

RULS - AD - 1981 - 190

5/6/81

Answer - Defendant Intervenes

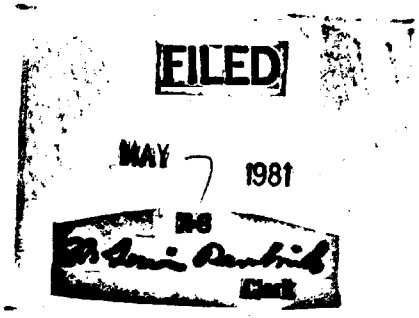
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SOMERSET COUNTY
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LEONARD DOBBS,)
)
Plaintiff,)
)
vs.)
)
TOWNSHIP OF BEDMINSTER,)
a Municipal Corporation,)
)
Defendant,)
)
ROBERT R. HENDERSON, DIANE)
M. HENDERSON and HENRY E.)
ENGELBRECHT,)
)
Defendant-Interveners)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

ANSWER

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

FIRST COUNT

1. Defendant-Interveners adopt the answers of the defendant as to Paragraphs 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13,

14, 15 and 16 of the First Count of the Complaint.

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

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

SECOND COUNT

1. Defendant-Intervenors repeat their answers to the First Count.

2. Defendant-Intervenors adopt the answers of the defendant as to Paragraphs 2 through 11 of the Second Count.

THIRD COUNT

1. Defendant-Interveners repeat their answers to the First and Second Counts.

2. Defendant-Interveners adopt the answer of the defendant as to Paragraph 2 of the Third Count.

3. Defendant-Interveners deny the allegations of Paragraph 3, and further add that the current zoning of the tract of land which the plaintiff is seeking to have rezoned is totally inappropriate for a regional shopping center and the current R-3% is reasonable in all respects.

FOURTH COUNT

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

2. Defendant-Interveners admit that the land in question is zoned for residential purposes and point out that the adjoining lots owned by the defendant-interveners are located in the same residential zone and are currently being utilized for residential purposes as provided in the zoning ordinance of the Township of Bedminster.

3. Defendant-Interveners adopt the answer of the defendant to Paragraph 3 of the Fourth Count but add that the tract of land in question is also in the immediate vicinity of, in fact it is adjacent to, the residential uses of the defendant-interveners.

4. The allegations of Paragraph 4 are denied.

5. The allegations of Paragraph 5 are denied.

FIFTH COUNT

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

2. The allegations of Paragraph 2 are denied. Residential development in the tract of land which is the subject of this action is economically practical and reasonable, especially considering the fact that lots located directly adjacent to the tract in question are currently being used for residential purposes. The fact that a portion of the tract is near Route 206 does not render the tract unusable for residential purposes.

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

4. The allegations of Paragraph 4 are denied.

5. The allegations of Paragraph 5 are denied.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

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

SECOND SEPARATE DEFENSE

The complaint was not filed within 45 days of

the adoption of the Revised Land Development Ordinance, and this action is therefore barred.

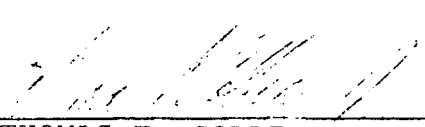
THIRD SEPARATE DEFENSE

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

DEMAND FOR DOCUMENT REFERRED TO IN PLEADING

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


VOGEL AND CHAIT
Attorneys for Defendant-Interveners

By 

THOMAS F. COLLINS, JR.

I hereby certify that a copy of the within answer was served and filed within the time prescribed by the Rules of the Court.

Dated: May 6, 1981

By 

THOMAS F. COLLINS, JR.