

ROBERT T. REGAN, ESQ.
345 Kinderkamack Road
P.O. Box 214
Westwood, New Jersey 07675
(201) 664-3344
Attorney for Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-

THOMAS WANNER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	<u>Civil Action</u>
	:	
BOROUGH OF WESTWOOD, MAYOR AND	:	COMPLAINT
COUNCIL OF THE BOROUGH OF	:	
WESTWOOD, and PLANNING BOARD OF	:	
THE BOROUGH OF WESTWOOD,	:	
	:	
Defendants.	:	

Plaintiff, Thomas Wanner, maintaining offices at 100 Sullivan Street in the Borough of Westwood, County of Bergen, and State of New Jersey, by way of Complaint against the defendants, says:

FIRST COUNT

1. Plaintiff, Thomas Wanner, ("plaintiff") is a citizen, resident and taxpayer of the Borough of Westwood and has standing to maintain the within action. Furthermore, plaintiff is the

owner of property situated within 200 feet of the property which is the subject matter of the within action.

2. Defendant Borough of Westwood ("Borough") is a municipal corporation of and political subdivision of the State of New Jersey, and has been incorporated pursuant to the provisions of the Borough Act, N.J.S.A. 40A:60-1, et seq.

3. Defendant Mayor and Council of the Borough of Westwood ("Mayor and Council") are the duly elected officials and Governing Body Members of the Borough, pursuant to N.J.S.A. 40A:60-2. The Mayor and Council possess such powers as are more particularly enumerated in the Borough Act and in general law, which include, inter alia, the power to adopt or amend a zoning ordinance pursuant to the Municipal Land Use Law ("MLUL") as set forth in N.J.S.A. 40:55D-62.

4. Defendant Planning Board of the Borough of Westwood ("Planning Board") has been established by Ordinance adopted by the Mayor and Council, pursuant to N.J.S.A. 40:55D-23. The Planning Board possesses such powers as are conferred upon it in the MLUL, which include, inter alia, the power to prepare, adopt or amend a master plan to guide the use of lands within the Borough pursuant to N.J.S.A. 40:55D-26 and to conduct a periodic general reexamination of the Master Plan pursuant to N.J.S.A.

40:55D-89.

5. The within action pertains to an amendment to the Zoning Ordinance of the Borough adopted by the Mayor and Council relating to property known as Block 2001, Lot 16 ("the property" or "the premises") which comprises an area of just over 20 acres and is located on the northerly side of Old Hook Road. The property was formerly owned by Pascack Valley Hospital Association ("the Hospital") with the premises being utilized as a hospital from the 1950s until November of 2007 when Pascack Valley Hospital closed operations.

6. Both the Master Plan and Zoning Ordinance of the Borough have for many years recognized and sanctioned the hospital use on the premises. More particularly, the Master Plan adopted by the Planning Board in 1993 noted the "Health Services and Office" use which encompassed the Hospital property and other parcels within the Old Hook Road corridor wherein medical offices and related uses would be permitted.

7. On or about December 1, 2005, the Planning Board caused to be prepared a document entitled "Periodic Reexamination Report of The Master Plan ("the Reexamination Report"), which was adopted and approved by the Planning Board.

8. The Reexamination Report recommended that the Hospital

be "contained within its own zone recommended as a new zone titled the "H" Zone specifically tailored to the hospital". It also proposed certain bulk standards for the new H District, and that the remaining properties in the Health Service Office ("HSO") Zone continue to have this designation, with the Hospital property being removed from this Zone.

9. Consistent with the Reexamination Report, in 2006 the Mayor and Council adopted Ordinance No. 06-10 which established the H Hospital District (the H District"), with the property being the sole parcel included in this Zone. Ordinance No. 06-10 provided that hospitals, essential municipal services and child care centers are the only principal uses in the H District and established area and bulk regulations for the Zone. Ordinance No. 06-10 also removed hospitals as a permitted use in the HSO District.

10. On or about May 20, 2008, the Mayor and Council adopted Ordinance No. 08-10 ("the Ordinance") which amended the use, area and bulk requirements applicable to the H District. The Ordinance provides an additional use, medical schools, as a permitted use in the H District.

11. In permitting medical schools as a use within the H District, the Ordinance does not require that there be open and in

operation, a hospital. Section 2F of the Ordinance merely requires that the medical school be affiliated or associated with a community hospital, and that the "condition for the issuance of an initial certificate of occupancy for a medical school shall be met if the affiliated community hospital is in the process of obtaining some or all of the licenses and approvals necessary to operate a community hospital on the site".

12. Section 2F of the Ordinance would accordingly permit a medical school to exist on the property without the concurrent existence of an operating community hospital. In connection therewith, a medical school could open and operate, so long as the affiliated community hospital "is in the process of obtaining some or all licenses and approvals". The Ordinance is further devoid of any time period that the medical school may operate without a functioning community hospital.

13. The Ordinance further subordinates a hospital use of the property to the new permitted medical school use by allowing a community hospital without a specific license type. Instead, the "community hospital" use could be satisfied by any one of the following: acute care, long term care, treatment or care on an in-patient or out-patient basis, or emergency room care basis for patients. The hospital use, which should be primary for the site,

should be for an institution holding a certificate of need pursuant to N.J.A.C. 8:43G-2.1 which provides primary health services and medical and surgical care to persons primarily on an in-patient basis.

14. Neither the 1993 Master Plan, nor subsequent re-examination thereof, have recognized, or considered appropriate, a medical school use within the former ("HSO") and current ("H") Zoning District designations.

15. The Ordinance as adopted is contrary to and violative of the Master Plan by permitting a medical school use in the H Zone, by allowing a medical school to operate even if a hospital is not open and functioning, and by relegating and subordinating the principal land use for the property, a hospital as required by and detailed in the Master Plan, to the new medical school use.

16. The action of the Mayor and Council in adopting the Ordinance contrary to the Master Plan was arbitrary, capricious, unreasonable and an abuse of discretion, and should be invalidated as a matter of law.

WHEREFORE, plaintiff demands judgment against defendants as follows:

A. Determining the Ordinance to be contrary to and inconsistent with the Master Plan;

B. Determining that the Ordinance is invalid as a matter of law;

C. For counsel fees and court costs; and

D. For such other relief as the court may deem equitable and just.

SECOND COUNT

1. Plaintiff repeats and reiterates the allegations contained in the First Count of the Complaint as if hereinafter set forth at length.

2. N.J.S.A. 40:55D-62 provides that a zoning ordinance shall be consistent with the master plan, but permits the governing body of a municipality to adopt an amendment to the zoning ordinance which, in whole or in part, is inconsistent with the land use plan element of the master plan provided, inter alia, that the reasons of the governing body for so acting be set forth in the resolution and recorded in the minutes at the time of adoption.

3. In adopting the Ordinance, notwithstanding its inconsistency with the Master Plan, the Mayor and Council failed to detail its reasons for so acting in a resolution adopted at the time it approved the Ordinance, nor have its reasons been recorded

in the minutes.

4. The failure of the Mayor and Council to detail its reasons for enacting the Ordinance contrary to the Master Plan requires that it be adjudged invalid as a matter of law.

WHEREFORE, plaintiff demands judgment against defendants as follows:

A. Determining the Ordinance to have been adopted contrary to the requirements of the MLUL;

B. Determining that the Ordinance is invalid as a matter of law;

C. For counsel fees and court costs; and

D. For such other relief as the court may deem equitable and just.

THIRD COUNT

1. Plaintiff repeats and reiterates the allegations contained in the First and Second Counts of the Complaint as if hereinafter set forth at length.

2. N.J.S.A. 40:55D-26 provides that prior to the adoption of a land use regulation, including an amendment to the zoning ordinance, that the planning board shall transmit to the governing body, within 35 days after referral, a report as to whether the

proposed regulation is consistent with the master plan.

3. The Planning Board failed to transmit to the Mayor and Council the requisite report pursuant to N.J.S.A. 40:55D-26. More particularly, the Planning Board neither provided a report determining the Ordinance to be consistent with the Master Plan, nor did it reference the fact that the Ordinance provides for a new and essentially primary use, a medical school, that is neither permitted nor sanctioned in the Master Plan.

4. The Planning Board's failure to comply with the requirements of N.J.S.A. 40:55D-26 requires that the Ordinance be invalidated as a matter of law.

WHEREFORE, plaintiff demands judgment against defendants as follows:

A. Determining the Ordinance to have been adopted contrary to the requirements of the MLUL;

B. Determining that the Ordinance is invalid as a matter of law;

C. For counsel fees and court costs; and

D. For such other relief as the court may deem equitable and just.

FOURTH COUNT

1. Plaintiff repeats and reiterates the allegations contained in the First, Second and Third Counts of the Complaint as if hereinafter set forth at length.

2. Section 2L of the Ordinance permits multi-level parking garages as a new permitted accessory use in the H District.

3. The Ordinance allows parking garages to have the same bulk, height and setback standards as principal buildings in the zone, with the additional benefit of being excluded in the calculation of building coverage or floor area ratio ("FAR").

4. The Master Plan neither provides for nor recommends that parking garages be permitted within any zoning district of the Borough, and such a use is not permitted within any other zone.

5. Moreover, the property was occupied by a hospital and operated for such a purpose for nearly 50 years, and during that time, a parking garage was never a permitted accessory use in the premises.

6. As a result of the adoption of the Ordinance, the property is the sole parcel within the Borough which is permitted to have a parking garage. Every other tract or lot in the Borough is required, by ordinance, to have parking at grade level.

7. The Ordinance accordingly confers a special benefit on the property, and is intended to benefit the owner or occupant

thereof and was not enacted for the purpose or effect of advancing or promoting the Borough's land use plan, as evidenced by the fact that parking structures are devoid of reference in the Master Plan or any land use regulation.

8. The Ordinance constitutes illegal spot zoning and should be stricken as a matter of law.

WHEREFORE, plaintiff demands judgment against defendants as follows:

A. Determining that inclusion in the Ordinance of parking garages as an accessory use is intended to confer a special benefit on the owner or occupant of the property rather than furthering the comprehensive zoning plan of the Borough;

B. Invalidating the Ordinance as spot zoning as a matter of law;

C. For counsel fees and court costs; and

D. For such other relief as the court may deem equitable and just.

FIFTH COUNT

1. Plaintiff repeats and reiterates the allegations contained in the First, Second, Third and Fourth Counts of the Complaint as if hereinafter set forth at length.

2. The Ordinance was introduced on first reading at a meeting of the Mayor and Council held on February 19, 2008.

3. The Ordinance proposed a change to the classification of the H District, in that it provides that medical schools would constitute an additional principal use within the Zone.

4. Furthermore, the Ordinance permits a medical school to open and operate, without a hospital concurrently being open and in operation. The "affiliated community hospital" would only be required to be in "the process of obtaining some or all licenses and approvals necessary to operate a community hospital on the site" for the medical school to obtain the required certificate of occupancy to commence operations.

5. Since the Ordinance proposed a classification change that was not recommended in a periodic general reexamination of the Master Plan adopted by the Planning Board, notice of the public hearing on the Ordinance was required to be provided to all property owners located within 200 feet in all directions of the boundaries of the H District, pursuant to N.J.S.A. 40:55D-62.1.

6. The notice provided to property owners merely referenced the title of the Ordinance, the date the Ordinance was introduced, and the scheduled hearing date. A copy of the Ordinance was also provided.

7. In connection with the adoption of a zoning ordinance, due process requires adequate notice and an opportunity to be heard, and the notice of the parking ordinance must apprise what the ordinance would change, alter or modify.

8. The notice failed to apprise that a medical school would constitute a new permitted use in the H District, that a medical school could open even though a hospital was not concurrently in operation, that parking garages would be permitted on the premises, and that new bulk standards, including a 133% increase over the current existing Floor Area Ratio ("FAR"), and parking requirements were proposed.

9. The notice of the pending Ordinance failed to comply with the requirements of N.J.S.A. 40:55D-62.1, and the due process requirements of the New Jersey and United States Constitutions, thereby requiring that the adoption of the Ordinance be invalidated as a matter of law.

WHEREFORE, plaintiff demands judgment against defendants as follows:

- A. Determining that the notice requirements prerequisite for the adoption of the Ordinance were not satisfied;
- B. Adjudging the adoption of the Ordinance to be invalid;
- C. For counsel fees and court costs; and

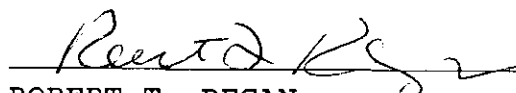
D. For such other relief as the court may deem equitable and just.


ROBERT T. REGAN
Attorney for Plaintiff

Dated: June // , 2008

CERTIFICATION

I hereby certify that this pleading was served within the time period allowed under Rule 4:6-1.

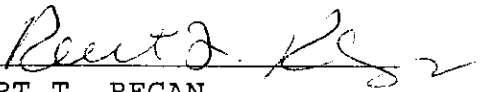

ROBERT T. REGAN
Attorney for Plaintiff

Dated: June // , 2008

CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that the matter in controversy herein is not the subject of any other action pending in any court or any arbitration proceeding, and no other action

or arbitration proceeding is contemplated to the best of my knowledge, information and belief.

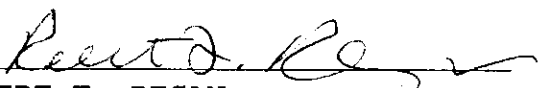


ROBERT T. REGAN
Attorney for Plaintiff

Dated: June 11, 2008

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, Robert T. Regan, Esq. is hereby designated as trial counsel for plaintiff, Thomas Wanner.



ROBERT T. REGAN
Attorney for Plaintiff

Dated: June 11, 2008