

RULS - AD - 1984 - 130

4/5/84

- Letter to Raymond re: Belminger's
"Green Acres" App.
- w/memo to Judge

Pgs. 13

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April 5, 1984

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SERPENTELLI'S CHAMBERS

Mr. George M. Raymond, P.P.
Raymond, Parish, Pine & Weiner, Inc.
555 White Plains Road
Tarrytown, New York 10591

Re: Bedminster/Allan-Deane/Dobbs

Dear Mr. Raymond:

Since Bedminster Township has recently indicated an intention to revive its dormant Green Acres application, previously filed in connection with the Dobbs property, I am enclosing, for your information, a copy of the Memorandum of Law (without attachments) which we submitted last year in opposition to such application. As Judge Serpentelli has indicated, however, present consideration of the appropriateness of the Dobbs tract for low and moderate income housing should not be affected by the proposed revival of this application.

Very truly yours,


Joseph L. Basralian

Enclosure

cc: Honorable Eugene D. Serpentelli
Alfred L. Ferguson, Esq.
Richard T. Coppola, P.P.
Henry A. Hill, Jr., Esq.
Kenneth E. Meiser, Esq.
Herbert A. Vogel, Esq.
(w/enclosure)

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WINNE, BANTA & RIZZI, ESQS.
25 East Salem Street
Hackensack, NJ 07602
Attorneys for Leonard Dobbs - Objector
to Bedminster Township's Application

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: :
In the Matter of the Application of :
the TOWNSHIP OF BEDMINSTER for :
local financial assistance pursuant :
to the Green Acres and Recreational :
Opportunities Program :
: :
-----X

PRELIMINARY STATEMENT

This memorandum is submitted on behalf of Leonard Dobbs in opposition to the application by the Township of Bedminster ("Bedminster" or the "Town"), dated February 24, 1983, for local financial assistance pursuant to the Green Acres and Recreational Opportunities Program and in conformance with Rules and Regulations adopted under the Administrative Program Act. This memorandum supplements our letters dated March 21, 1983 and April 15, 1983, addressed to Ms. Lisa S. Lubow, Grant Administrator.

The undersigned attorneys have requested and do hereby request that there be a hearing or conference with respect to the issues raised by the Application and the opposition thereto, at which hearing they will be able to present the relevant evidence and legal points supplementing this memorandum.

THE LAND AND ITS OWNERSHIP

The land which is the subject of the application is described in the application as located at the "northwest corner of River Rd. and Rtes. 202/206", and contains 227+ acres. Annexed hereto as Exhibit A is a map showing the actual location of the land and the surrounding area. Of the 227 acres, 211 acres (the Land), the bounds of which are indicated on Exhibit A, are owned by KENNETH B. SCHLEY, JR. and RALPH K. SMITH, JR., as Trustees under an agreement dated July 26, 1971, f/b/o Jeannie Byers Rhinelander (now Jeannine Schoeffler) and Serena Schley Rhinelander, (now Serena Bruno) KENNETH B. SCHLEY, JR., ANNE C. STRADLING, RALPH K. SMITH, JR., as nominee under an Agreement dated December 21, 1972 among YALE UNIVERSITY, ST. PAUL'S SCHOOL, MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES AND THE NEW YORK ASSOCIATION FOR THE BLIND and EVANDER D. SCHLEY ("the Owners"). Leonard Dobbs is the grantee of a purchase option extended by the Owners. The Land is due West, across Rtes. 202/206, and directly opposite the world headquarters of the American Telephone and Telegraph Long Lines Division. The said headquarters consists of more than 700,000 square feet of office and commercial space. Between the site of the American Telephone and Telegraph headquarters and the eastern side of Routes 202/206 is 68 acres of parkland, which was given to the Town for dedication as a park. The said parkland has not been developed at all by the Town and contains no facilities. It serves primarily as a water retention

area for the American Telephone and Telegraph headquarters.

As appears from Exhibit A, the Land fronts on Routes 202/206, for a distance of approximately 2800 feet but it is in close proximity to the Junction of I-287 and Route 202/206. The Junction is served by interchanges providing for traffic in every direction to and from the two major highways. The property is also within one mile from the Junction of I-78 and 287, which is also served by a complete interchange system.

The Land is level and fully capable of development for major commercial and residential facilities. It has been so designated by the Somerset County Master Plan, the New Jersey State Development Guidelines, and the Tri-State Regional Planning Commission Development Guide. Contrary to the Township's allegations concerning the property in its application, the Land is not environmentally sensitive in any respect which would inhibit the development of a major commercial and residential project. For a fuller description of the property, reference is hereby made to the planning study, described below, heretofore prepared for Leonard Dobbs by Wallace, Roberts & Todd, Planning Consultants, a copy of which is attached hereto and made a part hereof.

THE MASTER PLAN, ZONING AND RELATED PROCEEDINGS

The zoning of the Land and the adjacent and nearby lands appears on the existing Land Use Plan of the Town, a copy of

which is annexed hereto as Exhibit B. The existing zoning of the Land is "R-3%", "Rural Residence". Its development is restricted to residential uses on lots consisting of a minimum of three acres.

The Town's zoning and its Land Use Plan, particularly as it pertains to The Land and an area in close proximity to it across Routes 202/206 owned by HILLS DEVELOPMENT COMPANY ("HDC") have been the subject of intensive court litigation and other proceedings for many years. More particularly, the lands owned by HDC have been the subject of court litigation in the Superior Court, entitled Allan - Deane Corporation v. Township of Bedminster, which culminated in an opinion by the Supreme Court which is reported at 63 N.J. 591 (1973). That opinion and developments subsequent to it are described further below.

The Dobbs Land is the subject of litigation now pending in the Superior Court, entitled Leonard Dobbs, v. Township of Bedminster which litigation was instituted in November 1980. In that case there are presently pending and have not as yet been determined, certain appeals and cross appeals with respect to the issue of intervention by third parties and the the scope of permissible discovery. With respect to intervention, in essence, the trial court denied motions to intervene filed by all parties, including HDC, whose lands were beyond 200 feet from the Dobbs' Land and granted intervention to all parties whose lands were within 200 feet.

In Dobbs v. Township of Bedminster case, Dobbs seeks, in essence, to rezone the Dobbs Land for commercial development. The litigation was instituted as a result of denials by the Town of applications by Dobbs to include the Dobbs' Land in the rezoning of lands of the Town pursuant to the judgment rendered in the Allan - Deane Corporation case. The Dobbs application was denied by the Town despite the fact that the Dobbs' Land had been designated as part of the developing area within the community. The applications by Dobbs were first made in 1980. In November, 1980, upon the denial of the said applications, Dobbs instituted the lawsuit described above.

Following the institution of the lawsuit Town officials, Dobbs and his attorneys entered into discussions with respect to the rezoning of the Dobbs Lands. In March, 1981 the Town Planning Board agreed to conduct three special hearings with respect to the rezoning of the Dobbs' Lands. In anticipation of those hearings, Dobbs and his consultants of each major discipline in land use development prepared detailed presentations of the plans for development of the Dobbs Land. The agreement to hold the special hearings was not implemented, due to the fact that the Town cancelled the hearings. Attached hereto and made a part hereof as Exhibit C is a list of the experts reports submitted to the Township.

In June of 1981 the Town advised Dobbs and his attorneys that a new Master Plan would be prepared in September 1981 and that Dobbs would be given an opportunity to make a full and

detailed presentation, to the Master Plan Review Committee re-plans for development of the Dobbs Lands.

The proposed September 1981 meeting of the Committee was postponed repeatedly until the Spring of 1982 when the meeting was finally held. Severe time constraints were placed upon Dobbs, his consultants and attorneys which, among other things, precluded the presentation by the Dobbs consultants of their opinions and findings with respect to the several aspects of the development plan. Subsequent hearings on the proposed revised Master Plan by the full Planning Board also severely limited the scope of the presentation which Dobbs was allowed to make as to his plans for development.

On August 16, 1982, in response to the broader community concerns expressed at a large number of Planning Board and other community meetings held in the Town and attended by Dobbs, he submitted an alternative proposal to the Planning Board. Under that alternative proposal, 79 acres of the Dobbs Lands, which the Town now seeks to acquire and for which the Town has as immediate foreseeable use, would have been made available by Dobbs to the Town for a park and other public purposes. 49 of the said 79 acres were to be dedicated to the Town and 30 acres would have been leased to it for a period of ten years, until the Town and Dobbs had developed an alternate use for it.

During the period of the discussions and negotiations

with the Town described above, and at the request of the Town, Dobbs' attorneys were instructed by him to forebear from further prosecution of the lawsuit.

No formal response has been received from the Town to the said alternative proposal. Town officials have, however, informally advised Dobbs that his proposal has been rejected. In early March, 1983, Dobbs learned of the existing application by the Town for the Green Acres funding.

THE INVALIDITY OF THE GREEN ACRES APPLICATION

It is respectfully submitted that the present application by the Town is essentially an effort by the Town to avoid its duties and responsibilities, under the laws of New Jersey, as declared and construed by the Courts of New Jersey in various court decisions, including Mt. Laurel II. We believe that the Green Acres application is part of a series of dilatory tactics adopted by the Town in an effort to avoid its affirmative obligation to permit responsible and orderly development of the Dobbs Land.

The instant application is purportedly made under the New Jersey Green Acres Land Acquisition and Recreation Opportunities Act ("the Green Acres Act"), N.J.S. 13:8A-1 et. seq. Section 5 of the Green Acres Act, N.J.S. 13:8A-5, sets forth the "Considerations to guide commissioner" in acquisition and development

of lands and in grants to assist local units. The first of the said considerations, stated in subsection a., directs the Commissioner of Environmental Protection to:

"a. Seek to achieve a reasonable balance among all areas of the State in consideration of the relative adequacy of area recreation and conservation facilities at the time and relative anticipated future needs for additional recreation and conservation facilities."

The granting of the instant application would directly contravene the purposes of achieving the "reasonable balance" described above. Achievement of a "reasonable Balance" necessarily requires consideration of:

a. The relative economic means of the different communities in the State of New Jersey seeking such grants;

b. The nature of the lands and existing land uses within the several communities seeking such grants; and

c. The density of the population within such communities seeking such grants.

Upon information and belief, Bedminster is among the wealthiest communities in the State of New Jersey. The mean family income of Bedminster as of 1980, was in excess of \$59,000 annually. The basic information and statistics to document this fact and other related facts have been furnished to Dobbs and his attorneys by Dr. George Sternlieb of the Rutgers University Center for Urban Planning and Research. Fuller and further details can and will be furnished as requested, in written statements or

through oral testimony by Dr. Sternlieb.

With respect to the nature of the land and existing land uses, Bedminster is essentially rural. More than 80% of the land within the Township is either farmland or vacant. The geographical area of Bedminster is approximately 27 square miles and has a population of approximately 800 families.

Subsection b. of Section 5 of the Green Acres Act provides that the Commissioner shall:

"b. Insofar as practicable, limit acquisition to predominantly open and natural land and minimize the cost of acquisition and the subsequent expense necessary to develop such land for recreation and conservation purposes."

While it is true that the lands which the Town seeks to acquire are "open and natural lands", they are "open and natural" primarily because of their zoning as Rural Residential, with minimum lots of three acres, while adjoining a major commercial area and within a short distance of the junction of two major interstate highways. Appropriate funds for the acquisition of such lands would disserve the purpose of "minimizing the cost of acquisition. . .". The Owners of the Dobbs Land have no interest whatsoever in selling the Dobbs Land, or any portion thereof to the Town for parkland purposes. They and their attorneys, affirm and, join in the points made in this memorandum. Upon information and belief, the fair value of the Dobbs Land is in excess of \$15,000,000, based upon studies of recently completed sales of

comparable lands in the Town, and other nearby parcels. Further facts with respect to the fair value of the Dobbs Land can and will be presented by Dobbs and his attorneys at any conference or hearing on this application, through the sworn testimony or other submissions of qualified experts.

Subsection c. of Section 5 of the Green Acres Act provides that the Commissioner shall:

"c. Wherever possible, select land for acquisition which is suitable for multiple recreation and conservation purposes."

The Dobbs Lands is not "suitable for multiple recreation and conservation purposes". The Land directly adjoins a commercial road with heavy vehicular traffic and are within a few hundred yards of the junction of two of the principal interstate highways of the State of New Jersey. It is difficult to conceive of any lands within the Town of Bedminster or any other lands in the State of New Jersey which are less suitable for "multiple recreation and conservation purposes" and more suitable for commercial development.

The Town, which seeks the Dobbs Land purportedly for conservation purposes to protect the upper watershed of the Raritan River, has been in violation since 1982 of the discharge standards of the Department of Environmental Protection for its own sewage plant, which is currently under decrees from the State to modernize and install suitable pollution control equipment.

The Town claims that it does not have sufficient resources to upgrade its own sewage plant in order to comply with the law yet at the same time seeks a 1.5 million dollar grant for the acquisition of the Dobbs' Land to which grant the Town must contribute from its own funds the sum of 1.5 million dollars. It is inconsistent on the part of the Town to fail to install pollution control equipment to protect the watershed of the Raritan River while at the same time seeking to acquire the Dobbs Land, a part of which is adjacent to the very river The Town is polluting with its own sewage discharge. In addition thereto, the Town recently made application to enable it to build a public works garage and maintenance facility with the attendant storage facilities for salt and bituminous mix and other road repair materials, upon Lands formerly described as floodplain for the Raritan River, and which designation was changed upon application by the Township despite the objections of its own Environmental Commission.

Subsection d. of Section 5 of the Green Acres Act provides that the Commissioner shall:

"d. Give due consideration to coordination with the plans of other departments of State Government with respect to land use or acquisition."

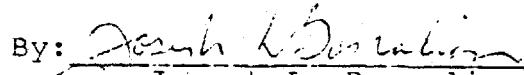
The undersigned submit that, "the plans of other Departments of State Government with respect to land use "include the policies and laws implemented by and implemented under the court decisions in Mt. Laurel I, II and the Hills case, as well

as State Development Guidelines, Somerset County Master Plan, and the plans of the Tri-State Regional Planning Commission, all of which would be subserved by the use of the Green Acres monies for the acquisition by the Town of the Dobbs Lands. The undersigned can and will make a fuller presentation of the provisions of each of the State laws and guidelines and the application thereof to the existing application, at any conference or hearing held in connection with the application, and by expert testimony or other submissions.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Green Acres application by the Town should be denied and dismissed. In the alternative, the undersigned respectfully requests that they be furnished the opportunity to make a fuller presentation of the relevant evidence and legal points at a conference or a hearing, scheduled at reasonable notice to the undersigned and other parties in interest.

Respectfully submitted,
WINNE, BANTA & RIZZI

By: 
Joseph L. Basralian