

RULES-AD-1989-160

4/12/84

- Dobbs amended & Supplemental Complaint
in lieu of Prog. writ.

pgs. 12

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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 (hereinafter "the Dobbs tract"), consisting of approximately

200 acres, located on River Road in the Township of Bedminster to the immediate west of the junction of River Road and Routes 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 contains within its borders a "growth area" as shown on the State Development Guideline Plan (hereinafter "the SDGP").

3. The Dobbs tract is located principally within the "growth area" as shown on the SDGP.

4. 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." (hereinafter the "Allan-Deane litigation"), 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 purpose of regulating and limiting the use and development of land within its boundaries and, inter alia, effecting rezoning of certain lands to the immediate east and west of Routes 202-206 within defendant township, purportedly to provide for an appropriate variety and choice of low and moderate income housing as required by said Order of the Court.

5. Notwithstanding the fact that the Dobbs tract is located within the SDGP defined "growth area" and is contiguous to Routes 202-206, defendant township excluded the Dobbs tract from its recommended corridor definition accepted by Judge Leahy.

6. The corridor definition recommended by defendant township, at a time when defendant township knew of plaintiff's intention to develop the Dobbs tract, excluded the Dobbs tract on the basis of broad scale information related to environmental sensitivity, proved erroneous by more detailed site-specific information.

7. The true developing corridor of land within defendant township consists of the areas both to the east and west of Routes 202-206 which have been designated as a "growth area" on the SDGP and which have been similarly designated in the Somerset County Master Plan and the Regional Development Guide of the Tri-State Regional Planning Commission.

8. To date, 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.

9. The housing opportunities for low and moderate income persons so provided by defendant township are insufficient to meet defendant township's fair share housing obligation.

10. Moreover, defendant township has not, in its rezoning,

provided a realistic opportunity for low and moderate income housing, as sites rezoned by defendant township for low and moderate income housing, inter alia, lack off-site sewage treatment capacity, are presently developed, are difficult and costly to assemble, have access and noise problems, and/or are not likely to be developed for low and moderate income housing by present owners.

11. Furthermore, in rezoning a bare minimum of sites so as to require 100% development of such sites in order for defendant township to meet its stated fair share obligation, defendant township has, contrary to the requirements of New Jersey law and of reasonable planning practice, failed to "overzone" and provide a cushion of additional sites which could be developed to meet defendant township's fair share obligation.

12. The zoning ordinance of defendant township and rezoning by defendant township are in violation of the requirement that zoning further and promote the general welfare, are arbitrary and unreasonable, and violate the substantive due process and equal protection requirements of the New Jersey and United States Constitutions, the provisions of N.J.S.A. 40:55D-1 et seq., and the mandates of the New Jersey Supreme Court in So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) (hereinafter "Mt Laurel II").

SECOND COUNT

1. Plaintiff repeats and reiterates the allegations set forth in the First Count of the Complaint and incorporates same by reference herein.

2. Plaintiff commenced the within litigation against defendant township in November 1980, challenging, as arbitrary and unreasonable, the three-acre residential zoning of the Dobbs tract and defendant township's refusal to rezone the Dobbs tract or to afford plaintiff an opportunity to fairly present to defendant township his development proposal.

3. Prior to commencement of the within litigation, plaintiff requested that defendant township give consideration to rezoning a portion of the Dobbs tract for regional commercial and office development (with the remainder to be zoned for such uses as would provide a balanced development plan), such tract, by virtue of its proximity to the major arteries of traffic and its location within the developing corridor and "growth area", being well-suited for such development necessary for defendant township to meet its obligation to provide necessary ancillary services and uses for its increasing population and that of the surrounding region.

4. Defendant failed to respond in any manner to such request by plaintiff or to the extensive expert reports submit-

ted by plaintiff and refused plaintiff and his experts an opportunity to fairly present to defendant township, in detail, plaintiff's development proposal:

5. In August 1982, while the within litigation was stayed, plaintiff revised his development proposal to provide for planned unit development with commercial, residential, and other uses, as called for in revisions to the Master Plan of defendant township, defendant township having refused to respond to plaintiff's proposed commercial and office development.

6. Again, defendant township failed to respond to such proposal and refused plaintiff the opportunity to fairly present his revised proposal.

7. Defendant township further demonstrated its refusal to consider plaintiff's development proposal and its effort to frustrate any development proposal by plaintiff by, among other things the filing in February 1983 of an application for Green Acres Program funds with respect to the Dobbs tract.

8. In June 1983, plaintiff detailed and defined the residential component of his planned unit development, providing for a low and moderate income housing component, which further enhanced the reasonableness of plaintiff's development proposal by addressing part of defendant township's Mt. Laurel II obligation.

9. In November 1983, plaintiff was granted leave, in connection with the Allan-Deane litigation, to participate in determinations to be made by the Court-appointed Master and by the Court concerning the definition of region and regional need for low and moderate income housing, the determination of defendant township's fair share obligation as to such regional need, and the decision as to whether defendant township's zoning ordinance, as revised, provides a realistic opportunity for low and moderate income housing.

10. In response to the Court's request, plaintiff submitted a revised development proposal, reflected as Plan B in a letter dated February 7, 1984, providing solely for residential development and, more particularly, providing for 232 low and moderate income units.

11. Plaintiff's proposed residential development is consistent with sound land use planning.

12. Absent plaintiff's proposed residential development, defendant township has not made realistic provision for low and moderate income housing sufficient to meet its fair share obligation.

13. Defendant township has not formally considered plaintiff's residential development proposal but rather has informally rejected it without affording plaintiff or the public any opportunity to be heard.

14. Notwithstanding the fact that defendant township permitted its earlier Green Acres application to remain dormant, defendant township, in response to plaintiff's residential development proposal, "revived" such application as a means of attempting to thwart consideration by the Court-appointed Master and the Court of plaintiff's development proposal.

15. Unlike virtually all of the owners of property rezoned by defendant township for low and moderate income housing, plaintiff is a ready, willing, and able developer, prepared to assist defendant township in meeting its fair share obligation for low and moderate income housing under Mt. Laurel II.

16. Unlike virtually all of the other properties rezoned by defendant township for low and moderate income housing, plaintiff's property, by virtue of its size and potential development density, can be serviced expeditiously by on-site sewerage treatment with subsurface discharge, thereby avoiding pollution of the North Branch of the Raritan River.

17. Plaintiff has significantly contributed to this Court's efforts to assure that defendant township will realistically meet its fair share obligation. Absent plaintiff's objections, for example, defendant township would likely meet its fair share obligation on paper only -- by rezoning sites which, because of the lack of off-site sewage treatment and the other factors referred to in paragraph 10 of the First Count hereof,

are not realistically developable for low and moderate income housing.

18. Defendant township's failure to give consideration to rezoning of the Dobbs tract and yet its apparent willingness to entertain rezoning have resulted in substantial detriment and monetary loss to plaintiff.

19. In light of all of the foregoing, plaintiff seeks a builder's remedy to provide a substantial amount of low and moderate income housing within defendant township as part of the development reflected in Plan B set forth in plaintiff's February 7, 1984 submission.

THIRD COUNT

1. Plaintiff repeats and reiterates the allegations set forth in the First and Second Counts of the Complaint and incorporates same by reference herein.

2. Under the provisions of the zoning ordinance adopted by defendant township, the Dobbs tract is zoned exclusively for R-3½ residential purposes.

3. The Dobbs tract lies in the immediate vicinity of major traffic arteries and public thoroughfares and was improperly excluded by defendant township from the developing corridor.

4. The present classification of the Dobbs tract, prohibiting, for example, 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 defendant township and its inhabitants and other inhabitants of the developing corridor.

5. Not only is defendant township's zoning of the Dobbs tract arbitrary and unreasonable but defendant township has otherwise failed to make adequate provision for commercial and office uses to meet the needs of defendant township's present and prospective population and of the residents of the region in which defendant township is located, as mandated by the Municipal Land Use Law and the Mt. Laurel II decision.

6. 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 will serve the needs of defendant township's present and prospective population and that of its immediate region.

7. The zoning map and Master Plan adopted by defendant township fails to comply with the foregoing obligations and is, as a result, invalid.

8. For the foregoing reasons, the zoning map and Master Plan of defendant township, as applied to the Dobbs tract, constitute an improper and unlawful exercise of the police power,

depriving plaintiff of his property without just compensation or due process of law, and are unconstitutional, null, and void.

FOURTH COUNT

1. Plaintiff repeats and reiterates the allegations set forth in the First, Second, and Third Counts of the Complaint and incorporates same by reference herein.

2. R-3% residential development on the Dobbs tract is rendered unfeasible by virtue of the fact that soil conditions would require the use of a sewerage treatment plant, which type of treatment is not economically viable for the residential development which would be required under the present zoning of the Dobbs tract.

3. R-3% residential development on the Dobbs tract is economically unfeasible for various other reasons.

4. As a direct result, the operation of the zoning ordinance and zoning map of defendant township has so restricted the use of the Dobbs tract and reduced its value so as to render said property unsuitable for any economically beneficial purpose, thereby constituting a de facto confiscation of said property.

5. For the foregoing reasons, the zoning ordinance and zoning map of defendant township are unconstitutional, null, and void in that they deprive plaintiff of the lawful use of his property without just compensation or due process of law.

WHEREFORE, plaintiff demands judgment against defendant township:

- A. Determining and adjudging defendant township's fair share of the present and prospective regional low and moderate income housing need;
- B. Determining and adjudging that defendant township has not provided a realistic opportunity for low and moderate income housing;
- C. Ordering defendant township to provide a builder's remedy to plaintiff;
- D. Declaring the zoning ordinance, zoning map and Master Plan of defendant township invalid as applied to the Dobbs tract;
- E. Compelling a rezoning of the Dobbs tract;
- F. Awarding plaintiff his costs of suit and attorneys' fees; and
- G. Granting plaintiff such further relief as the Court deems just and proper.

WINNE, BANTA, RIZZI,
HETHERINGTON & BASRALIAN
Attorneys for Plaintiff
Leonard Dobbs

By: _____
Joseph L. Basrallian

Dated: April 12, 1984