

RULS - AD - 1981 - 210

5/20/81

Letter from Thomas Collins, Jr. to Ms. McLaughlin
regarding case docs for Dobbs v. Belwinster Tp:

Pgs - 113

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VOGEL AND CHAIT
A PROFESSIONAL CORPORATION

HERBERT A. VOGEL
ARNOLD H. CHAIT
ENID A. SCOTT
ARON M. SCHWARTZ
THOMAS F. COLLINS, JR.

SOMERSET COUNTY *Attorneys at Law*
L. R. OLSON, CLERK

MAPLE AVENUE AT MILLER ROAD
MORRISTOWN, NEW JERSEY 07960
538-3800
AREA CODE 201

Encl. 1 I.C.D. 1
Registered Bk. Page

HAROLD GUREVITZ
OF COUNSEL

May 20, 1981

REC'D. AT CHAMBERS

MAY 21 1981

JUDGE IMBRIANI

Elizabeth McLaughlin, Clerk
Appellate Division
Superior Court of New Jersey
Room 316, CN 006
State House Annex
Trenton, N. J. 08625

Re: Dobbs v. Bedminster Tp.,
Henderson & Englebrecht - Intervenors
Attilio Pillon, Applicant for Intervention
Docket No. L-12502-80

Dear Ms. McLaughlin:

Enclosed please find the following documents concerning
the above-captioned case:

1. Notice of Appeal
2. Transcript Request
3. Notice of Motion to Accelerate Appeal
4. Request for Oral Argument
5. Brief-Appendix in support of Appeal

Also enclosed please find a check in the amount of \$220.00,
representing a deposit of \$200. for the costs of the appeal and
\$20. filing fee.

Thank you for your attention to this matter.

Very truly yours,

VOGEL AND CHAIT,
A Professional Corporation

Thomas F. Collins, Jr.
THOMAS F. COLLINS, JR.

TFC:hjb
Enc.

RULS - AD - 1981 - 210

FILED

5-7364

MAY 22 8 47 AM 1981

SOMERSE COUNTY
L. R. OLSON, CLERK

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. :

VOGEL AND CHAIT

A PROFESSIONAL CORPORATION
MAPLE AVENUE AT MILLER ROAD
MORRISTOWN, NEW JERSEY 07960
(201) 538-3800

ATTORNEYS FOR Applicant for Intervention

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : SOMERSET COUNTY

Plaintiff

LEONARD DOBBS

vs.

Defendant

TOWNSHIP OF BEDMINSTER,

Docket No. L-12502-80

CIVIL ACTION

NOTICE OF APPEAL

Defendant-Intervenors

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

Applicant for Intervention

ATTILIO PILLON

TO: WINNE, BANTA & RIZZI, ESQS.
Attorneys for Plaintiff, Leonard Dobbs
25 East Salem Street
P.O. Box 647
Hackensack, N.J. 07602

McCARTER AND ENGLISH, ESQS.
Attorneys for Defendant, Bedminster Township
550 Broad Street
Newark, N. J. 07102

SIRS:

PLEASE TAKE NOTICE that the undersigned, attorney for applicant for intervention ATTILIO PILLON, hereby appeals to the Superior Court of New Jersey, Appellate Division, from an order rendered by the Hon. Michael R. Imbriani, Superior Court of New Jersey, Law Division, Somerset County, on the 27th day of April, 1981, denying applicant's motion to intervene as of right in the above-captioned matter. The within Appeal is entitled to a hearing preference pursuant to R.1:2-5(1) in that a municipality, the Township of Bedminster is a party.

PLEASE TAKE FURTHER NOTICE that the Applicant-Appellant will rely on the Brief and Appendix annexed hereto.

VOGEL AND CHAIT,
A Professional Corporation
Attorney for Applicant for
Intervention

BY:

Thomas F. Collins, Jr.
THOMAS F. COLLINS, JR.

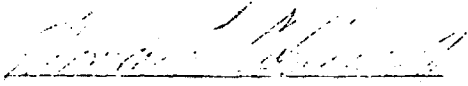
DATED: May 20, 1981

CERTIFICATION

The undersigned hereby certifies that:

- A. The original and 4 copies hereof has been filed with the Clerk of the Superior Court, Appellate Division, Trenton, N.J.
- B. A copy hereof has been filed with the Clerk of the Superior Court of New Jersey, Law Division, Trenton, N. J.

- C. A copy hereof has been served upon Winne, Banta & Rizzi, attorneys for Plaintiff, Leonard Dobbs, by mailing same to them, regular mail, at their last known address at 25 East Salem Street, P.O. BOX 647, Hackensack, N. J., on May 20,, 1981.
- D. A copy hereof has been served upon McCarter & English by mailing same to them, regular mail at their last known address at 550 Broad Street, New Jersey on May 20, 1981.
- E. A copy hereof has been served upon the Hon. Michael R. Imbriani, Somerset County Courthouse, Somerville, New Jersey, by mailing same to him, regular mail, at the above address on May 20, 1981.
- F. Payment of the filing fees required by N.J.S.A. 22A:2 has been made to the Superior Court of New Jersey, Appellate Division, simultaneous with the filing of the original of the Notice of Appeal herein.
- G. I have complied with Rule 2:5-3(a) and Rule 2:5-3(d) in that I have requested a transcript of the proceedings below and have paid a deposit for the estimated costs thereof, as set forth in the Request for Transcript form, annexed hereto.


THOMAS F. COLLINS, JR.

DATED: May 20,, 1981

5-7364

FILED

Superior Court of New Jersey

MAY 22 8 47 AM 1981

APPELLATE DIVISION

SOMERSET COUNTY
L. R. OLSON, CLERK

DOCKET NO.

LEONARD DOBBS
Plaintiff
v.
TOWNSHIP OF BEDMINSTER
Defendant

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

ATTILIO PILLON
Applicant for Intervention

CIVIL ACTION

ON APPEAL FROM Superior Court
of New Jersey, Law Division
Somerset County
DOCKET NO. L-12502-80

SAT BELOW

HON. Michael R. Imbriani, J.S.C.

BRIEF
FOR
APPELLANT-APPLICANT FOR INTERVENTION
ATTILIO PILLON

VOGEL AND CHAIT,
A Professional Corporation
Maple Avenue at Miller Road
Morristown, N.J. 07960

(201) 538 3800

ATTORNEY(S) FOR

Appellant-Applicant for Intervention
ATTILIO PILLON

ON THE BRIEF
Thomas F. Collins, Jr., Esq.
Richard C. Erdman, Esq.

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PROCEDURAL HISTORY

On November 5, 1980, the plaintiff in this action, Leonard Dobbs, filed a complaint in lieu of prerogative writs challenging the zoning of a tract of land in Bedminster Township. (D1a-1) On March 19, 1981, a motion to intervene either as of right under R.4:33-1 or permissive under R.4:33-2 was filed on behalf of defendant-intervenors, Robert R. Henderson, Diane M. Henderson, Henry E. Engelbrecht, and Attilio Pillon. (D1a-21) The motion to intervene was heard before the Hon. Michael R. Imbriani, J.S.C. on April 3, 1981. By Order dated April 27, 1981, all applicants but Attilio Pillon were permitted to intervene. (D1a-36)

From that portion of the Order denying Attilio Pillon leave to intervene as of right, appeal is now taken.

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STATEMENT OF FACTS

On November 5, 1980, the plaintiff in this action, Leonard Dobbs, filed a complaint in lieu of prerogative writs challenging the zoning of a tract of land in Bedminster Township. (DIA-1) The complaint seeks relief in the form of a declaration that the entire zoning ordinance of the Township is invalid and an order compelling the rezoning of the specific tract of land to a regional retail and commercial development district. (DIA-8 through 10, 11 through 13) The plaintiff's complaint was filed prior to any request to the governing body, the planning board, the zoning board of adjustment or any government official for relief from the requirements of the existing zoning.

The defendant-intervenors are residents of Mathews Drive, which is a cul-de-sac residential street located directly adjacent to the tract of land which is the subject of this suit. Three of the defendant-intervenors, Robert R. Henderson, Diane M. Henderson, and Henry E. Engelbrecht reside in homes which are within 200 feet of the tract which the plaintiff is requesting the court to rezone. (DIA-30, 37, and 44) Attilio Pillon, the appellant, is the owner of a lot and home on the side of Mathews Drive which is across the street from the tract of land which is the subject of this action; his property is not within 200 feet of the tract. (DIA-51)

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Since the plaintiff did not attempt to make any request for administrative relief prior to the filing of this law suit, the defendant-intervenors did not receive any notice of any public hearings and did not have any opportunity to be heard pursuant to various New Jersey statutes nor did they have the opportunity to petition the governing body pursuant to N.J.S.A. 40:55D-63. (DIA-15 and 16)

Late in January, 1981, Leonard Dobbs appeared before the Township of Bedminster and, under the threat of the pending law suit, presented a proposal for rezoning of the tract of land which is the subject of this suit. Some of the defendant-intervenors attended the January meeting of the governing body. Late in February and early in March, 1981, the defendant-intervenors sought legal counsel. On March 19, 1981 a motion was filed on behalf of the defendant-intervenors seeking waiver of the 14-day time requirements of R.1:6-3 and requesting leave to intervene in this action pursuant to either R.4:33-1 (Intervention as of Right) or in the alternative R.4:33-2 (Permissive Intervention). (DIA-21)

The short notice was requested because the attorneys for the defendant-intervenors became aware on Monday, March 16, 1981, that the court would be holding a pre-trial conference on March 20, 1981.

It should be noted that in January, 1981, the

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Hills Development Company, the successor in title to the Allan-Deane Corporation, sought to intervene in this action pursuant to R.4:33-1. The Hills Development Company owns property in a different section of the Township and claimed an interest in the rezoning request which was based in arguments of delay and damage which would indirectly occur if the plaintiff was successful. The motion of the Hills Development Company was denied. The interests of the applicants for intervention are clearly distinguishable from those of the Hills Development Company since these applicants are residents of the lots closest to the tract in question and since they are claiming interests based in constitutional and statutory rights and property interests. (T32-17 through 33-13)

Following a hearing on the motion to intervene on April 3, 1981, the Hon. Michael R. Imbriani, J.S.C., issued an order dated April 27, 1981, denying leave to intervene to the appellant but permitting the rest of the applicants who, unlike the appellant, lived within 200 feet of the subject property, to intervene as of right. (D1a-86) (T36-17 through 22) From this order denying intervention as of right to the appellant, appeal is now taken.

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POINT I

DENIAL OF AN APPLICATION FOR INTERVENTION
AS OF RIGHT UNDER R.4:33-1 IS APPEALABLE
AS A FINAL ORDER.

An order denying intervention as of right under R.4:33-1 is considered, for purposes of appeal, a final order. Grober v. Kahn, 88 N. J. Super. 34, 360-61 (App. Div. 1965) modified 47 N.J. 135 (1966); State by McLean v. Lanza, 60 N.J. Super. 130, 136 (App. Div. 1959) affirmed 39 N.J. 595 (1963); Pressler, Current N.J. Court Rules, Comment R. 4:33-1.

Since R.4:33-1 is the same as Fed. R. Civ. P. 24 (b)(2), interpretation of the New Jersey rule has often been guided by consideration of federal case law and also the law of other jurisdictions with similar rules governing intervention as of right. Vicendese v. J-Fad, Inc., 160 N.J. Super. 373, 378 (Ch. Div. 1978). Federal case law clearly recognizes that a denial of leave to intervene as of right is appealable as an appeal from a final order. Cascade Natural Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129 (1967); N.Y. PIRG, Inc. v. Regents of the University of the State of N.Y., 516 F.2d. 350, 351 n.1 (2d Cir. 1975). See generally 7A Wright & Miller, Federal Practice and Procedure §1923 at p. 628 (West 1972). State case law also recognizes that denial is appealable where intervention is a matter of right. See generally Annotation, Appealability of Order Granting or Denying Right of Intervention, 15 A.L.R. 2d 336, §6 at p. 358.

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Although Government Security Co. v. Waire, 94 N.J. Super. 586, 589 (App. Div. 1967) cert. den. 50 N.J. 84 (1967) suggests to the contrary that such a denial is considered an interlocutory order, Waire should not be followed for several reasons. First, that issue therein was not argued by the parties. 94 N.J. Super. at 589. Secondly, and most importantly, the position taken in Waire is contrary to the great weight of authority in New Jersey case law, federal case law, and that of other states interpreting the appealability of a denial of intervention as of right.

Consequently, appellant herein clearly may appeal the denial of his application for intervention as of right since such action constitutes a final order appealable under R.2:2-3(a).

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POINT II

THE APPLICANT MEETS THE PREREQUISITES
FOR INTERVENTION AS OF RIGHT UNDER
R.4:33-1; THEREFORE THE COURT BELOW
ERRED IN DENYING HIS APPLICATION.

The Appellant moved 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."

This Rule, adopted verbatim from Fed. R. Civ. P 24(a), Pressler,
Current N.J. Court Rules, Comment 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-Fad, Inc., supra,
160 N.J. Super at 378-379.

If these criteria are met, an application for intervention

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as of right must be approved by the court; unlike permissive intervention, intervention as of right is not discretionary. Id at 379. See also 7A Wright & Miller, Federal Practice and Procedure, §1902 at 467. Since the appellant clearly satisfies all prerequisites for intervention as of right, the court below erred in denying his application for leave to intervene.

Before addressing each criterion individually, it should be stressed that such applications for intervention are to be treated liberally. State by Bontempo v. Lanza, 74 N.J. Super. 362, 371 (App. Div. 1962) affirmed 39 N.J. 595, 600 (1963) cert. den. & app. dism. 375 U.S. 451 (1964); Cold Indian Springs Corp. v. Tp. of Ocean, 154 N.J. Super. 75, 87 (Law Div. 1977) aff'd 161 N.J. Super. 586 (App. Div. 1978) aff'd 81 N.J. 503 (1980); Davis v. Smith, 431 F. Supp. 1206, 1209 (D.C.N.Y. 1977). See generally, 7A Wright & Miller, Federal Practice and Procedure §1905, at 473-74.

A. Appellant has an interest in the subject of the present suit.

Appellant Pillon owns property and a home directly adjacent to and across Mathews Drive from lots within 200 feet of the area of land proposed for rezoning. Affidavit of Attilio Pillon dated March 18, 1981, para. 2(a), p.2. The economic interests of appellant will clearly be impaired if plaintiff obtains the requested relief. The development of a regional shopping mall, with all the attendant negative

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impacts including noise, lights, glare, traffic crime, water and air pollution, all directly behind the appellant's property, most assuredly will have a devastating effect on the value of their property. Indeed, even the pendency of plaintiff's action alone has a negative impact on the value and marketability of appellant's property. The plaintiff did not present any affidavit or other evidence below to counter the affidavit of Attilio Pillon.

Appellant's economic interest in the subject matter of the pending suit clearly entitles him to intervene as of right. In New York PIRG, Inc. v. Regents, supra, 516 F.2d at 352, an effect on economic interests alone was held to constitute a sufficient basis on which to predicate intervention as of right. In Cold Indian Springs Corp. v. Tp. of Ocean, supra, 154 N.J. Super. at 88, applicants' therein "direct financial interest" in the litigation was held sufficient to permit intervention as of right. Appellant herein has no less a direct financial interest in the pending suit and therefore should have been permitted to intervene.

In a case analogous to the instant one, the New Jersey Supreme Court reversed the decisions of both the trial court and the Appellate Division, holding that non-residents of Bedminster Township who claimed an interest in the plaintiff-developers suit for a rezoning were entitled to intervention as of right. The Allan-Deane Corp. v. Tp. of Bedminster, 63 N.J. 591 (1973) reversing and remanding 121 N.J. Super

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288 (App. Div. 1972). In sharp contrast to the Allan-Deane intervenors, the appellant in this case is a resident of a tract of land directly across a residential street from the property which is the subject of this action and is among the class of persons who will be most directly impacted by the rezoning transaction which is also the subject of this action. As such, appellant should be entitled to intervene as of right.

If the sole issue in the instant case was the necessity for plaintiff to comply with Land Use Law procedures, N.J.S.A. 40:55D-1 et seq., then there would be an obvious rationale for limiting intervention to those statutorily entitled to notice of applications for subdivision or variance, i.e., property owners within 200 feet of the property in question. N.J.S.A. 40:55D-12(b). But plaintiff herein has raised the larger question of whether the entire zoning ordinance of the Township of Bedminster is invalid and, in the alternative, seeks to compel the rezoning of plaintiff's land for retail and commercial use. (D1a-65) The requested relief directly negatively impacts upon the value and marketability of appellant's very nearby property. For purposes of intervention, the distinction drawn by the Land Use Law between those within 200 feet of the property and those without is not valid. If an applicant can demonstrate the requisite interest in the subject matter in the pending suit, that should suffice to permit intervention as of right.

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A concept or distinction drawn from another field of law should not be imported into the Rule governing intervention, whose requirements provide a rigorous test in and of themselves, where such other concept or distinction is not relevant to the primary issues in the pending suit.

The second criterion, the ability of the applicant to protect his interests is related to the first requirement of interest in the subject matter. Vicendese v. J-Fad, Inc., supra, 160 N.J. Super. at 379. Having demonstrated appellant's interest in the subject matter, it is certain that disposition of the action may as a practical matter impair the applicant's ability to protect his economic interests.

B. Appellant's interest may not be adequately represented by the existing defendant.

Given the potential effects to appellant's interests described above, the appellant is entitled to intervene as of right unless existing parties to the proceeding already represent their interests. As was stated of F.R.C.P. 24(b)(2) by the United States Supreme Court in Trbovich v. Mine Workers, 404 U.S. 528, 538 n. 10 (1971):

"The requirement of the Rule is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal."
(emphasis added)

Moreover, the burden of proof on the criterion of adequate representation rests on the party opposing intervention.

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United States Postal Service v. Brennan, 579 F. 2d 188, 191 (2d Cir. 1978); Smuck v. Hobson, 408 F. 2d. 175, 181, 132 U. S. App. D. C. 372 (D.C. Cir. 1969); Nuesse v. Camp, 385 F.2d. 694, 702, 128 U. S. App. D. C. 172 (D.C. Cir. 1967). See generally, 7A Wright & Miller, op. cit. §1909 at 521.

Unless there exists no possibility that the interests of the applicant and an existing party may diverge, courts have usually permitted intervention. Natural Resources Defense Council, Inc. v. United States Nuclear Regulatory Comm'n, 578 F. 2d 1341, 1346 (10th Cir. 1978). The appellant herein should have been allowed to intervene because he will make a better informed, more vigorous presentation of the impact of the requested rezoning on immediately adjacent property than will the defendant Township of Bedminster. New York PIRG v. Regents, supra, 516 F. 2d at 352; see generally, Natural Resources Defense Council v. Castle, 561 F. 2d 904 (D. C. Cir. 1977). Counsel for defendant Township of Bedminster in fact, admitted during argument on the motion to intervene that their outlook is "global," rather than site-specific on the surrounding properties. (T12-17 through 13-8)

Furthermore, the present plaintiff and defendant may settle or compromise issues in a manner detrimental to the appellant's interest although not to their own. Without appellant's participation, in any such negotiations, the harm to his interests can be blindly consummated.

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Consequently appellant's interest is sufficiently jeopardized in this action to acknowledge that a possibility of inadequate representation exists herein meeting the requirement of R. 4:33-1.

C. Appellant's application was timely.

Appellant's leave to intervene was filed March 19, 1981, prior to a pretrial conference scheduled on March 20, 1981.

In The Allan-Deane Corp. v. Tp. of Bedminster, supra, plaintiffs were permitted to intervene even though the application was not made until more than nine months after commencement of the suit. Indeed, the court below relying upon Allan-Deane, specifically held that the motion for leave to intervene was "timely and should be heard." (T33-25 through 33A-8)

In sum, the appellant meets all the requirements of R.4:33-1. Therefore the court below erred in denying his application to intervene as of right.

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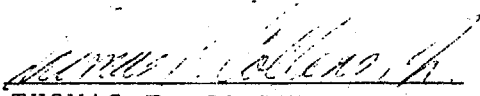
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CONCLUSION

For the foregoing reasons, the order denying leave to intervene to Applicant Attilio Pillon should be reversed and the cause should be remanded to trial court for further proceedings in which the Applicant shall be permitted to participate as a defendant-intervenor.

Respectfully submitted,

VOGEL AND CHAIT,
A Professional Corporation
Attorneys for Appellant


THOMAS F. COLLINS, JR.

Dated: May 20, 1981

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14.

PRESCRIBED COURT TRANSCRIPT REQUEST FORM - R.2:5-3(a)

ATTILIO PILLON [Name of party requesting transcript]
Mathews Drive, Bedminster, N.J. 07921 [Address of party requesting transcript]

HERBERT A. VOGEL, esq. [Name of attorney for party requesting transcript]
07960
Maple Avenue at Miller Rd., Morristown NJ [Address of attorney for party requesting transcript]

LEONARD DOBBS [Name(s) of plaintiff(s)]

TOWNSHIP OF BEDMINSTER [Name(s) of defendant(s)]

L-12502-80 [Lower Court docket no. ind. no. compl. no.]

SUPERIOR COURT, LAW DIV., SOMERSET COUNTY [Court from which appeal taken]

To: ROBERT B. GROSSMAN [Name of Court Reporter]*

10 Galaxy Ct., RD 3, Belle Mead, NJ 08502 [Address of Court Reporter]

[Trial Court Clerk (if sound recorded)]

[Address of Trial Court Clerk (if sound recorded)]

It is hereby requested that you prepare for use on appeal as original and 3 copies of the following:

Table with 3 columns: Date(s) of Proceeding, Type of Proceeding (e.g., trial, sentencing, hearing on petition for post conviction relief), Name of Judge. Row 1: 4/3/81, Hearing on Motion to Intervene, Michael R. Imbriani, J.S.C.

Herewith is deposit for transcript in the amount of \$200.00

Date May 20, 1981

VOGEL AND CHAIT, P.C.

[Handwritten signature]

[Signature of pro se party or attorney requesting transcript]

cc: Clerk, Appellate Division, Superior Court**
Administrative Office of the Courts
Attn: Chief, Reporting Services

THOMAS F. COLLINS, JR., ESQ.
(The Clerk's copy shall be attached to the notice of appeal - R.2:5-10)

[Reporter Supervisor for the County]

JOSEPH L. BASRALIAN, ESQ.

ALFRED L. FERGUSON, III, ESQ.

{ [Other attorneys and pro se parties]

*Note: If more than one reporter recorded a portion of the proceeding, a separate form shall be completed for each such reporter.
**Note: Where transcript is to be prepared for use in the Supreme Court rather than the Appellate Division, the copy shall be forwarded to the Clerk of the Supreme Court.

Copy

Superior Court of New Jersey

MAY 27 3 56 PM 1981 APPELLATE DIVISION

DOCKET NO. SOMERSET COUNTY L. B. OLSON, CLERK

CIVIL ACTION

LEONARD DOBBS

Plaintiff

v.

TOWNSHIP OF BEDMINSTER

Defendant

ON APPEAL FROM Superior Court of New Jersey, Law Division Somerset County Docket No. L-12502-80

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

Defendant-Intervenors

SAT BELOW

Hon. Michael R. Imbriani, J.S

ATTILIO PILLON

Applicant for Intervention

APPENDIX FOR

APPELLANT-APPLICANT FOR INTERVENTION ATTILIO PILLON

VOGEL AND CHAIT, A Professional Corporation Maple Avenue at Miller Road Morristown, New Jersey 07960

(201) 538 3800

ATTORNEY(S) FOR

Appellant-Applicant for Interven ATTILIO PILLON

ON THE BRIEF

Thomas F. Collins, Jr., Esq. Richard C. Erdman, Esq.

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A P P E N D I X

APPENDIX

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Affidavit of Defendant-Intervenor Attilio Pillon.....	D1a-50
Brief in Support of Application for Intervention.....	D1a-55
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SUPERIOR COURT OF N.J.
ORIGINAL FILED

NOV 5 1989

I hereby certify that the foregoing is a true copy
of the original on file in my office.

[Handwritten Signature]
Clerk

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.

02 01
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

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).

3. 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."

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(c).

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;

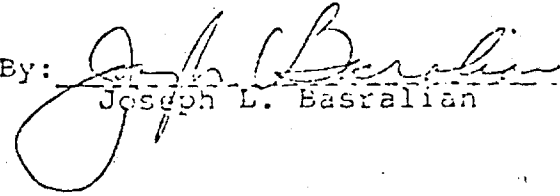
B) Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a regional retail and commercial development district;

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. Basrallian

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,

vs.

TOWNSHIP OF BEDMINSTER, a
municipal corporation,

Defendant.

..... :

Civil Action

ANSWER

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

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,

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;

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

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)

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

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

NOTICE OF MOTION

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.

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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. D-12502-80

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-38 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 W. VOGEL

Dated: March 19, 1981

D1a-28

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

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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.

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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.

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c. As a residential property owner in the R-3%
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.

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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.

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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:

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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.

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b. I am also raising the defense of the

Diane M. Henderson
DIANE M. HENDERSON

Sworn and subscribed before me
this 15th day of March, 1981.

Thomas J. [unclear]
Notary Public
State of Maryland

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 submit-
ting this Affidavit in support of my application for an Order
granting leave to intervene in the above-captioned matter.

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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, LFONARD 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 those 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 approve. 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 rezoning from the governing body and without having requested a recommendation for rezoning from the Planning Board of Bedminster Township. If the

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plaintiff obtains the relief he is requesting and on
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 locat-
ed 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 an R-3
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-3C 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 10th day of March, 1981.

James M. [unclear]
[unclear] of [unclear] State of [unclear]

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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)

HENRY E. ENGELBRECHT, 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. 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.

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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 disposi-
 tion of the action may, as a practical matter, impair or impede
 my ability to protect these interests:

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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-53 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 rezon-
 ing from the governing body and without having
 requested a recommendation for rezoning from the
 Planning Board of Edminster Township. If the

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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.

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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.

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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-30 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.

HENRY E. ENGELBRECHT

Sworn and subscribed before me
this _____ day of March, 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)

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% 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

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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.

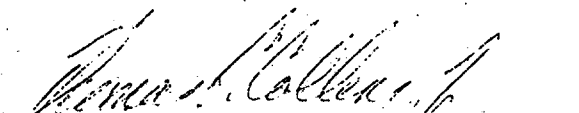
7. If I am permitted to intervene in this action, the within litigation will not be further complicated.

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 10th day of March, 1981.


Thomas J. Collins
Attorney at Law
1000 Walnut Street
Philadelphia, PA 19106

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

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

:

BRIEF IN SUPPORT OF
APPLICATION FOR INTERVENTION

VOGEL AND CHAIT,
A Professional Corporation
Maple Avenue at Miller Road
Morristown, New Jersey

Herbert A. Vogel, Esq.
Attorney for
Defendant-Interveners

THOMAS F. COLLINS, JR., ESQ.
On the Brief

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STATEMENT OF FACTS

On November 5, 1980, the plaintiff in this action, Leonard Dobbs, filed a complaint in lieu of prerogative writs challenging the zoning of a tract of land in Bedminster Township. The complaint seeks relief in the form of a declaration that the entire zoning ordinance of the Township is invalid and an order compelling the rezoning of the specific tract of land to a regional retail and commercial development district. The plaintiff's complaint was filed prior to any request to the governing body, the planning board, the zoning board of adjustment or any government official for relief from the requirements of the existing zoning.

The defendant-interveners are residents of Matthews Drive, which is a cul-de-sac residential street located directly adjacent to the tract of land which is the subject of this suit. Three of the defendant-interveners, Robert R. Henderson, Diane M. Henderson, and Henry E. Engelbrecht reside in homes which are within 200 feet of the tract which the plaintiff is requesting the court to rezone. Attilio Pillon is the owner of a lot and home on the side of Matthew Drive which is across the street from the tract of land which is the subject of this action and his property is not within 200 feet of the tract.

Since the plaintiff did not attempt to make any request for administrative relief prior to the filing of this

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law suit, the defendant-interveners did not receive any notice
of any public hearings and did not have any opportunity to be
heard pursuant to various New Jersey statutes nor did they
have the opportunity to petition the governing body pursuant
to N.J.S.A. 40:55D-63.

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Late in January, 1981, Leonard Dobbs appeared
before the Township Committee of the Township of Bedminster
and, under the threat of the pending law suit, presented a
proposal for rezoning of the tract of land which is the subject
of this suit. Some of the defendant-interveners attended
the January meeting of the governing body. Late in February
and early in March, 1981, the defendant-interveners sought
legal counsel. On March 19, 1981 this motion was filed on
behalf of the defendant-interveners seeking waiver of the
14-day time requirements of R.1:6-3 and requesting leave to
intervene in this action pursuant to either R.4:33-1 (Inter-
vention as of Right) or in the alternative R.4:33-2 (Permissive
Intervention).

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The short notice was requested because the attorneys
for the defendant-interveners became aware on Monday, March 16,
1981, that the court would be holding a pre-trial conference
on March 20, 1981.

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It should be noted that in January, 1981, the
Hills Development Company, the successor in title to the
Allan-Deane Corporation, sought to intervene in this action
pursuant to R.4:33-1. The Hills Development Company owns

property in a different section of the Township and claimed
an interest in the rezoning request which was based in arguments
of delay and damage which would indirectly occur if the
plaintiff was successful. The motion of the Hills Development
Company was denied. The interests of the applicants for
intervention are clearly distinguishable from those of the
Hills Development Company since these applicants are residents
of the lots closest to the tract in question and since they
are claiming interests based in constitutional and statutory
rights and property interests.

POINT I

THE DEFENDANT-INTERVENERS SHOULD
BE PERMITTED TO INTERVENE IN THE
ACTION PURSUANT TO EITHER R.4:33-1
or R.4-33-2.

R.4:33-1 states that:

"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 applicants' interest is adequately represented by the parties."

Under this rule and the applicable case law in New Jersey, it is clear that the defendant-interveners meet all of the requirements of R.4:33-1. See the Affidavits of the defendant-interveners. In State v. Lanza, 39 N.J. 595, at 600 (1963), the Supreme Court stated:

"Grant of permission to intervene in an action is committed in the first instance to the trial court. Ordinarily such applications are treated liberally there."

In an analogous case, The Allan-Deane Corp. v. Tp. of Bedminster, 63 N.J. 591 (1973), the New Jersey Supreme Court reversed the decisions of the trial court and the Appellate Division and held that non-residents of Bedminster Township who claimed an interest in the plaintiff-developers' suit for a rezoning were entitled to intervention as a matter of

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right pursuant to R.4:33-1, even though the application was
not made until more than nine months after the commencement
of the suit. (The Allan-Deane Corp. v. Tp. of Bedminster,
63 N.J. 591 (1973) reversing and remanding 121 N.J. Super 288
(App. Div. 1972.))

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In sharp contrast to the Allan-Deane interveners,
the defendant-interveners in this case are residents of the
tracts of land directly adjacent to the property which is
the subject of this action and they are the persons who will
be most directly impacted by the rezoning transaction which
is also the subject of this action. As residents who live
within 200 feet, three of the applicants, Robert R. Henderson,
Diane M. Henderson, and Henry E. Engelbrecht have various
statutory rights which are being impeded by this action. These
rights include the right to petition the governing body
pursuant to N.J.S.A. 40:55D-63 in order to prevent the effec-
tiveness of a rezoning amendment unless two-thirds of all of
the members of the governing body approve this rezoning.

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In addition, their rights to written notice of any
applications for a use variance before the zoning board of
adjustment are being impeded and circumvented by this action.

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Furthermore, the rights of all of the applicants,
as residents of the Township, to newspaper notice of all public
meetings relating to rezoning requests and their right to an
opportunity to be heard at all public meetings are being
impeded, if not irrevocably destroyed, by the plaintiff's

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attempt to circumvent all local processes and public bodies.

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In addition, the economic interest of the applicants for intervention will be impaired and impeded if the plaintiff obtains the relief he is seeking. Clearly, the development of a regional shopping mall, with all of the attendant negative impacts, including noise, lights, glare, traffic, crime, water and air pollution, directly behind the defendant-intervenors properties, will have a devastating effect on the value of their property. Indeed, even the pendency of this action is having a negative impact on the value and marketability of the property of the defendant-intervenors.

Furthermore, if the court grants the specific relief that the plaintiff is seeking, the court order will effectively deprive the defendant-intervenors of various liberty and property interests without due process of law. Thus, it is clear that the resolution of this matter may, as a practical matter, substantially impair and impede various statutory, constitutional and economic interests which are clearly encompassed by R.4:33-1.

It is also clear that the individual interests of the applicants for intervention will not be adequately represented by the Township within the meaning of R.4:33-1. It is also apparent that the Township will not adequately represent the interests of the defendant-intervenors in preventing the devastating negative economic impact on the value of their property which is already occurring due to the pendency of this action and

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which will be exacerbated if the property is rezoned to
permit a regional shopping mall.

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If the Court decides that intervention as of right
pursuant to R.4:33-1 is not appropriate, the applicant-defendant
interveners are also requesting permissive intervention
pursuant to R.4:33-2. The applicant-defendant-interveners
meet all of the requirements of R.4:33-2, since their
application is timely, they are claiming some defenses which
raise questions of law and fact in common with the questions
raised in the main action, and their intervention will not
unduly delay or prejudice the adjudication of the rights of
the original parties. See, R.4:33-2. The common questions
arise concerning the issues of failure to exhaust administrative
remedies and the reasonableness of the R-3% zoning. The
intervention clearly will not unduly delay the action since
the applicant-defendant-interveners will agree to limit their
discovery to the types of discovery which the plaintiff and
defendant are still permitted to indicate and they will
abide with any schedules for discovery which are established
for the plaintiff and the defendant.

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CONCLUSION

The applicants for intervention respectfully request that the court grant their motion for intervention pursuant to R.4:33-1 or, in the alternative, pursuant to R.4:33-2.

Respectfully submitted,
VOGEL AND CHAIT, P.C.
Attorneys for Defendant-
Interveners

By _____
Thomas F. Collins, Jr.

Dated: March 19, 1981

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

LEONARD DOBBS,

Plaintiff,

vs.

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

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

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

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

3-4. FACTUAL AND LEGAL CONTENTIONS OF THE DEFENDANTS

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

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

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

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

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

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

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

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

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

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

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

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

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the provisions of the R-38 zone are not arbitrary, capricious or unreasonable; 2) the plaintiff has failed to exhaust the administrative remedies available to him as required under R.4:69-4 and is barred from bringing this action; 3) the complaint was not filed within 45 days of the adoption of the Revised Land Development Ordinance, and this action is therefore barred; 4) the plaintiff's request for relief in the form of a court order rezoning the tract in question to retail commercial is barred since such an order would constitute state action which would deprive the defendants of their liberty and property interests without due process of law; 5) the property which the plaintiff is seeking to have rezoned can reasonably be used for its zoned purpose; and 6) developing municipalities do not have an obligation to provide the opportunity through their zoning and land use ordinances for regional commercial centers.

FACTUAL AND LEGAL CONTENTIONS OF PLAINTIFF

Plaintiff is the contract purchaser of a tract of land consisting of approximately 200 acres located on River Road in the defendant TOWNSHIP OF BEDMINSTER, which tract is located to the immediate west of the junction of River Road and Routes Nos. 202-206 in said township. Defendant township is a municipal corporation organized and existing under the laws of the State of New Jersey and is a developing municipality within the meaning of the decisional law of the State of New Jersey.

Pursuant to an Order of the Superior Court of New Jersey, Law Division, Somerset County, in the action bearing Docket Nos. L-36896-70 P.W. and L-28061-71 P.W., entitled "Allan-Deane Corporation, et al. v. The Township of Bedminster, et al.", defendant township has recently undertaken to formulate and adopt a revised zoning and land use ordinance, entitled "THE LAND DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF BEDMINSTER" [hereinafter "zoning ordinance"] for the purported purpose of regulating and limiting the use and development of land within its boundaries and to effect certain rezoning of the lands consisting of the so-called corridor of land to the immediate east of Routes Nos. 202-206 within the defendant township so as to provide for an appropriate variety and choice of low and moderate income housing as required by said Order of the Court.

As the result of the aforesaid rezoning and the increased residential development to be permitted by it, the total population

of defendant township will necessarily undergo an increase in the immediate future. The area occupied by defendant township contains a number of major arteries of traffic, including interstate and state highways, which not only will result in an increase in the population of defendant township but also will significantly affect the character, orientation and economic perspective of defendant township.

The true developing corridor of land within the defendant township consists of the areas both to the east and west of Route Nos. 202-206 and has been designated as such in the Somerset County Master Plan and the New York Regional Plan, and there is evidence of a further developing corridor of land on both sides of Interstate-78 both to the east and west of Interstate-287. The increased employment and economic growth which will result from development of the aforesaid corridors must be responded to by the defendant township by provision for increased services.

Plaintiff has requested that the defendant township give consideration to the provision for a regional retail and commercial development district or districts within said township, said district or districts to be located in the area of the tract of land for which plaintiff is the contract purchaser, because such land, by virtue of its proximity to the aforesaid major arteries of traffic, is ideally situated above all other tracts within the defendant township for such uses. Defendant has failed to respond in any manner to such request by plaintiff, has not rezoned the tract of land for which plaintiff is the contract purchaser and has left said tract in a R-3 Residential zone. Further attempts

by plaintiff to effect a rezoning of the tract of land in question through resort to administrative remedies would be futile in light of the opposition which defendant has made known to the particular uses and zoning changes proposed by plaintiff.

The uses and zoning changes proposed by plaintiff as aforesaid are designed to meet not only the current needs of nearby areas in and about defendant township which have been developed, but also the future needs of other nearby areas within defendant township which will be developed pursuant to the zoning ordinance adopted by defendant. The increase in population caused by the development authorized by defendant township in its zoning ordinance and by the presence of the major arteries of traffic described hereinabove will further result in a commensurate increase and expansion in the needs of such population for ancillary uses and services such as those proposed by plaintiff. The uses and zoning changes proposed by plaintiff as aforesaid would be for the public benefit and would serve the general welfare of the defendant township.

The zoning ordinance recently adopted by defendant township fails to enact a comprehensive zoning scheme, as it rezones only a small percentage of the total area of the defendant township, and fails to provide for the variety of retail, commercial and other uses which are necessary to serve the uses mandated by the rezoning effected by defendant. Defendant township cannot rely upon the possible development of retail and commercial uses in neighboring municipalities within its region as a purported

justification for its failure to provide for such uses in the zoning ordinance adopted by it. Said zoning ordinance fails to adequately fulfill the needs and requirements of the general welfare, and is arbitrary, capricious and unreasonable.

By virtue of its failure to adopt a comprehensive zoning scheme, defendant has failed to plan and zone in a manner which will promote the public health, safety, morals and general welfare, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(a).

Subsection B of the Land Use Plan contained in the master plan adopted by defendant township states that it is the planning objective of said township:

to contain business activities substantially within their present boundaries."

Said master plan recognizes various purported principles with regard to business and commercial development, which principles are inconsistent with the requirements of the Municipal Land Use Law:

"1. Bedminster's business districts are designed for neighborhood commercial uses only -- small retail and service establishments designed to serve residents of the Township.

"2. Strip commercial development along major highways is hazardous and results in the deterioration of surrounding areas. Provision for roadside restaurants, stores and facilities catering to transient traffic...has been considered and found incompatible with the development philosophies of Bedminster Township and is specifically excluded by this Plan."

Said master plan further recommends, in contravention to the requirements of the Municipal Land Use Law, the following action to implement those and other related principles which are intended to limit retail and commercial development:

"(a) Confining business activities to the provision of retail goods and personal services essential to support nearby residential facilities; and the exclusion of any enterprises which export product, services, or administration beyond the local residential trading areas."

Section 405(A) of the zoning ordinance adopted by defendant township, in applying the aforesaid principles by permitting retail and service activities of only a local nature in districts designated as Village Neighborhood districts (which districts occupy only a small area within defendant township), also contravenes the requirements of the Municipal Land Use Law.

The master plan and zoning ordinance adopted by defendant township have failed to ensure that land development within defendant township will not conflict with the development and general welfare of neighboring municipalities, the county within which defendant township is located, and the State as a whole, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(d).

The master plan and zoning ordinance adopted by defendant township have failed to provide sufficient space in appropriate locations for a variety of, among other things, commercial and retail districts in order to meet the needs of defendant's present and prospective population, of the residents of the

region in which defendant township is located, and of the citizens of the State as a whole, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(g).

The master plan and zoning ordinance adopted by defendant township have failed to encourage the proper coordination of various public and private activities and the efficient use of land, as mandated by the Municipal Land Use Law, N.J.S.A. 40:55D-2(m).

The master plan and zoning ordinance adopted by defendant township are, in other material respects, inconsistent with and in violation of the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

By seeking to contain business and commercial activities within their present territorial boundaries, the master plan and zoning ordinance of the defendant township constitute an illegal and improper zoning scheme. As the result of the foregoing deficiencies and shortcomings, the master plan and zoning ordinance of the defendant township are inconsistent with and contrary to the purposes and intent of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. Also, as a result of the foregoing, the master plan and zoning ordinance of the defendant township are inconsistent with and contrary to the purposes and intent of the Master Plan of the County of Somerset.

As a developing municipality, defendant township has the obligation not only to make possible an appropriate variety and choice of housing, but also to make possible, within its boundaries, an adequate and broad variety of facilities which would serve the needs of defendant's present and prospective

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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.

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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.

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The proximity of plaintiff's property to major traffic arteries and public thoroughfares renders it impossible to utilize said property for residential purposes as said property is presently zoned, because residential development near such traffic arteries and public thoroughfares is economically impractical, especially given the lot area required by the zoning ordinance adopted by defendant for the district in which plaintiff's property is located. Such residential development

is rendered further impracticable by virtue of the fact that soil conditions on plaintiff's property would require either the use of off-site sewerage treatment, which type of treatment is not possible for the residential development which would be required under the zoning ordinance adopted by defendant for the district in which plaintiff's property is located. Such residential development is rendered further impracticable by virtue of the fact that soil conditions on plaintiff's property would require either the use of off-site sewerage treatment, which type of treatment is not possible for the residential development which would be required under the present zoning of plaintiff's property, or economically impractical on-site sewerage disposal systems. As a direct result, the operation of a zoning ordinance adopted by defendant has so restricted the use of plaintiff's property and reduced its value so as to render said property unsuitable for any economically beneficial purpose, which constitutes a de facto confiscation of said property. For the foregoing reasons, said zoning ordinance is unconstitutional, null and void in that it deprives plaintiff of the lawful use of his property without just compensation or due process of law.

FACTUAL AND LEGAL CONTENTIONS
OF
DEFENDANT
TOWNSHIP OF BEDMINSTER

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

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

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

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

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

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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.

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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.

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

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". . . 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."

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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.

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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.

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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:

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(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.

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.

Dia-86

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 27th 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.

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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

MICHAEL R. IMBRIANI, J.S.C.