

RULS - AD - 1981 - 160

4/15/81

Pretrial Hearing Form

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Notes: Illegible cover pages

ORIGINAL TO SUPERIOR COURT 4-15-81

5-7364

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SOMERSET COUNTY
L. R. OLSON, CLERK

RULES - AD - 1981 - 160

SUPERIOR COURT, SOMERSET COUNTY, LAW DIVISION

PRETRIAL ORDER

LEONARD DOBBS,
TOWNSHIP OF BEDMINSTER,
etc.

Pretried by Judge WHELAN Michael P. Imbriani
on April 3, 1981
Superior No. L- 12502-3
County No. C- 7364

The parties to this action, by their attorneys, having appeared before the Court at a pretrial conference on the above date, the following action was taken:

1. Action to ~~request~~ declare the entire zoning ordinance of Bedminster to be invalid and in the alternative, to compel the rezoning of ~~the~~ plaintiff's land to permit retail and commercial use.
2. none
3. see attached
4. see attached
5. To declare the entire zoning plan invalid and to reserve plaintiff land.
6. none
7. Whether the zoning ordinance is arbitrary and unreasonably; Invalidation of master plan; compliance with municipal land use law; deprivation of property without compensation or due process; de facto confiscation; res judicata and collateral estoppel with reference to Allan Dean suit, whether the application violates the policy of State and Federal governments against sprawl development; municipal abolition, if any, to zone or rezone ~~regional~~ for regional ends; ~~is~~ retail and commercial exhaustion of administrative remedies.
8. none
9. none
10. none

11 As directed by the court.

12 usual

13 All motions with respect to the trial shall be filed with the court 30 days hereof. The intervenors shall file their objections and contentions within one week hereof, which shall be filed to this order.

14 For Plaintiff: Joseph J. Barrallan (David Stve, Esq. Co-counsel)

For Defendant: [Name] (Name), Esq.

For the Intervenor: [Name], Esq.

15 15 days

16 ~~XXXXXX~~ To be set by the Court.

17 Attorneys for parties have ~~XXXXXXXXXX~~ conferred and agreed on nothing.

18 Plaintiff shall comply with defendant's discovery with a copy of his contract to purchase the land in question ~~XXXXXXXXXX~~ by April 17, 1981; plaintiff and defendant shall answer interrogatories previously served upon them within the time provided by rules of Court; all other discovery shall be completed within time provided by the rules.
~~XXX~~ 19 none

[Signature]
For Plaintiff

[Signature]
For Defendant

[Signature]
Intervenor

Pretrial papers
for Dobbs, D,
Intervenor
4/15/81

7
VOGEL AND CHAIT
A Professional Corporation
Maple Avenue at Miller Road
Morristown, New Jersey 07960
(201) 538-3800
Attorney for Defendants

LEONARD DOBBS,

Plaintiff,

vs.

TOWNSHIP OF BEDMINSTER, a
Municipal Corporation, ROBERT R.
HENDERSON, DIANE M. HENDERSON,
and HENRY ENGELBRECHT,

Defendants

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

) DOCKET NO. L-12502-80

) CIVIL ACTION

) PRE-TRIAL MEMORANDUM
) ON BEHALF OF DEFENDANTS
) ROBERT R. HENDERSON,
) DIANE M. HENDERSON and
) HENRY E. ENGELBRECHT

With the exception of the matters discussed herein,
the defendant ROBERT T. HENDERSON, DIANE M. HENDERSON and HENRY
E. ENGELBRECHT adopt the pretrial memorandum ^{of the defendant} ~~of the defendant~~
~~Township of Bedminster~~
~~parties on April 3, 1981.~~

3-4. FACTUAL AND LEGAL CONTENTIONS OF THE DEFENDANTS

The defendants, ROBERT R. HENDERSON, DIANE M.
HENDERSON and HENRY E. ENGELBRECHT are residents of Matthews Drive,

New Jersey, a residential cul-de-sac which borders directly on the 200 acre tract which the plaintiff, LEONARD DOBBS, is seeking to have rezoned to a commercial retail shopping mall. The defendants reside in single family homes within 200 feet of the tract which is the subject of this action. Therefore, as residents within 200 feet, they have various statutory rights under the Municipal Land Use Law. One of these rights is the right to petition the governing body, pursuant to N.J.S.A. 40:55D-63, to attempt to prevent the effectiveness of any proposed amendment of the zoning ordinance unless there is a favorable vote of two thirds of all of the members of the governing body. As property owners within 200 feet they are also entitled to notice, by personal service or certified mail, of any public hearing regarding applications for development, including use variances, major site plans and subdivisions. See N.J.S.A. 40:55D-12. As residents of Bedminster Township, the defendants also have the right under various statutes and the constitution to an opportunity to be heard at public hearings of the governing bodies and various administrative agencies of the Township.

The plaintiff, LEONARD DOBBS, is a major developer of shopping centers and regional commercial malls. In instituting this suit, the plaintiff filed a complaint seeking relief in the form of a declaratory judgment that the entire zoning ordinance of Bedminster is invalid. The complaint also seeks a court order

compelling the rezoning of the 200 acre tract of property, for which the plaintiff is allegedly a contract purchaser, to a regional retail and commercial development district." The tract which the plaintiff is seeking to have rezoned is located directly adjacent to Matthews Drive. The regional shopping mall which the plaintiff is proposing would border on Route 206 and River Road, a narrow country road which leads to Matthews Drive.

The construction of the shopping mall on a tract located directly adjacent to the defendants property will have a devastating negative impact on the economic value of the property of the defendants. Indeed, the mere pendency of this law suit is already having a severely negative effect upon the economic value and marketability of the residences along Matthews Drive. The development of a regional shopping mall at this location would be totally incompatible with existing residential uses in the areas surrounding the tract. Such a mall would have extreme consequences in terms of visual impact, traffic, air, water and noise pollution, lighting, glare, crime and other negative impacts. Such a development would severely and substantially impair the zone plan and the zoning ordinance of the Township.

The plaintiff filed the complaint on November 5, 1980. Prior to the filing of the complaint, the plaintiff never made any request to the governing body, the planning board, the zoning board of adjustment or any government officials concerning his request for permission to construct a regional shopping mall.

Since the plaintiff never attempted to make any request for administrative relief prior to the filing of this law suit, the defendants did not receive any notice of any public hearings and did not have any opportunity to be heard pursuant to various New Jersey Statutes. Furthermore, since there was no official request to the planning board or governing body for rezoning, the defendants never had an opportunity to petition the governing body pursuant to N.J.S.A. 40:55D-63.

It is clear that the plaintiff has been attempting to circumvent all local public processes and procedures. Apparently, the plaintiff is attempting to expedite his attempt to obtain a rezoning in order to be the first regional shopping mall in Somerset County to obtain all of its approvals. Indeed, the other major regional retail shopping mall, the Bridgewater Commons, is currently in the approval process in Bridgewater Township. The Bridgewater Commons will be located less than 10 miles south of the property which the plaintiff is seeking to have rezoned.

Plaintiff invokes the Municipal Land Use Law and a perversion of the Mt. Laurel doctrine to claim that Bedminster, as a developing municipality, has an obligation to zone for a "fair share" of the regional demand for commercial uses, and for regional shopping centers in particular. This proposition is totally unsupported by the case law involving low and moderate income housing and it is also totally unsupported by any land use

planning principles. Indeed, it is clear that the Supreme Court, in Mt. Laurel, imposed a stricter standard for constitutional review of the zoning and land use ordinances of developing municipalities, but only with respect to the extent that the ordinances provide for low and moderate income housing. The courts have never applied the same principles and standards to regional shopping malls or other commercial centers. Such an extension of the Mt. Laurel doctrine would be ludicrous and totally illogical since the logical extension of the plaintiff's theory would be that every developing municipality must have a regional shopping mall.

Furthermore, it is also clear that the plaintiff will be unable to meet the traditional test of establishing that the zoning of his property is arbitrary, capricious and unreasonable. The defendants will establish that the plaintiff's land can be utilized for residential uses on three acres. The defendants themselves reside in homes on lots larger than three acres in the same zoning district. In addition, the defendants are utilizing septic systems which were economically feasible. Similarly, contrary to the arguments of the plaintiff, the plaintiff's land could also reasonably be used for residences on three acre lots with septic systems.

Based on the above, the defendant, residents of Matthews Drive, raise the following legal contentions; 1) the zoning ordinance of the Township of Bedminster, and in particular

the provisions of the R-3% zone are not arbitrary, capricious or unreasonable; 2) the plaintiff has failed to exhaust the administrative remedies available to him as required under R.4:69-4 and is barred from bringing this action; 3) the complaint was not filed within 45 days of the adoption of the Revised Land Development Ordinance, and this action is therefore barred; 4) the plaintiff's request for relief in the form of a court order rezoning the tract in question to retail commercial is barred since such an order would constitute state action which would deprive the defendants of their liberty and property interests without due process of law; 5) the property which the plaintiff is seeking to have rezoned can reasonably be used for its zoned purpose; and 6) developing municipalities do not have an obligation to provide the opportunity through their zoning and land use ordinances for regional commercial centers.

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.

FACTUAL AND LEGAL CONTENTIONS
OF
DEFENDANT
TOWNSHIP OF BEDMINSTER

The plaintiff, Leonard Dobbs, is a major developer of shopping centers and regional commercial malls. He has developed, inter alia, the Short Hills Mall in Essex County, New Jersey, which is in the process of undergoing an expansion from a one level open mall to a multi-level enclosed regional shopping mall.

The plaintiff Leonard Dobbs was an applicant to the Bridgewater Redevelopment Authority to be the developer for the regional shopping center and mall at the Bridgewater Commons, located in the "Golden Triangle" in Bridgewater, New Jersey. Plaintiff failed to get the requisite approvals to become the developer. The development approval was in fact awarded to Ernest Hahn, from California.

Frustrated in his attempts to become the developer at Bridgewater Commons, plaintiff has embarked on a two-pronged attack: First, defendant has sought to challenge the award of the developer franchise by Bridgewater to Hahn by engaging in and backing a series of lawsuits against the Bridgewater Redevelopment Authority. Defendant believes plaintiff may be financing said lawsuits as well. Secondly, plaintiff has brought this action in Bedminster Township with respect to land on which he has an option and on which he seeks to have this Court order Bedminster to allow plaintiff the regional shopping mall and shopping center which he was denied in Bridgewater.

Plaintiff has further attempted to sabotage the development at Bridgewater Commons and the award of the developer franchise to Hahn by informing the public and the relevant market in which he operates (large commercial chain stores such as Sears, J.C. Penney, Lord & Taylor, Bloomingdale's, Bonwit Teller, and other quality merchandisers) to the effect that plaintiff will be the first developer to receive final approval for a regional shopping mall in Somerset County. Defendant further believes plaintiff has encouraged retailers not to proceed with the development plans at the Bridgewater Commons in Bridgewater, New Jersey.

Defendant contends that this action against Bedminster Township is a fraud upon the courts and the citizens of the

state of New Jersey, in that its real purpose is to delay and impede progress of the Bridgewater Commons regional shopping mall development by anyone other than the plaintiff, so that plaintiff can undertake that development, when his suit in Bedminster proves unsuccessful.

Plaintiff invokes the Municipal Land Use Law and a perversion of the Mt. Laurel doctrine to claim in effect that every municipality has a duty to zone for a "fair share" of the regional demand for commercial uses, and for regional shopping centers in particular.

Specifically, plaintiff alleges in paragraph six of the Second Count that the Bedminster land development regulations

". . . have further failed to provide sufficient space in appropriate locations for a variety of, among other things, commercial and retail districts in order to meet the needs of defendant's present and prospective population, of the residents of the region in which defendant township is located, and of the citizens of the State as a whole."

This language, taken as it is from the Mt. Laurel decision, attempts to use a doctrine of constitutional law announced by the New Jersey Supreme Court to aid citizens who need housing to aid his quest for the developer's bonanza of a regional shopping mall.

In fact, plaintiff's proposed development will exacerbate the problem of balancing jobs and housing, since plaintiff's development will create 3,000 additional primary jobs without any provision for housing.

Defendant contends that plaintiff is wrong in the facts and the law. Sound and generally accepted principles of land use planning, the New Jersey Municipal Land Use Law and public policy decisions by the State of New Jersey, the federal government, and regional planning bodies (such as the Tri-State Regional Planning Commission, the Regional Planning Association, The Somerset County Planning Board, the Governor's Cabinet Development Committee, and others) all compel the following conclusions:

(1) Planning and public policy, and this Court, should not encourage further sprawl development by regional shopping malls in the exurban areas because of the inherent energy inefficiency of such sprawl development and because it violates the urban imperative of encouraging commercial and retail use to be developed in our already urbanized areas.

(2) The scarcity of public funds for subsidies or encouragement of further sprawl development in the ex-urban areas mandates against encouragement, subsidy or approval of further regional shopping malls in ex-urban areas in general, and Somerset County in particular.

(3) That if any shopping mall should be built in the ex-urban area of Somerset County, then the location of the Golden Triangle in Bridgewater, just 5 miles to the South, is by far the best place for regional mall development such as that proposed by the plaintiff. The Golden Triangle has been targeted by Bridgewater authorities and the State of New Jersey and by regional planning bodies as an appropriate center for regional mall commercial development for at least 25 years, and is particularly well-suited to that location because of the congruence of Rte. 22, I-287, US 202, US 206, other roads, existing rail networks, and the existing development pattern of industry and residences in Somerset County and the surrounding area.

(4) The need for a regional shopping mall in Somerset County is being met by the development of Bridgewater Commons approximately 5 miles south of Bedminster. Bridgewater Commons has received the approval of all State, county and local authorities, including the Governor's Cabinet Development Committee. The Governor's Committee not only approved the Bridgewater Commons, but explicitly recommended that the Somerset County Planning Board affirmatively discourage any other municipalities in Somerset County from undertaking similar developments. The Bridgewater Commons is expected to open in 1983 and groundbreaking is expected in the Spring of 1981.

(5) Defendant contends that with the Bridgewater Commons regional shopping mall progressing as planned, there will be no need for, and indeed there will be a duplication of commercial facilities by, plaintiff's proposed development in Bedminster Township. See supra.

(6) Bedminster Township has made more than adequate provision in its Revised Land Development Ordinance for retail and other commercial services for the present and future residents in Bedminster Township and the surrounding areas, pursuant to the rezoning and replanning process ordered by Judge Leahy in the Allan-Deane litigation and supervised by the court-ordered Planning Master, George Raymond, which resulted in the present land development regulations now in effect.

With respect to the property in Bedminster Township, defendant contends that the land allegedly optioned by plaintiff

is zoned appropriately for residential uses and can be economically developed with such zoning. The development of plaintiff's property for R-3 residential use is fully consistent with principles of sound planning and marketability.

Plaintiff's land is located close to the flood plain and water course of the North Branch of the Raritan River and is particularly inappropriate for the proposed commercial development because of ecological constraints and problems, including water quality, non-point pollution, sedimentation and erosion during construction and thereafter, and the like. The zoning of plaintiff's property for residential purposes on large lots is necessary to protect the critical water resources of the north branch of the Raritan River, which is a major source of water for northern New Jersey.

Defendant contends that because of the transportation problems, and specifically the lack of access ramps to the interstate highways I-80 and I-287 in Bedminster Township, and the traffic congestion problem currently existing and arising in the future because of future development already planned in the 202-206 Corridor in Bedminster Township, plaintiff's optioned land is particularly inappropriate for the proposed development.

Defendant contends that the Township of Bedminster has a limited sewerage capacity both now and in the future, and the development of future sewer facilities is limited by the §201 Facilities Plan approved by the Somerset County Planning Board under the applicable State and Federal Clean Water Acts. Present sewerage capacity, and that which is planned for in the future, is necessary to serve the residential development and supporting commercial services necessary to carry out Judge Leahy's orders and judgments in the Allan-Deane litigation, and diversion of any part of the sewerage capacity to support plaintiff's proposed development will operate to the detriment of and render illusory the rezoning ordered by Judge Leahy. Any attempt by plaintiff to build an advanced wastewater treatment plant to discharge into the Raritan River will be barred because the assimilative capacity of the stream will have been exceeded and the beneficial uses of the stream will have been degraded and stressed, all in violation of applicable New Jersey and Federal Clean Water Acts and water quality legislation and regulations, by the present and proposed sewer facilities in Bedminster, and by the other discharge above and below Bedminster.

Plaintiff never brought his proposal to the governing body of the Township of Bedminster, but instead waited for the replanning and rezoning process to end and commenced this action. Plaintiff has been utilizing the pendency of the action

to prepare his expert reports by which he will purport to justify the rezoning of his land for regional shopping mall development, a process which is condemned by the letter and the spirit of the Municipal Land Use Law and which has deprived the Township of Bedminster, in which sole land use planning jurisdiction is constitutionally vested by the New Jersey Constitution, from the opportunity to exercise its jurisdiction and power over land use planning. Plaintiff has therefore failed to exhaust his legislative and administrative remedies open to him, and plaintiff's complaint should be dismissed.

In addition, defendant raises the following specific defenses which as a matter of law, bar the plaintiff's claim:

Under the orders and judgments issued by the Superior Court, Law Division, Somerset County, Judge B. Thomas Leahy, in the matter of Allan-Deane Corporation v. Township of Bedminster, supra, the Revised Land Development Ordinance enacted by the Township was found to be fully consistent with the requirements of all state and regional planning bodies, with sound planning principles and with the constitutional requirements outlined in Mt. Laurel and Oakwood at Madison; plaintiff's cases of action are, therefore, barred by the doctrines of res judicata and collateral estoppel.

Plaintiff has failed to seek administrative relief before any authorized body in Bedminster Township; this failure to exhaust administrative remedies bars the present lawsuit.

Plaintiff has failed to file his lawsuit within 45 days of the adoption of the Ordinance, as required by R.4:69-6 and is therefore barred for being out of time.

McCARTER & ENGLISH
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(201) 622-4444

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

LEONARD DOBBS, :
 :
 Plaintiff, :
 : Civil Action
 vs. :
 : PRE-TRIAL MEMORANDUM ON BEHALF
 TOWNSHIP OF BEDMINSTER, : OF DEFENDANT
 a municipal corporation, : BEDMINSTER TOWNSHIP
 :
 Defendant. :
 :

1. NATURE OF ACTION: Plaintiff, Leonard Dobbs, is the unsuccessful, No. 2 bidder to be the developer of the regional mall to be located in the Bridgewater Commons in the "Golden Triangle" in Bridgewater, New Jersey. Having failed to receive the franchise in Bridgewater, he has obtained land in Bedminster on which he now seeks court approval for his regional mall. Plaintiff invokes constitutional law doctrines (from the Mt. Laurel cases) to claim that defendant Bedminster Township has an affirmative obligation to zone his optioned land for a regional shopping mall. Plaintiff also claims that the zoning of the property on which he proposes to develop the shopping center is arbitrary and capricious and represents an unconstitutional taking because it is not zoned for the mall he desires. Defendant asserts various affirmative defenses including, that plaintiff's causes of action are barred by the doctrine of res judicata and collateral estoppel by virtue of the orders and judgments in Allan-Deane Corporation vs. Township of Bedminster, Docket Nos. L-36896-70PW and L-23061-71PW; that plaintiff has failed to exhaust his administrative remedies; and that the complaint was not filed within 45 days of the adoption of the Revised Land Development Ordinance as required by court rule.

2. ADMISSIONS OR STIPULATIONS: None as yet. Plaintiff has refused to provide documentation as to his optionee status with respect to the subject premises. Defendant therefore cannot even stipulate plaintiff's standing to bring suit.

3. FACTUAL AND LEGAL CONTENTIONS OF THE PLAINTIFF: See attached.

4. FACTUAL AND LEGAL CONTENTIONS OF THE DEFENDANT: See attached.

5. CLAIMS AS TO DAMAGES AND THE EXTENT OF INJURY: Plaintiff's claims as to damages have not been detailed. Plaintiff seeks only a rezoning of property on which he allegedly has an option.

6. AMENDMENTS TO THE PLEADINGS: None.

7. SPECIFICATION OF THE ISSUES TO BE DETERMINED:

(a) The res judicata and collateral estoppel effect of the ruling, findings, orders and judgment of Judge Leahy in the Allan-Deane suit. (b) Whether the policy of the State of New Jersey and the federal government is such as to discourage, and indeed to prohibit, further sprawl development by the proliferation of ex-urban shopping malls such as that proposed by plaintiff. (c) The extent of the municipal obligation, if any, to provide zoning for regional shopping malls under the Municipal Land Use Law. (d) The municipal obligation, if any, to provide zoning for a regional shopping mall under the State constitutional obligations outlined in Mt. Laurel and Oakwood at Madison. (e) Whether the zoning of plaintiff's property for residential use is arbitrary and capricious and amounts to a taking in violation of due process.

8. LEGAL ISSUES ABANDONED: None.

9. EXHIBITS MARKED IN EVIDENCE BY CONSENT: To be prepared after and in accordance with the pretrial order and as discovery proceeds.

10. EXPERT WITNESSES: Defendant requests that experts retained by a party be limited to those identified in interrogatories and whose qualifications and reports have been exchanged. See No. 18, Discovery, infra. Virtually all witnesses will be experts, including many employed by the State of New Jersey and the federal government and the regional planning bodies, such as Somerset County Planning Board, Tri-State Regional Planning Commission, etc., as to which there should be no limit.

11. BRIEFS: As directed by the Court.

12. ORDER OF OPENING AND CLOSING: Usual order.

13. OTHER MATTERS WHICH HAVE BEEN AGREED UPON: None.
14. TRIAL COUNSEL: Alfred L. Ferguson.
15. ESTIMATED LENGTH OF THE TRIAL: Three weeks.
16. TRIAL DATE:
17. DATE THE ATTORNEY FOR THE PARTIES CONFERRED AND MATTERS THEN AGREED UPON: None.

18. PRETRIAL DISCOVERY: The Answer was filed and issue joined on February 11, 1981. Defendant served Interrogatories on February 19, 1981 and answers are due from plaintiff on April 22, 1981.

Plaintiff has refused to supply defendant with a copy of his contract to purchase, referred to in Paragraph 1 of the First Count, pursuant to R.4:18-2. Defendant requests an order directing plaintiff to do so forthwith.

Plaintiff served Interrogatories on defendant on March 12, 1981. Answers will be due on May 12, 1981.

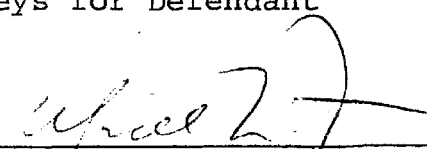
No other discovery has occurred.

19. PARTIES WHICH HAVE NOT BEEN SERVED: None

20. OTHER MATTERS: Defendant reserves its right to make the following motions prior to or at the trial: (a) Dismissal of plaintiff's suit on the grounds of res judicata and collateral estoppel. (b) Dismissal of plaintiff's suit for failure to exhaust administrative remedies. (c) Dismissal of plaintiff's suit as being filed out of time; (d) Summary judgment once discovery is completed.

Respectfully submitted,

McCARTER & ENGLISH
Attorneys for Defendant

By: 
Alfred L. Ferguson
A Member of the Firm

Dated: March 17, 1981

WINNE, BANTA & RIZZI
25 East Salem Street
Hackensack, New Jersey 07602
(201) 487-3800
Attorneys for Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET COUNTY

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

DOCKET NO. L-12502-80

CIVIL ACTION

PRETRIAL MEMORANDUM
OF PLAINTIFF

1. NATURE OF ACTION: Action to compel rezoning of a tract of land as to which plaintiff is a contract purchaser.
2. ADMISSIONS AND STIPULATIONS: None.
- 3-4. FACTUAL AND LEGAL CONTENTIONS: Annexed hereto.
5. DAMAGE AND INJURY CLAIMS: Plaintiff seeks, among other things, a declaration of the invalidity of defendant's Zoning Ordinance insofar as it applies to plaintiff and rezoning of plaintiff's tract to a regional retail and development district.
6. AMENDMENTS: None.
7. LEGAL ISSUES AND EVIDENCE PROBLEMS: Arbitrariness of zoning ordinance; invalidity of master plan; compliance with the Municipal Land Use Law; deprivation of property without compensation or due process; de facto confiscation.

8. LEGAL ISSUES ABANDONED: None.
9. EXHIBITS: None marked by consent at this time.
10. EXPERT WITNESSES: No limit.
11. BRIEFS: As directed by the Court:
12. ORDER OF OPENING AND CLOSING. Usual.
13. ANY OTHER MATTERS AGREED UPON: None.
14. TRIAL COUNSEL: Joseph L. Basralian, Esq. (David Sive, Esq., Co-counsel)
15. ESTIMATED LENGTH OF TRIAL: 10-15 days.
16. WEEKLY CALL OR TRIAL DATE: As set by the Court.
17. ATTORNEYS FOR PARTIES CONFERRED ON various occasions concerning this matter.

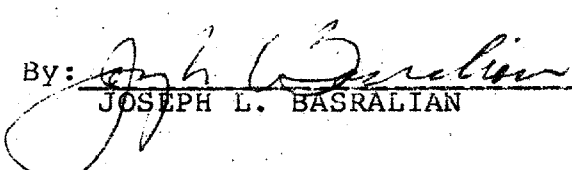
MATTERS THEN AGREED UPON: None.

18. IT IS HEREBY CERTIFIED THAT ALL PRETRIAL DISCOVERY HAS BEEN COMPLETED subject to the following: The parties have recently exchanged Interrogatories, which are presently outstanding.

19. PARTIES WHO HAVE NOT BEEN SERVED: None.

PARTIES WHO HAVE DEFAULTED: None.

WINNE, BANTA & RIZZI
Attorneys for Plaintiff

By: 
JOSEPH L. BASRALIAN

Dated: March 0, 1981.