

RULS - AD - 1981 - 200

5/11/81

Brief and Appendix in Support of Dobb's Motion  
for Leave to Appeal.

Pgs - 167

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RULS - AD - 1981 - 200

Ms. Elizabeth McLaughlin  
Clerk of the Appellate Division  
State House  
Trenton, New Jersey 08625

Re: Dobbs vs. Town of Bedminster,  
Law Division Docket No. L-12502-80

Dear Ms. McLaughlin:

Enclosed for filing please find original and four copies of Motion for Leave to Appeal, and Brief & Appendix in support thereof. Please charge the fee to our account.

By copy of this letter, I am informing both the Court below and all counsel of the within application.

Very truly yours,

Raymond R. Wiss

RRW:ng  
Enc.

cc: \*McCarter & English, Esqs. (2 copies)  
Brener, Wallack, Rosner & Hill, Esqs. (2 copies)  
Vogel & Chait, Esqs. (2 copies)  
Honorable Michael R. Imbriani  
Honorable Wilfred P. Diana  
Clerk of the Superior Court, Law Division:  
(Please charge the fee to our account).

FILED  
MAY 13 3 40 PM 1981  
SOMERSET COUNTY  
R. OLSON, CLERK

5-7364

Superior Court of New Jersey

APPELLATE DIVISION

DOCKET NO.  
(LAW DIVISION DOCKET NO. L-12502-80)

CIVIL ACTION

LEONARD DOBBS,  
  
Plaintiff-Appellant  
  
vs.  
  
TOWNSHIP OF BEDMINSTER, a  
municipal corporation,  
  
Defendant.

ON MOTION FOR LEAVE TO APPEAL FROM  
INTERLOCUTORY ORDER OF SUPERIOR  
COURT OF NEW JERSEY, LAW DIVISION,  
SOMERSET COUNTY

SAT BELOW  
HON. MICHAEL R. IMBRIANI, J. S. C.

BRIEF IN SUPPORT OF  
MOTION FOR LEAVE TO APPEAL AND MOTION TO CONSOLIDATE

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TO THE PRESIDING JUDGE AND JUDGES OF SUCH  
PART OF THE SUPERIOR COURT OF NEW JERSEY,  
APPELLATE DIVISION, AS THE WITHIN MATTER  
MAY BE ASSIGNED FOR DETERMINATION.

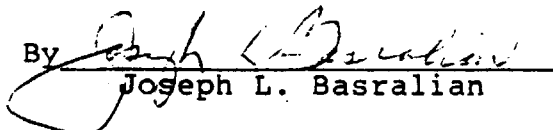
PLEASE TAKE NOTICE, that the plaintiff, Leonard Dobbs,  
by way of Motion for Leave to Appeal, pursuant to R. 2:2-4,  
respectfully requests that the Appellate Division consider  
the following issues:

- a) The propriety of the Order of the Superior Court of New Jersey, Law Division, Somerset County, entered on April 27, 1981 permitting intervention by Robert Henderson, Diane Henderson and Henry E. Engelbrecht in the within matter; and
- b) The consolidation of the issues raised by the within motion with those raised in an appeal presently pending before the Appellate Division, Docket No. A-2900-80T1, and arising out of the instant case, by which a certain motion to intervene filed by the Hills Development Company was denied.

Plaintiff respectfully relies upon the legal argument hereinafter set forth in support of this motion.

Respectfully submitted,

WINNE, BANTA & RIZZI  
Attorneys for Plaintiff  
Leonard Dobbs

By   
Joseph L. Basralian

PROCEDURAL HISTORY

This matter comes before the Court by way of Motion for Leave to Appeal filed on behalf of the plaintiff, Leonard Dobbs.

The within action was instituted by Complaint in Lieu of Prerogative Writ challenging the validity of the zoning ordinance of the defendant, Township of Bedminster, generally, and as applied to property as to which plaintiff is the contract purchaser. (Pa1). An Answer was filed by the defendant, Township (Pa14), and a Motion for Intervention was subsequently filed by Hills Development Company (Pa21) as successor to a corporation (Allen-Deane) which had succeeded in a prior challenge to the zoning ordinance of the defendant-municipality. Hills' Motion was denied by the court by Order dated March 2, 1981. (Pa 43). Hills has appealed to this court from the above determination. (Pa45).

On March 9, 1981, one day prior to a scheduled pre-trial conference, a Motion for intervention, was filed on behalf of Robert Henderson, Diane Henderson, Attilio Pillon and Henry E. Engelbrecht. (Pa49). This Motion was heard by the Hon. Michael R. Imbriani on April 3, 1981 (Pa83), and intervention was granted as to the defendant-intervenors, Robert Henderson, Diane Henderson and Henry E. Engelbrecht, by Order dated April 27, 1981. (Pa120). That same Order denied intervention as to Attilio Pillon.

This application has been filed seeking (i) a review of

the Order permitting intervention in the litigation presently pending below, and (ii) consolidation of this action with the matter presently pending before the Appellate Division and bearing Docket No. A-2900-80T1, the appeal of Hills Development Company from the Order denying its Motion for Intervention in the within action.

STATEMENT OF FACTS

The issues before the Court arise in the context of a prerogative writ action instituted by the plaintiff, Leonard Dobbs, challenging the validity of the zoning ordinance of the Township of Bedminster, both generally, and as applied to a certain tract of land as to which plaintiff is the contract purchaser. (Pa1). In this action, plaintiff seeks to have the property rezoned as a regional and commercial development District. The relief sought sub judice is premised upon numerous violations by the defendant municipality of the requirements of the Municipal Land Use Law, N.J.S. 40:55D-2(a), violations manifested principally in defendant's Master Plan and zoning ordinance.

Within the framework of this litigation, and as set forth in the Statement of Procedural History, Hills Development Company sought permission to intervene before the trial court. (Pa21). Hills is the successor to a certain corporation, Allen-Deane, which has successfully challenged the zoning scheme of the Township of Bedminster in a prior action. See, Allan-Deane Corporation et al. v. Township of Bedminster et al., 121 N.J. Super. 288 (App. Div. 1973), cause remanded, 63 N.J., 591 (1973).

The application by Hills for intervention was denied (Pa43), and an appeal from such denial is presently pending before the Appellate Division. (Pa45). As developed infra, it is submitted that consolidation of the issues raised by the within application with those raised on the appeal filed by Hills, will

promote justice, expediency and economy of litigation, and is consistent with the underlying philosophy of the "entire controversy" or "one action" rule. See. R. 4:27-1.

Regarding the intervention of Robert Henderson, Diane Henderson and Henry E. Engelbrecht, it is noted that such parties are landowners residing within two-hundred (200) feet of the property under contract to plaintiff. (Pa57; 64; 76). While the factual circumstances of these intervenors are distinguishable from that of Hills, it is submitted that both applications involve essentially common issues of law and fact which warrant resolution within the context of a single appellate proceeding.

POINT I

APPLICANTS HAVE FAILED TO MEET THE  
MINIMUM PREREQUISITES FOR INTERVEN-  
TION AS OF RIGHT PURSUANT TO R.  
4:33-1. ACCORDINGLY, THE DECISION  
OF THE TRIAL COURT GRANTING INTER-  
VENTION MUST BE REVERSED.

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.

The ability of an applicant to fulfill the above prerequisites for intervention is the standard by which any motion for intervention must be measured. It is submitted however, that the court below failed to apply this test and mistakenly premised its ruling upon a premature judgment on the merits of the exhaustion issue and upon the apparent absence of prejudice to plaintiff.<sup>1</sup> As detailed below, applicants

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While plaintiff acknowledges that the exhaustion issue will require resolution at some future point within the context of the pending litigation, it submits that the trial judge permitted considerations applicable to the question of exhaustion to unduly influence his decision on the intervention motion. On the merits of the exhaustion question, plaintiff refers to the opinion of our Supreme Court in Avant v. Clifford, 67 N.J. 496 (1975), which firmly establishes, as a minimum requirement of due process of law, plaintiff's right, in an administrative context, to a hearing before an "impartial and detached" tribunal. 67 N.J. at 523. This holding was premised, in large part, upon the prior decision of the United States' Supreme Court in Morrissey v. Brewer, 408 U.S. 771, 92 S.Ct. 2593, 33 L. Ed. 2d 484 (1972), which affirms the fact that fundamental constitutional rights (such as the property rights here asserted by plaintiff) may not be cast aside and disregarded merely because of the availability of appellate review which may ultimately provide redress for the prejudice and damage occasioned in the first instance.

In this regard, our appellate courts in Ferrari v. Melleby, 134 N.J. Super 583 (App. Div. 1975) and Nero v. Bd. of Chosen Freeholders, Camden Cty., 144 N.J. Super. 313 (App. Div. 1976), have reasoned that an exhaustion of all administrative or statutory remedies is not a precondition to review in the first instance of the impartiality and fairness of the administrative tribunal.

"...we have determined that justice and administrative due process mandate the granting of relief before the hearing is held so as to avoid

fail to meet the "interest" requirement of the Rule, and, in any case, any interest which they may claim is being adequately represented by the defendant municipality.

Plaintiff submits that the court below was unduly concerned with these tangential questions and, as a result, failed to adequately address the requirements of R. 4:33-1. As argued infra, the thrust of applicants' arguments, as taken from their affidavits in support of the Motion to Intervene (Pa57; 64; 76), is the failure of plaintiff to exhaust administrative remedies, a position which is fully and adequately represented by the Township of Bedminster in this action.

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Footnote continued from previous page

the needless expenditure of everyone's time and expense in holding the hearing and, if found guilty, an appeal to the Civil Service Commission and, thereafter, an appeal to the courts." 134 N.J. Super. at 586-587.

While the context of the above decision was different than at bar, it is urged that the "rule of law" is equally applicable, and that plaintiff was entitled to institute the within action in the Superior Court in light of the conduct of the defendant municipality to date. [Reference is made to section B-2 of the Master Plan of the Township of Bedminster (Pa140) where the Town has specifically rejected the type of use being advanced by plaintiff as being "incomptable" with local "philosophies." Accordingly, any attempt by plaintiff to seek redress through local administrative procedures would result in a "needless expenditure of everyone's time and expense" within the meaning of Ferrari v. Melleby.]

More importantly, however, these considerations are properly reserved for a motion to dismiss the complaint or a motion to strike separate defenses within the framework of the pending action, and should not be permitted to "cloud" a resolution of the intervention issue.



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 concerns of adjacent property owners, but those 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 the Court's decision upon adjacent property owners does not constitute an "interest" within the meaning of R.4:33-1. Applicants have no claim and can 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. 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 to entitle them to become defendants in this action. Such logic would "open the floodgates" and permit residents of a municipality to become parties to any litigation in which a zoning ordinance was challenged. See, Fred Harvey, Inc. v. Mooney, 526 F.2d 608 (7th Cir. 1975), where, in the context of a diversity suit brought by a restaurant lessee seeking the invalidation of a petition filed by local residents to prohibit the lessee from selling alcoholic beverages, the court held that 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, previously discussed. Vicendese v. J - Fat, Inc., 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 permit intervention of these applicants under R.4:33-1. This is an interest which the Township of Bedminster is presently representing in this litigation, and has represented throughout the municipal (administrative) hearings below.

A classic situation in which Courts have determined that the interest of an applicant for intervention was adequately represented by existing parties is the case of an existing party's (and especially a governmental body's) obligation under law to represent the interests of a prospective intervenor. See 7A Wright & Miller, Federal Practice and Procedure, §1909 at p. 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 airline 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."

Likewise, such showing has neither been made nor advanced by applicants in the matter sub judice. Similarly, 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 Alfred v. Frizzell, 536 F. 2d 1332, 1334. Wright and Miller, Section 1905."

A review of the stenographic transcript of oral argument below (Pa83) reveals that the essence of applicants' positions at bar is the alleged failure of plaintiff to exhaust administrative remedies. This fact is also evidenced by the proposed form of Answer (Pa52) submitted by applicants.

While the exhaustion issue will no doubt be addressed in the context of the subject litigation (see argument at Pb7, F.N. 1), this question is raised by the defendant, Township of Bedminster, in both its Answer (Pa24) and its Pre-Trial Memorandum (Pa122), and there is no indication or question that defendant-municipality's able counsel will thoroughly address this issue. The mere existence of this issue does not present a sufficient basis for permitting intervention, especially where, as here, the rights of all interested persons are adequately represented by existing parties to the litigation.

As noted by Judge Diana in denying the Motion to Intervene filed by the Hills Development Company,

"I'm not going to allow any intervention. It further complicates what is already a complicated case. I will permit Hills Development to file an amicus curiae brief so that if there are issues that they want to raise, legal questions that they want to present to the Court, they may do so. But I am not adding that party. I see no basis to do it in this case. It suggests that the Township can't protect its own ordinance. It's not true. You may not have all the greatest confidence in them, but the Township's duty is to protect its ordinances in the litigation,

and I expect they intend to do so. They have come a long way, and I see no basis for intervention, putting another party in the case, further experts, further discovery. The Plaintiff's action to protect its own land, not your land, not Hill's land, its own land. Defendant's Township's concern is to protect the zoning ordinance as it has zoned the Plaintiff's land. That's what the case is about, and that's all I'm going to hear when this case gets reached." (Pa37-10 to 38-6).

For all of the foregoing reasons, applicants should not be designated as defendants in the pending litigation. If applicants have anything to contribute (other than protection of their self-interest), then their 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 status."

This was the approach taken by Judge Diana with respect to the similar<sup>2</sup> and more timely application to intervene by the Hills Development Company earlier this year.

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<sup>2</sup> The only apparent distinction between the papers filed by the present applicants for intervention and the papers filed by The Hills Development Company 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 withing 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 appliation 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 are fully represented by defendant, Township of Bedminster.

POINT II

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

Alternatively, applicants had sought 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 defendant municipality; it seeks no relief against any private parties. R. 4:33-2 is directed principally to the situation of 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 the applicants can be fairly characterized as a desire to lend support to the legal defense 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 of 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.

POINT III

THE ISSUES RAISED BY THE WITHIN MOTION FOR LEAVE TO APPEAL SHOULD BE CONSOLIDATED WITH THOSE BEFORE THE COURT IN A RELATED APPEAL FILED BY AN ADDITIONAL APPLICANT FOR INTERVENTION.

By Notice of Appeal dated March 11, 1981, The Hills Development Company has appealed to the Superior Court of New Jersey, Appellate Division, from the March 2, 1981 ruling of the Law Division, denying Hills the right to intervene in the instant litigation. (Pa45). This appeal has been assigned appellate docket number, A-2900-80T1.

While our Rules contain no express provision relating to the consolidation of matters on appeal, it is submitted that the philosophy underlying R. 4:38-1 (a) - consolidation of actions in the Superior Court - and that of R. 4:27-1, the "one action rule," warrants the granting of the Motion to consolidate at bar. Specifically, the applicants for intervention have each raised issues concerning their entitlement to participate as defendants in the pending litigation. While R. 4:33-1 requires an independent evaluation of the rights of each applicant, it is submitted that there are several overriding issues which predominate as to both applications.

In addressing the intervention question, this Court will necessarily decide not only the right of the several applicants to intervene, but will shape the nature of the proceedings

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Motion of the plaintiff, Leonard Dobbs, for leave to appeal from the Order permitting intervention as to Robert R. Henderson, Diane M. Henderson and Henry E. Engelbrecht, should be granted; and that, the within matter should be consolidated with the appeal of the Hills Development Company, Docket No. A-2900-80T1.

Respectfully submitted,

WINNE, BANTA & RIZZI  
Attorneys for Plaintiff  
Leonard Dobbs

By: Joseph L. Basralian  
Joseph L. Basralian

5-7364

Brief in support  
of Motion for  
leave to appeal  
intervention of  
Δ's

5/13/81

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FILED

Superior Court of New Jersey

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SOMERSET COUNTY  
L. R. OLSON CLERK

APPELLATE DIVISION

DOCKET NO.  
(LAW DIVISION DOCKET NO. L-12502-80)

CIVIL ACTION

LEONARD DOBBS,  
  
Plaintiff-Appellant  
  
vs.  
  
TOWNSHIP OF BEDMINSTER, a  
municipal corporation,  
  
Defendant.

ON MOTION FOR LEAVE TO APPEAL FROM  
INTERLOCUTORY ORDER OF SUPERIOR  
COURT OF NEW JERSEY, LAW DIVISION,  
SOMERSET COUNTY

SAT BELOW  
  
HON. MICHAEL R. IMBRIANI, J.S.C.

APPENDIX IN SUPPORT OF  
MOTION FOR LEAVE TO APPEAL AND MOTION TO CONSOLIDATE

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

ATTORNEY(S) FOR PLAINTIFF, LEONARD DOBBS

Of Counsel:  
Joseph L. Basralian

On the Brief:  
Donald A. Klein  
Raymond R. Wiss

WINNE, BANTA, RIZZI & HARRINGTON  
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.*

*CIVIL ACTION*

COMPLAINT IN LIEU  
OF PREROGATIVE WRIT

Plaintiff LEONARD DOBBS, residing at 111 Central Avenue, Lawrence, New York, by way of Complaint against the defendant, says:

FIRST COUNT

1. Plaintiff Dobbs 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.



15. 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.

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

WHEREFORE, plaintiff demands judgment against defendant:

- A) Declaring the zoning ordinance adopted by defendant township invalid;
- B) Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a regional retail and commercial development district;
- C) Awarding the plaintiff his costs of suit and attorneys' fees herein;
- D) Granting the plaintiff such further relief as the Court deems just and proper.

SECOND COUNT

1. Plaintiff repeats and realleges all of the allegations contained in the First Count and incorporates same herein by reference.

2. By virtue of its failure to adopt a comprehensive zoning scheme, defendant has failed to plan and zone in a

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es which are

"(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."

4. 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.

5. 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).

6. The master plan and zoning ordinance adopted by defendant township 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, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(g).

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

8. 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.

9. 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.

10. 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.

11. 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.

WHEREFORE, plaintiff demands judgment against defendant:

A) Declaring the master plan and zoning ordinance of the defendant township invalid;

B) Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a regional retail and commercial development district;

C) Awarding the plaintiff his costs of suit and attorneys' fees herein;

D) Granting the plaintiff such further relief as the Court deems just and proper.

### THIRD COUNT

1. Plaintiff repeats and realleges all of the allegations contained in the First and Second Counts and incorporates same herein by reference.

2. 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.

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

WHEREFORE, plaintiff demands judgment against defendant:

A) Declaring the zoning ordinance adopted by defendant township invalid;

B) Compelling a rezoning of the tract of land for

which plaintiff is a contract purchaser to a regional retail and commercial development district;

C) Awarding the plaintiff his costs of suit and attorneys' fees herein;

D) Granting the plaintiff such further relief as the Court deems just and proper.

FOURTH COUNT

1. Plaintiff repeats and realleges all of the allegations contained in the First, Second and Third Counts and incorporates same herein by reference.

2. 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.

3. 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.

4. 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.

5. For the reasons set forth hereinabove, 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.

WHEREFORE, plaintiff demands judgment against defendant:

A) Declaring the zoning ordinance adopted by defendant invalid;

B) Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a regional retail and commercial development district;

C) Awarding the plaintiff his costs of suit and attorneys' fees herein;

D) Granting the plaintiff such further relief as the Court deems just and proper.

#### FIFTH COUNT

1. Plaintiff repeats and realleges all of the allegations contained in the First, Second, Third and Fourth Counts and incorporates same herein by reference.

2. 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.

3. 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.

4. 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.

5. For the reasons set forth hereinabove, 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.

WHEREFORE, plaintiff demands judgment against defendant:

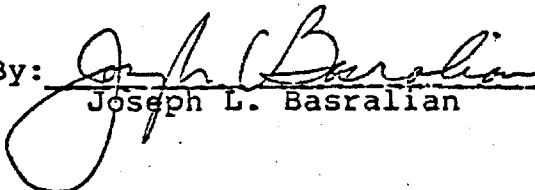
A) Declaring the zoning ordinance adopted by defendant invalid;

B) Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a regional retail and commercial development district;

C) Awarding the plaintiff his costs of suit and attorneys' fees herein;

D) Granting the plaintiff such further relief as  
the Court deems just and proper.

WINNE, BANTA, RIZZI & HARRINGTON  
Attorneys for Plaintiff

By:   
Joseph L. Basralian

Dated: November 3, 1980



McCarter & English  
550 Broad Street  
Newark, New Jersey 07102  
(201) 622-4444  
Attorneys for Defendant

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

LEONARD DOBBS,	:	
	:	
Plaintiff,	:	Civil Action
	:	
vs.	:	ANSWER
	:	
TOWNSHIP OF BEDMINSTER, a	:	
municipal corporation,	:	
	:	
Defendant.	:	
.....	:	

Defendant, the Township of Bedminster, a municipal corporation of the State of New Jersey, answering the Complaint, says:

AS TO THE FIRST COUNT

1. Defendant does not have knowledge sufficient to form a belief as to the truth of the allegation of plaintiff's contract to purchase the property in question and demands production and proof of its contract.

2. Defendant admits it is a municipal corporation; the other allegations of paragraph 2 are legal in nature, and defendant neither admits nor denies same, leaving plaintiff to his proof.

3. Defendant admits the existence and pendency of an action entitled "Allan-Deane Corporation, et al. v. the Township

of Bedminster, et al.," bearing Docket Nos. L-36896-70 P.W. and L-28061-71 P.W.; the existence and entry of various orders, opinions, and judgments therein; and that it has adopted a revised Land Development Ordinance pursuant to and at the direction of the orders of Judge Leahy in said action; and as to the terms and provisions of said orders, opinions, judgments and Land Development Ordinance, demands production and proof from the plaintiff. Except as herein admitted, the allegations of paragraph 3 are denied.

4. Defendant admits that its population will increase in the future, and denies the balance of the planning allegations of said paragraph and leaves plaintiff to his proofs.

5. Defendant admits that there are highways in the Township of Bedminster, as to the legal and planning results thereof leaves plaintiff to his proof, and denies the remaining allegations of paragraph 5.

6. The allegations of paragraph 6 are denied.

7. The allegations of paragraph 7 are in the nature of legal and planning allegations; defendant leaves plaintiff to his proofs. Defendant denies that it is under any duty to rezone or take any special action with respect to plaintiff's property as a result of the court-ordered rezoning or any other reason.

8. Defendant denies that plaintiff has made any request of the Township with respect to its proposed regional retail and commercial shopping center other than a request to the Planning Master George Raymond, appointed as the expert planning master by Judge Leahy in an Order dated February 22, 1980; defendant denies

cited, supra.

15. Answering paragraph 15, defendant states that the allegations thereof are legal and planning conclusions; denies such of the allegations as are factual in nature; and leaves plaintiff to his proofs.

16. The allegations of paragraph 16 are denied.

AS TO THE SECOND COUNT

1. Defendant repeats its answers to the First Count.

2. The allegations of paragraph 2 are denied.

3. Defendant admits the existence of a Master Plan adopted in 1977 by Bedminster Township; states that major portions of the Master Plan are inconsistent with and were expressly or impliedly invalidated by Judge Leahy in his rulings, opinions, orders and judgments in the Allan-Deane litigation, in which he exercised exclusive jurisdiction of and supervision over the planning and zoning of land use in Bedminster Township. The portions of the said Master Plan quoted by plaintiff in paragraph 3 of the Second Count of the Complaint are not relevant to or binding on the opinions, orders, rulings and judgments of Judge Leahy in the Allan-Deane litigation or to the Land Development Ordinance enacted under his supervision and at his direction. As to the terms and provisions of said Master Plan, even if relevant, defendant leaves plaintiff to his proofs.

4. Answering paragraph 4, defendant denies that Section 405(A) of the Land Development Ordinance applies any principles quoted in paragraph 3 of the complaint by plaintiff;

that plaintiff has exhausted, or indeed even attempted to invoke, the administrative procedures and remedies available to him with respect to the land use planning process of defendant Township. The remaining allegations are denied.

9. Defendant admits that it has not rezoned the land for which plaintiff is allegedly the contract purchaser; that said land is in a R-3 residential zone under the Land Development Ordinance; and defendant denies the remaining allegations of paragraph 9.

10. The allegations of paragraph 10 are denied, and defendant states that plaintiff has failed and refused to resort to the administrative remedies available to him.

11. The allegations of paragraph 11 are denied.

12. Defendant admits that in general an increase in population will result in some increase in the needs of said population for services. Defendant denies that the proposed regional commercial shopping center is responsive to the needs of the future increase in population of the Township. Defendant denies that it is under any obligation to meet any increase in needs by zoning plaintiff's land for a regional shopping center and mall; and defendant states it has already made provision in its Land Development Ordinance for any increase in services and needs required by any increase in the number of dwelling units theoretically possible under the Land Development Ordinance.

13. The allegations of paragraph 13 are denied.

14. The allegations of paragraph 14 are denied, and defendant refers to and incorporates by reference the rulings, orders and judgments of Judge Leahy in the Allan-Deane litigation,

defendant denies the remaining allegations of paragraph 4.

5. Answering paragraph 5, defendant denies the allegations thereof and states that its land development ordinance is consistent with development and general welfare and development regulations of neighboring municipalities, Somerset County, the State of New Jersey, and the housing, economic and planning regions in which the Township of Bedminster and the State of New Jersey are located and of which they are a part.

6. The allegations of paragraph 6 are denied.
7. The allegations of paragraph 7 are denied.
8. The allegations of paragraph 8 are denied.
9. The allegations of paragraph 9 are denied.
10. The allegations of paragraph 10 are denied.
11. The allegations of paragraph 11 are denied.

AS TO THE THIRD COUNT

1. Defendant repeats its answers to the allegations of the First and Second Counts.
2. The allegations of paragraph 2 are denied, and defendant denies that it is under any obligation or duty, be it legal or planning, to zone plaintiff's property for a regional shopping center.

3. The allegations of paragraph 3 are denied.

AS TO THE FOURTH COUNT

1. Defendant repeats its answers to the allegations of the First, Second and Third Counts.
2. Defendant admits that the land in question is zoned

for residential purposes.

3. Defendant admits that there are highways in the vicinity of the land in question, and denies that the highest and best use of said land is a relevant test by which to judge the development regulations affecting said property; and denies that any appropriate use of the property is for regional, retail and commercial shopping center purposes.

4. The allegations of paragraph 4 are denied.

5. The allegations of paragraph 5 are denied.

#### AS TO THE FIFTH COUNT

1. Defendant repeats its answers to the allegations of the First, Second, Third and Fourth Counts.

2. The allegations of paragraph 2 are denied.

3. The allegations of paragraph 3 are denied.

4. The allegations of paragraph 4 are denied.

5. The allegations of paragraph 5 are denied.

#### FIRST SEPARATE DEFENSE

The causes of action asserted by plaintiff are barred by doctrines of res judicata and collateral estoppel, by virtue of the rulings, opinions, orders and judgments which have been entered and are to be entered in a litigation entitled "Allan-Deane Corporation, et al. v. the Township of Bedminster," bearing Docket Nos. L-36896-70 P.W. and L-28061-71 P.W., by the Honorable B. Thomas Leahy.

SECOND SEPARATE DEFENSE

Plaintiff has failed to exhaust the administrative remedies available to him and is barred from bringing the within action until he does.

THIRD 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.

DEMAND FOR DOCUMENT REFERRED TO IN PLEADING

Defendant Township of Bedminster demands, 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 the service of this Answer upon plaintiff.

McCarter & English  
Attorneys for Defendant

By: Alfred L. Ferguson  
Alfred L. Ferguson  
A Member of the Firm

DATED: February 11, 1981

BRENER, WALLACK, ROSNER & HILL

15 CHAMBERS STREET

PRINCETON, NEW JERSEY 08540

(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*

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

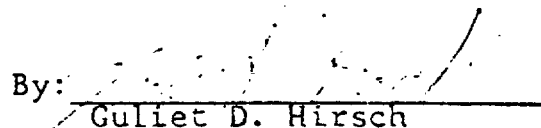
SIRS:

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:

Attorney(s): Brener, Wallack, Rosner & Hill

Office Address & Tel. No.: 15 Chambers Street

Princeton, New Jersey 08540 (609) 924-0808

Attorney(s) for Defendant-Intervenor

LEONARD DOBBS,

Plaintiff(s)

vs.

TOWNSHIP OF BEDMINSTER, a Municipal Corporation

Defendant(s)

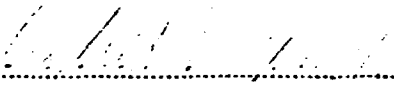
SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

Docket No. L-12502-80

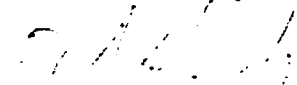
CIVIL ACTION

NOTICE OF MOTION

A copy of the within Notice of Motion has been filed with the Clerk of the County of Somerset  
at 110 Administration Bldg., Somerville New Jersey

  
-----  
Guliet D. Hirsch  
Attorney(s) for Defendant-Intervenor

The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton, New Jersey.

  
-----  
Guliet D. Hirsch  
Attorney(s) for Defendant-Intervenor

Service of the within

is hereby acknowledged this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.

-----  
Attorney(s) for

I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 4:6.

-----  
Attorney(s) for

**PROOF OF MAILING:** On January 1981, I, the undersigned, mailed to  
WINNE, BANTA, RIZZI & HARRINGTON McCARTER & ENGLISH  
25 East Salem Street 550 Broad Street  
Hackensack, New Jersey 07602 Newark, New Jersey 07102  
by regular mail, return receipt requested, the following:

NOTICE OF MOTION

R. 1:5-3 ~~The xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx~~

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: January 1981

BRENER, WALLACK, ROSNER & HILL  
15 CHAMBERS STREET  
PRINCETON, NEW JERSEY 08540  
(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.

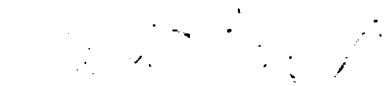
3. Denied.

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:   
Gullet D. Hirsch

Dated: /



BRENER, WALLACK, ROSNER & HILL  
15 CHAMBERS STREET  
PRINCETON, NEW JERSEY 08540  
(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*

*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 8 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  
John H. Kerwin

Sworn to and Subscribed  
before me this 14<sup>th</sup> day  
of January, 1981.

Valeska W. Andren

**VALESKA W. ANDREN**  
A Notary Public of New Jersey  
My Commission Expires July 28, 1986

1 SUPERIOR COURT OF NEW JERSEY  
2 LAW DIVISION - SOMERSET COUNTY  
3 DOCKET NO. L-12502-80  
4 APPELLATE DIV. DOCKET A- 2900-80

4 LEONARD DOBBS, :

5 Plaintiff, :

6 STENOGRAPHIC TRANSCRIPT  
7 OF:

6 vs. :

7 TOWNSHIP OF BEDMINSTER, a :  
8 Municipal Corporation, :

7 MOTION

8 Defendant. :  
9 - - - - -

10 DATE: January 30, 1981  
11 PLACE: Somerset County Courthouse  
12 Somerville, New Jersey

12 B E F O R E: THE HONORABLE WILFRED P. DIANA, J.S.C.

13 ORDERED BY: GULIET D. HIRSCH, ESQUIRE

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

15 MESSRS. McCARTER & ENGLISH  
16 Attorneys for Plaintiff  
17 BY: JOSEPH FALGIANI, ESQUIRE

17 MESSRS. WINNE, BANTA, RIZZI & HARRINGTON  
18 Attorneys for Defendant  
19 BY: JOSEPH L. BASRALIAN, ESQUIRE

19 MESSRS. BRENER, WALLACK & HILL  
20 Attorneys for Defendant-Intervenor  
21 BY: GULIET D. HIRSCH, J.S.C.

22 DEBORAH A. LUIHN, C.S.R.  
23 OFFICIAL COURT REPORTER  
24 SOMERSET COUNTY COURTHOUSE  
25 SOMERVILLE, NEW JERSEY

1 THE COURT: This is a motion by the  
 2 Hill Development Company for leave to intervene  
 3 in the pending action of Dobbs versus the Township  
 4 of Bedminster. The underlying action of Dobbs  
 5 versus the Township is a prerogative writ action  
 6 filed in November of this year by the Plaintiff  
 7 who is a contract purchaser of a tract of land  
 8 in the Township. Apparently the Plaintiff has  
 9 been attempting to convince the Township to rezone  
 10 this particular tract of land that's a couple  
 11 hundred acres under which he has contracted to  
 12 purchase.

13 It is alleged that as a result of the  
 14 now famous Allen-Deane vs. the Township of  
 15 Bedminster case that the Township has undertaken  
 16 to formulate and adopt a semi-plan and that the  
 17 recently adopted plan is arbitrary, capricious,  
 18 and unreasonable. Apparently the Plaintiff's  
 19 land in that plan and ordinance remains in a  
 20 residential status rather than a retail and  
 21 commercial status. As I understand it, that's  
 22 the underlying litigation. And now comes Hill  
 23 Development which is the successor of change of  
 24 name of the Allen-Deane Corporation and moving  
 25 to intervene for fear that if the Plaintiff

PENGAD CO., BAYONNE, N.J. 07002 - FORM 1044



1 succeeds, some of what they have gained in the  
2 enormous litigation the past few years may be  
3 undone to their substantial debt.

4 Is that what we're all saying?

5 MR. HIRSCH: Yes, your Honor.

6 THE COURT: Well, I have your papers,  
7 folks. I don't think you're going to add anything  
8 to them, although, I know you are all competent  
9 attorneys.

10 I'm not going to allow any intervention.  
11 It further complicates what is already a complicated  
12 case. I will permit Hill Development to file an  
13 amicus curiae brief so that if there are issues  
14 that they want to raise, legal questions that they  
15 want to present to the Court, they may do so.  
16 But I am not adding that party. I see no basis  
17 to do it in this case. It suggests that the  
18 Township can't protect its own ordinance. It's  
19 not true. You may not have all the greatest  
20 confidence in them, but the Township's duty is to  
21 protect its ordinances in the litigation, and I  
22 expect they intend to do so. They have come a  
23 long way, and I see no basis for intervention,  
24 putting another party in the case, further  
25 experts, further discovery. The Plaintiff's

PERGAD CO. PATONNE, N.J. 07002 FORM 2046

1 action to protect its own land, not your land,  
2 not Hill's land, its own land. Defendant's  
3 Township's concern is to protect the zoning  
4 ordinance as it has zoned the Plaintiff's land.  
5 That's what the case is about, and that's all I'm  
6 going to hear when this case gets reached.

7 MR. HIRSCH: Your Honor, just very  
8 briefly if I may, contrary to Plaintiff's letter  
9 brief, every count of this complaint, all five  
10 counts, ask first for the remedy of invalidation  
11 of the zoning ordinance. Presently the Hill  
12 Development Company has a number of pending  
13 applications before the Township Planning Board  
14 and will have more within the ensuing year. These  
15 would all be jeopardized if the Town was given an  
16 opportunity to rezone, to change its ordinance,  
17 the procedures in its ordinance.

18 Additionally, if Plaintiffs are successful  
19 in their very unique claim that there is a  
20 constitutional demand of a municipality to provide  
21 for its fair share of commercial office uses, I  
22 believe under the Mount Laurel decision that this  
23 Court would have to give the municipality another  
24 opportunity to look at its entire zoning scheme and  
25 decide if it wanted to withdraw some of its resi-

1           dential uses, change the overall scheme, and given  
2           the Allen-Deane case where the Honorable  
3           Judge Leahy found that the corridor area was the  
4           growth corridor in the Township where the Hill  
5           Development Company's land is located, we would  
6           be affected by that kind of a resolution.

7           My understanding is that the intervention  
8           rules are to be liberally construed. We would  
9           cause no delay by our intervention at this time.

10           THE COURT: My decision remains the same.  
11           I am not impressed by that argument, Counsel.  
12           Motion to intervene is denied.

13           MR. FALGIANI: Your Honor, in a related  
14           matter, I wonder if I might show you this. We  
15           have a consent order extending our time to  
16           respond. I have a letter here from Mr. Ferguson  
17           and a consent order signed by both Mr. Basralian  
18           and myself. Tonight we have a meeting of the  
19           Township Committee in Bedminster to allow  
20           Mr. Dobbs to introduce his concept to the Town in  
21           a very sketchy kind of way. We didn't feel that  
22           it was appropriate with that compromise effort  
23           going on to pursue the litigation. This will  
24           extend 15 days the already extended response  
25           period.

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THE COURT: Fifteen days?

MR. FALGIANI: Fifteen days from -- yes.

THE COURT: That's all. I don't care what you're discussing after that. You're going to file an answer and then you can still discuss whatever you want to discuss.

MR. FALGIANI: Thank you, Judge.

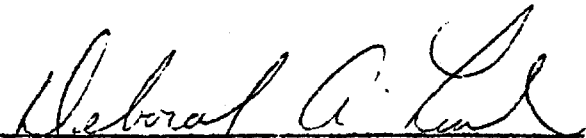
(Whereupon the matter is concluded.)

PENCAD CO., BAYONNE, N.J. 07002 - FORM 1000

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C E R T I F I C A T E

I, DEBORAH A. LUIHN, a Certified  
Shorthand Reporter of the State of New Jersey,  
do hereby certify that the foregoing is a true  
and accurate transcript of my stenographic notes  
of the within proceedings to the best of my  
ability.

  
DEBORAH A. LUIHN, C.S.R.  
Official Court Reporter

DATED: 3-30-81

PENGAD CO., BAYONNE, N.J. 07002 - FORM 3046

**BRENER, WALLACK, ROSNER & HILL**

15 CHAMBERS STREET  
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 Falgiana, 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.

s/ Wilfred P. Diana  
Wilfred P. Diana, J.S.C.

**BRENER, WALLACK & HILL**  
15 CHAMBERS STREET  
PRINCETON, NEW JERSEY 08540  
(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*

NOTICE OF APPEAL

TO: WINNE, BANTA, RIZZI &  
HARRINGTON, ESQS.  
Attention: Joseph L. Basralian, Esq.  
25 East Salem Street  
Hackensack, New Jersey 07602

McCARTER & ENGLISH  
Attention: Alfred L. Ferguson and  
Joseph Falgiani, Esqs.  
550 Broad Street  
Newark, New Jersey 07102

The Honorable Wilfred P. Diana, J.S.C.  
Somerset County Court House  
Somerville, New Jersey 08876

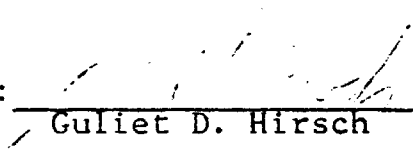


Elizabeth M. McLaughlin, Clerk  
Superior Court, Appellate Division  
P.O. Box CN006  
Trenton, New Jersey 08625

W. Lewis Bambrick, Clerk  
Superior Court  
State House Annex  
P.O. Box 1300  
Trenton, New Jersey 08625

NOTICE IS HEREBY GIVEN that The Hills Development Company hereby appeals to the Appellate Division of the Superior Court of New Jersey from the Order entered on March 2, 1981 in the Superior Court of New Jersey, Law Division, Somerset County, by the Honorable Wilfred P. Diana denying The Hills Development Company the right to intervene as a Defendant in the case of Leonard Dobbs v. Township of Bedminster, Docket No. L-12502-80. This matter is not entitled to a hearing preference pursuant to Rule 1:2-5.

BRENER, WALLACK & HILL  
Attorneys for The Hills  
Development Company

By:   
Guliet D. Hirsch

Dated: March 11, 1981

CERTIFICATION

I hereby certify that a copy of this Notice of Appeal has been served on the Trial Judge, The Honorable Wilfred P. Diana and the filing fees required by N.J.S.A. 22A:2 have been paid.

BRENER, WALLACK & HILL  
Attorneys for The Hills  
Development Company

By: 

Guliet D. Hirsch

Attorney(s): Brener, Wallack & Hill

Office Address & Tel. No.: 15 Chambers Street, Princeton, N.J. 08540 (609) 924-0808

Attorney(s) for Defendant-Intervenor

LEONARD DOBBS

Plaintiff(x)

vs.

TOWNSHIP OF BEDMINSTER,  
a Municipal Corporation

Defendant(x)

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

Docket No. L-12502-80

CIVIL ACTION  
NOTICE OF APPEAL

A copy of the within Notice of Motion has been filed with the Clerk of the County of  
at New Jersey

Attorney(s) for

The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton, New Jersey.

Attorney(s) for

Service of the within

is hereby acknowledged this day of 19

Attorney(s) for

I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 4:6.

Attorney(s) for

PROOF OF MAILING: On March 11 19 81, I, the undersigned, mailed to  
Attorneys for Plaintiff Attorneys for Defendant  
WINNE, BANTA, RIZZI & HARRINGTON McCARTER & ENGLISH  
25 East Salem St., Hackensack, N.J. 07602 550 Broad St., Newark, N.J. 07102  
by regular mail, ~~not by registered mail~~ the following:

NOTICE OF APPEAL

3.1:5-3 The enclosed copy is attached to the original copy.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: March 11 19 81

Guliet D. Hirsch

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

LEONARD DOBBS,

Plaintiff,

vs.

TOWNSHIP OF BEDMINISTER,  
a Municipal Corporation,

Defendant,

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

Applicants for Intervention)

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

) DOCKET NO. L-12502-80

) CIVIL ACTION

) NOTICE OF MOTION

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

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

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

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

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

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

VOGEL AND CHAIT  
A Professional Corporation

By: 

HERBERT A. VOGEL

DATED: March 19, 1981.

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

LEONARD DOBBS,  
  
Plaintiff,

vs.

TOWNSHIP OF BEDMINSTER,  
a Municipal Corporation,  
  
Defendant

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

) DOCKET NO. L-12502-80

) CIVIL ACTION

) AFFIDAVIT  
)

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

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

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

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

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

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



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

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

c. As a residential property owner in the R-33 zone in Bedminster Township, I have relied on the surrounding residential zoning. I purchased my home in reliance on the residential zoning provided in the zoning ordinance and the plaintiff, by way of this suit, is attacking the zoning provision upon which

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

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

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

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

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

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

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

b. I am also raising the defense of the

reasonableness of the R-38 zoning. Questions of fact relating to my existing residential use and the fact that the houses on our street all use septic systems which were economically feasible are some of the factual questions which are in common with factual and legal issues raised by the Township.

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

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

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

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

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

*Robert R. Henderson*  
ROBERT R. HENDERSON

Sworn and subscribed before me  
this 1st day of March, 1981.

*James A. Palmer Jr.*  
Attorney at Law of N.J.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

b. I am also raising the defense of the

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

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

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

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

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

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

*Diane M. Henderson*  
DIANE M. HENDERSON

Sworn and subscribed before me  
this 15<sup>th</sup> day of March, 1981.

*Donald Collins*  
*Attorney at Law*  
*State of N.J.*

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

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

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

AFFIDAVIT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



and legal issues raised by the Township.

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

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


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

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

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

  
ATTILIO PILLON

Sworn and subscribed before me  
this 19<sup>th</sup> day of March, 1981.

  
Attorney at Law of the  
State of N.J.

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

LEONARD DOBBS,

Plaintiff,

vs.

TOWNSHIP OF BEDMINSTER,  
a Municipal Corporation,

Defendant,

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

Defendant-Interveners

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-88

CIVIL ACTION

ANSWER

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

FIRST COUNT

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

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

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

SECOND COUNT

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

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

THIRD COUNT

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

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

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

FOURTH COUNT

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

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

3. Defendant-Interveners adopt the answer of the defendant to Paragraph 3 of the Fourth Count but add that the

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

4. The allegations of Paragraph 4 are denied.

5. The allegations of Paragraph 5 are denied.

FIFTH COUNT

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

2. The allegations of Paragraph 2 are denied.

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

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

4. The allegations of Paragraph 4 are denied.

5. The allegations of Paragraph 5 are denied.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

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

SECOND SEPARATE DEFENSE

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

THIRD SEPARATE DEFENSE

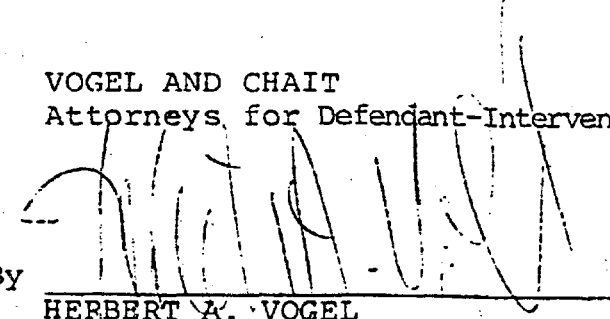
The plaintiff's request for relief in the form of a Court order rezoning the tract of land in question to retail commercial is barred since such an order would constitute state action which would deprive the defendant-interveners of their liberty and property interests without due process.

DEMAND FOR DOCUMENT REFERRED TO IN PLEADING

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

VOGEL AND CHAIT  
Attorneys for Defendant-Interveners

By

  
HERBERT A. VOGEL

Dated: March 19, 1981

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

1  
2  
3  
4 LEONARD DOBBS, :

Plaintiff, :

v. :

5 TOWNSHIP OF BEEMINSTER, :

6 Defendant. :

STENOGRAPHIC TRANSCRIPT  
OF  
MOTION TO INTERVENE

9 Place:

10 Somerset County Courthouse  
Somerville, New Jersey

11 Date:

12 April 3, 1981

13 BEFORE:

14 HONORABLE MICHAEL R. FABRIANI, J.S.C.

15  
16 APPEARANCES:

17 WINNE, BANTA & RIZZI, ESQS.,

18 BY: JOSEPH L. BASRALIAN, ESQ.,

19 For Leonard Dobbs, Plaintiff.

20 MC CARTER & ENGLISH, ESQS.,

21 BY: ALFRED L. FERGUSON, III,

For Township of Beeminster, Defendant.

22 VOGEL & CHAIT, ESQS.,

23 BY: HERBERT VOGEL, ESQ.,

For Intervenors.

24 ROBERT D. GROSSMAN, C.S.R.,

OFFICIAL COURT REPORTER

SOMERSET COUNTY COURTHOUSE

SOMERVILLE, N.E. JERSEY, 08876

## 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, 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

PENGAD CO., BAYONNE, N.J. 07002 - FOLIO 2046

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  
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

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

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

PENGAD CO., BAYONNE, N.J. 07002 FORM 1049

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

PENGAD CO., BOSTON, N.J. 07102 - FOUR 1946

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

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

10 Finally, your Honor, under Rule:  
11 4-33-1, there is a final criterion and that  
12 is that the applicant's interest -- applicant  
13 should show that its interest would not be fully  
14 and adequately represented by the defendant in the  
15 law suit.

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

PENGAR CO., BAYONNE, N.J. 07002 FORM 1049

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 best  
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, Santa & 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 Sedminster 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 to 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?

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1 MR. BASRALIAN: We have communicated  
2 with the municipality and have had discussions with  
3 the 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



1 Honor, that ---

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

3 MR. BASRALIAN: Your Honor ---

4 THE COURT: You see the thing -- wait.

5 The problem is here, one of the issues,  
6 it seems to me, is whether or not you are entitled  
7 to maintain this action in the Superior Court  
8 prior to filing an action before the Township  
9 Boards, to have the Township Boards make a  
10 determination as to whether or not there is merit  
11 in your application. And one of the questions  
12 that the Court has is we have a certain pattern,  
13 which has been adopted by the Legislature in our  
14 statutes, which is that when a particular property  
15 owner believes that for whatever reason his  
16 property is made either useless or not as useful  
17 as he would like it to be, that there are procedures  
18 adopted whereby application is made to a Township  
19 agency, whether the Planning Board or Board of  
20 Adjustment, or what have you; notice is given to  
21 those parties who are particularly situated in  
22 terms of proximity to the tract in question;  
23 a hearing date is established, so as to give them  
24 an opportunity to go before the municipal  
25 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 in effect 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 18 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

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respect to zoning of this specific property.

We were in attendance at almost all of the public discussions and the private discussions to which the public was invited of the Planning Board, standing Master and its zoning specialist, at which time we made known our specific requests and why we thought what was being undertaken by virtue of the new land use plan was inappropriate and failed to consider both the municipality as an entirety and our property, specifically. And in each instance -- and I believe transcripts are available and I can go through them -- we were told that this was not the matter for consideration before the Planning Board and its committee at that time, because they were under a Court imposed order to rezone specifically with respect to Alien Dean, to do no more. Their comments by the then Chairman of the Planning Board, that he thought our intervention, if you will, or our discussions with respect to our properties and the zoning scheme, as a whole, were in inappropriate.

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

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



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

10 One of the issues, it seems to the  
 11 Court in this matter, is the question that will  
 12 have to be determined ultimately, which is  
 13 whether or not this litigation should lie  
 14 prior to the plaintiff exhausting all administrative  
 15 remedies below before the Planning Board, the  
 16 Township Committee and the Board of Adjustment  
 17 and that is an issue that I think I am not  
 18 certain of what the law is in this particular  
 19 area, but it is certainly an issue that has to be  
 20 heard and decided. Implicit in that is the hope  
 21 and the policy of our Courts that there be a  
 22 joinder of all actions, so that we could have  
 23 one single trial to dispose of all issues at one  
 24 time with respect to matters before the Court.  
 25 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 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.

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

property owners?

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

(The motion proceedings are concluded.)

C E R T I F I C A T E

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

DATE: 4/5/81

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

PENGAD CO., BAYONNE, N.J. 07002 - FORM 8048

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

LEONARD DOBBS,  
Plaintiff,

vs.

TOWNSHIP OF BEDMINSTER,  
a Municipal Corporation,  
Defendant,

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

Applicants for Intervention

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

ORDER

This matter having been opened to the Court on the motion of Vogel and Chait, A Professional Corporation (Herbert A. Vogel, Esq. appearing) Attorneys for the Applicants for Intervention as defendants, Robert R. Henderson, Diane M.

Henderson, Attilio Pillon and Henry E. Engelbrecht, and Winne, Banta & Rizzi (Joseph L. Basralian, Esq., appearing) Attorneys for plaintiff, Leonard Dobbs and McCarter & English (Alfred L. Ferguson, Esq., appearing) Attorneys for the defendant, Township of Bedminster, for an ORDER accompanied by an Answer setting forth the defenses of the applicants, and the Court having read and considered the brief and affidavit of the applicants and the brief of the plaintiff, and the Court having heard oral argument from all counsel, and it appearing to the Court that the applicants, Robert R. Henderson, Diane M. Henderson and Henry E. Engelbrecht should be permitted to intervene as defendants pursuant to R. 4:33-1 and that applicant Attilio Pillon should not be permitted to intervene for the reasons stated in the Court's oral opinion, which is hereby incorporated by reference:

IT IS on this <sup>27<sup>th</sup></sup> day of April, 1981:

ORDERED that the applicants, Robert R. Henderson, Diane M. Henderson and Henry E. Engelbrecht, be given leave to intervene in this action, pursuant to R. 4:33-1 and to serve and file an Answer upon the entry of this ORDER, with like effect as if the applicants, Robert R. Henderson, Diane M. Henderson and Henry E. Englebrecht had been named as original party defendants.

IT IS FURTHER ORDERED that the application of Attilio Pillon for intervention pursuant to either R. 4:33-1 or R. 4:33-2 is hereby denied.

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

  
MICHAEL R. IMBRIANI, J.S.C.

McCARTER & ENGLISH  
 550 Broad Street  
 Newark, New Jersey 07102  
 (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
	:	OF DEFENDANT
TOWNSHIP OF BEDMINSTER,	:	BEDMINSTER TOWNSHIP
a municipal corporation,	:	
	:	
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

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.

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

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SOMERSET COUNTY

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

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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.

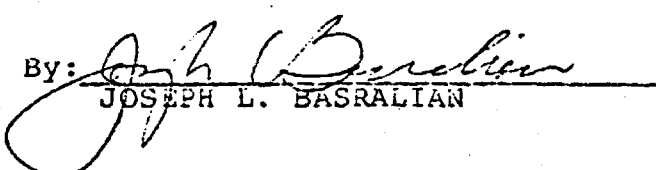
MATTERS THEN AGREED UPON: None.

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/3 , 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.

## B. Business Districts

Objectives: To provide essential consumer services to residents of the Township; to contain business activities substantially within their present boundaries; to provide for adequate and safe vehicular access, adequate parking, and adequate loading facilities; to provide adequate pedestrian amenities; and otherwise to encourage the development, within the business district, of functional and aesthetic qualities in harmony with the character of the Township.

Various principles concerning a neighborhood business district are recognized:

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 road-side restaurants, stores and facilities catering to transient traffic, such as are currently found on U. S. Routes 1, 22 and 17, has been considered and found incompatible with the development philosophies of Bedminster Township and is specifically excluded by this Plan.
  
3. The Business Districts, in the villages of Bedminster and Pluckemin, must be attractive. Prospective customers are conscious of appearance. Also, scale of the establishment is important to maintain the village character.

Certain specific actions and measures, such as the following are necessary to implement the principles set forth above.

- (a) Confining business activity to the provision of retail goods and personal services essential to support nearby residential facilities; and the exclusion of any enterprises which export products, services, or administration beyond the local residential trading areas;
- (b) Strict control of signs and lights and exclusion of all advertising signs and billboards that advertise off-site products or services;
- (c) Shielding and landscaping of all business buildings and all objectionable sights, such as parking lots for customer's cars and commercial vehicles, and loading and unloading spaces;
- (d) Exclusion of outside display of all merchandise, excepting only gasoline pumps and cans of lubricating oil;
- (e) Review and approval of plans for all structures and alterations by the Planning Board before a building permit is issued to insure quality of design and harmony with the environment, consistent with the character and best interests of the Township.

FILED

MAY 18 2 38 PM 1981

SOMERSET COUNTY  
L. B. OLSON, CLERK

WINNE, BANTA & RIZZI  
25 East Salem Street  
Hackensack, New Jersey 07601  
(201) 487-3800  
Attorneys for Plaintiff

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

LEONARD DOBBS,  
Plaintiff,

v.

TOWNSHIP OF BEDMINSTER, a  
Municipal Corporation,  
Defendant,

ROBERT R. HENDERSON, DIANE M.  
HENDERSON and HENRY E. ENGELBRECHT;  
Defendant-  
Intervenors

Docket No. L-12502-80

PROOF OF SERVICE

1. I, the undersigned, am an attorney with the firm of Winne, Banta & Rizzi, attorneys for plaintiff, Leonard Dobbs in the within matter.

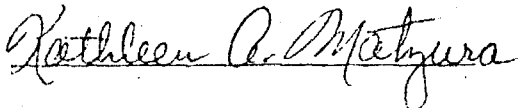
2. On May 11, 1981, an original and four copies of Motion for Leave to Appeal, and Brief and Appendix were delivered to Elizabeth McLaughlin, Clerk of the Appellate Division by Aztec Messenger Service. Copies of the Motion for Leave to Appeal and supporting documents were delivered to the persons set forth on the attached Rider.

3. I hereby certify that the foregoing statements

made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

  
RAYMOND R. WISS

Sworn and subscribed to  
before me this 15<sup>th</sup> day  
of May, 1981.



**KATHLEEN A. MATZURA**  
A Notary Public of New Jersey  
My Commission Expires July 29, 1984

RIDER

<u>WHO</u>	<u>WHAT</u>	<u>HOW</u>
Honorable Wilfred P. Diana	Motion, Brief and Appendix	Lawyers Service
Honorable Michael Imbriani	Motion, Brief and Appendix	Lawyers Service
W. Lewis Bambrick, Clerk Superior Court	Motion, Brief and Appendix	Lawyers Service
Brenner, Wallack, Rosner and Hill, Esqs.	Motion, Brief and Appendix	Lawyers Service
McCarter & English, Esqs.	Motion, Brief and Appendix	Lawyers Service
Vogel and Chait, Esqs.	Motion, Brief and Appendix	Lawyers Service

*File*

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JOSEPH L. BASRALIAN  
EDWARD H. MILLER, JR.  
JOHN P. PAXTON  
DONALD A. KLEIN  
ROBERT M. JACOBS  
T. THOMAS VAN DAM  
RAYMOND R. WISS  
PHILIP SCALO  
EDWARD R. KOCH  
VIRGINIA ANNE GLYNN

REC'D AT CHAMBERS

MAY 13 1981

WILFRED P. DIANA, J.S.C.

May 15, 1981

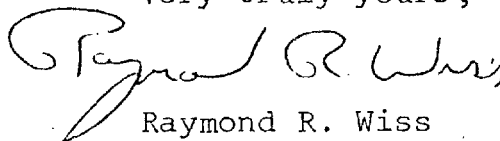
Elizabeth McLaughlin, Clerk  
Appellate Division  
State House  
Trenton, New Jersey 08625

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

Dear Ms. McLaughlin:

In connection with the Motion for Leave to Appeal, Brief and Appendix which was filed on May 12, 1981 in connection with the above-captioned matter, I enclose herewith original and four copies of Proof of Service.

Very truly yours,

  
Raymond R. Wiss

RRW:vjs

cc: McCarter and English, Esqs.  
Brenner, Wallack, Rosner & Hill, Esqs.  
Vogel and Chait, Esqs.  
Honorable Michael R. Imbriani  
Honorable Wilfred P. Diana  
Clerk, Superior Court