

RULS-AD-1981-140

3/27/81

Brief in Opposition to Motion to Intervene

Pgs - 38

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MAR 27 1981

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VIRGINIA ANNE GLYNN

March 27, 1981

Honorable Michael R. Imbriani
Court House
Somerville, New Jersey 08876

Re: Leonard Dobbs v. Township of Bedminster
Docket No. L-12502-80

Dear Judge Imbriani:

Enclosed are the original and one copy of plaintiff Leonard Dobbs' Brief in opposition to the motion to intervene recently filed on behalf of Robert R. Henderson, Diane Henderson, Attilio Pillon and Henry R. Engelbrecht.

It is our understanding that such motion will be considered at the time of the pretrial conference, scheduled for Friday, April 3, 1981.

Respectfully yours,



Donald A. Klein

DAK:vjs
Enclosures

cc: McCarter & English, Esqs.
Vogel & Chait, Esqs.

RULS - AD - 1981 - 140

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY

LEONARD DOBBS,

Plaintiff,

Docket No. L-12502-80

v.

TOWNSHIP OF BEDMINSTER, a Municipal
Corporation

BRIEF IN OPPOSITION TO APPLICATION FOR INTERVENTION BY ROBERT R.
HENDERSON, DIANE HENDERSON, ATTILIO PILLON AND HENRY E. ENGELBRECHT

WINNE, BANTA & RIZZI
25 East Salem Street
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(201) 487-3800
Attorneys for Plaintiff
Leonard Dobbs

Of Counsel:
Joseph L. Basralian

STATEMENT OF FACTS

This matter comes before the Court on the application of Robert R. Henderson, Diane M. Henderson, Attilio Pillon and Henry E. Engelbrecht for leave to intervene in an action by Leonard Dobbs against the Township of Bedminster, which action was commenced on November 5, 1980 by the filing of a Complaint in lieu of prerogative writ. This action is scheduled for a pretrial conference on April 3, 1981, an adjourned date.

Plaintiff's action, more particularly delineated in the Factual and Legal Contentions of plaintiff filed in connection with the Pretrial Conference to be held on April 3, 1981,* is essentially an action challenging the validity of the zoning ordinance of the Township of Bedminster as applied to property as to which plaintiff Dobbs is a contract purchaser. Plaintiff seeks in such action a rezoning of such property to a regional and commercial development district. As noted in plaintiff's Complaint, further attempts by plaintiff to effect such rezoning through resort to administrative remedies would be futile in light of the opposition which the defendant municipality has made known to the particular uses and zoning changes which have been proposed by plaintiff. The relief sought by plaintiff is based on numerous violations by defendant municipality of the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-2(a), violations manifested principally in defendant municipality's Master Plan and Zoning Ordinance.

*A copy of such Factual and Legal Contentions is attached hereto as Exhibit A.

Three of the applicants for intervention, Robert R. Henderson, Diane M. Henderson, husband and wife, and Henry E. Engelbrecht reside in homes which are located within 200 feet of the property line of the property as to which plaintiff Dobbs is a contract purchaser. The property of the fourth applicant, Attilio Pillon, is not within 200 feet of the property line of such property.

In mid-January 1981, The Hills Development Company, the owner of land being developed in the municipality pursuant to Court orders obtained by the predecessor of Hills, moved to intervene in this action, claiming an interest and claiming that defendant municipality did not adequately represent its interests. Attached hereto as Exhibit B are the papers submitted in support of such application. By Order dated March 2, 1981, the Honorable Wilfred P. Diana denied such application for intervention, holding that The Hills Development Company was adequately represented by defendant municipality, but permitted The Hills Development Company to participate as amicus curiae in this action. Attached as Exhibit C is a copy of Judge Diana's Order.

APPLICANTS DO NOT MEET THE
PREREQUISITES OF R.4:33-1 AND
THEIR APPLICATION TO INTERVENE
SHOULD BE DENIED.

Applicants move to intervene as of right pursuant to
R.4:33-1, which states:

"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 applicant's interest is adequately represented by existing parties." (Emphasis supplied.)

This Rule, which was adopted verbatim from Fed. R. Civ. P. 24(a), Pressler, Current N.J. Court Rules, Comment R.4:33-1, prescribes four prerequisites to intervention as of right:

- (i) An interest relating to the property or transaction which is the subject of the action;
- (ii) Situation so that disposition of the action may as a practical matter impair or impede the applicant's ability to protect the interest;
- (iii) Inadequate representation of the applicant's interest by existing parties; and
- (iv) Timeliness of the application.

Vicendese v. J-Fat, Inc. 160 N.J. Super. 373 (Ch. Div. 1978). The Rule is so written and applied that the existence of adequate representation defeats intervention as of right even where the first two conditions above have been met.

A. Applicants have no interest in the property or transaction which is the subject of the present suit. Applicants'

interests in the pending action, if any, are purely collateral to the issues presented at bar.

Plaintiff seeks judgment that the current zoning ordinance applicable to plaintiff's property constitutes an improper and unlawful exercise of the police power and a deprivation of property without just compensation or due process of law. Applicants' concerns about the effect of a judgment in plaintiff's favor may be the practical concern of adjacent property owners, but their concerns are not relevant to the legal issues raised by plaintiff. Were plaintiff seeking subdivision or variance approval, pursuant to N.J.S. 40:55D-1 et seq., applicants might then have a statutory right to be heard in opposition to such approval. Plaintiff, however, is seeking adjudication of the legality of the zoning scheme as a whole. The collateral impact of this Court's decision upon adjacent property owners does not constitute an "interest" within the meaning of R.4:33-1. Applicants have and make no claim to an interest in the property as to which plaintiff is a contract purchaser.

Plaintiff's challenges to the zoning ordinance of the municipality are made strictly in the context of the alleged improper zoning of the aforementioned property, as to which plaintiff is a contract purchaser and applicants have no interest. The fact that plaintiff must challenge the zoning ordinance of the municipality because of its impact on a particular piece of property in which plaintiff has an interest does not afford applicants or any other property owner in the municipality a

sufficient interest within the meaning of R.4:33-1 which would entitle them to become defendants in this action. Such logic would open the floodgates to residents of a municipality becoming parties to any litigation in which the zoning ordinance was challenged. Cf. Fred Harvey, Inc. v. Mooney, 526 F.2d 608 (7th Cir. 1975), wherein the Court held that, in a diversity suit brought by a restaurant lessee that sought a judgment declaring invalid a petition filed by the residents of an annexed area in which the restaurant was located to prohibit the lessee from selling alcoholic beverages, no resident of the adjoining dry area had any interest relating to the status of the restaurant tract and thus had no right to intervene in the suit.

The second requirement, that of the ability of applicants to protect their interest, is necessarily related to the first requirement of the Rule discussed supra. Vicendese, supra, at 379. Where, as here, applicants do not meet the threshold requirement of having an "interest" in the property which is subject of the action, consideration of the second criteria is not necessary.

B. Applicants' interests are purely collateral to the subject matter at bar; assuming, arguendo, the existence of rights in applicants, those interests are adequately represented by the existing defendant, the Township of Bedminster.

The most telling argument against intervention by applicants is that any interest which they arguably could claim is adequately represented by the Township of Bedminster. As noted

previously, applicants have no interest in the property specifically described in plaintiff's Complaint. Applicants' interest is in preserving the present zoning of the municipality which interest is insufficient to require intervention of these applicants under R.4:33-1. This is an interest, however, which the Township of Bedminster and its very able counsel are presently representing in this litigation.

A classic situation where Courts have considered that the interest of an applicant to intervention is adequately represented by existing parties is that situation where an existing party (and especially a governmental body) is charged by law with representing the interest of the intervenor. See 7A Wright & Miller, Federal Practice and Procedure §1909 at 524:

"...if there is a party charged by law with representing his interest, then a compelling showing should be required to demonstrate why his representation is not adequate."

Analogously, see British Airways Bd. v. Port Authority of New York & New Jersey, 71 F.R.D. 583, 584-85 (S.D.N.Y. 1976), wherein the Court denied intervention to various towns, villages, community groups, environmental organizations, and residents located near John F. Kennedy International Airport in an action brought by a foreign airlines against the Port Authority seeking injunctive relief from the Authority's order prohibiting supersonic transports from operating at the airport. In so holding, the Court noted significantly as follows:

"The applicants for intervention stumble on the third prong of the Rule 24(a)(2)

test, however, for there is no reason to presume that the Port Authority will not vigorously and conscientiously defend the action which has been brought against it. Whether or not representation of an intervenor's interest by existing parties is to be considered inadequate hinges upon whether there has been a showing of (1) collusion; (2) adversity of interest; (3) possible nonfeasance; or (4) incompetence. United States v. International Business Machines Corp., 62 F.R.D. 530, 538 (S.D.N.Y. 1974). No such showing has been made here."

No such showing has either been made or advanced by applicants. Likewise, the Court in Deltona Corporation v. U.S., 14 E.R.C. 1810, 1812 (Ct. of Claims 1980), in denying intervention to an environmental group on the ground that the intervenor's interest was adequately represented by an existing party, noted as follows:

"...we are reluctant to entertain a presumption other than that the United States, through the Department of Justice, adequately represents the interests of the United States, which in this suit are aligned with the interest applicants assert. See Allard v. Frizzell, 536 F.2d 1332, 1334. Wright and Miller, Section 1905.

For all of the foregoing reasons, applicants should not be designated defendants with the full panoply of discovery devices available to defendants. If applicants have anything to contribute (other than protection of its self-interest), then the appropriate role would be as a friend of the Court. See Judge Wyzanski's comments in Crosby Steam Gage & Valve Co. v. Manning, Maxwell & Moore, Inc., 51 F. Supp. 972, 973 (D. Mass. 1943), cited with approval in British Airways, supra, at 585:

"It is easy enough to see what are the

arguments against intervention where, as here, the intervenor merely underlines issues of law already raised by the primary parties. Additional parties always take additional time. Even if they have no witnesses of their own, they are the source of additional questions, objections, briefs, arguments, motions and the like which tend to make the proceedings a Donnybrook fair. Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention."

See also, Deltona, supra, at 1802:

"...to the extent applicants may have an interest in the question before the court, it may be best advanced, as the trial judge determined, by amicus curiae statuts."

This was the approach taken by Judge Diana with respect to the similar* and more timely application to intervene by the Hills Development Company earlier this year.

In sum, applicants totally fail to meet the requirements of R. 4:33-1 and are not entitled to intervene as of right.

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*The only apparent distinction between the papers filed by the present applicants for intervention and the papers filed by The Hills Development Company (Exhibit B) relate to the present applicants' proximity to the property as to which plaintiff Dobbs is a contract purchaser. While this might superficially appear to give such applicants a "greater" interest, it is not an interest within the meaning of R.4:33-1. See discussion supra. More importantly, this distinction in no way affects the compelling argument - and the rationale underlying Judge Diana's denial of The Hills Development Company's application for intervention - that any arguable interest which applicants may claim is adequately protected by defendant municipality. Defendant municipality has vigorously raised the defense of failure to exhaust administrative remedies. Absent the factors recited in British Airways, supra, any arguable interest of the present applicants is fully and adequately represented by defendant municipality. This is not an application for a variance or any other type of administrative proceeding. Rather it is a clear challenge to the validity of defendant municipality's zoning ordinance and master plan. As such, the present applicants' interests are dubious and, in any case, fully represented by defendant municipality.

II. APPLICANTS ALTERNATIVE REQUEST FOR
PERMISSIVE INTERVENTION PURSUANT
TO R. 4:33-2 IS WITHOUT SUBSTANCE
AND SHOULD BE DENIED.

Applicants alternatively request permissive intervention pursuant to R.4:33-2 which Rule provides in pertinent part as follows:

"Upon timely application anyone may be permitted to intervene in an action if his claim or defense and the main action have a question of law or fact in common ...In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

In order for the Court to consider an application for permissive intervention, the applicant must have a claim or defense sharing a common question of law or fact within the main action. Applicant's have no claim against plaintiff Dobbs nor indeed are they in a position to assert any defense to plaintiff's action. Plaintiff's action is an action in lieu of prerogative writ seeking certain relief against defenant municipality; it seeks no relief against any private parties. R.4:33-2 is directed principally to the situation where there are parallel or related litigations or potential litigations involving claims or defenses which have common questions of law or fact. This is clearly not such a case.

Applicants' concerns therefore do not implicate questions of law or fact in common with the litigation commenced by plaintiff Dobbs against defendant municipality. The position taken by applicants in their affidavits can be fairly characterized as a desire to lend support to the legal defenses which defendant municipality

has already raised. As discussed in Point I, the proper role, if any, to be served by applicants is in the capacity as amicus curiae.

Finally since R.4:33-2 provides for intervention only within the discretion of the Court, there are compelling reasons why intervention should not be permitted at this point. Intervention by these applicants at this point would fragment the issues presented, would jeopardize the orderly process of the matter and would necessarily and unduly delay resolution of this action, scheduled for pretrial next week.

CONCLUSION

For the foregoing reasons, plaintiff Leonard Dobbs respectfully requests that applicants' motion for intervention be denied.

Respectfully submitted,

WINNE, BANTA & RIZZI
Attorneys for Plaintiff
Leonard Dobbs

By 
Joseph L. Basralian

Dated: March 26, 1981.

FACTUAL AND LEGAL CONTENTIONS OF PLAINTIFF

Plaintiff 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. 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.

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.

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. 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.

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. 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.

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. 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. 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.

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. 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. 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.

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

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).

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."

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.

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).

The master plan and zoning ordinance adopted by defendant township have 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).

The master plan and zoning ordinance adopted by defendant township have 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).

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.

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. 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. 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.

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

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. 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. 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. For the foregoing reasons, 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.

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

BRENER, WALLACK, ROSNER & HILL

15 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540
(609) 224-0808
ATTORNEYS FOR

Defendant-Intervenor

Plaintiff

LEONARD DOBBS,

vs.

Defendant

TOWNSHIP OF BEDMINSTER,
a Municipal Corporation

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

Docket No. L-12502-80

CIVIL ACTION

NOTICE OF MOTION
FOR INTERVENTION
(R. 4:33-1, R. 4:33-2)

TO: WINNE, BANTA, RIZZI & HARRINGTON
25 East Salem Street
Hackensack, New Jersey 07602


McCARTER & ENGLISH
550 Broad Street
Newark, New Jersey 07102

SIRS:

PLEASE TAKE NOTICE that the undersigned attorneys
for The Hills Development Company, shall make application on

Friday, the 30th day of January, 1981, at 9:00 A.M. o'clock
or as soon thereafter as counsel may be heard, at the Somerset
County Court House, Somerville, New Jersey, before the Superior
Court of New Jersey, Law Division, Somerset County, for an
Order pursuant to R. 4:33-1 or R. 4:33-2 permitting the movant,
The Hills Development Company, to intervene in the within action
as a Defendant. The movant will rely upon the Affidavit hereto
annexed, and in accordance with R. 4:33-3 submits the annexed
Answer setting forth the claim for which intervention is hereby
sought.

BRENER, WALLACK, ROSNER & HILL
Attorneys for Defendant-Intervenor

By: 
Guliet D. Hirsch

Dated:

BRENER, WALLACK, ROSNER & HILL

15 CHAMBERS STREET

PRINCETON, NEW JERSEY 08541

(609) 924-0808

ATTORNEYS FOR Defendant-Intervenor

Plaintiff

LEONARD DOBBS,

vs.

Defendant

TOWNSHIP OF BEDMINSTER,
a Municipal Corporation

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

Docket No. L-12502-80

CIVIL ACTION

ANSWER

Defendant-Intervenor, The Hills Development Company,
by and through their attorneys, Brener, Wallack, Rosner & Hill,
Esquires, by way of answer to the Complaint say:

FIRST COUNT

1. Defendant-Intervenor is without sufficient knowledge
to either admit or deny the allegations of Paragraph 1 of the
First Count and accordingly, leaves the Plaintiff to his proofs.

thereon.

2. Admitted.

3. Admitted, except that the rezoning of the Route 202-206 corridor by the Defendant Township was for the purpose of providing for an appropriate variety and choice of housing including a substantial quantity of least-cost housing to satisfy the N.J. Constitutional requirement for low and moderate income housing.

4. Admitted.

5. Defendant-Intervenor admits the existence of a number of major traffic arteries within the Defendant Township, but is without sufficient knowledge to either admit or deny the remaining allegations of Paragraph 5 of Count One and accordingly, leaves the Plaintiff to his proofs thereon.

6. Defendant-Intervenor admits the designation of a development corridor to the east and west of Route 202-206 in the Somerset County Master Plan, but denies the remaining allegations of Paragraph 6 of Count One.

7. Denied.

8. Defendant-Intervenor denies that Plaintiff's tract of land is ideally situated above all other tracts within the Defendant Township for regional retail and commercial develop-

ment, but is without sufficient knowledge to either admit or deny the allegations regarding his request for rezoning to the Defendant Township.

9. Defendant-Intervenor is without sufficient knowledge to either admit or deny the allegations of Paragraph 9 of the First Count and accordingly, leaves the Plaintiff to his proofs thereon.

10. Defendant-Intervenor is without sufficient knowledge to either admit or deny the allegations of Paragraph 10 of the First Count and accordingly, leaves the Plaintiff to his proofs thereon.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

WHEREFORE, Defendant-Intervenor demands judgment against Plaintiff dismissing Plaintiff's Complaint with costs of suit.

SECOND COUNT

1. Defendant-Intervenor incorporates herein by reference as though recited verbatim and at length, the answers

to Paragraphs 1 through 16 of the First Count.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

WHEREFORE, Defendant-Intervenor demands judgment against the Plaintiff dismissing the Plaintiff's Complaint with costs of suit.

THIRD COUNT

1. Defendant-Intervenor incorporates herein by reference as though recited verbatim and at length, the answers to all allegations of the First and Second Count of the Complaint.

2. Denied.

3. Denied.

WHEREFORE, Defendant-Intervenor demands judgment

against the Plaintiff dismissing the Plaintiff's Complaint with costs of suit.

FOURTH COUNT

1. Defendant-Intervenor incorporates herein by reference as though recited verbatim and at length, the answers to all allegations of the First, Second and Third Counts of the Complaint.

2. Defendant-Intervenor is without sufficient knowledge to either admit or deny the allegations of Paragraph 2 of the Fourth Count and accordingly, leaves the Plaintiff to his proofs thereon.

3. Denied.

4. Denied.

5. Denied.

WHEREFORE, Defendant-Intervenor demands judgment against the Plaintiff dismissing the Plaintiff's Complaint with costs of suit.

FIFTH COUNT

1. Defendant-Intervenor incorporates herein by reference as though recited verbatim and at length, the answers to the First, Second, Third and Fourth Counts to the Complaint.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

WHEREFORE, Defendant-Intervenor demands judgment against Plaintiff dismissing the Plaintiff's Complaint with costs of suit.

BRENER, WALLACK, ROSNER & HILL
Attorneys for Defendant-Intervenor

By: Guliet D. Hirsch

Dated:

BRENER, WALLACK, ROSNER & HILL

15 CHAMBERS STREET

PRINCETON, NEW JERSEY 08540

(609) 924-0908

ATTORNEYS FOR Defendant-Intervenor

Plaintiff

LEONARD DOBBS,

vs.

Defendant

TOWNSHIP OF BEDMINSTER,
a Municipal Corporation

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

Docket No. 1-12502-80

CIVIL ACTION

AFFIDAVIT

STATE OF NEW JERSEY)
) ss:
COUNTY OF MERCER)

JOHN H. KERWIN, of full age, having been duly sworn according to law, upon his oath deposes and says:

1. I am President of The Hills Development Company, the proposed Intervenor in the above-captioned matter and make this Affidavit in support of the movant's application for an

Order granting leave to intervene in the above-captioned matter.

2. For the following reasons the movant has an interest relating to the transaction which is the subject of the within action, and is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest:

- a. The Hills Development Company is the successor in title to the Allan-Deane Corporation, the Plaintiff in the action referred to in Paragraph 3, Count One of the Complaint. The Hills Development Company is a New Jersey partnership consisting of the Allan-Deane Corporation and Ligone Corporation as the partners. The Land Development Ordinance of the Township of Bedminster was adopted by the Township of Bedminster in order to bring the Township into compliance with Court Orders issued in the case of Allan-Deane Corporation, et al v. Township of Bedminster, et al, referred to in Paragraph 3 of Count One of the Complaint.
- b. Plaintiff in the within action contests the specific location of zones which permit commercial and/or retail uses (see Paragraph 5 of Count One of the Complaint). The Hills Development Company

(the movant), owns a substantial quantity of land which is zoned for planned unit development, of which 20% may be developed for commercial and/or retail uses under Section 606D of the Land Development Ordinance (June, 1980). On November 19, 1980, The Hills Development Company submitted a complete application for site plan approval to the Defendant Township's Planning Board, said site plan including commercial uses. If Plaintiff is successful in the within action, a Court Order to shift the commercial/retail zoning from the planned unit development zone to Plaintiff's property would adversely affect the progress of the planned unit development proposed by The Hills Development Company, applications for which are currently pending before the Bedminster Township Planning Board.

- c. Paragraph 14 of Count One of Plaintiff's Complaint declares the entire zoning scheme of the Township of Bedminster to be uncomprehensive in scope because of the alleged failure to provide for commercial uses necessary to serve residentially zoned areas. Any Court Order in this case which

permits Bedminster Township to reduce the quantity of lands zoned for residential use (and/or densities permitted thereon) as an alternative to zoning additional land for commercial/retail uses would delay or prevent the implementation of the development currently proposed by The Hills Development Company.

- d. One form of relief requested in all Counts of the Complaint is invalidation of the entire Land Development Ordinance. If Plaintiff is successful in this case and this remedy is granted, The Hills Development Company would be substantially delayed and perhaps barred from pursuing the planned unit development, applications for which are currently pending before the Bedminster Township Planning Board.
- e. The Hills Development Company has conducted extensive market studies to determine the commercial and service needs of the potential residential population of Bedminster Township under the new zoning in order to plan for the proper development of the commercial areas within the Planned

Development Zone and can assist the Court in measuring those needs.

3. The movant's interest is not adequately represented by the existing parties for the following reasons:
 - a. Plaintiff's interest is in obtaining a Court Order requiring the rezoning of the entire Township of Bedminster. The movant's interest is in retaining the current Land Development Ordinance intact.
 - b. Although Defendant's interest certainly is in defending its present land use scheme, (the product of many years of litigation), Defendants have no pecuniary or other interest in the efficient and timely processing of The Hills Development Company planned unit development application since this proposed development will substantially change the rural character of the township.
4. This Application is both timely and prompt.
5. As a result of the movant's promptness in bringing this Application, if leave to intervene is granted, there will be no resultant delay since the period for pretrial discovery has just recently commenced.
6. If the movant is granted leave to intervene in the within action, subsequent litigation will be prevented

which might otherwise result if Defendant Township of Bedminster is ordered to rezone any portion of The Hills Development Company property.

7. If permission to intervene is granted to The Hills Development Company, the within litigation will not be further complicated and will, in fact, be simplified since the movant was an active participant in the rezoning process which generated the Zoning Ordinance in issue herein.

8. For all of the aforementioned reasons the movant, The Hills Development Company, should be granted permission to intervene in the Leonard Dobbs v. Township of Bedminster suit as a matter of right.

John H. Kerwin

Sworn to and Subscribed
before me this *14th* day
of *January*, 1981.

Valeska W. Andren

VALESKA W. ANDREN
A Notary Public of New Jersey
My Commission Expires July 28, 1985

BRENER, WALLACK, ROSNER & HILL

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PRINCETON, NEW JERSEY 08540
(609) 924-0808
ATTORNEYS FOR

Plaintiff

LEONARD DOBBS

vs.

Defendant

TOWNSHIP OF BEDMINSTER,
a Municipal Corporation

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

Docket No. L-12502-80

CIVIL ACTION

ORDER

This having been opened to the Court on January 30, 1981, by Brener, Wallack, Rosner & Hill (Guliet D. Hirsch, Esq. appearing), attorneys for The Hills Development Company, in the presence of McCarter & English (Joseph Falgiani, Esq. appearing) attorney for Defendant and Winne, Banta & Rizzi (Joseph F. Basralian, Esq. appearing) attorneys for Plaintiff, and the Court having considered the moving papers and arguments of counsel;

WHEREAS, this Court found that The Hills Development Company has an interest in the maintenance of the present zoning scheme of the Township of Bedminster due to its ownership of a substantial quantity of

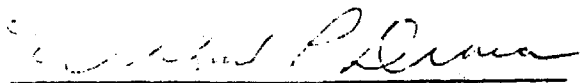
land presently zoned for planned unit development and its pending and future development applications under the present procedures set forth in the current land development ordinance;

WHEREAS, this Court found that Plaintiff in the within action is requesting relief in the form of invalidation of the entire land development ordinance as well as invalidation of the zoning scheme as it applies specifically to Plaintiff's property; and

WHEREAS, this Court found ~~that despite the nine years of litigation in which The Hills Development Company's predecessor (The Allan Deane Corporation) actively litigated the validity of the previous land development ordinance of the Township of Bedminster, which actions terminated in a Court Order requiring a master appointed by the Court to participate in and oversee the process of revising the Bedminster Township Land Development Ordinance to bring it into compliance with the New Jersey Constitution and State Law,~~ that The Hills Development Company was adequately represented by the Township of Bedminster in the within litigation challenging the validity of the entire zoning scheme of Bedminster Township.

NOW, THEREFORE, on this *2nd* day of *March*, 1981, it is

ORDERED that The Hills Development Company's Motion to intervene in the within action is hereby denied, but the applicant is hereby granted leave to participate as amicus curiae in this suit.



Wilfred P. Diana, J.S.C.