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Stenographic Transcript of Motion to Intervene

Pgs - 37

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

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LEONARD DOBBS,

Plaintiff,

v.

TOWNSHIP OF BEDMINSTER,

Defendant.

STENOGRAPHIC TRANSCRIPT
OF
MOTION TO INTERVENE

Entered: *h. [unclear]*

Place:
Somerset County Courthouse
Somerville, New Jersey

Date:
April 3, 1981

BEFORE:

HONORABLE MICHAEL R. IMBRIANI, J.S.C.

A P P E A R A N C E S:

WINNE, BANTA & RIZZI, ESQS.,
BY: JOSEPH L. BASRALIAN, ESQ.,
For Leonard Dobbs, Plaintiff.

MC CARTER & ENGLISH, ESQS.,
BY: ALFRED L. FERGUSON, III,
For Township of Bedminster, Defendant.

VOGEL & CHAIT, ESQS.,
BY: HERBERT VOGEL, ESQ.,
For Intervenors.

ROBERT B. GROSSMAN, C.S.R.,
OFFICIAL COURT REPORTER
SOMERSET COUNTY COURTHOUSE
SOMERVILLE, NEW JERSEY, 08876

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SOMERSET COUNTY
I. R. OLSON, CLERK

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AFTERNOON SESSION

1
2 THE COURT: Dobbs v. Township of
3 Bedminster.

4 MR. VOGEL: Herbert Vogel, your Honor,
5 representing the intervenors in this case.

6 Do you want to hear my motion first?

7 THE COURT: Yes, that is what we are
8 going to do.

9 MR. VOGEL: If it pleases the Court,
10 I represent three intervenors in this pending
11 law suit -- I am sure your Honor knows -- in a
12 law suit in which the property owner of some
13 200 acres seeks to have the highest quality or
14 at least the lowest density residential zone in
15 Bedminster Township rezoned for regional shopping
16 center purposes.

17 I represent property owners on a street
18 immediately adjoining the tract that is sought
19 to be rezoned.

20 THE COURT: Within 200 feet of the tract?

21 MR. VOGEL: Two of my clients are
22 within 200 feet of the tract. One client is right
23 across the street from the properties which are
24 within 200 feet of the tract.

25 This is a very beautiful neighborhood,

1 your Honor, and we are talking about zoning
2 which is three acres or better, residential
3 zoning, zoning, and really what this plaintiff is
4 seeking to do, Judge -- he never went to the
5 town to ask for rezoning. There was no
6 application to the Planning Board for rezoning;
7 no application to the governing body for
8 rezoning. Here is a plaintiff that moved
9 directly in court challenging the validity of the
10 zoning ordinance.

11 What impact does this have on my
12 clients, aside from the fact that it surely is
13 going to destroy the value of these homes if
14 a regional shopping center is brought?

15 The very real interest of my client
16 is that they have a right under the statute to
17 be heard on any rezoning. They have a right to
18 notice on any application, whether it is a variance
19 application or whether it is an application of the
20 Planning Board for rezoning or the governing body,
21 They have the right to petition the governing body,
22 your Honor, in a special way. That statute -- namely,
23 the Land Use Law, especially protects the rights
24 of my client, at least two out of three of my
25 clients, within 200 feet and as a very real

1 matter, their affidavits say -- and I am sure,
2 your Honor can understand this -- living
3 immediately adjacent to a tract that has been
4 announced for regional shopping center purposes,
5 where there is a suit to get that rezoning,
6 as a practical matter right now my clients have
7 been impacted. Their homes -- they are not
8 valuable now. Nobody wants a beautiful home
9 next to a regional shopping center. So their
10 interest with due respect -- I know there was
11 another motion to intervene involving the Allen
12 Dean Corporation. Their interests are very
13 different from Allen Dean. There is a statutory
14 right here. It is not someone living out of town
15 and who doesn't want to see the overall zoning
16 changed.

17 Your Honor, I think also that the
18 Rule, which is 4:33-1 and 4:33-2. 4:33-1, by
19 the way, is intervention as a matter of right and
20 4:33-2 is intervention in the discretion of the
21 Court.

22 We urge the Court to grant our right to
23 intervene under either Rule, but as a matter of
24 of right, the criterion or really three-fold.

25 First, Judge, that we do have an

1 Interest in the transaction about which there
2 is litigation. I don't think the interests could
3 be clearer. We have an interest -- that is our
4 clients have an interest in preserving their
5 residences. They have an interest in preserving
6 their property, their style of living. They
7 have an interest in preserving the marketability
8 of their homes and they have an interest in
9 preserving their right to be heard; their right
10 to petition, as the statute sets up. So I think
11 they clearly have an interest.

12 The second criterion of Rule 4:33-1
13 is that the disposition of the suit may impair
14 or impeded that interest.

15 Well, I don't know how the suit is
16 going to be decided, your Honor, but if the Court
17 ordered Bedminster Township to rezone that
18 particular tract of land for regional shopping
19 center purposes, it would surely impede the
20 interests of my client. I think that is clear
21 and that is fundamental.

22 I think also, your Honor, in a way the
23 Court needs the participation of my clients.
24 My clients need the Court and the Court needs my
25 clients. Suppose the Court is inclined to grant

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some relief to plaintiff or all the relief plaintiff seeks. You have somebody with a special statutory right, who can petition the government, who can force a two-thirds vote, especially protected by statute and on the other hand you may have a Court directing a rezoning and you get these two interests clashing here and it is a problem for the Court because all the parties in interest aren't before the Court and in a way it would be a tragedy, aside from violating my clients' legal rights, it would be a tragedy if the Court were to order a rezoning, send it back to the governing body or the Planning Board or both and tell them to rezone and my clients at that point in time file a petition under the statute and say don't rezone. They governing body has a Court order. They are not going to ignore the Court. They can't ignore the Court. They would be in contempt of Court to ignore the Court and, really, that would be after the fact if my clients came in then.

But, Judge, my clients did not have the opportunity to come in before. If this plaintiff had filed before the Town with the Planning Board the way people do or with the governing body when

1 they want a zone change, with the proposal and
 2 a hearing in the town and transcripts were taken
 3 and my clients were heard before the municipality,
 4 it might be a different story. At least you
 5 would know what their position is. None of that
 6 occurred.

7 So I think that it is in the interest
 8 of the Court to have the plaintiff here -- I am
 9 sorry -- to have the intervenors here and I
 10 think it is in the interest of the intervenors,
 11 certainly, to be here.

12 I think also, your Honor, there is
 13 a possibility of depriving my clients of
 14 constitutional rights. Their property rights are
 15 directly affected. They are not general, as in
 16 the whole -- anybody out in the municipality.
 17 They are immediately adjacent thereto and, again,
 18 if they were not given a right to be heard, this
 19 might well deprive them of their constitutional
 20 rights; certainly in terms of their economic
 21 rights.

22 Finally -- not quite finally -- there
 23 are some practical considerations and that is
 24 your Honor knows in the course of litigation
 25 there are frequently discussions to amicably

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resolve a law suit. That is to settle a law suit.

Again, Judge, people who have that special protected statutory right to be heard, if they are not a part of the litigation and not likely to be part of the settlement process, I doubt whether a settlement could be achieved and if achieved it would surely be unfair to my clients particularly.

Finally, your Honor, under Rule: 4-33-1, there is a final criterion and that is that the applicant's interest -- applicant should show that its interest would not be fully and adequately represented by the defendant in the law suit.

Now, as you recall, the Township of Bedminster is represented by able counsel. I know of Mr. Ferguson. He is their special counsel. He is an eminent trial attorney and we have no question about his competence. But there are ways in which my clients have special and particular interests in this law suit which are a little bit different from the municipality's interest. Therefore, those interests may not be especially protected and those are as follows:

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1 First of all, I think in terms of the
2 town depending upon the zoning ordinance, they are
3 going to have planners; they are going to try to
4 defend the overall zone plan. My clients, while
5 they would like to see the zone plan defended,
6 they have, I think, a very, very special interest
7 in putting forth expert testimony in terms of
8 real estate experts, for example, that a town
9 might not put forth in the defense of the overall
10 zone plan. My clients surely want to show that
11 the impact of changing the zone from the lowest
12 density residential to the highest density
13 commercial would have a devastating economic
14 impact on their property and you do that with
15 real estate experts. I doubt whether the town
16 would have that kind of expert testimony.

17 Secondly, I don't think it is the
18 town's role to get involved in the special
19 statutory interests that I have mentioned before
20 of property owners within 200 feet. They are
21 defending an overall zone plan. We want to defend
22 our statutory right to be specifically heard.

23 I talked about settlement of the law
24 suit. I think, again, the town may want to settle
25 because of certain overall considerations. Our

1 clients may not want to see a settlement. They
2 may want a settlement that is different or they
3 may want to propose something slightly different
4 to the Court in terms of what ought to be the
5 zoning for the property in question.

6 So, again, there could be some
7 variations between the town's position and
8 my client's position.

9 Mainly, your Honor, I think -- I think,
10 fundamentally, you have property owners whose
11 impact is so direct on them and their desire
12 is to defend that.

13 The second rule, your Honor, is rule
14 4:33-2. That is a discretionary rule. The
15 requirements are not quite as severe. I would ask
16 the Court only to look at the property owners and
17 the impact upon them, upon their way of life, upon
18 their homes with a regional shopping center and I
19 urge that they be allowed to come into this law
20 suit to defend their own particular interests in
21 this particular case.

22 Without getting into all the legal --
23 case law in the briefs before you ---

24 THE COURT: Don't, because I have already
25 read it. I don't want you to repeat.

1 MR. VOGEL: I do want to point out just
2 one matter and that is I know there was a prior
3 application by Allen Dean Corporation to come
4 into this law suit. It was denied by the Court.
5 They are not within 200 feet and they are very
6 different from us.

7 But I understand in that argument there
8 is a case, the Allen Dean v. Bedminster case,
9 cited in our brief in which the Appellate Division
10 that denied the right to intervene was reversed
11 by the Supreme Court. There people who were non-
12 residents of the community sought to intervene.
13 The intervention was about nine months after the
14 suit was filed. The Supreme Court did allow them
15 to intervene. There are very few New Jersey
16 cases on point, but I think that case is a close
17 one to this one and I think our clients' interests
18 in this particular case are at least equivalent
19 to the interests of the intervenors in the Allen
20 Dean case.

21 Based upon all of that I ask that your
22 Honor allow my clients to intervene and protect
23 their very real interests in this matter.

24 THE COURT: Okay.

25 MR. VOGEL: Thank you.

1 THE COURT: Who are the men to your left
2 and right? Perhaps, you ought to indicate it
3 for me.

4 MR. VOGEL: I beg your pardon.

5 THE COURT: To your left and right.

6 MR. VOGEL: This is Mr. Collins of
7 my law firm, your Honor.

8 MR. FERGUSON: I am Al Ferguson for
9 the Township, your Honor. This is Mr. Joe
10 Basralian for Plaintiff.

11 THE COURT: I am sorry.

12 MR. BASRALIAN; Winne, Banta & Rizzi
13 by Joseph L. Basralian for the plaintiff.

14 THE COURT: All right.

15 Let me ask you what is the position of
16 Township of Bedminster on this application?

17 MR. FERGUSON: We think, weighing the
18 question, your Honor, that the intervenors should
19 be allowed to come in. The Township is concerned
20 with the zone plan and the integrity of the zone
21 plan. However, our outlook is global, as it were.
22 It is not site-specific and it is certainly not
23 site-specific on the surrounding properties.

24 I am not saying we would ignore those problems,
25 but we certainly would not concentrate on it.

1 We will be concerned -- we are rebutting Mr.
2 Basralian's claim that there is need for a
3 regional shopping center in Bedminster verses
4 Bridgewater, where everybody else says it should
5 go. There is no need for two of them.

6 We do not intend to focus on the
7 specific effect of a shopping center on property
8 owners within 200 feet.

9 I think it anomalous that a claim
10 can be made for the first time in court as to the
11 unconstitutionality of an ordinance that doesn't
12 provide for regional shopping centers because if
13 the requests for a zone change came up through the
14 usual administrative and legislative process in the
15 town, Mr. Vogel's clients would have an absolute
16 right under the statute to be heard, to object,
17 to submit evidence and cross-examine.

18 I think they are effectively being denied
19 that right by the attack being made by Mr. Dobbs
20 in this court in the first instance.

21 For those reasons we support intervention.

22 THE COURT: All right.

23 Mr. Basralian.

24 MR. BASRALIAN: If it pleases the Court,
25 your Honor -- pardon me -- the action that is

1 brought is really two-fold by Mr. Dobbs.

2 One is attacking the ordinance that was recently
3 adopted by the municipality as a result of the
4 Allen Dean decision in that it only considered
5 a small aspect of the town and failed to take
6 into consideration zoning of the entire municipality
7 and in particular the property which is the subject
8 matter of this litigation.

9 To refresh, perhaps, Mr. Vogel's memory
10 and that of Mr. Ferguson, that at a time subsequent
11 to the decision of the Court there were very, very
12 expensive hearings in the municipality with respect
13 to the proposed land use changes and the Allen Dean
14 property, at which public notice was available
15 and it was made available to all residents of the
16 municipality, all of whom had an opportunity, and
17 many of whom had the opportunity and did
18 participate in the discussions with respect to
19 the zoning ordinance, as they were they proposed.

20 All of the residents in that instance
21 were within 200 feet and without 200 feet, outside
22 200 feet, had the opportunity to be heard,
23 suggestions, listened to and considered and from
24 time to time incorporated into the zoning scheme,
25 as was finally adopted by the municipality.

1 I don't think that the intervenors
2 here have any different rights than any other
3 property owner in the municipality.

4 Specifically, with respect to Mr.
5 Vogel's reference to the intervenors in the
6 Allen Dean litigation, those were residents
7 outside of the municipality who sought the right
8 to live in the municipality but were precluded
9 from it by virtue of the zoning. It is an
10 extension of the Mt. Laurel concept in the
11 developing community wherein individuals are
12 denied a right to live in an area by virtue of
13 their zoning.

14 It is not analogous to the situation
15 of the clients that Mr. Vogel represents.

16 I am very surprised to hear Mr.
17 Ferguson's position with respect to his global or
18 the municipality's global outlook having attended
19 many of the hearings on the Land Use Law that was --
20 Land Use Ordinance that was adopted. There was
21 very specific attention given to all of the
22 residents who were interested and specifically
23 those who were within the immediate area of the
24 proposed land use changes, which were quite
25 dramatic and somewhat different than what is

1 proposed here.

2 I think that in the course of any
3 litigation there certainly might well be dis-
4 cussions with respect to settlement. Having been
5 involved with the Township of Bedminster for well
6 over a year and having had discussions with the
7 township officials during the time that the
8 new land use ordinance was being prepared and
9 prior to and subsequent to its adoption, I can
10 assure Mr. Vogel and his clients the municipality
11 has a very deep interest in all that happens
12 and, specifically that of all of its neighbors.

13 I think too, that the representation
14 of the municipality is certainly adequate to
15 represent all of the interested parties, whether
16 or not they are specifically represented by
17 counsel or otherwise.

18 Rule 4:33-1 provides, and I think
19 the case law specifically provides that even
20 if the first two prerequisites are met, that the
21 third prerequisite with respect to representation
22 of applicant's interest still must be met and it
23 certainly is from the point of the municipality.

24 Through nine years of litigation or
25 eight years of litigation, the municipality

1 very forcefully represented the interests
2 of the entire municipality in the Allen Dean
3 litigation. I would suspect they are prepared
4 to do the same in this instance as well.

5 The briefs are before you. I really
6 don't seek to go into the case law. I think
7 Judge Diana's decision with respect to the
8 proposed intervention by the Hill Development
9 Company was proper and should be the same
10 decision followed here.

11 THE COURT: Let me ask you is there
12 a precedent in another case permitting this suit
13 to be brought in court prior to, as we say,
14 exhausting one's administrative remedies below?

15 MR. BASRALIAN: It is our contention --
16 if you ask me for a specific case, I am not able
17 to tell you a cite and direct the Court to it.

18 Certainly, the Courts have permitted
19 in the past the relief that we sought or at least
20 access of the Courts with the relief we sought,
21 because of the inability to exhaust the
22 administrative remedies, which might otherwise
23 be available.

24 THE COURT: Inability? Why do you
25 say inability?

1 MR. BASRALIAN: We have communicated
2 with the municipality and have had discussions with
3 their municipality for a period of one year prior ---

4 MR. VOGEL: I must object. There are
5 no affidavits supporting that.

6 MR. BASRALIAN: It is not an issue.
7 I think it is pertinent to the question of
8 intervention.

9 THE COURT: I am interested because
10 you have made the statement that going before
11 the Township Committee and the Township agencies
12 would be futile and I was wondering how did you
13 arrive at that conclusion.

14 MR. BASRALIAN: Through communications
15 with, discussions with the individual elected
16 officials of the municipality that are charged
17 with the responsibility; through the knowledge
18 of many years of Allen Dean litigation, through ---

19 THE COURT: Well, let me ask you this:
20 Do you have any written document
21 from a responsible township official telling you
22 in black and white don't file an appeal because
23 we are going to reject it?

24 MR. BASRALIAN: I can't answer in the
25 affirmative, your Honor. But I can tell you, your

Honor, that ---

THE COURT: Well, you see, but that is ---

MR. BASRALIAN: Your Honor ---

THE COURT: You see the thing -- wait.

The problem is here, one of the issues, it seems to me, is whether or not you are entitled to maintain this action in the Superior Court prior to filing an action before the Township Boards, to have the Township Boards make a determination as to whether or not there is merit in your application. And one of the questions that the Court has is we have a certain pattern, which has been adopted by the Legislature in our statutes, which is that when a particular property owner believes that for whatever reason his property is made either useless or not as usefull as he would like it to be, that there are procedures adopted whereby application is made to a Township agency, whether the Planning Board or Board of Adjustment, or what have you; notice is given to those parties who are particularly situated in terms of proximity to the tract in question; a hearing date is established, so as to give them an opportunity to go before the municipal agencies and present their views as to the merits

1 or the objections to the application and,
2 obviously, by utilizing the procedure which
3 you have by going directly to the Court and by
4 asking this Court to deny the application of
5 three, admittedly, property owners in close
6 proximity to the property in question the opportunity
7 to intervene. You are, it would seem to me,
8 ineffect asking this Court to countenance and
9 give approval to a procedure whereby these three
10 property owners are going to be denied a right
11 that has been given to them by the Legislature
12 to appear and give their views.

13 MR. BASRALIAN: Perhaps, my response
14 might be in form of some of the history going
15 back some 15 or 18 months, 15 or 16 months.

16 We have met with the governing body.
17 We have explained what we believe are the problems
18 with the zoning ordinance as adopted and with
19 respect to our specific property. The governing
20 body, by virtue of the parties with whom we met
21 and the representation that I assume those
22 individuals have, has declined to seek to
23 have us go to -- until very recently -- February --
24 mid-February sometime, by written communication
25 from Mr. Ferguson -- to the Planning Board with

1 respect to zoning of this specific property.

2 We were in attendance at almost all
3 of the public discussions and the private
4 discussions to which the public was
5 invited of the Planning Board, standing
6 Master and its zoning specialist, at which
7 time we made known our specific requests
8 and why we thought what was being undertaken
9 by virtue of the new land use plan was inappro-
10 priate and failed to consider both the municipality
11 as an entirety and our property, specifically.
12 And in each instance -- and I believe transcripts
13 are available and I can go through them -- we
14 were told that this was not the matter for
15 consideration before the Planning Board and its
16 committee at that time, because they were under
17 a Court imposed order to rezone specifically
18 with respect to Allen Dean, to do no more.
19 Their comments by the then Chairman of the
20 Planning Board, that he thought our intervention,
21 if you will, or our discussions with respect to
22 our properties and the zoning scheme, as a whole,
23 were in inappropriate.

24 Again, because they were under order
25 from the Court to rezone.

1 We attended all of the public meetings
2 at which this occurred. We were aware of all
3 these problems. We went forward and had a subse-
4 quent discussion with the governing body.
5 True, after the litigation was started. We
6 requested and received the right to make a
7 presentation on impact. That was available and
8 open to the entire public. The municipality
9 isn't running pell-mell into any action.
10 But the past history of this community, its
11 fight with Allen Dean, its fight with any
12 proposed developer, certainly, is adequate
13 proof of the inability to deal with the
14 municipality, which has an avowed purpose -- an
15 avowed purpose of maintaining the status quo.
16 It has taken high density residential and
17 commercial uses to some extent and jammed it
18 into less than one-third of the land area of
19 the community and left the entire balance of
20 the community untouched.

21 THE COURT: Well, let me say that suppose
22 I accept as true what you have said.

23 MR. FERGUSON: Before the Court does
24 that, I would make the representation that I
25 will give the history from our point of view

1 and it is not as counsel has just given.

2 THE COURT: Mr. Basralian, if I accept
3 as true what you have said, won't it be necessary
4 somewhere to substantiate those charges?

5 MR. BASRALIAN: Not if the attack is
6 on the zoning, the impropriety of the land use
7 plan as adopted by the municipality as it
8 effects the entire municipality and the impact
9 of what has been done in the community by virtue
10 of Allen Dean and the continuing effect of that.

11 THE COURT: Doesn't that impact have
12 to be proven by some evidence or testimony?

13 MR. BASRALIAN: Yes, it will be.

14 THE COURT: Well, one of the questions
15 that I would have in my mind, knowing the problems
16 that we have in court with such an enormous
17 backlog. As a matter of reasonable judicial
18 management, where should that record be made?
19 Should it be made in the municipal agencies
20 where a transcript could be made and presented
21 to the Court or should I permit you and your
22 adversaries to come into this Court and take
23 up two, three, four weeks of the Court's time
24 to make a record? As a matter of judicial
25 management, shouldn't I ---

1 MR. BASRALIAN: May I say that in
2 part response to that, that one of the prerequisites
3 under the ordinance is for an environmental impact
4 study. The cost of such a study alone is approx-
5 imately half -million dollars. That is part of
6 what the Court is suggesting about making a record
7 below. With respect to a parcel of property,
8 the prerequisites under the ordinances of this
9 Township are so burdensome so as to cause us to
10 know that the effort is futile and I think the
11 Courts have the obligation with respect to what
12 we think is the position and the law, as it is
13 and should be, certainly, makes the Court
14 available for the litigation instituted.

15 THE COURT: Well, your complaint in
16 this case asks that the entire zoning ordinance
17 be declared invalid, correct?

18 MR. BASRALIAN: Correct.

19 THE COURT: Is there not also a demand
20 that only your specific tract be rezoned so as
21 to permit a regional retail and commercial zone?

22 MR. BASRALIAN: I cannot demand for
23 other property owners.

24 THE COURT: So you are.

25 MR. BASRALIAN: For our property.

1 THE COURT: And as to that you feel
2 that these three intervenors don't have any
3 different claim than Allen Dean or what they
4 call themselves -- Hill Development Corporation?

5 MR. BASRALIAN: I said that they have
6 no different -- I said they have no different
7 standing than any other property owner within
8 the municipality.

9 THE COURT: Do you think that if the
10 alternative request that you have asked,
11 which is that your particular property be
12 rezoned to permit regional retail and commercial
13 development, that impliedly that request would
14 be granted on the assumption that the entire
15 zoning ordinance should not be declared invalid
16 but that there has been a showing that such a
17 zone should be allowed in Bridgewater -- Bedminster
18 Township and shouldn't these intervenors, if that
19 is so, have the opportunity at that point to say to
20 the Court, well, Judge, maybe there should be one
21 allowed in Bedminster Township, but not on this
22 tract next to our property, but on the other end
23 of town?

24 MR. BASRALIAN: Should the Court decide
25 that our alternative relief be granted, that is

1 only the first step in a long scheme of rezoning
2 and planning at which point all individuals have
3 the right, whether it is these intervenors or
4 anyone else, to interject and have a right to
5 state their beliefs.

6 Certainly, if the municipality had
7 rezoned under Allen Dean including this property,
8 would the same argument be made by these
9 individuals? If a highway were extended to
10 our property within 200 feet of the property line
11 of these parties and as a consequence of that
12 highway our property was developed, the zone will
13 change and I don't think that their rights are
14 affected any greater by that mechanism than by what
15 we propose.

16 The intervenors are at a disadvantage
17 to know at this point that the location of the
18 shopping center, as proposed, is not in close
19 proximity to their property. The entire tract of
20 land owned by the plaintiff is within 200 feet
21 of the -- I believe it is two of the intervenors.

22 THE COURT: Indicate if you would just
23 for the record what would be the prejudice to the
24 plaintiff if I granted the application? Assuming
25 that I am satisfied with the representation of the

1 intervenors, that their appearance will not
2 in any way delay the time period for discovery
3 or the trial, how would that prejudice the
4 plaintiff to allow the granting of this motion.

5 MR. BASRALIAN: Certainly, if you
6 allowed the granting of this motion as to these
7 intervenors, there could be a subsequent 900
8 representing property owners in and around and
9 in Bedminster itself. Certainly, the granting
10 of this motion by the Court would not preclude
11 anyone else from making the same argument. I don't
12 believe it estopped anyone else from the same
13 type of action.

14 THE COURT: Let me ask you one other
15 thing. Suppose I determine that there was a
16 distinction between this application and the
17 application of Hill Development Company, which
18 was denied by Judge Diana in January of 1981,
19 on the grounds that Hill Development Company
20 did not-- was not within 200 feet as these
21 intervenors are? How many property owners are
22 there within 200 feet of your client's tract?
23 Do we know?

24 MR. BASRALIAN: I don't know. It is
25 a 200 acre tract of land, your Honor. It has a

1 big perimeter.

2 THE COURT: What are talking of, ten,
3 50, 100?

4 MR. BASRALIAN: I couldn't answer,
5 your Honor.

6 THE COURT: Does anyone here know?

7 MR. VOGEL: Your Honor, it is somewhere
8 in the order of magnitude of approximately
9 seven property owners. They are large pieces
10 of property. One is 90 acres.

11 THE COURT: Seven property owners
12 within 200 feet of plaintiff's tract.

13 MR. VOGEL: And Matthews Drive is a
14 street of five or six houses and they are right
15 next to this shopping center. Some backyards ---

16 MR. BASRALIAN: How many of those are
17 within 200 feet? I believe Mr. Vogel did not
18 indicate ---

19 MR. VOGEL: Two of the three. The
20 Hendersons and Englebrechts are immediately --
21 their backyards immediately adjoin this shopping
22 center and it is no hill or mountain, Judge. It is
23 wide open flat field. Mr. Pellon, who is here in
24 Court, incidentally, lives immediately across the
25 street from the Hendersons and is right back there.

1 MR. BASRALIAN: I cannot confirm
2 that there are seven property owners.

3 THE COURT: Assume that to be a fact.
4 Assume what counsel represents is the fact. What
5 harm or prejudice is there to your action or
6 to the management of this trial if I were to
7 grant this application by three of those property
8 owners and it is conceivable that four other
9 applications may be made? I have got a case
10 waiting outside with 15 lawyers. This would still
11 be a lot less than that.

12 MR. BASRALIAN: First of all, of the
13 proposed intervenors, only two live within
14 200 feet, as Mr. Vogel has represented.
15 So your granting the motion as to these
16 property owners, it would seem to me to open
17 it up to those outside of the 200 feet radius of
18 the property as well. I think that the whole
19 handling of the litigation, the impact of what
20 is concerned, would be a prejudice.

21 THE COURT: How? That is what I want to
22 know. How?

23 MR. BASRALIAN: Your Honor, the magnitude
24 of the litigation will be such ---

25 THE COURT: You have got to Xerox more

1 papers and send out more papers?

2 MR. BASRALIAN: That is the easy part,
3 your Honor.

4 Certainly, should it come to pass
5 that there is an ability for the municipality,
6 as the defendant, and the plaintiff to open
7 a discussion and to negotiate, should that be
8 possible, a settlement of their disputes,
9 which is amicable to the parties, and adding
10 in the individuals, rights of individual
11 property owners, all of whom are within the
12 200 feet, there would not in fact be a settlement
13 of any litigation. The concern by these property
14 owners is the impact on the property and their
15 market value as to the property. There is no
16 end to which this intervention seeks the individual
17 rights as to the value of their property verses
18 the impact on the municipality.

19 When I am asked whether or not I am
20 demanding a zone change or plaintiff is demanding
21 a zone change for all of the untouched land
22 within Bedminster, I can ask whether or not the
23 intervenors stand here because their concern is
24 based only on the impact, unsubstantiated, on the
25 value of their property verses their interest as

1 to Bedminster and all property owners.

2 THE COURT: Well, implicit in that
3 suggestion that the Township may be willing to
4 resolve the matter and the property owners may
5 not ---

6 MR. BASRALIAN: I doubt that were possible.

7 THE COURT: That would sort of suggest
8 that the interest of the Township and the individual
9 property owners may well be different.

10 MR. BASRALIAN: I don't think that is so.
11 The Township has a demonstrated record of the
12 interests of all of its residents in any of the
13 zoning litigation that has been involved and
14 the records are replete with Allen Dean alone
15 and other litigation as to their interest and
16 their representation of the municipality.

17 THE COURT: Then it is unlikely there
18 would be a settlement with the Township that the
19 individual would not acquiesce to.

20 MR. BASRALIAN: I think it is unlikely,
21 but not certainly outside of the scope of what
22 could happen.

23 THE COURT: All right. Thank you.

24 Anything further, gentlemen?

25 (No response.)

1 THE COURT: Okay.

2 All right, gentlemen, this is an
3 application for three property owners to be
4 permitted to intervene to assert defenses
5 to the application by the plaintiff in this
6 case Leonard Dobbs, who owns certain property
7 in Bedminster Township, to set aside and declare
8 as invalid the entire zoning ordinance of
9 Bedminster or in the alternative to compel
10 the Township to rezone the specific tract of
11 land owned by the plaintiff so as to permit
12 regional and retail commercial development.

13 I would note that there is a request
14 to waive the time requirements for service and
15 filing of this application, as permitted by
16 Rule 1:6-3, which is granted.

17 In this particular matter there was
18 an earlier motion for intervention brought by
19 another party, the Hills Development Company
20 which was not, I understand, a resident of the
21 Township, but I presume owns some property in the
22 Township -- which was heard by Judge Dianai
23 in January and denied.

24 These intervenors claim that they are
25 in a different situation because they own property

1 much closer to the tract of land in question and
2 they point out some of the things that I am sure
3 were said before Judge Diana, which is that they have
4 been effectively denied by reason of the procedure
5 adopted by these plaintiffs their right to have
6 notice of the application, if this were to have
7 been brought in the Planning Board or the
8 Board of Adjustment, an opportunity to appear
9 with counsel if necessary, to present their
10 arguments in support of or in opposition to
11 the application and they effectively would
12 be denied any voice in these applications.

13 On the other hand the plaintiff argues
14 that, well, there is a Township that is involved
15 as a defendant. The interests of the Township
16 are such that they are and would be able to present
17 all of the arguments in opposition to the
18 application and if these intervenors were to be
19 allowed to intervene, that that would open the
20 particular trial to intervention by hundreds of
21 other property owners, the result of which would
22 be effectively to create great consternation
23 and problems and mayhem in the management of this
24 particular trial.

25 First of all, I think it is clear, as

1 pointed out, Allen Dean Corporation v. The
2 Township of Bedminster at 63 N.J. 591, a
3 1973 decision of our Supreme Court, that the
4 application is timely and should be heard.
5 In that particular case the application had
6 been made nine months later and the Supreme
7 Court indicated that that was a timely
8 application.

9 Obviously, there are several
10 factors that this Court could take into
11 consideration in making a determination.
12 One is, as I have pointed out, the Legislature
13 has adopted a scheme so as to permit property
14 owners an opportunity to be notified of all
15 changes in zoning or any applications for
16 variance made by property owners within 200
17 feet by requiring that when there are applications
18 for subdivision or variance, that those particular
19 individuals should and must be given notice of
20 the application, the time and place, to be given
21 an opportunity to appear at the hearing and present
22 their views. Of course, this is not to say that
23 the other property owners in the Township are not
24 equally entitled to appear in those applications
25 and they certainly are. But the Legislature has

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for whatever reasons determined that those who lie within 200 feet of the property in question have a particular interest in the issue that should be given personal and direct notice as opposed to the remaining residents in the rest of the Township, so as to make certain that they do make note if they so wish before the agency of their objection or support of any particular application.

One of the issues, it seems to the Court in this matter, is the question that will have to be determined ultimately, which is whether or not this litigation should lie prior to the plaintiff exhausting all administrative remedies below before the Planning Board, the Township Committee and the Board of Adjustment and that is an issue that I think I am not certain of what the law is in this particular area, but it is certainly an issue that has to be heard and decided. Implicit in that is the hope and the policy of our Courts that there be a joinder of all actions, so that we could have one single trial to dispose of all issues at one time with respect to matters before the Court. And with that policy, obviously, the more parties

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1 that participate, who have an interest, the more
2 certain we are that there will be a single trial
3 to dispose of all issues at one time.

4 Finally, the Court must also give
5 consideration to the fact that a record must
6 be made if the zoning code is to be declared to
7 be invalid. A record must be made to show that
8 what the Township did in order to adopt it, a
9 record must be showed to show where it is wrong,
10 if it is wrong, and that, of course, requires
11 expert testimony and that, of course, is a
12 proceeding that takes a great deal of time and
13 the issue of judicial management is very important
14 to this Court. I say nothing that is of any
15 surprise to anyone when I say that our Courts are
16 deluged with work and to set aside what has to be
17 weeks in order to make a record, to make a
18 determination as to whether or not the zoning
19 code was properly adopted, will take a long time
20 and a great deal of the Court's time and I really
21 at this point do not know why that time should not
22 be taken by the parties, who are particularly
23 interested; namely, the Planning Board, the
24 Board of Adjustment and the Township Committee.
25

1 It seems to me that taking into
2 consideration all of the aspects of this case,
3 that these particular intervenors, at least
4 two of them, have a particular interest which
5 may not well be represented by the attorney, who
6 is obviously very confident, for the Township.
7 The Township has an interest, obviously, to
8 represent all of the property owners throughout
9 the Township. But those who are within 200
10 feet, I think have been given special designation
11 by the Legislature in the procedures that it has
12 adopted and I think that to -- that they should
13 be given the opportunity to present in court
14 through their counsel whatever objections they
15 have or whatever support they wish to give to
16 a particular application.

17 Accordingly, it is my determination
18 that all property owners, that they two property
19 owners in this particular case who have property
20 within 200 feet of the property in question shall
21 be allowed to intervene. The one who does not,
22 his application will be denied.

23 You can present an order to that effect.

24 MR. VOGEL: Thank you, your Honor.

25 MR. BASRALIAN: Might I ask which two

1 property owners?

2 MR. VOGEL: The Hendersons and the
3 Englebrechts are the two property owners within
4 200 feet.

5 (The motion proceedings are concluded.)

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10 C E R T I F I C A T E

11 I hereby certify the foregoing to be
12 a true and accurate transcript of the proceedings
13 in the above entitled matter.
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15

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17
18 DATE: 4/15/87

Robert B. Grossman
19 ROBERT B. GROSSMAN, C.S.R.,
20 OFFICIAL COURT REPORTER
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