

RULS - AD - 1983 - 40

7/28/83

Re: Dobbs v. Tp. of Bedminster

Pleadings attached.

Pgs - 65

# WINNE, BANTA & RIZZI

COUNSELLORS AT LAW

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TELECOPIER (201) 487-8529

July 28, 1983

Superior Court of New Jersey  
Office of the Clerk  
P.O. Box 1300  
Trenton, New Jersey 08625

Re: Dobbs v. Township of Bedminster

Dear Sir or Madam:

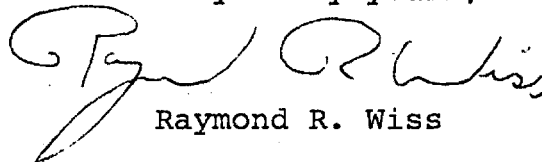
Enclosed for filing, please find an original and two copies of each of the following pleadings:

1. Notice of Motion to amend and supplement Plaintiff's Complaint returnable on August 12, 1983.
2. Certification of Leonard Dobbs in support of Motion.
3. Certification of Raymond R. Wiss, Esq., in support of Motion.
4. Proposed form of Amended and Supplemental Complaint.
5. Proposed form of Order.

By copy of this letter, I am serving all counsel, as well as the Clerk of Somerset County, with a copy of the above pleadings, together with Plaintiff's Brief In Support of Motion To Amend and Supplement Complaint.

Would you kindly mark one copy of each of the above pleadings as "filed" and return the same to my attention in the stamped, self-addressed envelope which has been provided herewith.

Very truly yours,



Raymond R. Wiss

RRW/ac  
Encls.

cc: Clerk of Somerset County  
Herbert A. Vogel, Esq.  
Alfred L. Ferguson, Esq.  
Guliet F. Hirsch, Esq.

RUIS - AD - 1983 - 40

REC'D

JUL 29 1983

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*Maria Dambrosio*  
Clerk

*Box #30*

Entered

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SOMERSET COUNTY  
L.R. OLSON, CLERK

*S-7364*

FILED

WINNE, BANTA & RIZZI  
25 East Salem Street  
Hackensack, New Jersey 07603  
(201) 487-3800  
Attorneys for Plaintiff  
Leonard Dobbs

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SOMERSET COUNTY

-----X

LEONARD DOBBS, :  
:  
Plaintiff. :  
:  
v. :  
:  
TOWNSHIP OF BEDMINSTER, :  
:  
Defendant. :  
:  
THE HILLS DEVELOPMENT COMPANY, :  
ROBERT R. HENDERSON, DIANE M. :  
HENDERSON, HENRY E. ENGELBRECHT, :  
and ATTILIO PILLON, :  
:  
Intervenors/Defendants. :  
-----X

DOCKET NO. L-12502-80

CIVIL ACTION

*8-12-83*

NOTICE OF MOTION TO  
DISSOLVE STAY AND TO AMEND  
AND SUPPLEMENT PLAINTIFF'S  
COMPLAINT

TO: McCARTER & ENGLISH  
550 Broad Street  
Newark, New Jersey 07102  
Attorneys for Defendant  
Township of Bedminster

BRENER, WALLACK & HILL  
2-4 Chambers Street  
Princeton, New Jersey 08540  
Attorneys for Intervenor/Defendant  
Hills Development Company

X

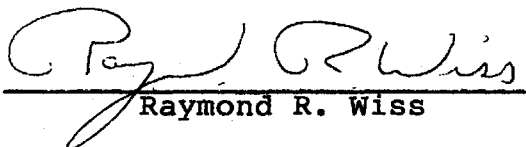
VOGEL & CHAIT  
Maple Avenue at Miller Road  
Morristown, New Jersey 07960  
Attorneys for Intervenors/Defendants  
Robert R. Henderson, Diane M. Henderson,  
Henry Engelbrecht, and Attilio Pillon

SIRS:

PLEASE TAKE NOTICE that on August 12, 1983, at 9:00 a.m. in the forenoon or as soon thereafter as counsel may be heard, the undersigned attorneys for plaintiff Leonard Dobbs will apply to the Superior Court of New Jersey, Law Division, Somerset County, at the Courthouse, in Somerville, New Jersey, for an Order dissolving the stay entered in this matter on July 17, 1981 and granting plaintiff leave to amend and supplement his Complaint, in the form attached hereto.

In support of the within application, the undersigned will rely upon the pleadings in this matter together with the Certifications of Raymond R. Wiss, Esq. and Leonard Dobbs filed herewith.

WINNE, BANTA & RIZZI  
Attorneys for Plaintiff  
Leonard Dobbs

By:   
Raymond R. Wiss

Dated: July 28, 1983

FILED

JUL 29 11 21 AM '83

SOMERSET COUNTY  
L.R. OLSON, CLERK

-----X  
LEONARD DOBBS,

Plaintiff.

v.

TOWNSHIP OF BEDMINSTER,

Defendant.

THE HILLS DEVELOPMENT COMPANY,  
ROBERT R. HENDERSON, DIANE M.  
HENDERSON, HENRY E. ENGELBRECHT,  
and ATTILIO PILLON,

Intervenors/  
Defendants.  
-----X

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISSOLVE STAY  
AND TO AMEND AND SUPPLEMENT PLAINTIFF'S COMPLAINT

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

Of Counsel:  
Joseph L. Basralian

On the Memorandum:  
Donald A. Klein

## STATEMENT OF FACTS

Facts relevant to plaintiff's motion are contained in the certifications of Raymond R. Wiss and Leonard Dobbs filed herewith and will only be briefly summarized herein.

This is an action brought by plaintiff, the contract purchaser of approximately 200 acres in defendant Township of Bedminster, wherein plaintiff, inter alia, challenges the zoning and master plan of defendant municipality. The action was commenced originally by Complaint filed in November 1980. Among other things, the Complaint challenged the zoning and master plan of defendant municipality as it related to plaintiff's property and also alleged that same constituted a taking of plaintiff's property.

Shortly after the action was commenced, various parties, including The Hills Development Company and Robert R. and Diane M. Henderson, Henry E. Engelbrecht, and Attilio Pillon, sought to intervene. Hills is another developer in defendant municipality which has been engaged in lengthy litigation with defendant municipality with respect to property owned by it in defendant municipality. The other intervenors are nearby property owners. Plaintiff resisted intervention, and the trial court granted intervention as to the individual property owners within 200 feet of plaintiff's property, but denied intervention as to Hills and as to the other individual property owner. Although a pretrial

conference was held in this matter in March 1981, the intervention applications by the individual intervenors were filed only one day before said conference and no discovery has taken place in this matter. Appeals and cross-appeals were filed in connection with the intervention Orders entered by the trial court, and the litigation was stayed pending resolution of the intervention issue by the Appellate Division. Although the Appellate Division granted leave to the parties to file interlocutory appeals from the intervention orders and although briefs had been exchanged in the summer of 1981, the matter was not called for oral argument until June of this year.

In the interim, plaintiff has endeavored, unsuccessfully, to work with defendant municipality toward a development plan which would be satisfactory to him and to defendant municipality. Plaintiff's requests and efforts to have an adequate opportunity for him and his experts to present his development plan have, for the most part, been frustrated and to no avail. Recently, defendant municipality has, in fact, filed a Green Acres application to acquire the plaintiff's property which would have the effect of frustrating plaintiff's development plan.

Incorporating aspects of the planned unit development (PUD) recommended by the Planning Board of defendant municipality in its Master Plan studies after this litigation had been commenced and during the pendency of the stay in this matter, and incorporating other concepts recommended by the Planning Board

during this period, plaintiff has, during the course of the stay of this matter, made certain modifications to his development plan, revisions reflected in a submission made to plaintiff by defendant municipality in August 1982. This submission resulted in the same lack of response which had attended plaintiff's basic plan.

Further, plaintiff more recently modified his development plan to make provision for high density multi-family housing, with a substantial percentage of the housing units to be for low and moderate income persons as defined in the recent Mt. Laurel II decision, further enhancing the reasonableness of plaintiff's basic proposal. Once again, defendant municipality has ignored plaintiff's plan.

Because of the various developments which have taken place since this action was initially commenced, plaintiff recently consented to intervention by the various parties who had filed statutory appeals. As a consequence, a consent order has been entered granting the parties who had sought intervention leave to intervene.

Plaintiff has prepared an Amended and Supplemental Complaint, which reflects the various developments which have taken place since the stay was entered in this matter, including, among other things, defendant municipality's response or lack of response to plaintiff's development plan and the modifications to



plaintiff's basic development plan. Defendant municipality and defendant-intervenors have refused to consent to the filing of the Amended and Supplemental Complaint, primarily on the basis that plaintiff would be alleging a new cause of action.

ARGUMENT

PLAINTIFF'S MOTION TO FILE AN AMENDED AND  
SUPPLEMENTAL COMPLAINT SHOULD BE GRANTED.

Although styled an Amended and Supplemental Complaint, the Complaint which plaintiff seeks leave to file differs from the original Complaint filed by plaintiff essentially in that it reflects developments which have taken place since this action was commenced which bear on the allegations set forth in plaintiff's original Complaint. As noted, plaintiff's Complaint challenges the zoning and master plan of defendant municipality as they relate to plaintiff's property and further alleges that they amount to a taking of plaintiff's property. This continues to be the thrust and gravamen of plaintiff's action. However, this action cannot and should not proceed in a vacuum and the various developments which have taken place during the pendency of the stay of this matter should, once the stay is vacated, be reflected in plaintiff's pleading. Included in the changes are certain changes in the zoning ordinances and master plan of defendant municipality and the history of defendant municipality's response or lack of response to plaintiff's development plan during the pendency of the stay and in the applicable legal standards which, in turn, have resulted in certain revisions to plaintiff's basic development plan.

R. 4:9-4 provides that:

On motion by a party the court may upon reasonable notice and on terms permit him to serve a supplemental pleading setting forth transactions or occurrences which took place after the date of the pleading sought to be supplemented. A motion for leave to file a supplemental pleading shall have annexed thereto a copy of the proposed pleading. The court may require the opposing party to plead thereto, specifying in its order the time therefor.

Plaintiff is following the procedure outlined in this rule to reflect relevant developments which have taken place since the original action was commenced.

The supplemental pleadings rule fosters the principles reflected in the entire controversy doctrine (see R. 4:27-1), which requires all aspects of a party's controversy with another to be included within a single litigation. See MacPherson v. Schwinn, 19 N.J. Super. 502, 507 (App. Div. 1952). Similarly, see Galler v. Slurzberg, 22 N.J. Super. 477, 484 (App. Div. 1952), in which the Appellate Division held that interpretation of the supplemental pleadings rule "should be influenced by the general principle that all controversies between the parties may be determined in a single action." In Galler, plaintiff, a primary distributor of a soft drink, was permitted, in an action against sub-distributors of such soft drink for an alleged breach of contract which regulated relations between plaintiff and defendant, to file a supplemental Complaint setting forth alleged facts relative to defendant's retaliation by picketing the

primary distributor's plant and engaging in other activities commonly associated with labor disputes and seeking to enjoin such activities.

Defendant and defendant-intervenors argue in their opposition to plaintiff's motion that plaintiff should not be permitted to file an Amended and Supplemental Complaint because plaintiff has set forth therein a new cause of action. This is not so. Plaintiff's original Complaint challenges the zoning and master plan of defendant municipality as applied to a particular piece of property. The Amended and Supplemental Complaint does also. Although additional allegations have been added and existing allegations modified to reflect recent developments, plaintiff's cause of action remains the same, as do the vast majority of the allegations in plaintiff's original Complaint, (including, for example, those relating to the argument that the corridor determination excluding plaintiff's property is erroneous, to the argument that defendant municipality has a responsibility to provide for adequate commercial and other uses, and the argument that the zoning and master plan of defendant municipality constitutes a taking of plaintiff's property remains).

Even if plaintiff's Amended and Supplemental Complaint sets forth a new cause of action, however, this would not be a basis for barring the Complaint. In Galler v. Slurzberg, 22 N.J. Super. 477, 484 (App. Div. 1952), for example, the Appellate

Division cites with approval the following comment by Professor Moore:

"While the matters stated in a supplemental complaint should have some relation to the cause of action set forth in the original pleading, the fact that the supplemental pleading technically states a new cause of action, should not be a bar to its allowance but only a factor to be considered by the court in the exercise of its discretion." Moore's Federal Practice §15, 16.

While the question of whether a new cause of action has been plead may, in the case of an amended pleading,\* have relevance where a limitation problem exists, plaintiff's Amended and Supplemental Complaint not only does not state a new cause of action within the meaning of the relation back rule, R. 4:9-3, but clearly there is no limitation problem in this case. See, for example, Harr v. Allstate Insurance Co., 54 N.J. 287, 299-300 (1969), interpreting R. 4:9-3:

"The rule should be liberally construed. Its thrust is directed not toward technical pleading niceties, but rather to the underlying conduct, transaction or occurrence giving rise to some right of action or defense. When a period of limitation has expired, it is only a distinctly new or different claim or defense that is barred. Where the amendment constitutes the same matter more fully or differently laid, or the gist of the action or the basic subject of the controversy remains the same, it should be readily allowed and the

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\*Although certain minor amendments have been made to plaintiff's original complaint, they are strictly of a form nature. The substantive changes which are reflected in the amended and supplemental complaint reflect developments since this action was commenced.

doctrine of relation back applied.\*\*\*It should make no difference whether the original pleading sounded in tort, contract or equity, or whether the proposed amendment related to the original or a different basis of action."  
[Citations omitted.]

R. 4:9-1 states that amendments to pleadings "shall be freely given in the interest of justice". This spirit applies also to supplemental pleadings. See Associated Metals and Minerals Corp. v. Dixon, 52 N.J. Super. 143, 150 (Ch. Div. 1958). The filing by plaintiff of an Amended and Supplemental pleading is especially appropriate given the fact that such pleading properly reflects the facts relevant to and the status of the matter under dispute at this time, given the fact that no discovery has taken place in this matter, and given the fact that after vacation of the stay of more than two years it is appropriate that the litigation proceed on the basis of present reality rather than on the basis of the status quo two years ago.

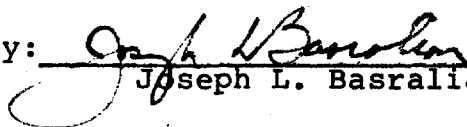
Defendant and defendant-intervenors suggest that plaintiff should be required to file a new Complaint. Under the circumstances, the filing of a new Complaint to reflect the changes which have taken place over this period, (which presumably then would be consolidated with the complaint originally filed by plaintiff,) much of which remains unchanged is an unnecessary and contorted response to the developments in this matter during the stay and ignores the purpose and spirit of the supplemental

pleading and entire controversy rule. Plaintiff's Amended and Supplemental Complaint is not inconsistent with plaintiff's original complaint; rather it simply adds to it reference to developments, factual and legal, which have taken place since the action was commenced.

CONCLUSION

For the reasons hereinabove set forth, plaintiff Leonard Dobbs respectfully requests that an Order be entered granting plaintiff leave to file an Amended and Supplemental Complaint, in the form submitted to the Court.

WINNE, BANTA & RIZZI  
Attorneys for Plaintiff

By:   
Joseph L. Basralian

Dated: July 28, 1983



WINNE, BANTA & RIZZI  
25 East Salem Street  
Hackensack, New Jersey 07603  
(201) 487-3800  
Attorneys for Plaintiff  
Leonard Dobbs

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SOMERSET COUNTY

-----X	:	
LEONARD DOBBS,	:	
	:	DOCKET NO. L-12502-80
Plaintiff.	:	
	:	
v.	:	
	:	CIVIL ACTION
TOWNSHIP OF BEDMINSTER,	:	
	:	
Defendant.	:	CERTIFICATION OF LEONARD
	:	DOBBS IN SUPPORT OF
THE HILLS DEVELOPMENT COMPANY,	:	PLAINTIFF'S MOTION TO
ROBERT R. HENDERSON, DIANE M.	:	DISSOLVE STAY AND TO AMEND
HENDERSON, HENRY E. ENGELBRECHT,	:	AND SUPPLEMENT PLAINTIFF'S
and ATTILIO PILLON,	:	COMPLAINT
	:	
Intervenors/Defendants.	:	
-----X	:	

LEONARD DOBBS, hereby certifies as follows:

1. I am the plaintiff in this matter and presently reside at 111 Central Avenue, Lawrence, New York.

2. During the pendency of the stay entered in this matter, I have endeavored to work with representatives of defendant municipality on a proposal for development of the property in question which would be satisfactory to the municipality. I have continually sought the opportunity to be heard by the appropriate municipal bodies with respect to such development and to have my experts make their presentations to such bodies. Although the Planning Board had agreed to conduct hearings to consider the use of my property in March 1981, this agreement was not implemented and the hearings were cancelled.

3. Despite the passage of nearly two years since the stay was entered, the sole opportunity provided to me and my experts to formally present my development proposal for a regional retail facility and other development which would be agreeable to the township has been during a one-half hour period before a committee of the Planning Board, holding hearings on the municipality's Master Plan, in early 1982, followed by an informal discussion with the Planning Board on July 28, 1982. As a result of a meeting on May 21, 1981 attended by representatives of the Township and the Planning Board of the Township's counsel and by me and my counsel, it was agreed that three one-hour hearings would be conducted by the Planning Board commencing June 1981, wherein I and my experts would be afforded adequate time to make appropriate presentation with respect to my development proposal. It was agreed that in exchange for

the conduct of such hearings that I would dismiss the litigation without prejudice. Despite my good faith efforts to implement this agreement and despite the agreement of defendant Township, defendant Township reneged on this agreement and failed to provide me with the opportunity to make a presentation as agreed upon.

4. In August 1982, I submitted to the municipality a letter proposal detailing my original regional mall development proposal which is the subject of the pending litigation, incorporating aspects of the planned unit development (PUD) recommended by the Planning Board in its Master Plan studies and incorporating other concepts recommended by the Planning Board after this litigation had been commenced. For example, provision was made not only for commercial development but also for a hotel/conference center and municipal facilities, both of which had been recommended by the Planning Board for the municipality. A copy of such submission is attached hereto as Exhibit A.

5. Despite the passage of many months since this submission, I have received from the municipality no response to this submission, except for the filing by the municipality of a Green Acres application which effectively would frustrate the proposed development of the property in question.

6. The August 1982 submission contemplates the development of a portion of the property for residential use. The residential component of the planned unit development, as detailed in my June 17, 1983 submission to defendant municipality (letter dated June 14, 1983), a copy of which is attached hereto as Exhibit B, is to consist of the utilization of forty acres for the development of high density multi-family housing, with a substantial percentage of the housing units to be for low and moderate income persons, as defined in the recent Mt. Laurel II decision.

7. I have attended during the pendency of the stay nearly every meeting of the Township Committee and countless meetings of the Planning Board and other governmental bodies. In spite of the fact that defendant municipality has rezoned properties for certain uses in accordance with a Court Order, it is highly unlikely that such properties (other than Hills) will be developed for such uses. Further, defendant municipality has consistently frustrated efforts of developers to develop properties for the variety of uses provided for in the zoning ordinance. This history of superficial compliance coupled with the defendant municipality's refusal to rezone my property, which is developable for such uses, demonstrates the need for the relief which I am seeking in this Amended and Supplemental Complaint.

8. There is presently no retail commercial development proposed in defendant municipality. Although 20% of the Hills tract is zoned commercial in the PUD zone, Hills has, since the commencement of this litigation, sold such portion of the PUD to a developer who proposes to develop such portion almost entirely for office buildings.

9. In light of the foregoing, I believe that the pending litigation should be amended and supplemented to make reference to developments which have taken place since the stay was entered (including revisions to my development plan, changes in the zoning ordinance and master plan, and developments in New Jersey law) and to the municipality's response to same. Filed herewith is a form of Amended and Supplemental Complaint which accomplishes this.

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

  
LEONARD DOBBS

Dated: July 28, 1983

Leonard Dobbs  
111 Central Avenue  
Lawrence, New York  
11559

August 16, 1982

Planning Board of the Township of Bedminster  
J. William Scher, Chairman  
Administrative and Executive Offices  
Hillside Avenue  
Bedminster, New Jersey 07921

Dear Mr. Scher and Board Members:

Thank you for allowing Dr. Wallace and me the time on Wednesday evening, July 28, 1982, to submit to you an alternative proposal for the development of my property in your community. At that time we left certain documents with you illustrating corridor definitions as made by various planning agencies and a proposed concept plan in diagrammatic form. A copy of the concept plan is enclosed for your reference. That submission is in addition to the eight reports delivered to the Master Plan Subcommittee, February 12, 1982, outlining the work of the consultants who have reviewed various aspects concerning the physical development of the Site. These reports, a list of which is attached, are a matter of record within the Township.

The purpose of this letter is to summarize our presentation and my proposal in a concise manner in an effort to assist you in your deliberations.

#### The Corridor

It is clear from the reading of your Part I – Background Studies, dated April 1982, the Court's concept of the corridor was that it would "straddle" Routes 202-206. It in fact does so except on the Site. The Tri-State Regional Planning Commission, the State Development Guidelines and the Somerset County Master Plan each include all or most of the Site within the "developing corridor." Judge Leahy stated with regard to the corridor ". . .the Zoning within the Corridor. . .is not easily justified. . . the County Master Plan anticipates Village Neighborhood development on both sides of Routes 202-206. . .unless in specific areas and for specific reasons such densities would constitute improper land use development." The Judge then exempted the Site from the Corridor reportedly ". . .based on the proofs submitted to us as to the ecological sensitivity of the area. . .this Court accepts the decision of the municipal officials (emphasis added) as to the provisions, locations, and extent of the R-3 zone."

This decision was based on misinformation presumably derived from the gross data used by the Township. On a "site-specific" basis more detailed information shows that the Site has little limitation for development other than for those uses that require on-site septic systems. Moreover our studies have shown that all negative environmental impacts that may be anticipated in connection with the development of the Site as proposed can be adequately dealt with by appropriate mitigating actions.

212-327-2400

EXHIBIT A

### The Proposal

The proposed uses for the Site are as follows:

Use	Acres
Commercial	112
Hotel/Conference Center	20
Residential	30
Municipal Facilities	20
Open Space	29
Total	211

The Commercial Area would be utilized for a retail center of 850,000 to 950,000 square feet. If the appropriate major retailers are not forthcoming for the retail center, it would be my intention as part of this alternative to develop the commercial area as a Corporate Office Park.

A 250 to 300-room "campus-style" Hotel/Conference Center would be built on the 20-acre portion of the Site furthest north. Efforts will be made to have the tennis courts, swimming pool and other physical fitness facilities attendant to this use open to the community on an appropriate basis.

Three hundred townhouses or other appropriate low-rise dwelling units would be built on the western portion of the Site. This housing would not be built for at least ten years and the parcel would be available during that period for a mutually agreeable Township use.

Twenty acres at the southwestern corner of the Site (with 900-foot-approximate frontage on River Road) would be donated to the Township for a Municipal Facilities Center.

Approximately twenty-nine acres (all the land from River Road south to the North Branch of the Raritan River) would be dedicated as open space for passive recreation purposes. This area will be in addition to the "green acres" easement along the Route 202-206 boundary of the Site.

I propose that the Planning Board and the Township zone the entire 211-acre Site Planned Unit Development (PUD) in a manner to allow the above to take place. With the Site zoned PUD the Planning Board, together with all other appropriate commissions or authorities, will be able to participate in every step of the Site's development—a process that my consultants and I would anticipate and welcome.

The use of the Site as proposed in this alternative locates various centers of activity near traffic access points of high quality, i.e., the Interstate system and the non-residential, undeveloped portions of Routes 202-206. The planning principle is to put relatively intensive development on property where traffic capacity already

Planning Board of the  
Township of Westminster  
August 16, 19  
Page 3

Leonard Dobbs

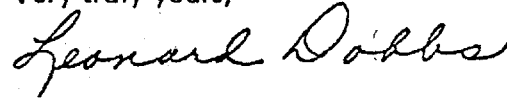
exists rather than string out development along a highway where other major changes in the road network become necessary. There are, of course, certain traffic modifications required to provide a high level of service for the Site. They are feasible and their cost will be borne by me.

Concentrating commercial use on the Site absorbs and tends to preclude the pressure for strip commercial development. The proposed use of the Site reduces the threat of sprawl. The opportunity to plan the use of a large tract of land assures the community the ability to deal with environmental concerns in a coordinated, highly-skilled and sensitive manner.

As I have demonstrated, a project of this scale can afford to contribute in ways, other than taxes, to the long-term benefit of the community and I am prepared to cooperate with you in that pursuit.

My consultants and I welcome any comments you may have with regard to this proposal and stand ready to respond to any question concerning the material that has been submitted.

Very truly yours,

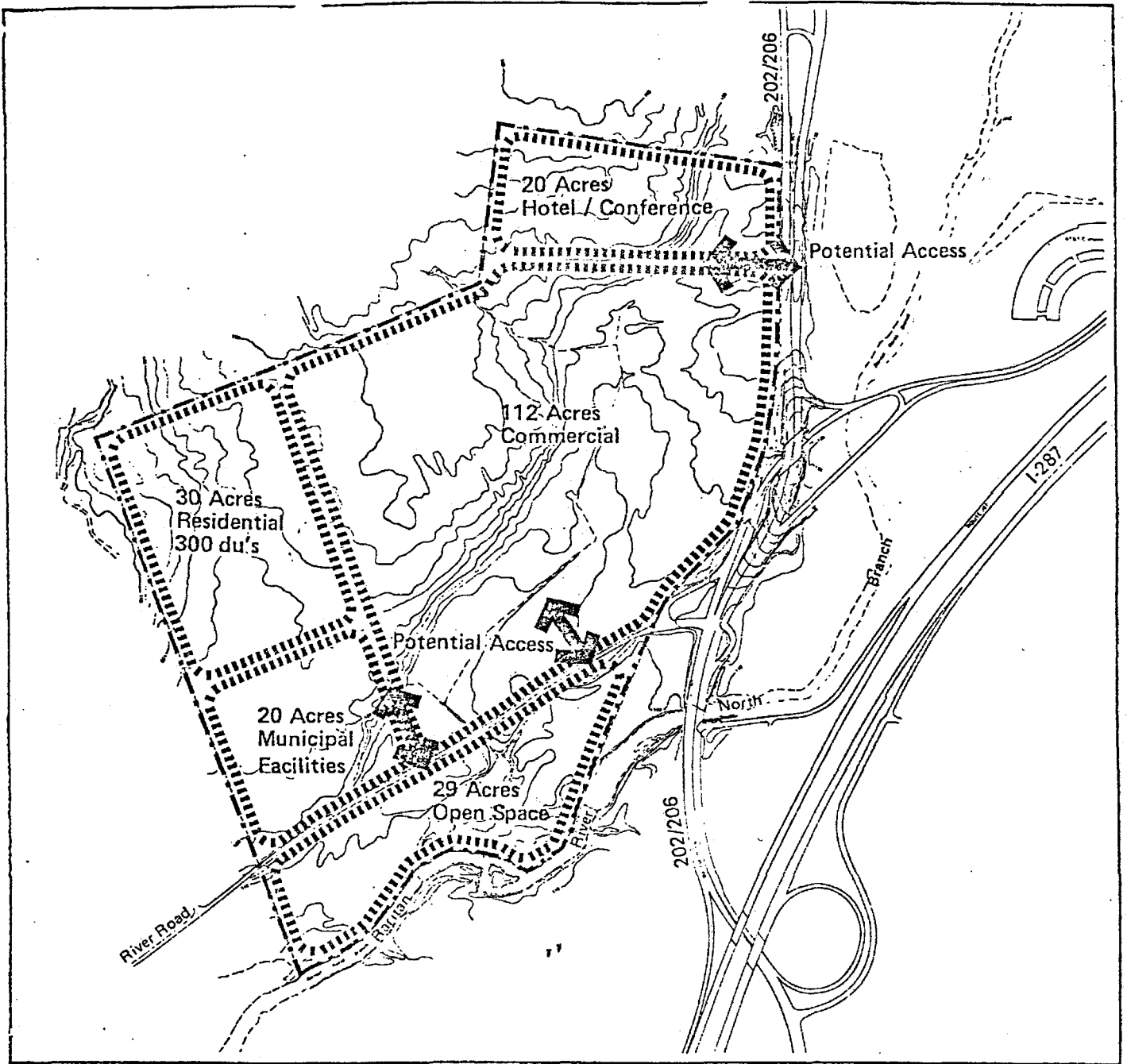


Leonard Dobbs

LD:md

Enclosure



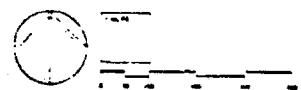


Proposed PUD  
 July 1982

**BEDMINSTER  
 CENTER**

SOMERSET COUNTY  
 NEW JERSEY

**WRT**  
 WOODS BARTON AND TROTT  
 ENGINEERS AND ARCHITECTS



LEONARD DOBBS  
111 Central Avenue  
Lawrence, New York 11559

June 14, 1983

Honorable Mayor and Township Committee Members  
Township of Bedminster  
Hillside Avenue  
Bedminster, New Jersey 07921

Members of the Planning Board of the Township of Bedminster  
Hillside Avenue  
Bedminster, New Jersey 07921

Re: Bedminster Regional Center

Dear Mayor and Township Committee and Planning Board Members:

As you know, several years ago I requested that the 211 acre tract of which I am the purchaser, known as the Old Schley Polo Field (Block 41, Lot 34), be rezoned from R-3 residential. After no action was taken with respect to this request, I ultimately commenced litigation against the Township in November 1980.

Since such time, and during the stay of the litigation imposed by the Court, I have endeavored to work with you on a proposal which would be satisfactory to the Township. After extensive discussions and my attendance at countless Township Committee and Planning Board meetings, I submitted in August 1982 a refinement of my original proposal, which incorporated concepts contained in the PUD recommendations of the Planning Board in the Master Plan Program. More particularly, such proposal provided for 112 acres of commercial development; 20 acres for a hotel/conference center; 30 acres for residential development; 29 acres for passive recreation; and 20 acres for municipal facilities. I am enclosing a copy of my August 16, 1982 submission to the Planning Board, which was subsequently presented to the Township Committee as well.

EXHIBIT B

Unfortunately, despite the passage of nearly a year, no official action has been taken with respect to the August 1982 proposal either, although one can assume from various actions of the municipality, including the filing of a Green Acres application, that the Township has implicitly denied my request for rezoning.

During the extended period since this proposal incorporating PUD concepts was made, the New Jersey Supreme Court in the Mt. Laurel II decision addressed the obligations of municipalities throughout the State with respect to the provision of low and moderate income housing. Accordingly, this letter application amends the residential component of my August 1982 proposal as follows:

Forty acres will be utilized for the development of high density multi-family housing. A substantial percentage of the housing units in this section will be for low and moderate income persons, as defined in the Mt. Laurel II decision. The exact amount is to be determined by mutual agreement, when the Township's fair share housing allocation has been determined. The units for low and moderate income persons will be subsidized by the commercial and other housing sections of the total development in order to reduce: (a) land cost; (b) site improvement cost, including, but not limited to, water and sewer systems, roadways, curbs and lighting; (c) professional fees, including, but not limited to, legal, planning and engineering; (d) municipal fees; and (e) the capital cost of construction and financing related thereto.

In all other respects (except for the reduction of the municipal facilities acreage from 20 acres to 10 acres and the consolidation of the hotel conference and commercial development acreage), the proposal as described in my August 16, 1982 submission remains unchanged.

As I have noted in the past and as I have argued in the pending litigation, the above-referenced property was improperly excluded from the development corridor straddling Routes 202-206. The State Development Guidelines Plan, along with the Tri-State Regional Planning Commission and Somerset County Master Plan, all include the site in their definition of the corridor and in their maps of the "Growth Area." While Judge

Leahy exempted the site from his corridor definition, his conclusion was based on misinformation supplied to him by the municipality as to the environmental sensitivity of the site. I have clearly demonstrated in the specific environmental proofs in the detailed studies submitted to you in February 1982 that there is no basis for this conclusion. The site is certainly capable of development in accordance with this application.

Sewage treatment for a development of this size can be handled in several ways: by expanding the Hills Development plant, by connecting to an enlarged Bedminster Township Treatment Plant, or by utilizing innovative treatment methods that have been approved by the New Jersey Department of Environmental Protection. Further, our detailed studies, submitted to you in February 1982, demonstrate that all utilities are available to the site and that traffic ingress and egress, storm water management, air quality, and noise will not create any negative environmental impact as a result of the development.

In sum, the planned unit development which I have proposed, with its combination of commercial and housing components, will not only provide for zoning which is appropriate for the property but will also enable the municipality to assist in satisfying its "fair share" obligation under Mt. Laurel II and the ancillary obligations which it will have as a result of population increases in the future. Also, since the anticipated housing development throughout the township will result in a negative tax impact, the tax revenues afforded by the development contained in this application will assist the municipality enormously in offsetting the costs of future municipal services.

Sincerely,

Leonard Dobbs

WINNE, BANTA & RIZZI  
25 East Salem Street  
Hackensack, New Jersey 07603  
(201) 487-3800  
Attorneys for Plaintiff  
Leonard Dobbs

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SOMERSET COUNTY

-----X  
LEONARD DOBBS,

Plaintiff.

v.

TOWNSHIP OF BEDMINSTER,

Defendant.

THE HILLS DEVELOPMENT COMPANY,  
ROBERT R. HENDERSON, DIANE M.  
HENDERSON, HENRY E. ENGELBRECHT,  
and ATTILIO PILLON,

Intervenors/Defendants.  
-----X

DOCKET NO. L-12502-80

CIVIL ACTION

CERTIFICATION OF RAYMOND R.  
WISS IN SUPPORT OF PLAINTIFF'S  
MOTION TO DISSOLVE STAY AND TO  
AMEND AND SUPPLEMENT  
PLAINTIFF'S COMPLAINT

RAYMOND R. WISS, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and a member of the firm of Winne, Banta & Rizzi, attorneys for plaintiff Leonard Dobbs in this matter.

2. This is an action brought by plaintiff Leonard Dobbs, the contract purchaser of approximately 200 acres in defendant Township of Bedminster, wherein plaintiff, inter alia, challenges the zoning and master plan of defendant municipality.

3. After this action was commenced, various parties - namely, Hills Development Company, Robert R. Henderson, Diane M. Henderson, Henry Engelbrecht, and Attilio Pillon, sought leave to intervene as defendants in this matter. By Orders dated March 2, 1981 and April 27, 1981, copies of which are attached hereto as Exhibits A and B, Robert R. Henderson, Diane M. Henderson, and Henry Engelbrecht were granted leave to intervene while Attilio Pillon and Hills Development Company were denied leave to intervene.

4. Subsequently, appeals were taken from such intervention Orders by Hills Development Company, by Attilio Pillon, and by Leonard Dobbs.

5. By Order dated July 17, 1981, a copy of which is attached hereto as Exhibit C, the above-referenced litigation was stayed pending an Appellate Division ruling upon the foregoing appeals.

6. Recently, a Consent Order has been entered in the Appellate Division by the Honorable Robert A. Matthews, pursuant

to which all of the foregoing parties will be permitted to intervene in this litigation. A copy of such Consent Order is attached hereto as Exhibit D.

7. The Consent Order resulted from the withdrawal by plaintiff Leonard Dobbs of his objection to the intervention by these parties, this as a result of the fact that considerable developments have taken place since the spring of 1981, when the various intervention Orders were entered, which significantly affect the context within which the intervention issues would have been considered by the Appellate Division and which further require certain amendments to and supplementation of the pending litigation.

8. The various developments which have taken place since entry of the stay in this matter are generally described in the Certification of Leonard Dobbs and in the form of Amended Complaint filed herewith.


9. It should also be noted that upon dissolution of the stay entered on July 17, 1981, plaintiff is to produce in camera to the Court a copy of his Option Agreement to purchase the property which is the subject of this litigation so that the Court may determine, after in camera inspection, which portions of such Agreement are relevant to the issues in the litigation and should be produced to the parties hereto pursuant to a Protective Order. (See Order dated August 7, 1981, attached hereto as Exhibit E.)

Plaintiff is prepared, upon dissolution of the stay, to submit such Option Agreement to the Court for such review.

10. Counsel for the Township of Bedminster, counsel for Hills Development Company, and counsel for Robert R. Henderson, Diane M. Henderson, Henry Engelbrecht, and Attilio Pillon have been forwarded copies of the amended complaint in an effort to obtain their consent to this motion. However, such counsel have each objected to the motion. See letters attached as Exhibits F, G, and H respectively.

11. Although a pretrial conference was held in this matter on March 10, 1981, the motion for intervention filed by Robert R. Henderson, Diane M. Henderson, Henry Engelbrecht, and Attilio Pillon was filed only one day prior thereto, and this matter has been effectively stayed since such time. Although interrogatories have been exchanged, such interrogatories were not answered prior to the entry of the stay. There has been no calendar call or trial date in this matter.

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

  
\_\_\_\_\_  
Raymond R. Wiss

Dated: July 28, 1983



ORIGINAL FILED
3/5/81
W. LEWIS BAMBRICK
Clerk

**BRENER, WALLACK, ROSNER & HILL**

15 CHAMBERS STREET  
PRINCETON, NEW JERSEY 08540  
(609) 924-0808  
ATTORNEYS FOR

*Plaintiff*

LEONARD DOBES

*vs.*

*Defendant*

TOWNSHIP OF BEDMINSTER,  
a Municipal Corporation

SUPERIOR COURT OF  
NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

*Docket No. L-12502-80*

**CIVIL ACTION**

**ORDER**

This having been opened to the Court on January 30, 1981, by Brener, Wallack, Rosner & Hill (Guliet D. Hirsch, Esq. appearing), attorneys for The Hills Development Company, in the presence of McCarter & English (Joseph Falgiani, Esq. appearing) attorney for Defendant and Winne, Banta & Rizzi (Joseph F. Basralian, Esq. appearing) attorneys for Plaintiff, and the Court having considered the moving papers and arguments of counsel;

WHEREAS, this Court found that The Hills Development Company has an interest in the maintenance of the present zoning scheme of the Township of Bedminster due to its ownership of a substantial quantity of

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land presently zoned for planned unit development and its pending and future development applications under the present procedures set forth in the current land development ordinance;

WHEREAS, this Court found that Plaintiff in the within action is requesting relief in the form of invalidation of the entire land development ordinance as well as invalidation of the zoning scheme as it applies specifically to Plaintiff's property; and

WHEREAS, this Court found ~~that despite the nine years of litigation in which The Hills Development Company's predecessor (The Allan Deane Corporation) actively litigated the validity of the previous land development ordinance of the Township of Bedminster, which actions terminated in a Court Order requiring a master appointed by the Court to participate in and oversee the process of revising the Bedminster Township Land Development Ordinance to bring it into compliance with the New Jersey Constitution and State Law,~~ that The Hills Development Company was adequately represented by the Township of Bedminster in the within litigation challenging the validity of the entire zoning scheme of Bedminster Township.

NOW, THEREFORE, on this *2<sup>nd</sup>* day of *March*, 1981, it is

ORDERED that The Hills Development Company's Motion to intervene in the within action is hereby denied, but the applicant is hereby granted leave to participate as amicus curiae in this suit.

*Wilfred P. Diana*  
Wilfred P. Diana, J.S.C.

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

LEONARD DOBBS,  
Plaintiff,

vs.

TOWNSHIP OF BEDMINSTER,  
a Municipal Corporation,  
Defendant,

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

Applicants for Intervention

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-SOMERSET COUNTY

DOCKET NO. L-12502-80

CIVIL ACTION

ORDER

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

EXHIBIT B

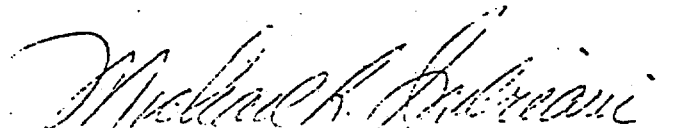
Henderson, Attilio Pillon and Henry E. Engelbrecht, and Winne, Banta & Rizzi (Joseph L. Basralian, Esq., appearing) Attorneys for plaintiff, Leonard Dobbs and McCarter & English (Alfred L. Ferguson, Esq., appearing) Attorneys for the defendant, Township of Bedminster, for an ORDER accompanied by an Answer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

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

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

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

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

  
MICHAEL R. IMBRIANI, J.S.C.

**BRENER, WALLACK & HILL**

15 CHAMBERS STREET  
PRINCETON, NEW JERSEY 08540  
(609) 924-0808  
ATTORNEYS FOR

*Plaintiff*

LEONARD DOBBS

vs.

*Defendant*

TOWNSHIP OF BEDMINSTER  
THE HILLS DEVELOPMENT COMPANY, Intervenor -  
Appellant

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

*Docket No. L-12502-80*

**CIVIL ACTION  
ORDER**

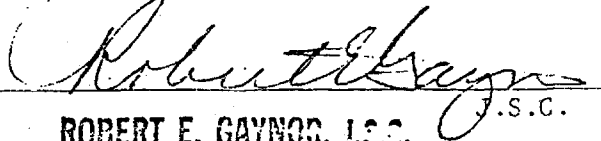
This matter having been opened to the Court by Brener, Wallack & Hill, attorneys for Intervenor-Appellant Hills Development Company on application for an Order staying the proceedings pending resolution in the appeal of Hills Development Company from the Order entered on March 2, 1981 by the Honorable Wilfred P. Diana, and the application having been submitted for ruling on the papers pursuant to Rule 1:6-2 and this Court having considered the papers submitted in support of the Motion, and it appearing to the Court that this appeal should be decided before any further proceedings in this case occur, and good cause having been shown;

EXHIBIT C

It is on this 17<sup>th</sup> day of July, 1981

ORDERED that further proceedings in this case be stayed until the Superior Court, Appellate Division, rules upon the appeal of the Hills Development Company, except for motions scheduled for July 31, 1981

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ROBERT E. GAYNOR, J.S.C.

A-2900-80T1  
A-4180-80T1  
A-3978-80T1

+12

81-D-11

81-F-101

REC'D.

APPELLATE DIVISION

JUL 6 1983

*Elizabeth W. Langille*

Clerk

FILED

APPELLATE DIVISION

JUL 6 1983

NMR

*Elizabeth W. Langille*  
CLERK

WINNE, BANTA & RIZZI  
25 East Salem Street  
Hackensack, New Jersey 07603  
(201) 487-3800  
Attorneys for Plaintiff  
Leonard Dobbs

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

A-2900-80T1

A-4180-80T1

A-3978-80T1

CIVIL ACTION

LEONARD DOBBS,  
Plaintiff-Respondent,

v.

TOWNSHIP OF BEDMINSTER,  
Defendant,

THE HILLS DEVELOPMENT COMPANY,  
Intervenor-Appellant.

ON APPEAL FROM THE SUPERIOR  
COURT OF NEW JERSEY, LAW  
DIVISION, SOMERSET COUNTY  
DOCKET NO. L-12502-80

Sat Below: Diana, J.S.C.

CONSENT ORDER

LEONARD DOBBS,  
Plaintiff-Appellant,

v.

TOWNSHIP OF BEDMINSTER,  
Defendant,

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

Intervenors/Respondents,

and

ATTILIO PILLON,

Intervenor/Cross-  
Appellant.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

~~DOCKET NO. AM 883-80-T-1~~

CIVIL ACTION

ON APPEAL FROM THE SUPERIOR  
COURT OF NEW JERSEY, LAW  
DIVISION, SOMERSET COUNTY  
DOCKET NO. L-12502-80

Sat Below: Imbriani, J.S.C.

CONSENT ORDER

7-20-83  
*BP*

NMR



THIS MATTER having been opened to the Court by cross-appeals filed by Brener, Wallack, Rosner & Hill, attorneys for intervenor-appellant, The Hills Development Company; Winne, Banta & Rizzi, attorneys for plaintiff, Leonard Dobbs; and Vogel and Chait, attorneys for intervenors/appellants, Robert R. Henderson, Diane M. Henderson, and Henry E. Engelbrecht, and for intervenor/cross-appellant, Attilio Pillon, from various orders entered by the trial court with respect to intervention; and the parties and intervenors having agreed to a resolution of such appeals, plaintiff Leonard Dobbs having withdrawn his objection to intervention by The Hills Development Company and by the individual intervenors; and good cause having been shown;

IT IS on this 6 day of July, 1983

ORDERED that The Hills Development Company, Robert R. Henderson, Diane M. Henderson, Henry E. Engelbrecht, and Attilio Pillon shall be and hereby are granted leave to intervene as parties in the above-captioned litigation.

FOR THE COURT

  
ROBERT A. MATTHEWS, P.J.A.D.

We hereby consent to the form and entry of the within Order.

WINNE, BANTA & RIZZI  
Attorneys for Plaintiff  
Leonard Dobbs

Dated: June 29, 1983

By:   
Donald A. Klein

VOGEL AND CHAIT  
Attorneys for Intervenors/Respondents  
Robert R. Henderson, Diane M.  
Henderson, and Henry E. Engelbrecht,  
and for Intervenor/Cross-Appellant  
Attilio Pillon

Dated: June 15, 1983

By: 

Herbert A. Vogel

BRENER, WALLACK, ROSNER & HILL  
Attorneys for Intervenor-Appellant  
The Hills Development Company

Dated: June 15, 1983

By: 

Guliet D. Hirsch

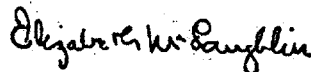
McCARTER & ENGLISH  
Attorneys for Defendant  
Township of Bedminster

Dated: June 22, 1983

By: 

Alfred L. Ferguson

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



Clerk

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

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SOMERSET COUNTY

-----  
LEONARD DOBBS, :

Plaintiff, :

DOCKET NO. L-12502-80

v. :

TOWNSHIP OF BEDMINSTER, a  
municipal corporation, :

Defendant :

CIVIL ACTION

ORDER

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

Defendants-Intervenors:  
-----

THIS MATTER having been opened to the Court by  
Vogel & Chait, attorneys for defendants-intervenors Robert  
R. Henderson, Diane M. Henderson and Henry Engelbrecht  
(Thomas F. Collins, appearing) on application for an Order  
requiring production of the Option Agreement entered into  
by plaintiff in connection with the property which is the  
subject of the above-referenced litigation, and McCarter  
and English, attorneys for defendant Township of Bedminster  
(Joseph Falgiani appearing), joining in such motion, and by  
Winne, Banta & Rizzi, attorneys for plaintiff Leonard Dobbs

EXHIBIT E

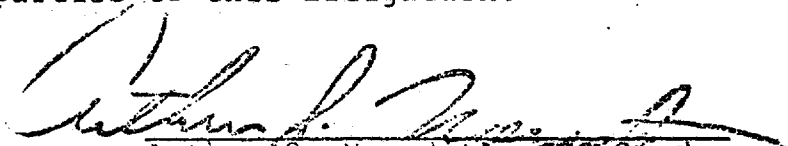
(Donald A. Klein appearing), by cross-motion for a Protective Order with respect to production of said Option Agreement, and upon consideration of the briefs and affidavits submitted, and the arguments of counsel, and good cause having been shown therefore;

It is on this 7<sup>th</sup> day of Aug., 1981

ORDERED that plaintiff shall not be required to make production of the Option Agreement as long as the stay entered in this matter by the Honorable Robert E. Gaynor by Order dated July 17, 1981 is in effect; and it is further

ORDERED that after such stay is dissolved, plaintiff shall be required to produce the Option Agreement only to the Court in camera for determination as to whether any portions of said Option Agreement are relevant to the issues in this litigation; and it is further

ORDERED that in the event the Court, after its in camera inspection, determines that any portions of the Option Agreement are relevant to the issues in this litigation that only such portions of the Option Agreement be excised and produced to the then parties to this action, subject to a Protective Order that such excised portions be used only in connection with this litigation and be disclosed to no one other than the parties to this litigation.

  
Arthur S. Meredith, J.S.C.

**BRENER, WALLACK & HILL**

**ATTORNEYS AT LAW**

**2-4 CHAMBERS STREET**

**PRINCETON, NEW JERSEY 08540**

**(609) 924-0808**

**CABLE "PRINLAW" PRINCETON**

**TELECOPIER: (609) 924-6238**

**TELEX: 837652**

**POST OFFICE BOX 506  
PLUCKEMIN, NEW JERSEY 07978  
(201) 658-4130**

**\*MEMBER OF N. J. & D. C. BAR**

**\*\*MEMBER OF N. J. & PA. BAR**

**\*MEMBER OF N. J. & N. Y. BAR**

**HARRY BRENER  
HENRY A. HILL  
MICHAEL D. MASANOFF\*\*  
ALAN M. WALLACK\***

**GULIET D. HIRSCH  
GERARD H. HANSON  
J. CHARLES SHEAK\*\*  
PATRICK J. CERILLO  
EDWARD D. PENN+  
ALLEN V. BROWN  
KENNETH I. HYMAN  
NATHAN M. EDELSTEIN  
THOMAS L. HOFSTETTER\*\***

**July 15, 1983**

**Mr. Joseph L. Basralian  
Winne, Banta & Rizzi  
25 East Salem Street  
P.O. Box 647  
Hackensack, New Jersey 07602**

**Re: Dobbs v. Township of Bedminster, et.al.**

**Dear Mr. Basralian:**

I received yours of July 12, 1983 enclosing the proposed Amended Complaint to be filed on behalf of Leonard Dobbs. Please be advised that my client, The Hills Development Co., does object to the filing of the Amended Complaint since it states a totally new cause of action sounding in Mount Laurel II. The proper procedure would be to file a new complaint based on this new cause of action, however, if there is a problem with the \$75.00 filing fee, please be advised that we have no objections to waiving of that fee.

Additionally, we think your Complaint is deficient as a commercial/Mount Laurel II pleading, since it fails to obligate Mr. Dobbs to providing retail stores which will carry goods which are affordable to lower income groups, as said groups are defined in Mount Laurel II.

Very truly yours,

*Guliet D. Hirsch /ts*  
Guliet D. Hirsch

GDH/ts

cc: Herbert A. Vogel, Esq.  
Alfred L. Ferguson, Esq.  
John Kerwin

FRANCIS E. P. MCCARTER  
ARTHUR C. HENSLER, JR.  
EUGENE M. HARING  
JULIUS B. POPPINGA  
GEORGE C. WITTE, JR.  
STEVEN B. HOSKINS  
RODNEY N. HOUGHTON  
THOMAS F. DALY  
ALFRED L. FERGUSON  
CHARLES R. MERRILL  
ANDREW T. BERRY  
JOSEPH E. IRENAS  
JOHN L. MCGOLDRICK  
RICHARD C. COOPER  
PETER C. ASLANIDES  
WILLIAM H. HORTON  
FREDERICK B. LEHLBACH  
MARY L. PARELL  
RICHARD M. EITREIM  
JOHN E. FLAHERTY  
STEVEN G. SIEGEL  
WILLIAM T. REILLY  
HAYDEN SMITH, JR.  
JOHN B. BRESCHER, JR.  
TODD M. POLAND  
JOHN J. SCALLY, JR.  
THOMAS V. SICILIANO

WOODRUFF J. ENGLISH  
NICHOLAS CONOVER ENGLISH  
JAMES R. E. OZIAS  
OF COUNSEL

MCCARTER & ENGLISH

ATTORNEYS AT LAW

550 BROAD STREET

NEWARK, N. J.

07102

(201) 622-4444

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INTERNATIONAL TRT 178016  
TELECOPIER (201) 622-0012  
CABLE "MCCARTER" NEWARK

ONE WORLD TRADE CENTER  
SUITE 2665  
NEW YORK, NEW YORK 10048  
(212) 466-9018

150 E. PALMETTO PARK ROAD  
SUITE 505  
BOCA RATON, FLORIDA 33432  
(305) 368-6500

JOHN R. DROSDICK  
GEORGE W. C. MCCARTER  
ROSLYN S. HARRISON  
ROBERT S. SCAVONE  
GITA F. ROTHSCHILD  
RONALD J. HEDGES  
DAVID R. KOTT  
JOHN J. LAMB  
LOIS M. VAN DEUSEN  
MICHAEL A. GUARIGLIA  
ROSS J. HOLDEN  
LANNY S. KURZWEIL  
JOHN W. MCGOWAN, III  
DEBORAH L. GREENE  
DAVID A. LUGGIN  
SARA B. CHRISMAN  
JOHN F. BRENNER  
JOSEPH FALGIANI  
FRANCIS C. BAGBEY  
JAMES H. GORMAN  
JEFFREY W. MORYAN  
DANIEL L. RABINOWITZ  
JOSEPH E. BOURY  
LYNN G. GOLDMAN  
KATHLEEN M. MIKO  
GORDON M. CHAPMAN  
FRANK E. FERRUGGIA  
RUSSELL M. FINESTEIN  
CHERYL L. HARATZ  
JONATHAN KOLES  
JAMES A. KOSCH  
KEITH E. LYNOTT  
ROBERT P. SEAWRIGHT  
HINDA B. SIMON  
MICHAEL A. TANENBAUM  
CHARLES J. BENJAMIN  
RICHARD K. FORTUNATO

RECEIVED  
JUL 20 1983  
WINNE & BANTA

July 19, 1983

Re: Bedminster ads Dobbs

Joseph L. Basralian, Esq.  
Winne, Banta, Rizzi & Harrington  
25 East Salem Street  
Hackensack, New Jersey 07602

Dear Mr. Basralian:

Please be advised that we object to the proposed Amended Complaint.

It states an entirely new cause of action, purportedly under Mt. Laurel II. We believe that it is in effect a new lawsuit, and a new complaint should be filed.

We join with Ms. Hirsch in offering to waive the \$75 filing fee.

Ms. Hirsch's comments on the inadequacies of your proposed amended complaint are intriguing. We think there are many more respects in which it is deficient. It is premature, of course, to deal with them now.

Sincerely,

  
Alfred L. Ferguson

ALF/nw

cc: Herbert A. Vogel, Esq.  
Guliet D. Hirsch, Esq.  
Anne O'Brien, Committeewoman

VOGEL AND CHAIT

A PROFESSIONAL CORPORATION

*Attorneys at Law*

July 21, 1983

MAPLE AVENUE AT MILLER ROAD  
MORRISTOWN, NEW JERSEY 07960

538-3800  
AREA CODE 201

HERBERT A. VOGEL  
ARNOLD H. CHAIT  
ARON M. SCHWARTZ  
THOMAS F. COLLINS, JR.  
LORRAINE C. STAPLES\*

OF COUNSEL  
HAROLD KOLOVSKY  
HAROLD GUREVITZ

\*MEMBER OF THE N.J. AND PA. BARS

Joseph L. Basralian, Esq.  
Winne, Banta & Rizzi  
25 East Salem Street  
P.O. Box 647  
Hackensack, New Jersey 07602

RECEIVED

JUL 21 1983

WINNE & BANTA

Re: Dobbs v. Township of Bedminister, et al (Henderson, Englebrecht and Pillon)

Dear Mr. Basralian:

I have your letter of July 12, 1983 requesting that we consent to the filing of the amended complaint which is enclosed in that letter. I have reviewed the proposed amended complaint and find that the same constitutes a totally new alleged cause of action in which your client is seeking rezoning for a PUD including a housing component which is alleged to comply with the Mount Laurel II decision.

On behalf of the Intervenors, Henderson, Englebrecht and Pillon, we do not consent to the filing of the amended complaint because it is so incongruous with the procedural and substantive basis for the first complaint and now represents a totally different cause of action based upon different facts.

We also object to the filing of the amended complaint based upon the self-serving activities taken by and on behalf of your client during the pendency of the interlocutory appeal. Those efforts were obviously geared to an attempt to eliminate the manifest defects in your clients original cause of action.

The Intervenors do not consent to the filing of the amended complaint.

Very truly yours,

VOGEL AND CHAIT  
A Professional Corporation

HERBERT A. VOGEL

HAV:dn

cc: R.Henderson, H. Englebrecht & A.Pillon

FILED

JUL 29 11 21 AM '83

SOMERSET COUNTY  
L.R. OLSON, CLERK

WINNE, BANTA & RIZZI  
25 East Salem Street  
Hackensack, New Jersey 07603  
(201) 487-3800  
Attorneys for Plaintiff  
Leonard Dobbs

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: SOMERSET COUNTY

-----X	
LEONARD DOBBS,	:
	:
Plaintiff.	:
	:
v.	:
	:
TOWNSHIP OF BEDMINSTER,	:
	:
Defendant.	:
	:
THE HILLS DEVELOPMENT COMPANY,	:
ROBERT R. HENDERSON, DIANE M.	:
HENDERSON, HENRY E. ENGELBRECHT,	:
and ATTILIO PILLON,	:
	:
Intervenors/Defendants.	:
-----X	

DOCKET NO. L-12502-80

CIVIL ACTION

AMENDED AND SUPPLEMENTAL  
COMPLAINT IN LIEU OF  
PREROGATIVE WRIT

Plaintiff Leonard Dobbs, residing at 111 Central Avenue,  
Lawrence, New York, by way of Amended and Supplemental Complaint  
against defendants, 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 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 and the State Development Guideline Plan.

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 formulated and adopted 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 and west of Routes Nos. 202-206 within the defendant township, except for the plaintiff's property which is contiguous to Routes 202-206, 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 a 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 will also 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, the State Development Guide Plan, and the Regional Development Guide for the Tri-State Region, 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 corridor definition referred to paragraph 3 hereof excluded the plaintiff's property on the basis of erroneous broad scale information at a time when defendant township knew of plaintiff's intention to develop such property.

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 requested that the defendant township give consideration to providing 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 and location within the developing corridor is ideally situated above all other tracts within the defendant township for such uses and repeatedly requested as a major property owner in defendant township the opportunity to be heard with respect to such proposal.

9. Defendant failed to respond in any manner to such requests by plaintiff, did not rezone the tract of land for which plaintiff is the contract purchaser, and left said tract in a R-3 $\frac{1}{2}$  Residential zone.

10. As a consequence of the foregoing, plaintiff commenced the within litigation against defendant township in November 1980.

11. Pending decision on appeals from intervention Orders entered by the trial court, this matter has been stayed since July 17, 1981.

12. During the pendency of such stay, plaintiff repeatedly sought an opportunity to fairly present to defendant township and

the Planning Board of defendant Township, in detail, plaintiff's development proposal and request for zoning change and to have plaintiff's experts make presentations to defendant township with respect to same.

13. Despite such requests, defendant township has essentially failed, neglected, and refused such opportunity.

14. Also, during the pendency of such stay, plaintiff has submitted to defendant township extensive reports of plaintiff's experts in conjunction with plaintiff's development proposal and request for zoning change, including a site specific soil survey demonstrating the site's unsuitability for septic tank disposal systems.

15. Defendant township has failed to make any response to such submissions by plaintiff.

16. The master plan of defendant township provides for planned unit development (PUD)(i.e., mixed residential and commercial uses).

17. Notwithstanding such provision in the master plan of defendant township, defendant township has rezoned no properties within the township for planned unit development except for a portion of Hills and the property immediately adjacent and another parcel overlooking I-287 characterized by steep slopes and poor access which parcel is not suitable for development.

18. In August 1982, plaintiff revised his development proposal to provide for planned unit development, as called for in the Master Plan of defendant township.

19. Defendant township has failed, neglected, and refused to act on such submission.

20. Defendant township has demonstrated its refusal to consider plaintiff's submission and its effort to frustrate the development proposal contained in such submission by, among other things, the filing in February, 1983 of an application for Green Acres Program funds with respect to the property in question.

21. On June 17, 1983, plaintiff, in a submission to defendant township, detailed and defined the residential component of plaintiff's planned unit development, which submission provides a low and moderate income housing component and enhances the reasonableness of the plaintiff's overall proposal by addressing part of the township's Mt. Laurel II obligation.

To date the defendant township has refused to voluntarily provide housing opportunities for low and moderate income persons and has only rezoned to purportedly provide such opportunities after being ordered to do so by the courts. However, the housing opportunities provided by the township in response to the court fall far short of the township's fair share housing obligation; thus, making the low and moderate

income housing component of the plaintiff's proposal even more reasonable and essential to satisfying the township's fair share housing obligation.

22. 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.

23. The uses and zoning changes proposed by plaintiff as aforesaid are designed to meet not only the current needs of the residents of defendant township and surrounding areas, but also the future needs of the township and nearby areas which will be developed pursuant to the adopted zoning.

24. The increase in population caused by the development authorized by defendant township in its zoning ordinance, by the presence of the major arteries of traffic described hereinabove, and by mandates of present New Jersey law 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.

25. 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, adjacent areas within

the corridor, and other developing municipalities within the region.

26. The rezoning in accordance with the zoning ordinance adopted by defendant township fails to enact a comprehensive zoning map as it rezones only a small percentage of the total area of the defendant township, and fails to provide for the variety and quantity of low and moderate income housing, retail, commercial and other uses which are necessary to serve the uses mandated by the rezoning effected by defendant and by mandates of present New Jersey law.

27. Defendant township has, notwithstanding changes in its zoning ordinances to permit such uses, frustrated efforts by various property owners to develop property in defendant township for such uses.

28. Additionally, it is evident that various areas rezoned by defendant township for such uses have very little or no likelihood of being developed for such uses.

29. Defendant township cannot rely upon the possible development of residential, 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.

30. Said zoning enactments fail 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 adopted by defendant township for the subject property invalid;

B. Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a planned unit 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 reiterates each of the allegations set forth in the First Count of the Complaint and incorporates same herein by reference.

2. By virtue of its failure to adopt a comprehensive zoning map, 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. The Master Plan of defendant township contains the following objective:

"Retail shopping facilities should be provided within the Court defined Route 202-206 corridor to serve the needs of the existing and anticipated residential population of the Township, and such shopping facilities should be provided as an integral part of the large scale residential development in order to avoid the proliferation of vehicular shopping trips and to prevent the evolution of 'strip' commercial development."

The commercial zoning adopted by defendant township fails to meet the requirements of the Master Plan and the mandates of New Jersey law in that, inter alia:

(i) VN (Village Neighborhood) zones adopted by defendant township constitute 'strip' commercial development as they straddle Lamington Road and Route 202-206 with inadequate land area for on-site circulation.

(ii) PUD (Planned Unit Development) zones adopted by defendant township in its zoning ordinance limit commercial land use to 20% of tract acreage and limit building square footage (so as to prevent the development of regional facilities) and other than the property of Hills (Hills being the successor to Allan Deane), such zones have limited access and slope problems, making development difficult. Further, Hills has since sold the commercial portion of its PUD zoned property to a developer intending to develop such portion almost entirely for office buildings.

(iii) Plaintiff's property should properly be included in the 202-206 corridor as it is adjacent to said routes, and was excluded based on broad based, as opposed to site specific information.

4. The New Jersey Municipal Land Use Law includes in its section on purpose and intent the following objective:

"To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private according to their respective environmental requirements in order to meet the needs of all New Jersey citizens."

Further, the Master Plan of defendant township contains the following objective:

"The Development Plan should strive to prevent the homogenous spread of suburban development throughout the municipality. The Court defined Route 202-206 corridor should continue to be designated for specific types of relatively dense residential uses offering a variety of housing opportunities, as well as relatively intense non-residential development, a sufficient component of which is to serve local needs. (Emphasis added.)

Plaintiff's proposed development (which is appropriately located in terms of regional and local access and serves both local and regional needs), satisfies both of these objectives and yet has been rejected by defendant township.

5. Another objective of the Bedminster Master Plan reads as follows:

"To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site."

Defendant township has not encouraged Planned Unit Development, as evidenced by their selections which lack development potential and, by the failure of defendant township to adopt the PUD recommendation of the Master Plan which does not limit the percentage of commercial development.

6. Section 405.1 c, d, e, and f, of the zoning ordinance adopted by defendant township, specify permitted uses in the VN (Village Neighborhood) Zone. The permitted uses are, however, all local and retail and service type uses, precluding within this zone commercial uses which serve a larger constituency.

7. The Master Plan and zoning map of defendant township have failed to take into account the massive amount of industrial and office development in the region, the access provided by existing and soon to be completed highways (I-78) and the attendant existing and future needs of the accompanying residences.

8. The Master Plan and zoning map of defendant township have further failed to provide sufficient space in appropriate locations for a variety of, among other things, residential, 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), and by present New Jersey law.

9. The Master Plan and zoning map of 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).

10. The Master Plan and zoning map of 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., and of the mandates of the present New Jersey law.

11. By seeking to contain business and commercial activities within the rezoned Hills property and property directly north which has poor access and slopes, the Master Plan and zoning ordinance of the defendant township constitute an illegal and improper zoning scheme.

12. As the result of the foregoing deficiencies and shortcomings, the master plan and zoning map 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., and the mandates of the present New Jersey law.

WHEREFORE, plaintiff demands judgment against defendant:

A. Declaring the master plan and zoning adopted by defendant township for the subject property invalid;

B. Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a planned unit 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 reiterates each of the allegations set forth in the First and Second Counts and incorporates same herein by reference.

2. As a developing municipality, defendant township is obligated 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 map adopted by defendant township fails to comply with the foregoing obligations and is, as a result, invalid.

WHEREFORE, plaintiff demands judgment against defendant:

- A. Declaring the zoning map adopted by defendant township for the subject property invalid;
- B. Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a planned unit 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 reiterates each of the allegations set forth in the First, Second and Third Counts of the Complaint 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 R-3% 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 in a planned unit development district.

4. The present classification of plaintiff's property, prohibiting its use for planned unit development, 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 and other inhabitants of the developing corridor.

5. For the reasons set forth hereinabove, said zoning map, 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 adopted by defendant township for the subject property invalid;
- B. Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a planned unit 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 reiterates each of the allega-

tions contained in the First, Second, Third and Fourth Counts of the Complaint 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 (R-3%), because such 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 or on-site sewerage treatment, which type of treatment is not economically practical for the residential development which would be required under the present zoning of plaintiff's property.

4. As a direct result, the operation of the 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



map 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 adopted by defendant township for the subject property invalid;
- B. Compelling a rezoning of the tract of land for which plaintiff is a contract purchaser to a planned unit 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  
Attorneys for Plaintiff  
Leonard Dobbs

Dated: August , 1983

By: \_\_\_\_\_  
Joseph L. Basralian

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 (201) 487-3800  
 Attorneys for Plaintiff

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION: SOMERSET COUNTY

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LEONARD DOBBS,	
	:
Plaintiff,	: Docket No. L-12502-80
	:
vs.	:
	:
TOWNSHIP OF BEDMINSTER,	:
	:
Defendant,	:
	: Civil Action
THE HILLS DEVELOPMENT COMPANY,	:
ROBERT R. HENDERSON, DIANE M.	:
HENDERSON, HENRY E. ENGLEBRECHT,	: <u>ORDER</u>
and ATTILIO PILLON,	:
	:
Intervenors/Defendants.:	
-----x	

This matter having been opened to the Court on Motion of the Plaintiff, Leonard Dobbs, pursuant to Rule 4:9-1 for an Order granting Plaintiff leave to amend and supplement his Complaint, and the Court having considered the record in this matter, the papers filed in support and in opposition to the Motion, and for good cause shown:

IT IS ON this          day of August, 1983, ORDERED that the Plaintiff, Leonard Dobbs, is granted leave to file an Amended and Supplemental Complaint, the same to be filed and served within ten (10) days of the date of entry of the within Order.

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J.S.C.