

RULS- AD - 1985-150

6/6/85

- Final ~~subject~~ Judgment of Mt. Laurel II Compliance
and Six Year Repose
- Letters to Judge

pgs. 15

6-6-85

CHIEF CLERK
EUGENE D. SERPENTELLI, A.J.S.C.

RUIS - AD - 1985 - 150

McCarter & English, Esqs.
550 Broad Street
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(201)622-4444
Attorneys for Defendants,
Township of Bedminster and
Township of Bedminster Planning
Board

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SOMERSET/OCEAN
COUNTIES
DOCKET NOS. L-36896-70 P.W.
L-28061-71 P.W.

THE ALLAN-DEANE CORPORATION,	:	Civil Action
	:	
Plaintiff,	:	FINAL JUDGMENT OF
	:	<u>MT. LAUREL II COMPLIANCE</u>
vs.	:	AND SIX YEAR REPOSE
	:	
TOWNSHIP OF BEDMINSTER and	:	
TOWNSHIP OF BEDMINSTER PLANNING	:	
BOARD,	:	
	:	
Defendants	:	
<hr/>		
LYNN CIESWICK, APRIL DIGGS,	:	
W. MILTON KENT, GERALD ROBERTSON,	:	
JOSEPHINE ROBERTSON, and JAMES	:	
RONE,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
TOWNSHIP OF BEDMINSTER AND	:	
TOWNSHIP OF BEDMINSTER PLANNING	:	
BOARD,	:	
	:	
Defendants.	:	

This matter being opened to the Court by Alfred L. Ferguson, Esq., of the firm of McCarter & English, Esqs., attorneys

for defendants Township of Bedminster and Planning Board of the Township of Bedminster; by Daniel F. O'Connell, Esq., Township Attorney; by Roger W. Thomas, Esq., Planning Board Attorney; and by Henry A. Hill, Jr., Esq., of the firm of Brener, Wallack, & Hill, Esqs., attorneys for plaintiff Allan-Deane Corporation; by Kenneth E. Meiser, Esq., Deputy Director, Department of the Public Advocate, State of New Jersey, attorneys for the individual plaintiffs, Lynn Cieswick, et al.; by Winne, Banta, Rizzi, Hetherington & Basralian, Raymond R. Wiss, Esq., appearing, attorneys for Leonard Dobbs, non-party objector at the Compliance Hearing; and by Brian Schwartz, Esq., attorney for Timber Properties, Inc., non-party objector at the Compliance Hearing; and

These consolidated cases having been remanded to this Court by order of the Appellate Division, dated August 3, 1983, for review of all issues in light of the decision in Southern Burlington County NAACP v. Mt. Laurel Township, 92 N.J. 158 (1983) ("Mt. Laurel II"), following the appeal by the individual plaintiffs of the Order for Final Judgment on Issue of Defendant's Zoning Obligations and Order for Specific Corporate Relief, entered by the trial court of March 20, 1981; and

Bedminster Township having developed a proposed strategy, including proposed zoning ordinance amendments and other municipal actions, for fully complying with its obligations under the Mt. Laurel II decision (hereinafter referred to as the "compliance package"); and

This Court having reviewed Bedminster Township's compli-

ance package at a Compliance Hearing conducted during 17 trial days in November and December of 1984, and having conducted other proceedings in connection with this action; and

The Court having permitted Leonard Dobbs and Timber Properties, Inc. full opportunity to appear and participate as non-party objectors at the Compliance Hearing; and

This Court having made findings of fact and conclusions of law in an Opinion of May 1, 1985 ("Opinion"), which approves Bedminster Township's compliance package, subject to certain modifications and conditions as discussed therein; now, therefore,

IT IS ON this 6th day of *June*, 1985,

ORDERED AND ADJUDGED that:

A. The findings of fact and conclusions of law made by this Court in its Opinion of May 1, 1985 be, and they hereby are, incorporated by reference in this Judgment.

B. Bedminster Township's fair share obligation under the Mt. Laurel II decision is 819 lower income housing units for the decade of 1980 through 1990; provided, however, that in order to avoid a radical transformation of Bedminster Township, said fair share obligation may be satisfied by the provision of a realistic opportunity for the construction of 656 of those units on or before December 31, 1990, and for the remaining 163 units on or before December 31, 1994. The deferred fair share obligation of 163 units shall be in addition to any fair share obligation which Bedminster Township may be found to have for the decade of 1990 through 2000.

C. Upon the adoption by Bedminster Township of the proposed zoning ordinance amendments contained in the compliance package, as modified in accordance with the Opinion with respect to the land dedication option for the OR zone and the commercial option for the PUD zone (excluding all of Site A, for which the number of lower income housing units has already been set at 260 pursuant to prior orders in this action), Bedminster Township and its land development regulations are hereby declared to be in full compliance with the requirements of the Mt. Laurel II decision and doctrine. Bedminster Township shall expeditiously enact into law the proposed zoning ordinance amendments (as modified by the Opinion) and promptly thereafter file a copy of said amendatory ordinance with the Master and this Court.

D. Pursuant to the Opinion of the Court, Bedminster Township is hereby granted a six year period of protection and repose from the institution of litigation against Bedminster Township under the Mt. Laurel doctrine for the period ending six (6) years from the date of the entry of this judgment, consistent with the principles of res judicata enunciated by the New Jersey Supreme Court in Mt. Laurel II, 92 N.J. at 291-292.

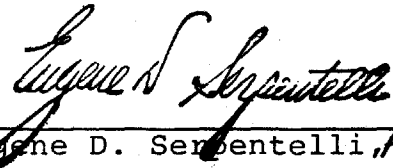
E. Bedminster Township shall implement and pursue in accordance with the Opinion the elements of the compliance package concerning the expansion of the Environmental Disposal Corporation sewerage treatment capacity and franchise area, the technical upgrading of the Bedminster-Far Hills Sewerage Treatment Plant and the senior citizen housing proposal.

F. Pursuant to Order Appointing Master of February 21, 1980, and Orders of this Court dated March 6, 1980, March 20, 1981 and November 3, 1983 George Raymond shall continue as planning master for the purpose of performing those duties specified in the Opinion.

G. Bedminster Township shall comply with all reporting requirements to the Master and this Court as specified in the Opinion.

H. The request of Leonard Dobbs, as objector at the Compliance Hearing, for a builder's remedy, is denied for the reasons set forth in the Opinion.

I. This Court retains jurisdiction solely for purposes of those supervisory functions specified in the Opinion and in this judgment. The retention of this supervisory jurisdiction is not intended to limit the finality of this judgment in any respect. Except insofar as this limited supervisory jurisdiction has been retained, this litigation is terminated.



Eugene D. Serpentelli, A.J.S.C.

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JUN 3 - 1985

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*MANAGING PARTNER
+MEMBER NEW YORK BAR

May 31, 1985

Honorable Eugene D. Serpentelli
Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

Re: Dobbs/Bedminster

Dear Judge Serpentelli:

We have received via Mr. Ferguson's transmittal letter of May 30, 1984, the proposed form of Final Judgment. As indicated in Mr. Ferguson's letter, we had previously received the same and made certain suggested changes which have not been incorporated into the proposed Judgment.

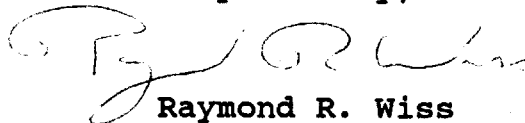
On behalf of Leonard Dobbs, objection is hereby made to the form of the proposed Judgment. A copy of my letter to Mr. Ferguson with respect to such changes has been submitted herewith.

It is clearly my understanding that Your Honor intended all rights of direct appeal to be preserved to Mr. Dobbs. By objecting to the changes which I had proposed, I believe that Bedminster is attempting to create a procedural basis for frustrating the appeal which we intend to file on behalf of Mr. Dobbs.

Honorable Eugene D. Serpentelli
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

In the event that this matter cannot be resolved by conference call, we would request a hearing on the form of the Judgment.

Respectfully,



Raymond R. Wiss

RRW/ac

Enclosure

cc: Alfred L. Ferguson, Esq.
Henry A. Hill, Jr., Esq.
Brian D. Schwartz, Esq.
Mr. Leonard Dobbs

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JUN 3 - 1985

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*NEW YORK BAR ONLY
*FLORIDA BAR ONLY

May 30, 1984

Re: Bedminster ads Allan-Deane

The Honorable Eugene D. Serpentelli
Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

Dear Judge Serpentelli:

We enclose an original and two copies of a proposed form of order for the Final Judgment in the within action, consistent with your Opinion, dated May 1, 1985. By copy of this letter, we are sending a copy to all counsel under the five day rule, so that they may formally submit any objections to the proposed form of order.

Pursuant to your prior request, we previously sent a copy of the proposed form of order to all counsel in an attempt to reach agreement as to the form of order. That effort was only partially successful.

At the request of Mr. Hall (of Mr. Hill's office), some additional language was added to paragraph C to make it clear that the necessary modification of the PUD ordinance provisions will not apply to Site A, which is currently being developed by Hills Development. The development of that entire site will include only 260 lower income units, as established by prior proceedings and as set forth in Bedminster's compliance

package. As a consequence of this revision to the proposed judgment, we do not anticipate any objections from Allan-Deane/Hills Development.

The only request for revisions to the form of order which we could not accommodate came from Mr. Wiss, who requested certain changes with respect to the characterization of Mr. Dobbs' status in this case and potential rights of appeal. We could not agree to such changes, since we believe that the proposed judgment accurately reflects Mr. Dobbs' status and that it will be up to the Appellate Division to decide whether or not that status gives Dobbs standing to pursue an appeal, if Dobbs attempts to do so. We will, of course, respond more fully to Mr. Wiss' objections when and if they are presented to you.

We received no objections from either the Department of the Public Advocate or the attorneys for Timber Properties. Thus, we do not believe that they will formally object to the enclosed form of order.

Respectfully yours



Alfred L. Ferguson

ALF/nw

Enclosure

cc: Peter J. O'Connor, Esq.
Thomas Hall, Esq.
Kenneth E. Meiser, Esq.
Raymond R. Wiss, Esq.
George M. Raymond, AICP, AIA
Richard T. Coppola, PP
Daniel F. O'Connell, Esq.
Roger W. Thomas, Esq.

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*MANAGING PARTNER
*MEMBER NEW YORK BAR

May 28, 1985

Alfred L. Ferguson, Esq.
Special Counsel, Bedminster Township
McCarter and English
550 Broad Street
Newark, New Jersey 07102

Re: Dobbs/Bedminster

Dear Mr. Ferguson:

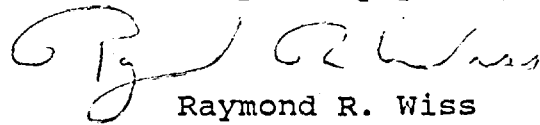
I have had the opportunity to review the proposed form of Judgment which you have circulated to all counsel. My only reservation relates to a clarification of the right of Leonard Dobbs to appeal from the determination of Judge Serpentelli. As you are probably aware from your conversations with Dan O'Connell, the Judge has indicated that it is his intent to afford Mr. Dobbs "party status" for the purpose of taking an appeal.

I would therefore request that the form of Judgment be modified so as to delete the descriptive reference "non-party objector". Additionally, at paragraph H of the proposed Judgment, I would request the following modification:

"The claim by Leonard Dobbs, as objector during the several case management conferences conducted in this matter and at the compliance hearing, for a builder's remedy, is denied for the reasons set forth in the Opinion." However, this is not in any

way intended to limit Dobbs' right to appeal from this Judgment, the Court being firmly of the belief that Dobbs, by virtue of his participation in the case management conferences and compliance hearing in this matter, is clearly entitled to such right.

Very truly yours,



Raymond R. Wiss

RRW/ac

cc: Daniel F. O'Connell, Esq.
Henry A. Hill, Jr., Esq.
Brian D. Schwartz, Esq.

MCCARTER & ENGLISH

ATTORNEYS AT LAW

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*NEW YORK BAR ONLY
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May 13, 1985

Re: Bedminster ads Allan-Deane

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MAY 15 1985

JUDGE SERPENTELLI'S CHAMBERS

The Honorable Eugene D. Serpentelli
Superior Court of New Jersey
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

My dear Judge Serpentelli:

In reply to Mr. Wiss' letter of May 9, 1985, please be advised that in the draft of the judgment we have recently circulated, we have designated Mr. Dobbs as a "non-party objector." Mr. O'Connell and I believe this is appropriate, and this should resolve any problem Mr. Wiss has as to the appropriate designation for Mr. Dobbs.

Respectfully yours,


Alfred L. Ferguson

ALF/nw

cc: Thomas Hall, Esq.
Kenneth E. Meiser, Esq.
Peter J. O'Connor, Esq.
Roger Thomas, Esq.
Daniel F. O'Connell, Esq.
Richard T. Coppola, PP
George M. Raymond, AICP, AIA
Brian D. Schwartz, Esq.

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MAY 13 1985

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ATTORNEYS AT LAW
550 BROAD STREET
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07102

JUDGE SERPENTELLI'S CHAMBERS

May 10, 1985

Re: Bedminster Township ads Allan-Deane et. al
Docket Nos. L-36896-70 P.W.
L-28061-71 P.W.

TO: Messrs Hall, Wiss, O'Connor, Meiser,
Raymond, O'Connell, Coppola, Thomas and Schwartz

Gentlemen:

Pursuant to the request of Judge Serpentelli, I enclose a copy of a form of judgment for your review. This is not being sent to the Court under the five day rule yet.

Please advise us of your concurrence in the form or any objection. Judge Serpentelli wants counsel to work out the form of the judgment, if possible, before sending it to him.

Very truly yours,

Alfred L. Ferguson

ALF/nw
Enclosure

cc: Hon. Eugene D. Serpentelli (w/o enc.)

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MAY 13 1985

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*MANAGING PARTNER
+MEMBER NEW YORK BAR

May 9, 1985

Honorable Eugene D. Serpentelli
Court House
CN 2191
Toms River, New Jersey 08754

Re: Dobbs/Bedminster

Dear Judge Serpentelli:

We have had the opportunity to review your recent Opinion and to discuss the same with our client. We note that the appearance of our firm as trial counsel for Leonard Dobbs, and the submission by our firm of a brief in support of Mr. Dobbs' position is not referenced in the "appearance" portion of Your Honor's Opinion.

We would respectfully request that the Opinion reflect the appearance of Winne, Banta, Rizzi, Hetherington & Basralian as attorneys for Leonard Dobbs; Raymond R. Wiss, Esq. as trial counsel and Donald A. Klein and Raymond R. Wiss as "on the brief". In order to avoid any problems concerning the status of Mr. Dobbs, we do not believe that for the purpose of this request a designation of intervenor, objector etc. need be indicated. We do note, that Mr. Ferguson, on behalf of the Township, had argued that the status of Mr. Dobbs was an amicus. Had the Court accepted even this position, the designation of an appearance would have been appropriate. In this light, I would

WINNE, BANTA, RIZZI, HETHE, LINGTON & BASRALIAN

request that the Court indicate our appearance on behalf of Leonard Dobbs and that the Opinion be formally amended in this regard.

Respectfully,

A handwritten signature in cursive script, appearing to read "Raymond R. Wiss".

Raymond R. Wiss

RRW/ac

cc: Daniel S. O'Connell, Esq.
Brian D. Schwartz, Esq.