequately represented by the existing parties.

a. My statutory rights to petition the governing body and to public notice and an opportunity to be heard are all substantial private and individual interests which will not be adequately represented by the Township of Bedminster. Instead, it is questionable whether the township is even in the position to assert my statutory right to petition in protest pursuant to N.J.S.A. 40:55D-63. Furthermore, it is very unlikely that the Township will adequately protect my statutory and constitutional interests in notice and an opportunity to be heard.

b. Parties before the Court will clearly not adequately represent my right to rely on the residential zoning which is currently in effect and which was in effect when I purchased my home. The Township is not in the position to assert this interest. Furthermore, the Township will not adequately represent my interest in preventing the devastating negative economic impact on the value of my property which is already occurring due to the pendency of this action and which will be exacerbated if the property is rezoned to permit a regional shopping mall.

5. I should be permitted to intervene in the action pursuant to R.4:33-2 because some of the defenses I am raising in my answer raise questions of law or fact in common with some of the claims or defenses in the main action:

a. I am also raising the defense of failure on the part of the plaintiff to exhaust all administrative remedies prior to bringing an action in lieu of prerogative writs. The plaintiff has failed to comply with R.4:69-5 which requires exhaustion of administrative remedies since he never requested rezoning before the governing body and planning board prior to the filing of this action and he never requested a use variance. This defense is one of the separate defenses raised by the Township.

b. I am also raising the defense of the

reasonableness of the R-3% zoning. Questions of fact relating to my existing residential use and the fact that the houses on our street all use septic systems which were economically feasible are some of the factual questions which are in common with factual and legal issues raised by the Township.

6. This application is both timely and prompt. I did not know of the law suit until recently and I immediately sought legal advice and requested that my attorneys intervene immediately in the action in order to protect my constitutional, statutory and economic rights.

7. As a result of my promptness in bringing this Application, and in view of the fact that we will agree to limit our discovery to any remaining discovery which the plaintiffs and defendants are permitted to undertake, there will be no additional delay and no prejudice whatsoever to any of the parties if we are granted leave to intervene.

8. If I am permitted to intervene in this action, the within litigation will not be further complicated.

9. If I am not permitted to intervene in this action my rights and interests will be severely prejudiced.

10. For all of the aforementioned reasons, I should be granted permission to intervene in the Leonard Dobbs v. Township of Bedminster suit as a matter of right or alternatively by leave of the Court.

Henry E. Engelbrecht
HENRY E. ENGELBRECHT

Sworn and subscribed before me
this 26th day of March, 1981.

James L. Callahan, Jr.
Attorney at Law of the
State of New Jersey

VOGEL AND CHAIT
A Professional Corporation
Maple Avenue at Miller Road
Morristown, New Jersey 07960
Attorneys for Defendant-Intervener

LEONARD DOBBS,)
)
) Plaintiff,)

vs.)

TOWNSHIP OF BEDMINSTER,)
a Municipal Corporation,)
)
) Defendant)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

AFFIDAVIT

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

ATTILIO PILLON, of full age, having been duly sworn
according to law, upon his oath deposes and says;

1. I am a resident of Matthews Drive, Bedminster,
New Jersey and I am submitting this Affidavit in support of my
Application for an order granting leave to intervene in the
above-captioned matter.

2. For the following reasons, among others, I have interests relating to the property and the transaction which are the subject of this action and I am so situated that the disposition of the action may, as a practical matter, impair or impede my ability to protect these interests:

(a) I own property and a home that are located directly adjacent to and across Matthews Drive from lots which are within 200 feet of the area of land proposed for rezoning. As a property owner near the area proposed for rezoning and as a resident of Bedminster Township, I have not been given any opportunity to be heard before any official body concerning or court concerning the matters relating to the property and transaction which are the subject of this suit. If the plaintiff had proceeded before the governing body and planning board or before the zoning board of adjustment, I would have had the right to actual notice or newspaper notice of the meetings and I would have had an opportunity to be heard before the appropriate administrative agency. Therefore, as a result of the plaintiff's efforts to circumvent all local public bodies, my rights to notice and an opportunity to be heard will be impaired or impeded if not irrevocably lost.

(b) As a residential property owner in the R-3 $\frac{1}{2}$ zone in Bedminster Township, I have relied on the surrounding residential zoning. I purchased my home in reliance on the

residential zoning provided in the zoning ordinance and the plaintiff, by way of this suit, is attacking the zoning provisions upon which I have relied. It is clear that if the plaintiff obtains the relief he is seeking, including a declaration that the entire zoning ordinance is null and void and an order compelling the rezoning of the tract of land for which the plaintiff is a contract purchaser to a regional shopping center, my interests will be severely impeded or impaired.

The rezoning which the plaintiff is seeking and even the pendency of this action raising the possibility of rezoning will have a disastrous impact upon the economic value and marketability of my property.

3. For the following reasons, among others, my interests will not be adequately represented by the existing parties.

(a) My statutory rights to public notice and an opportunity to be heard are all substantial private and individual interests which will not be adequately represented by the Township of Bedminster. It is very unlikely that the Township will adequately protect my statutory and constitutional interests in notice and an opportunity to be heard.

(b) Parties before the court will clearly not adequately represent my right to rely on the residential zoning which is currently in effect and which was in effect when I purchased my home. The Township is not in the position to assert

this interest. Furthermore, the Township will not adequately represent my interest in preventing the devastating negative economic impact on the value of my property which is already occurring due to the pendency of this action and which will be exacerbated if the property is rezoned to permit a regional shopping mall.

4. I should be permitted to intervene in the action pursuant to R.4:33-2 because some of the defenses I am raising in my answer raise questions of law or fact in common with some of the claims or defenses in the main action:

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b. I am also raising the defense of the reasonableness of the R-3% zoning. Questions of fact relating to my existing residential use and the fact that the houses on our street all use septic systems which were economically feasible are some of the factual questions which are in common with factual

and legal issues raised by the Township.

5. This Application is both timely and prompt. I did not know of the law suit until recently and I immediately sought legal advice and requested that my attorneys intervene immediately in the action in order to protect my constitutional, statutory and economic rights.

6. As a result of my promptness in bringing this Application, and in view of the fact that we will agree to limit our discovery to any remaining discovery which the plaintiffs and defendants are permitted to undertake, there will be no additional delay and no prejudice whatsoever to any of the parties if we are granted leave to intervene.

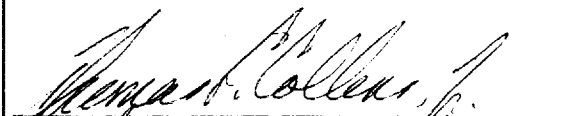
7. If I am permitted to intervene in this action, the within litigation will not be further complicated.

8. If I am not permitted to intervene in this action my rights and interests will be severely prejudiced.

9. For all of the aforementioned reasons, I should be granted permission to intervene in the Leonard Dobbs v. Township of Bedminster suit as a matter of right or alternatively by leave of the Court.


ATTILIO PILLON

Sworn and subscribed before me
this 18th day of March, 1981.


Attorney at Law of the
State of N.J.

VOGEL AND CHAIT
A PROFESSIONAL CORPORATION

Attorneys at Law

HERBERT A. VOGEL
ARNOLD H. CHAIT
ENID A. SCOTT
ARON M. SCHWARTZ
THOMAS F. COLLINS, JR.

MAPLE AVENUE AT MILLER ROAD
MORRISTOWN, NEW JERSEY 07960
538-3800
AREA CODE 201

March 27, 1981

see 3.19.81

HAROLD GUREVITZ
OF COUNSEL

REC'D. AT CHAMBERS

MAR 31 1981

JUDGE IMBRIANI

Honorable Michael Imbriani
Judge of the Superior Court
Court House
Somerville, New Jersey 08876

RE: Leonard Dobbs v. Township of Bedminster
Docket No. L-12502-80, Interveners, Henderson, Pillon, Engelbrecht
Our File No. 12332

Dear Judge Imbriani:

Enclosed please find the signed original of the affidavit of Mr. Henry E. Engelbrecht, one of the Applicants for Intervention in the above matter. An unsigned copy of this affidavit was filed on March 19, 1981. By copy of this letter we are serving a copy of this signed original upon all attorneys of record.

Respectfully yours,

VOGEL AND CHAIT
A Professional Corporation

Thomas F. Collins, Jr.

THOMAS F. COLLINS, JR.

TFC:ngc
encl.

cc: Joseph L Basralian (Winne, Banta, Rizzi & Harrington)
Alfred L. Ferguson (McCarter & English)

NEW JERSEY
DEPARTMENT OF TREASURY
COUNTY CLERK

W. J. Wintermute, Sr.
Assignment Clerk



EX-100
EX-115

RULS - AD - 1981 - 130

March 24, 1981

Winne, Bonta, Rizzi & Harrington, Esqs.
Brener, Wallack, Rosner & Hill, Esqs.
McCarter & English, Esqs.
Vogel & Chait, Esqs.

Re: Leonard Dobbs vs. Township of Bedminster
Docket No. L-12502-80
S-7364 P.W.

Gentlemen:

Please be advised the the Pretrial on the above captioned matter, adjourned from March 20, and the Motion to Intervene have been scheduled for hearing before The Honorable Michael R. Imbriani on Friday, April 3, 1981, at 1:30 P.M.

Very truly yours,

William J. Wintermute, Sr.

WJW/kh

CC: Honorable Michael R. Imbriani
Lawrence R. Olson, County Clerk ✓